RAJENDRA PRALHADRAO WASNIK

v.

THE STATE OF MAHARASHTRA

(Criminal Appeal Nos.145-146 of 2011)

FEBRUARY 29, 2012

[A.K. PATNAIK AND SWATANTER KUMAR, JJ.]

PENAL CODE, 1860:

ss. 302, 376(2)(f), and 377 - Rape and murder of a 3 year old girl - Circumstantial evidence - Conviction and sentence of death awarded by trial court, upheld by High Court - Held: The prosecution has been able to bring home the guilt of the accused for the offences charged - The chain of events proved by the prosecution is fully established and the circumstances which were required to be proven by the prosecution, have been proved by them successfully - The cumulative effect of the entire prosecution evidence is that it points unmistakably towards the guilt of the accused - It is not only a case of circumstantial evidence simpliciter but also the 'last seen together' principle - There is no justifiable reason to interfere with impugned judgment - Circumstantial evidence - 'Last seen together' principle - Sentence/ Sentencing.

SENTENCE/SENTENCING.:

Sentence of death - Mitigating and aggravating circumstances - Rape and murder of a 3 year old girl - Accused found guilty of offences punishable u/ss 302, 376(2)(f) and 377 IPC - Held: In fact, it is not heinous simpliciter, but is a brutal and inhuman crime where a married person, aged 31 years, chooses to lure a three year old minor girl child and then commits rape on her - Further, obviously intending to destroy the entire evidence and the possibility of

being identified, he kills the minor child - It can hardly be even imagined that what torture and brutality the minor child must have faced during the course of commission of the crime - The injuries show the extent of brutal sexual urge of the accused, which targeted a minor child - The pain and agony that he must have caused to the deceased minor girl is beyond imagination and is the limit of viciousness - Court has to examine the conduct of the accused prior to, at the time as well as after the commission of the crime - When a balance-sheet of the aggravating and mitigating circumstances is drawn, in the instant case, for the purposes of determining whether the extreme penalty of death should be imposed upon the accused or not, the scale of justice only tilts against him as there is nothing but aggravating circumstances evident from the record - Trial court was fully justified in law and on the facts of the case, in awarding the extreme penalty of death - Penal Code, 1860 - ss. 302, 376(2)(f) and 377 - Circumstantial evidence.

The appellant was prosecuted for committing offences punishable u/ss 376 (2) (f), 377 and 302 IPC. The prosecution case was that the appellant, at about 6.00 P.M. on 2.3.2007, took away the three year old daughter of PWs 2 and 12 from their house stating that he would purchase her biscuits. Thereafter, the child did not return home. The following day the dead body of the child was found in the fields. The post mortem report clearly showed the cause of death as rape and asphyxia. The trial court convicted the accused of the offences charged and sentenced him to various terms including sentence of death u/s 302 IPC. The High Court upheld the conviction and the sentence.

Dismissing the appeals, the Court

HELD: 1.1. There is no doubt that it is not a case of direct evidence and the conviction of the accused is founded on circumstantial evidence. The circumstances

forming the chain of events should be proved and they should cumulatively point towards the guilt of the accused alone. In such circumstances, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. Furthermore, the rule which needs to be observed by the court while dealing with cases of circumstantial evidence is that the best evidence must be adduced which the nature of the case admits. The circumstances have to be examined cumulatively. The court has to examine the complete chain of events and then see whether all the material facts sought to be established by the prosecution to bring home the guilt of the accused, have been proved beyond reasonable doubt or not. It has to be kept in mind that all these principles are based upon one basic canon of our criminal jurisprudence that the accused is innocent until proven guilty and that the accused is entitled to a just and fair trial. [para 7] [237-B-H; 238-A]

Dhananajoy Chatterjee alias Dhana vs. State of W.B. 1994 (1) SCR 37 = JT 1994 (1) SC 33; *Shivu & Anr. v. R.G. High Court of Karnataka & Anr.* 2007 (2) SCR 555 = (2007) 4 SCC 713; and *Shivaji @ Dadya Shankar Alhat v. State of Maharashtra* 2008 (13) SCR 81 = (AIR 2009 SC 56 - referred to.

