

Death Reference (D.B.) No.06 of 2019
With
Criminal Appeal (D.B.) No. 180 of 2020

[Arising out of judgment of conviction dated 20.12.2019 and order of sentence dated 21.12.2019 passed by learned Additional Judicial Commissioner-XVI cum Special Judge, CBI, Ranchi in Sessions Trial No. 576 of 2019 (R.C. Case No.06(S)/2018-R]

Death Reference (D.B.) No.06 of 2019

The State of Jharkhand **Appellant**
 --Versus--

Rahul Kumar @ Rahul Raj @ Raj Srivastava @ Rocky Raj @ Aryan @ Ankit
aged about 25 years son of Umesh Prasad, resident of Dhurgaon, P.O. & P.S.
Dhurgawan, District Nawada, Bihar **Respondent**

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Criminal Appeal (D.B.) No. 180 of 2020

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Dhurgawan, District Nawada, Bihar **Appellant**
 --Versus--

The State of Jharkhand **Respondent**

For the Appellant : Mr. R.S. Mazumdar, Sr. Advocate
 Mr. Rohan Mazumdar, Advocate
For the State : Ms. Priya Shrestha, Special P.P.
For the CBI : Mr. Anil Kumar, ASGI

PRESENT: SRI ANANDA SEN, J.
SRI GAUTAM KUMAR CHOUDHARY, J.

JUDGMENT

Reserved on: 29.08.2024

Pronounced On: 09.09.2024

Per Gautam Kumar Choudhary, J. Death Reference on behalf of the State and the Criminal Appeal preferred on behalf of the appellant arise out of the common judgment and sentence passed in Sessions Trial No.576 of 2019, whereby and whereunder the appellant has been convicted and sentenced to death under Section 302 of the IPC, appellant is also convicted under Sections 376, 449 and 201 of the IPC and sentenced to different terms of imprisonment and fine. Appellant has preferred the Criminal Appeal against the judgment of conviction and sentence, whereas the State has preferred reference for affirmance of the death sentence.

2. Informant is the father of the victim girl who was aged 19 years at the time of incidence. As per the FIR, on 15.12.2016, she had gone to attend her Class at RTC Institute of Technology, Anandi at Ormanjhi and he had gone to drop her to the College. Informant returned from there to his home at Barkakana and on that day after attending her Class, victim returned to her home at Booti Basti, Ranchi. After she returned home, at 6.30 in the evening, the informant received a call from her daughter on his mobile where she requested to recharge her mobile. On the intervening night of 15/16.12.2016, she was all alone in the house situated at Booti Basti. On the next morning at 8.15, when the daughter of informant tried to contact the victim, she found that the mobile was switched off. At this she contacted the wife of Anil Kumar Singh, who was a resident neighbor at Booti Basti and requested her to get the information regarding the victim as her mobile was switched off. When wife of Anil Kumar Singh went to the house, she found that door was open, smoke billowing from the room and inside victim was in burnt condition. The bed and mattress over it were on fire and this information was given to the informant on telephone. By 9 O' Clock, the informant reached his house at Booti and found his daughter in burnt condition lying on the ground. Informant apprehended attempted rape and murder by unknown miscreants.

3. On the basis of the fardbeyan, Ranchi Sadar P.S. Case No.534/2016 was registered under Sections 448, 302, 201, 328, 376, 511/34 of the IPC on 17.12.2016 against unknown. During investigation, matter was handed over to CBI for investigation. During investigation, it was found that the appellant had been stalking the victim. Further, on the basis of the post mortem examination report, it was found that the victim was raped brutally and murdered by strangulating with data cable and electric wire. The vaginal swab, nail clippings and other body materials were sent for chemical analysis to FSL. On the basis of DNA report, the identity of the appellant was established as the assailant. After investigation, charge sheet was submitted under Sections 302, 376, 449 and 201 of the IPC against the appellant- Rahul Kumar @ Rahul Raj @ Raj Srivastava @ Rocky Raj @ Aryan @ Ankit.