1.2. The following circumstances which would show that for the undisputable rape and murder of the deceased minor girl, the accused is not only the suspect but is also the person who has committed the crime: (i) The accused had taken the victim from her home on the pretext of purchasing her biscuits; (ii) Neither the victim nor the accused returned to the house; (iii) Accused was seen with the deceased on 2.3.2007 at about 6.00 p.m. at the bus stand where, in the normal course of life, such

A shops are situated; (iv) Thereafter, the nude body of the victim was found in the field of 'PVM' on 3.3.2007; and (v) Exts. 11 and 71, show beyond reasonable doubt that the three year old girl was subjected to rape, injuries and then murdered. These circumstances and the chain of events B is complete with regard to the commission of crime and undoubtedly points towards the accused. [para 8-9] [238-B-G]

1.3. PW2, the mother of the deceased, in her statement has stated that the accused had come to their C house earlier and then on the date of the incident as well; that the accused at about 6.00 P.M., took the child with him saying that he would purchase biscuits for her. They went towards the bus-stand and thereafter, neither the child nor the accused returned home; that on the next day D body of deceased was found in the fields. Her statement remained uncontroverted or nothing material came in her cross-examination. PW-12, the father of the deceased, provided the complete chain of events, right from the time he got the information that his daughter had been taken E away till the time when her dead body was recovered from the fields. The accused was also seen in the house of PW12 by PW3, who is the niece of PW12. She also corroborated the statements of PW12 and PW2. PW4 is the other material witness, who stated that on the day of F the incident, he was present at the bus stand and he saw the accused along with the victim child in a hotel; she was on the waist of the accused and they had purchased a packet of biscuits. PW-7, is another witness, who had seen the accused holding the victim child when he was G going back to his house from the bus stand. [para 10] [238-H; 239-A-G; 240-C]

1.4.The postmortem report, Ext.-17 clearly shows that the cause of death of the three-year old girl was rape and asphyxia. The accused admitted the documents i.e. the H

sketch map, Ext.64, spot panchnama, Ext.10, inquest panchnama, Ext.11, seizure panchnamas Exts. 12, 13 and 14 in respect of the seizure of clothes of the accused and in respect of blood sample, pubic hair sample, semen sample of the accused, arrest panchnama, Ext.16, postmortem report, Ext.17 and letters Ext.19 to 27. [para 11] [240-E-G]

1.5. Once the crucial pieces of documentary evidence have been admitted by the accused and other factual links in the story of the prosecution have been duly proved by the witnesses by circumstantial or direct evidence, there is no occasion for this Court to doubt that the prosecution has not been able to prove its case beyond reasonable doubt. [para 12] [240-H; 241-A]

1.6. From the report of the experts, it is clear that there is no direct evidence connecting the appellant to the commission of the crime but it is not the case of the defence that the FSL report was in the negative. Merely because the report regarding the samples of blood and semen of the accused was inconclusive, it is not necessary that the irresistible conclusion is only one that the accused is not guilty, particularly, where the prosecution has been able to establish its case on circumstantial evidence as also by direct oral evidence. It is a settled principle of law that the evidence has to be read in its entirety. If, upon reading the evidence as such, there are serious loopholes or lacking in the case of the prosecution and they do not prove that the accused is guilty, then the court would be justified in giving the benefit of doubt to the accused on the strength of a weak FSL report. The FSL report Ext. P77 had clearly established that the blood of group 'O' was found on the clothes of the deceased and that was her blood group. [para13] [241-E-H; 242-A]

1.7. As regards the identity of the accused, he has

A been identified by PW2, PW3 and PW4. Besides them, even PW7 had also stated that he had seen the victim minor girl with the appellant in the house of PW2 and then again saw him with the victim going towards the bus stand. Statement of these four witnesses successfully B stood the lengthy cross-examination conducted on behalf of the defence. There cannot be any doubt in these circumstances that the accused had taken away the victim from the house of PW2 and was seen at the bus stand. [para 14] [242-B-D]

C *Baldev Singh v. State of Haryana* 2008 (16) SCR 826 = AIR 2009 SC 963 - relied on.

1.8. The circumstances and the chain of events proved by the prosecution is fully established and the D circumstances which were required to be proven by the prosecution, have been proved by them successfully. The cumulative effect of the entire prosecution evidence is that it points unmistakably towards the guilt of the accused. It is not only a case of circumstantial evidence E simpliciter but also the 'last seen together' principle. There are witnesses who had seen the accused at the house of PW2 with the deceased minor girl. Thereafter, he was again seen with the child at the bus stand and lastly while going away from the bus stand with the minor F child. Thus, once the evidence had successfully shown that the accused was last seen with the minor girl, it was for the accused to explain the circumstances. The accused in his statement u/s 313 Cr.P.C., in response to all the 68 questions put to him, answered only one simple G answer - 'it is false'. He also stated that the Police had registered a false case against him and that he did not want to lead any defence. There are no circumstances which can even remotely suggest that this plea taken by the accused even deserves consideration. Ex facie this is an incorrect stand. [para 15] [242-E-H; 243-A-B]

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1.9 The prosecution has been able to bring home the guilt of the accused for the offences punishable u/ss 376(2)(f), 377 and 302 of the IPC. [para 16] [243-D]

2.1. As regards the sentence, in fact, it is not heinous simpliciter, but is a brutal and inhuman crime where a married person, aged 31 years, chooses to lure a three year old minor girl child on the pretext of buying her biscuits and then commits rape on her. Further, obviously intending to destroy the entire evidence and the possibility of being identified, he kills the minor child. It can hardly be even imagined that what torture and brutality the minor child must have faced during the course of commission of the crime. The injuries, as described in Ext. P17 (the post mortem report) shows the extent of brutal sexual urge of the accused, which targeted a minor child. The pain and agony that he must have caused to the deceased minor girl is beyond imagination and is the limit of viciousness. [para 17] [249-D-G]

Ramnaresh vs. State of Chattisgarh, **2012 (2) JT 588 - relied on.**

2.2. This Court has to examine the conduct of the accused prior to, at the time as well as after the commission of the crime. Prior thereto, the accused had been serving with PW5 and PW6 under a false name and took advantage of his familiarity with the family of the deceased. He committed the crime in the most brutal manner and, thereafter, he opted not to explain any circumstances and just took up the plea of false implication, which is unbelievable and unsustainable. When the Court draws a balance-sheet of the aggravating and mitigating circumstances, for the purposes of determining whether the extreme sentence of death should be imposed upon the accused or not, the scale of justice only tilts against the accused as there is nothing

A but aggravating circumstances evident from the record. In fact, one has to really struggle to find out if there were any mitigating circumstances favouring the accused. Another aspect of the matter is that the minor child was helpless in the cruel hands of the accused. The accused
B was holding the child in a relationship of 'trust-belief' and 'confidence', in which capacity he took the child from the house of PW2. The accused, by his conduct, has belied the human relationship of trust and worthiness. The accused left the deceased in a badly injured condition in
C the open fields without even clothes. This reflects the most unfortunate and abusive facet of human conduct. [para 17-18] [249-H; 250-A-E]

2.3. The trial court was fully justified in law and on the facts of the case, in awarding the extreme penalty of
D death for an offence u/s 302 IPC along with other punishments for other offences. There is no justifiable reason to interfere with the judgment of conviction and order of sentence under the impugned judgment. [para 19] [250-F-G]

E

Case Law Reference:

1994 (1) SCR 37	referred to	para 7
2007 (2) SCR 555	referred to	para 7
F 2008 (13) SCR 81	referred to	para 7
2008 (16) SCR 826	relied on	para 15
2012 (2) JT 588	relied on	para 16

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 145-146 of 2011.

From the Judgment & Order dated 26.03.2009 of the High Court of Judicature at Bombay Nagpur Bench, at Nagpur dismissing Criminal Confirmation Case No. 3 of 2008 in
H Criminal Appeal No. 700 of 2008.

Subhro Sanyal, Kawaljeet Singh for the Appellant. A

Sushil Karanjkar, Sanjay Kharde, Asha Gopalan Nair for the Respondent.

The Judgment of the Court was delivered by B

SWATANTER KUMAR, J. 1. The present appeals are directed against the judgment dated 26th March, 2009 passed by the High Court of Bombay, Nagpur Bench affirming the conviction of the accused under Sections 376(2)(f), 377 and 302 of the Indian Penal Code, 1860 (hereafter 'IPC') and the C sentence of death awarded to the accused-appellant herein vide judgment of the First Additional Sessions Judge, Amrawati, dated 10th September, 2008.

2. The facts giving rise to the present appeal fall within a narrow compass and are as follows : D

Mahendra Namdeorao Wasnik, PW12, was living with his wife, three children and parents in Village Asra. He used to go to Village Tarkheda for earning his livelihood at the thresher of one Zafarbhai. Normally, he used to return to E his village at about 10.00 p.m. after doing his day's work. On 2nd March, 2007, he left his house at 7.00 a.m. and returned from his work at about 9.00 p.m. Upon his arrival, he was informed by his wife Kantabai Wasnik that at about 4.00 p.m. one person, whose name she did not know, had F come to the house and after taking tea, he left. The said person had again come at about 6.30 p.m. On his second visit, he told that he would take out their daughter, namely Vandana, to get her biscuits. After talking to the mother of Vandana, the accused had taken Vandana for purchasing G biscuits but never brought her back to her house. Having learnt this, PW12 started searching for his daughter Vandana along with others, but they were unable to find her. On 3rd March, 2007 at about 8.00 a.m. when he was going to the Police Station for lodging the report, he saw H