4. After cognizance, the appellant was put on trial for the offence punishable under Sections 302, 376 449, and 201 of the IPC.

5. The prosecution has examined altogether 30 witnesses out of 34 witnesses cited in charge-sheet to substantiate the charges. They are :-

P.W. 1	Nageshwar Mahto	Retired Category-VI, CMPDI, Barkakana
P.W. 2	Kalpana Kumari	Apprentice in Jamalpur Locomotive (Railway)
P.W. 3	Monika Bharti	LDC, Ministry of Defence
P.W. 4	Madhumita Bharti	M.A, Ranchi Women's College, Ranchi
P.W. 5	Akshay Kumar @ Bunty	
P.W. 6	Hemant Kumar Tiwary	Private Job
P.W. 7	Krishna Kumar	Officer Incharge of P.S-Bhandaria
P.W. 8	Smt. Meena Kujur	C.C.R. Ranchi
P.W. 9	Anil Ohdar	Business
P.W. 10	Wasim Khan	Business
P.W. 11	Mahesh Mahto	Business
P.W. 12	Saroj Singh	Auto Driver
P.W. 13	Rupesh Singh	Student
P.W. 14	Rahul Singh	Student
P.W. 15	Jahangir Imam	Scientific, Assistant, S.F.S.L, Jharkhand
P.W. 16	Neha Kumari	Scientific, Assistant, S.F.S.L, Jharkhand
P.W. 17	Vrijesh Kumar Yadav	Scientific, Assistant, S.F.S.L, Jharkhand
P.W. 18	Rakesh Kumar Rana	Assistant Director S.F.S.L, Jharkhand
P.W. 19	Dr. Nawal Kumar Singh	Senior Resident Department of F.M.T AIIMS, Patna
P.W. 20	Dr. Tulsi Mahto	Professor and Head of the Department F.M.T, RIMS, Ranchi
P.W. 21	Dr. B.K.Mohapatra	Principal Scientific Officer Biology in C.F.S.L, New Delhi
P.W. 22	Anuj Kumar	Judicial Magistrate 1 st Class Civil Court, Ranchi
P.W. 23	Dharmendra Kumar	Railway Judicial Magistrate, Ranchi
P.W. 24	Dr. Anil Kumar Sinha	Professor Department of Pathology, RIMS, Ranchi
P.W. 25	Uma Shankar Prasad	Subordinate Engineer, Q.M, Dept. CCL, Head Quarter, Darbhanga House, Ranchi

P.W. 26	Zafar Imam Ansari	Subordinate Engineer, Q.M, Dept. CCL, Head Quarter, Darbhanga House, Ranchi
P.W. 27	Harsh Bardhan	Clerk at CCL, Head Quarter, Darbhanga House, Ranchi
P.W. 28	Rohit	Clerk at CCL, Head Quarter, Darbhanga House, Ranchi
P.W. 29	Md. Parwez Alam	Inspector, CBI, EO-VI, Ranchi
P.W. 30	Tarkeshwar Das	Railway Judicial Magistrate, Sahebganj

6. During the examination of aforesaid witnesses prosecution has produced and exhibited following documents and material exhibits-