A that some persons had gathered in the fields of Pramod Vitthalrao Mohod. He went there and saw the dead body of his daughter in that field. The dead body of Vandana was lying in a nude condition and there were injuries on her person. It has come in evidence that the accused had B visited the house of PW12, Mahendra Namdeorao Wasnik to see his ailing father. He left after a cup of tea. It was on this information received from his wife that PW12 suspected that the accused was the person who was a resident of Village Parlam and had taken away his C daughter. Consequently, PW12 lodged the report with the Police, Exhibit 71 in respect of the incident. As the body of the deceased minor girl, Vandana, had been recovered, an FIR was registered being Crime Case No.23/2007 under Sections 376(2)(f), 377 and 302 IPC. The D Investigating Officer started the investigation, prepared the inquest *panchnama* in respect of the dead body of the deceased Vandana vide Exhibit 11. Sample of soil, soil mixed with urine and clothes of the deceased Vandana were seized from the spot under *Panchanama* Exhibit 12. The Investigating Officer had also drawn a sketch map of E the spot of the incident on 16th June, -2007 vide Exhibit 64. At the request of the Police, the Judicial Magistrate recorded statement of the witnesses, namely, Bhimrao Gulhane, Nilesh Gedam, Ravindra Borkar and Sumit Ramteke under Section 164 of the Code of Criminal F Procedure, 1973 (hereafter 'Cr.P.C.') The accused was arrested on 10th April, 2007 his clothes were seized vide Exhibit 14. He was subjected to medical examination. The doctor had taken blood and semen sample of the accused. These samples and the viscera were sent for G medical examination vide Exhibits 21 and 22. The reports thereof are Exhibits 76 to 79.

3. The accused was produced before the Court and was committed to the Court of Sessions where he was charged with H the offences punishable under Sections 376(2)(f), 377 and 320

IPC. He was tried for these offences. Learned Trial Court found him guilty of all the offences and awarded him punishments as follows :

Offences	Punishment/Sentence
302 IPC	Sentenced to death and he shall be hanged by neck till he is dead subject to confirmation by the Hon'ble High Court, Bombay, Bench at Nagpur as per the provisions of Section 366 of Cr.P.C.
376(2)(f) IPC	Sentenced to imprisonment for life and to pay fine of Rs.1,000 (one thousand), in default to suffer rigorous imprisonment for six months.
377 IPC	Sentenced to rigorous imprisonment for 10 (ten) years and to pay fine of Rs.1,000 (one thousand) in default to suffer further rigorous imprisonment for six months.

4. Aggrieved by the said judgment, the accused preferred an appeal before the High Court which, as already noticed, came to be dismissed. The High Court upheld the conviction and sentence of the accused giving rise to the filing of the present appeals.

5. Learned counsel appearing for the appellant-accused contended that the complete chain of events leading to the involvement of the appellant in the crime, in question, have not been established by the prosecution. According to him, the prosecution has failed to prove its case beyond reasonable doubt. The case is one of circumstantial evidence and the onus to prove the case by leading cogent, appropriate and linking evidence is on the prosecution. The prosecution has failed to establish the charge against the appellant. All witnesses are interested witnesses as they are the relatives of the informant or the deceased and as such cannot be safely relied upon by

A the Court to hold the appellant guilty of the alleged offences. Lastly, it is also contended that it was not a case which fell in the category of 'rarest of rare' cases where the Court would find that any other sentence except death penalty would be inadequate and unjustifiable. Thus, the imposition of penalty of
B death imposed by the High Court calls for interference by this Court. Though the accused, in his statement under Section 313 Cr.P.C., while replying to question No.9 about the death of Vandana and injuries on her body, had stated that it was false but from the evidence led by the prosecution, it is clear that the
C death of the deceased Vandana was homicidal. One can get the idea of the torture and brutality that the minor girl suffered at the hands of the accused from the injuries found on her person in the post-mortem report. They have been described by the doctor as follows:

D "External Vaginal Swelling present Vaginal wall lacerated, wound extending from labia mejora to inside vaginal canal in lower 1/3rd on both side 1½" x ¼" x muscle deep

Stains of semen present on inner side of thigh.

E Hymen absent, one finger easily pass.

Swelling present on anal region.

Multiple abrasions with Contusions present on body on
F face, chest back & both shoulders and knees Interiorly.

Bite mark on chest (L) side around Nipple elliptical with diameters 1½" x 1¼".

Right Lung collapsed, 150 gm, Congested on section
G collapsed.

Left Lung Collapsed, 100 gm, Congested on section collapsed.

Large vessels – contained blood."