Ext. 1	Fard-beyan
Ext. 2	Carbon Copy of Inquest Report
Ext. 3	Seizure list of dated 01.01.17
Ext. 4 & 4/1	Two Paper of Identification Form for DNA Profiling
Ext. 5	Statement u/s 164 CrPC of Kalpana Kumari (PW-2)
Ext. 5/1	Statement u/s 164 CrPC of Akshay Kumar @ Bunty (PW-5)
Ext. 5/2	Statement u/s 164 CrPC of Hemant Tiwari (PW-6)
Ext. 5/3	Statement u/s 164 CrPC of Anil Ohdar (PW-9)
Ext. 5/4	Statement u/s 164 CrPC of Wasim Khan (PW-10)
Ext. 5/5 & 5/6	Statement u/s 164 CrPC of Mahesh Mahto (PW-11) and Saroj Singh (PW-12)
Ext. 5/7 & 5/8	Statement u/s 164 Cr.P.C. of Rupesh Singh (PW-13) and Rahul Singh (PW-14)
Ext. 5/9 & 5/10	Statement u/s 164 CR.P.C. of Madhumita Bharti (PW-4) and Monika Bharti (PW-3)
Ext. 6	Seizure list
Ext. 7	F.I.R
Ext. 8 & 8/1	Two Forwarding Note of date 16.12.16
Ext. 8/2 to 8/4	Three Forwarding Note of dated 16.12.16
Ext. 9	Letter dated 16.12.19 for handing over the biological evidence collected from P.O. to I.O.
Ext. 10	Report on murder
Ext. 11	Letter no. 3031/Confidential dt. 2.8.19 of Director Lab of S.F.S.L, Ranchi
Ext. 11/1	Letter no. 140/18 dt. 4.5.18 of Incharge Director, SFSL, Ranchi to S.P. CBI, Ranchi.
Ext. 12	S.F.S.L Report no.1427/16 dated 20.01.17
Ext. 12/1	S.F.S.L Report no. 1427/16 dated 15.03.17

Ext. 12/2	S.F.S.L Report no. 69/17 dated 03.04.17
Ext. 13	Post-Mortem Report
Ext. 14	C.F.S.L-2018/B-0980 Report of dated 23.10.18
Ext. 14/1	C.F.S.L 2019 /B-195 dated 13.03.19
Ext. 14/2	Forwarding letter with signature of Director N.B.Bardhan
Ext. 14/3	Report no. CFSL-2019/B-0581 dt. 10.7.19 of Blood Sample of Rahul Raj with annexure I and II
Ext. 15	Signature of P.W-21 in Envelope marked as parcel 2
Ext. 15/1	Signature of P.W-21 in envelope as parcel 3
Ext. 15/2	Signature of P.W-21 in envelope as parcel 4
Ext. 15/3	Signature of P.W-21 in envelope as parcel 5
Ext. 15/4	Signature of P.W-21 in envelope as parcel 6
Ext. 15/5	Signature of P.W-21 in envelope as parcel 7
Ext. 15/6 to 15/12	Signature of PW-21 is Seven Ext. in envelope as parcel 9
Ext. 15/13 & 15/14	Examination tag with signature of PW-21 in envelope as parcel 1 (Mat. Ext. X/1 and X/2)
Ext. 15/15	Examination tag with Signature of PW-21 in envelope marked as parcel 1 (Mat. Ext. XI/1)
Ext. 15/16	Signature of PW-24 in envelope contained EDTA vial and Strip gauge
Ext. 15/17 & 15/18	Signature of P.W-24 in two envelope containing EDTA vial and sterile gauge
Ext. 16 &16/1	Two letter (Blood Collection Forms) along-with Ext A and B
Ext. 16/2	Forwarding of Form in two page of Rahul Raj blood Sample
Ext. 17	FIR of RC 6(S)/18-R
Ext. 18	Production cum seizure memo dt. 02.04.18 in 3 sheets
Ext. 19	Letter No. 1637/Confidential dt. 26.07.18 in 10 sheet through which remnants of exhibit sealed cover received
Ext. 20	Letter No. 5732/3/06(S)/2018-R dt. 31.08.18 in 11 sheets
Ext. 21	Letter of Supdt. Beur Jail, Patna vide no. 1469 dt. 11.02.19 in 2 sheet
Ext. 22	FIR of Ekangsarai P.S-127/16 dt. 25.09.16
Ext. 23	Letter No. 896/3/6(S)/2018-R dt. 19.02.19 in 8 sheets through which blood sample sent to CFSL New Delhi for DNA Profiling .
Ext. 24 to 24/3	FIR and Charge-sheet of Patna Case No. 21/13, dt. 30.04.13 Beur case no. 57/15, Kankarbagh P.S. Case No. 354/12, Kankarbagh P.S. Case No. 407/12
Ext. 25	C.D.R in 11 sheet
Ext. 26 to 26/4	Five FIR in Hasanganj P.S. Case No. 152/19, 138/19, 151/19, 171/19 and 174/19

Ext. 27	Letter No. 338/3/6(S)/2018-R dt. 25.06.19 in 4 sheets
Ext. 28	Letter No. 297 dt. 19.07.19 with annexure
Ext. 29	Letter No. 86/19 dt. 20.07.19 in 9 sheet
Ext. 30	Copy of FIR of Sadar P.S. case No. 441/18 dt. 22.08.18
Ext. 31 & 31/1	Two T.I.P report conduct on dt. 27.07.19

Mat. Ext -I to I/21	Twenty two colour photograph
Mat.Ext. II	D.V.D of Photograph and Scratch
Mat.Ext. III	Multiprinted Salvar (Ext. L)
Mat.Ext. III/1	Examinations tag with signature of PW-21
Mat.Ext. IV	Multi-coloured printed cloth bag (Ext. M)
Mat.Ext. IV/1	Examination tag with signature of PW-21
Mat.Ext. V	Few long hair (Ext. N)
Mat.Ext. V/1	Examination tag with signature of PW-21
Mat.Ext. VI	Burnt hair in bunch (Ext. O)
Mat.Ext. VI/1	Examination tag with signature of PW-21
Mat.Ext. VII	Sunmica switch board (Ext. P)
Mat.Ext. VII/1	Examination tag with signature of PW-21
Mat.Ext. VIII	One cotton panty (Ext. Q)
Mat.Ext. VIII/1	Examination tag with signature of PW-21
Mat.Ext. IX	Seven small amount of cotton thread
Mat.Ext. IX/1 to IX/7	Examination tag with signature in seven number of PW-21
Mat.Ext. X	Blood sample of Umesh Prasad and Nirmala Devi (Ext. A and Ext. B)
Mat.Ext. X/1 & X/2	Examination tag with signature in Ext. A and B of PW-21
Mat.Ext. XI	Blood sample of Rahul Raj
Mat.Ext. XI/1	Examination tag with signature of PW-21
Mat.Ext. XII, XII/1 & XII/2	Three envelope contains EDTA vial and strip gauge
Mark X	Xerox copy of receipt of Sample to Police Officer

7. Judgment of conviction and sentence has been assailed on the ground that there is no direct eye witness to the incidence and the case is based on circumstantial evidence. In order to prove the charge on the basis of circumstantial evidence, law is settled that the chain of circumstance should be complete in such a manner as to unerringly point towards the guilt of the accused, without leaving any hypothesis compatible with his innocence.

8. It is argued by the learned counsel Mr. Rohan Mazumdar, appearing on behalf of the appellant submitted that P.W. 4, sister of the victim has deposed that on 16.12.2016, she had made a call to the victim at about 6 – 7 a.m., whereas in the fardbeyan it is mentioned that the said call was made by her at 8.15 a.m. Prosecution has also failed to prove that appellant was living in the room in Durga Temple situated near the place of occurrence. Experts were not called for to prove the FSL reports.

9. On the point of sentence, it is argued that appellant is a young boy who was aged 25 years at the time of judgment in 2019. There is no past proved conviction against him and the learned trial court has failed to follow the guidelines laid down by the Hon'ble Supreme Court in awarding death sentence. It was incumbent on the part of the trial court, in view of the guidelines laid down by Hon'ble Supreme Court in suo moto Writ Petition (Criminal No.1 of 2022) to afford a separate hearing, to urge why capital sentence ought not to be resorted to. Further reliance is placed on ***Rajendra Prahlad Rao Wasnik Versus The State of Maharashtra, (2019) 12 SCC 460*** wherein it has been held that pendency of one more criminal case against the convict, cannot be a factum for consideration while awarding a sentence. For imposition of death penalty, there must be some exceptional circumstances. It is not only the crime but also the criminal should be considered. In ***Ram Deo Prasad Versus State of Bihar (2013) 7 SCC 725*** it has been held that nature of offence alone may not in all cases be determining factor for bringing case within "rarest of rare category" and to impose ultimate and irreversible punishment of death.