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6. Exhibit 11, the inquest *panchnama* is admitted while the post mortem report Exhibit 71 has been proved in accordance with law. Both these documents demonstrate, beyond reasonable doubt, that it was a case of homicidal death and as per the post mortem report, the cause of death was rape and asphyxia.

7. There is no doubt that it is not a case of direct e idence but the conviction of the accused is founded on circum tantial evidence. It is a settled principle of law that the p osecution has to satisfy certain conditions before a conviction b sed on circumstantial evidence can be sustained. The c rcumstances from which the conclusion of guilt is to be drawn sh uld be fully established and should also be consistent w th only one hypothesis, i.e. the guilt of the accused. Th circumstances should be conclusive and proved by the prosecution. here must be a chain of events so complete as not to leave any subs antial doubt in the mind of the Court. Irresistibly, the ev dence should lead to the conclusion which is inconsistent wit the innocence of the accused and the only possibility is that t e accused has committed the crime. To put it simply, the cir umstances forming the chain of events should be proved an they should cumulatively point towards the guilt of the accused alone. In such circumstances, the inference of guilt can be ustified only when all the incriminating facts and circumstan es are found to be incompatible with the innocence of the ccused or the guilt of any other person. Furthermore the rule which needs to be observed by the Court while dealing with cases of circumstantial evidence is that the best evidence must be adduced which the nature of the case admits. The circumstances have to be examined cumulatively. The Court has to examine the complete chain of events and then see whether all the material facts sought to be established by the prosecution to bring home the guilt of the accused, have been proved beyond reasonable doubt or not. It has to be kept in mind that all these principles are based upon one basic cannon of our criminal jurisprudence that the accused is innocent until

A proven guilty and that the accused is entitled to a just and fair trial. [Ref. *Dhananajoy Chatterjee alias Dhana vs. State of W.B.* [JT 1994 (1) SC 33]; *Shivu & Anr. v. R.G. High Court of Karnataka & Anr.* [(2007) 4 SCC 713]; and *Shivaji @ Dadya Shankar Alhat v. State of Maharashtra* [(AIR 2009 SC 56].

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8. Now, we will revert to the facts of the present case in light of the above-stated principles. We must spell out the circumstances which would show that for the undisputable rape and murder of the deceased minor girl, the accused is not only the suspect but is also the person who has committed the crime.
C These circumstances are:

1. The accused had taken Vandana from her home on the pretext of purchasing her biscuits.

D 2. Neither Vandana nor the accused returned to the house.

3. Accused was seen with the deceased Vandana on 2nd March, 2007 at about 6.00 p.m. at the bus stand where, in the normal course of life, such
E shops are situated.

4. Thereafter, the nude body of Vandana was found in the field of Pramod Vitthalrao Mohod on 3rd March, 2007.

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5. Exhibit 11 and 71, show beyond reasonable doubt that the three year old girl was subjected to rape, injuries and then murdered.

9. The above circumstances and the chain of events is
G complete with regard to the commission of crime and undoubtedly points towards the accused. Now, we have to examine whether the prosecution has provided these facts as required in law.

H 10. PW2, Kanta, is the mother of the deceased Vandana.

In her statement she has stated that she was living along with her husband, one daughter and two sons. According to her, her in-laws were residing in the same house, though separately. Vandana was three years old at the time of her death. According to her, the occurrence took place on the day of *Holi* festival. She identified the accused, who was present in the court and stated that he had come to their house earlier and then on the date of the incident as well. Supporting the case of the prosecution, she stated that he had come to the house at about 3.00 p.m. and then left after having tea by saying that he wanted to meet his friends and thereafter, he again came back at 6.00 p.m. Vandana was playing in front of the house at that time. The accused told her that he would purchase biscuits for the child and took Vandana with him. They had gone towards the bus-stand and thereafter, neither Vandana nor the accused returned home. She had told her husband, PW1, about the incident on his return from work. PW2 also stated that on the next day body of deceased was found in the fields. There was blood in her nostrils and mouth. Marks of bites were found on her breast. There was swelling in the private parts of her body. She came to know the name of the accused subsequently. Her statement remained uncontroverted or nothing material came in her cross-examination. The accused was also seen in the house of PW12 by PW3, Preeti, who is the niece of PW12. She also corroborated the statements of PW12 and PW2. PW4, is the other material witness, Ravindra, who stated that on the day of the incident, i.e. 2nd March, 2007, he was present at the S.T. Bus stand of Asra and he had seen the accused along with Vandana in hotel *Rajendra Bhojane*. She was on the waist of the accused and they had purchased a packet of biscuits. Thereafter, he saw the accused going on the road which goes to Amrawati. Thereafter, he even searched for Vandana along with Vikram Meshram. PW5, Bhimrao Pundlik Gulhane is a witness who owns 13 acres of agricultural land at Village Khargodi in Village Nagthana. For the purposes of cultivating his land, he used to engage labourers, and the accused was engaged by him for doing the work on his agricultural field and