10. It is argued by the learned ASGI, Mr. Anil Kumar on behalf of CBI and by Special P.P. (Vigilance) on behalf of the State that the post mortem examination report (Exhibit 13) establishes that the victim was savagely raped,

throttled to death and then burnt to cause disappearance of evidence. Complicity of the appellant has been proved by the deposition of the friend of the deceased P.W. 2 who has stated that appellant had been stalking the victim for quite some time about six months. He was identified on TIP after his arrest. The DNA profile generated from the vaginal swab as well as nail clippings of the victim matched with DNA profile of the accused. It is also argued that the incidence took place in December, 2016 and the judgment has been delivered in December, 2019. Guidelines laid down by the Apex Court for the Trial Court which are being relied by the learned counsel on behalf of the appellants is of the year 2022 and after which will apply in the present case.

11. On the point of sentence, it is argued that the appellant is a history sheeter and Mahila P.S. Case No.21/13 under Sections 376 and 380 of the IPC and Section 66/66A of the I.T. Act. He was facing trial (Exhibit 21) and once enlarged on provisional bail absconded. There were other cases also pending against him. Considering the gravity of offence, the barbaric manner of its execution and the criminal antecedent of the appellant, the death sentence is urged to be affirmed.

FINDINGS

12. Life of a bright young girl aged 19 years who was studying in an engineering college, was snuffed out in a most barbaric manner, is established by the post mortem examination report (Exhibit 13) duly proved by the Doctors who formed the Medical Board (P.W. 19, P.W. 20 and P.W. 21) to conduct the autopsy over the dead body of the victim. The Medical Board found the following injuries on the dead body: -

- I. Post mortem deep burn over head, portions of neck, part of left upper limb (upper part) including shoulder and right upper limb except right palm.
- II. An electric wire and data cable wire was present around the neck, wracked transversally as ligature material. After cutting and removing the ligature material, there was presence of transverse ligature mark externally visible on unburnt portions of neck. On internal examination of neck, there was found contusion of tissues underlying the ligature mark.
- III. There was recent rupture of hymen around 5O' Clock – 7O' Clock

position with contusion and tear of forchette and also there was recent erosion of mucosa of external os of cervix. These injuries were within 24 hours prior to death.

13. Doctor opined the following:

- i. Ligature mark noted above was ante mortem in nature caused by ligature material.
- ii. Death was due to asphyxia as a result of strangulation.
- iii. Burn was post mortem in nature.
- iv. Injuries to the reproductive parts and forchette were ante mortem in nature and suggestive of recent violent sexual act/acts within 24 hours prior to death.
- v. Time since death 6-24 hours prior to post mortem examination.

14. P.W. 18 is Assistant Director, SFSL who has proved that in body swab mark A/5 (Ia), lubricating oil was found. The report was exhibited as Exhibit 12/2. This establishes that the deceased was set on fire by putting the lubricating oil on her body.

15. Objective findings of the post mortem examination report establish violent rape with the victim followed by throttling her to death. The perpetrator did not stop here, but also set her on fire causing extensive post mortem burn injuries in order to cause disappearance of evidence. Prosecution has relied on following circumstances to establish the charge against the appellant: -

- I. Victim was all alone in her house at Booti Basti in the intervening night of 15/16.12.2016 as deposed by her father who is the informant of the case (P.W. 1).
- II. Appellant had approached the sisters of the deceased P.W. 3 and P.W. 4 for a room on rent which was refused by them.
- III. Appellant had been stalking the deceased as informed by the deceased to P.W. 4.
- IV. The appellant was residing in a room situated in Durga Temple premises near the place of occurrence about 50-100 meters and immediately after the incidence, he absconded from there. This has come in testimony of P.W. 5, P.W. 6, P.W. 9, P.W. 10, P.W. 11, P.W. 12, P.W. 13 and P.W. 14 who are all independent witnesses of the locality. These witnesses have testified to the presence of the appellant in the area at the relevant time

of the incidence.