A he disclosed the name of accused as Sanjay Manohar Wankhede. According to this witness, he maintained a regular register for marking 'presence' and 'payment of wages' to the labourers he engaged. The said witness deposed that on the date of occurrence, i.e. 2nd March, 2007, the accused did not
B come for duty. However, on that day in the morning, the accused came to him and demanded Rs. 500/- saying that he wanted to go to Asra and thereafter, he did not come back. He produced the register which had been seized by the police earlier and had the signatures and it was exhibited as Ex.36.
C PW7, is another witness, who had seen the accused holding Vandana when he was going back to his house from the S.T. bus stand Asra.

11. The accused was subjected to medical examination and was examined by Dr. Ravindra Ruprao Sirsat, PW9 and
D he noticed no injuries on his person. Father of the deceased minor girl was examined as PW12 and he provided the complete chain of events, right from the time he got the information that his daughter had been taken away till the time when her dead body was recovered from the fields. Dr. K.V.
E Wathodkar, Dr. (Mrs.) V.K. Wathodkar and Dr. Varsha S. Bhade had prepared the postmortem report, Ex.-17, which clearly shows that the cause of death of the three-year old girl was rape and asphyxia. All these factors have been proved by the prosecution both by documentary as well as oral evidence.
F The accused admitted the documents i.e. the sketch map, Ex.64, spot *panchnama*, Ex.10, inquest *panchnama*, Ex.11, seizure *panchnamas* Exihibits 12, 13 and 14 in respect of the seizure of clothes of the accused and in respect of blood sample, public hair sample, semen sample of the accused,
G arrest *panchnama,* Ex.16, postmortem report Ex.17 and letters Ex.19 to 27.

12. Once these crucial pieces of documentary evidence have been admitted by the accused and other factual links in the story of the prosecution have been duly proved by the
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witnesses by circumstantial or direct evidence, there is no occasion for this Court to doubt that the prosecution has not been able to prove its case beyond reasonable doubt.

13. It has been vehemently argued on behalf of the appellant that the report of the FSL does not connect the accused to the commission of the crime. This, being a very material piece of evidence which the prosecution has failed to establish, the accused would be entitled to the benefit of doubt. There were two kinds of Exhibits which were sent by the Police to the Forensic Science Laboratory for examination – one, the blood-stained clothes of the deceased and second, the sample of blood, semen and pubic hair sample of the accused which were sent vide Exhibit 57. The reports of the laboratory are Exhibits 76, 77, 78 and 79. As far as the reports in respect of the appellant's sample of semen and blood are concerned, they were inconclusive as was stated by the FSL in Exhibit 76. His clothes which were seized by the Police did not bear any blood or semen stains and that was duly recorded in Exhibit 78. Exhibit 77 were the clothes of the deceased which were blood stained. The clothes contained blood group 'O' which was the blood group of the deceased girl. From the report of the experts, it is clear that there is no direct evidence connecting the appellant to the commission of the crime but it is not the case of the defence that the FSL report was in the negative. Merely because the report was inconclusive, it is not necessary that the irresistible conclusion is only one that the accused is not guilty, particularly where the prosecution has been able to establish its case on circumstantial evidence as also by direct oral evidence. It is a settled principle of law that the evidence has to be read in its entirety. If, upon reading the evidence as such, there are serious loopholes or lacking in the case of the prosecution and they do not prove that the accused is guilty, then the Court would be justified in giving the benefit of doubt to the accused on the strength of a weak FSL report. The FSL report Exhibit P77 had clearly established that the blood of group 'O' was found on the clothes of the deceased and that

A was her blood group. The prosecution has been able to establish not only by substantial evidence but clearly by medical evidence as well, that the minor girl had suffered serious injuries on her private parts and there were bite marks on her chest.

B 14. An attempt was also made to cast certain doubts as to the very identity of the accused but we find this submission without any substance. The accused has been identified by PW2, PW3 and PW4. Besides them, even PW7 Sumeet Ramteke had also stated that he had seen the victim minor girl with the appellant in the house of PW2, Kantabai and then again C seen him with the victim going towards the ST bus stand. Statement of these four witnesses successfully stood the lengthy cross-examination conducted on behalf of the defence. There cannot be any doubt in these circumstances that the accused had taken away the victim from the house of PW2 and was seen D at the ST stand.

15. In our considered opinion, the tests laid down by this Court in *Baldev Singh v. State of Haryana,* AIR 2009 SC 963 in relation to cases of circumstantial evidence are completely E satisfied in the present case. The circumstances and the chain of events proved by the prosecution is fully established and the circumstances which were required to be proven by the prosecu ion, have been proved by them successfully. The cumulative effect of the entire prosecution evidence is that it points F unmistakably towards the guilt of the accused. It is not only a case of circumstantial evidence simpliciter but also the 'last seen together' principle. There are witnesses who had seen the accused at the house of PW2 with the deceased minor girl. Thereafter, he was again seen with the child at the ST bus G stand, Asra and lastly while going away from the ST bus stand with the minor child. Thus, once the evidence had successfully shown that the accused was last seen with the minor girl, it was for the accused to explain the circumstances. The accused in his statement under Section 313 Cr.P.C., in response to all the 68 questions put to him, answered only one simple answer - 'it H

is false'. He also stated that the Police had registered a false case against him and that he did not want to lead any defence. It is very difficult to assume that as many as 13 witnesses from the same village, the Police and doctors would falsely implicate the accused. There are no circumstances which can even remotely suggest that this plea taken by the accused even deserves consideration. *Ex facie* this is an incorrect stand.

16. Having dealt with the contentions of the learned counsel appearing for the appellant on the merits of the case, now we would proceed to discuss the last contention raised on behalf of the appellant that this is not one of the rarest of rare cases where awarding death sentence is justified. We have already held that the prosecution has been able to bring home the guilt of the accused for the offences under Sections 376(2)(f), 377 and 302 of the IPC. In order to deal with this contention raised on behalf of the appellant, we may, at the very outset, refer to the basic principles that are to be kept in mind by the Court while considering the award of death sentence to an accused. This very Bench in a recent judgment, considered various judgments of this Court by different Benches right from *Bachan Singh's* case, in relation to the canons governing the imposition of death penalty and illustratively stated the aggravating circumstances, mitigating circumstances and the principles that would be applied by the Courts in determining such a question. It will be useful to refer to the judgment of this Bench in the case of *Ramnaresh vs. State of Chattisgarh*, Crl. Appeal No. 166-167/2010 decided on February 28, 2012 wherein it was held as under: -

> "The above judgments provide us with the dicta of the Court relating to imposition of death penalty. Merely because a crime is heinous *per se* may not be a sufficient reason for the imposition of death penalty without reference to the other factors and attendant circumstances.
>
> Most of the heinous crimes under the IPC are punishable by death penalty or life imprisonment. That by

itself does not suggest that in all such offences, penalty of death should be awarded. We must notice, even at the cost of repetition, that in such cases awarding of life imprisonment would be a rule, while 'death' would be the exception. The term 'rarest of rare case' which is the consistent determinative rule declared by this Court, itself suggests that it has to be an exceptional case. The life of a particular individual cannot be taken away except according to the procedure established by law and that is the constitutional mandate. The law contemplates recording of special reasons and, therefore, the expression 'special' has to be given a definite meaning and connotation. 'Special reasons' in contra-distinction to 'reasons' *simplicitor* conveys the legislative mandate of putting a restriction on exercise of judicial discretion by placing the requirement of special reasons.

Since, the later judgments of this Court have added to the principles stated by this Court in the case of *Bachan Singh* (supra) and *Machhi Singh* (supra), it will be useful to re-state the stated principles while also bringing them in consonance, with the recent judgments.

The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in the case of *Bachan Singh* (supra) and thereafter, in the case of *Machhi Singh* (supra). The aforesaid judgments, primarily dissect these principles into two different compartments – one being the 'aggravating circumstances' while the other being the 'mitigating circumstance'. The Court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the Court. It will be

appropriate for the Court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the Court as contemplated under Section 354(3) Cr.P.C.

Aggravating Circumstances :

1. The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

2. The offence was committed while the offender was engaged in the commission of another serious offence.

3. The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

4. The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

5. Hired killings.

6. The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

7. The offence was committed by a person while in lawful custody.

8. The murder or the offence was committed, to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 Cr.P.C.

A 9. When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

10. When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

11. When murder is committed for a motive which C evidences total depravity and meanness.

12. When there is a cold blooded murder without provocation.

13. The crime is committed so brutally that it pricks or D shocks not only the judicial conscience but even the conscience of the society.

Mitigating Circumstances :

E 1. The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

2. The age of the accused is a relevant consideration but F not a determinative factor by itself.

3. The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

G 4. The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

5. The circumstances which, in normal course of life, would H render such a behavior possible and could have the effect

of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

6. Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a pre-ordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

7. Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused.

While determining the questions relateable to sentencing policy, the Court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

Principles :

1. The Court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence.

2. In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.

3. Life imprisonment is the rule and death sentence is an exception.

4. The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant circumstances.

A 5. The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.

B Stated broadly, these are the accepted indicators for the exercise of judicial discretion but it is always preferred not to fetter the judicial discretion by attempting to make the excessive enumeration, in one way or another. In other words, these are the considerations which may collectively or otherwise weigh in the mind of the Court, while C exercising its jurisdiction. It is difficult to state, it as an absolute rule. Every case has to be decided on its own merits. The judicial pronouncements, can only state the precepts that may govern the exercise of judicial discretion to a limited extent. Justice may be done on the facts of D each case. These are the factors which the Court may consider in its endeavour to do complete justice between the parties.

The Court then would draw a balance-sheet of E aggravating and mitigating circumstances. Both aspects have to be given their respective weightage. The Court has to strike a balance between the two and see towards which side the scale/balance of justice tilts. The principle of proportion between the crime and the punishment is the F principle of *'just deserts'* that serves as the foundation of every criminal sentence that is justifiable. In other words, the 'doctrine of proportionality' has a valuable application to the sentencing policy under the Indian criminal jurisprudence. Thus, the court will not only have to examine what is just but also as to what the accused deserves G keeping in view the impact on the society at large.

Every punishment imposed is bound to have its effect not only on the accused alone, but also on the society as a whole. Thus, the Courts should consider retributive

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and deterrent aspect of punishment while imposing the extreme punishment of death.

Wherever, the offence which is committed, manner in which it is committed, its attendant circumstances and the motive and status of the victim, undoubtedly brings the case within the ambit of 'rarest of rare' cases and the Court finds that the imposition of life imprisonment would be inflicting of inadequate punishment, the Court may award death penalty. Wherever, the case falls in any of the exceptions to the 'rarest of rare' cases, the Court may exercise its judicial discretion while imposing life imprisonment in place of death sentence."

17. We shall tentatively examine the facts of the present case in light of the above principles. First and foremost is that the crime committed by the accused is heinous. In fact, it is not heinous simplicitor, but is a brutal and inhuman crime where a married person, aged 31 years, chooses to lure a three year old minor girl child on the pretext of buying her biscuits and then commits rape on her. Further, obviously intending to destroy the entire evidence and the possibility of being identified, he kills the minor child. On the basis of the 'last seen together' theory and other direct and circumstantial evidence, the prosecution has been able to establish its case beyond any reasonable doubt. It can hardly be even imagined that what torture and brutality the minor child must have faced during the course of commission of this crime. All her private parts were swollen and bleeding. She was bleeding through her nose and mouth. The injuries, as described in EX.P17 (the post mortem report) shows the extent of brutal sexual urge of the accused, which targeted a minor child, who still had to see the world. He went to the extent of giving bites on her chest. The pain and agony that he must have caused to the deceased minor girl is beyond imagination and is the limit of viciousness. This Court has to examine the conduct of the accused prior to, at the time as well as after the commission of the crime. Prior thereto, the accused

had been serving with PW5 and PW6 under a false name and took advantage of his familiarity with the family of the deceased. He committed the crime in the most brutal manner and, thereafter, he opted not to explain any circumstances and just took up the plea of false implication, which is unbelievable and unsustainable. When the Court draws a balance-sheet of the aggravating and mitigating circumstances, for the purposes of determining whether the extreme sentence of death should be imposed upon the accused or not, the scale of justice only tilts against the accused as there is nothing but aggravating circumstances evident from the record of the Court. In fact, one has to really struggle to find out if there were any mitigating circumstances favouring the accused. Another aspect of the matter is that the minor child was helpless in the cruel hands of the accused. The accused was holding the child in a relationship of 'trust-belief' and 'confidence', in which capacity he took the child from the house of PW2. In other words, the accused, by his conduct, has belied the human relationship of trust and worthiness.

18. The accused left the deceased in a badly injured condition in the open fields without even clothes. This reflects the most unfortunate and abusive facet of human conduct, for which the accused has to blame no one else than his own self.

19. Thus, for the reasons afore-recorded, we find that the learned trial court was fully justified in law and on the facts of the present case, in awarding the extreme penalty of death for an offence under Section 302 IPC along with other punishments for other offences. We find no justifiable reason to interfere with the judgment of conviction and order of sentence under the impugned judgment. The appeals are dismissed.

R.P. Appeals dismissed.