V. In the statement under Section 313 of the Cr.P.C., appellant has given a false answer that he had never resided in the Durga Temple premises. This is against the over whelming evidence of his presence there as stated by independent witnesses, referred to above. This along with his feigned ignorance about the deceased, is against the weight of evidence and is palpably false.

16. Apart from the above incriminating circumstances appearing against the appellant, the clinching evidence is DNA profile of vaginal swab of the deceased marked A/1 matched with the DNA profile generated from the blood sample of appellant- Rahul Kumar @ Rahul Raj @ Raj Srivastava @ Rocky Raj @ Aryan @ Ankit as per Report No. CFSL-2019/B-0581 dated 10.07.2019 (Exhibit 14/3).

17. The above circumstances have been proved by the witnesses. On circumstance no.1, there is no dispute that incidence took place in the house of the informant in the intervening night of 15/16.12.2016 at Booti Basti, Ranchi. This has been proved by P.Ws. 1 – 14. There has not been any cross examination on this part to controvert the prosecution case regarding the date, time and place of occurrence.

18. With regard to the second circumstance that the appellant had approached victim and his sister for getting a room on rent in the house of the informant, P.W. 4 who is the daughters of the informant, has deposed in para 5 that the appellant had approached them for getting a room on rent which was refused. It has also been deposed by this witness that appellant had been stalking her. Her testimony is corroborated by her earlier statement under Section 164 of the Cr.P.C. (Exhibit 5/9) in terms of Section 157 of the Evidence Act. She has also identified the appellant in Test Identification Parade. This witness has not been confronted with her earlier statements given to the police under Section 161 of the Cr.P.C. or under Section 164 of the Cr.P.C. to elicit any contradiction under Section 145 of the Evidence Act. The second and third circumstance, is accordingly proved as the testimony of this witness remains uncontroverted on these facts.

19. On circumstance no.4, apart from the circumstance referred to above, P.W. 5 – Akshay Kumar, who has deposed that he was acquainted with the

appellant as his native place was in Dhurgaon in Bihar and in the same place, the matrimonial home of his sister was situated. During Durga Puja festival, the appellant has requested him to arrange a room on rent. As no such room could be found therefore, he was given temporary accommodation in a room in the Durga Temple. He has also deposed in para 3 that on one occasion he has made specific enquiry regarding deceased on which he had reprimanded him. After hearing about the incidence, when this witness came to know about it, he was going to the place of occurrence by his scooty when the appellant also took lift and joined him while visiting the place of occurrence. After that, he had said that he will return to Patna. Thereafter, few times he received call from him by his mobile no.9060383482. He had made distinct enquiry regarding this case as to whether anyone had been arrested or not. This fact has remained undemolished in the cross examination which establishes that he was living in the premises of the Durga Temple and shortly after the incidence, he absconded from there. P.W. 13- Rupesh Singh has deposed that he was acquainted with the deceased and was living in her house as tenant. In para 4, he has deposed that a room had been arranged for the appellant- Rahul Raj in the temple complex. He has further deposed that he had taken Rahul Raj along with him to the house of deceased to get a rented room. At that time, Madhumita Didi and the deceased were present, who declined to give room to any bachelor. This part of his testimony has been corroborated by his statement given under Section 164 of the Cr.P.C. in terms of Section 157 of the Evidence Act. He has not been confronted with his previous statements to elicit contradiction under Section 145 of the Evidence Act.

20. P.W. 7 was the Officer in Charge of Bhandaria P.S. After receiving the information, he visited the place of occurrence where he found the half burnt naked body of the deceased and smoke was billowing from the house. The part of the bed was burnt and the dead body was lying on the ground. At the place of occurrence, there were three cans of mobil lubricant, one of which was filled and two were empty. He has stated that the body was sent for post mortem where samples of nail clipping, femur bone, blood sample, vaginal swab were collected.

21. After the prosecution evidence, statement of the accused was recorded under Section 313 of the Cr.P.C., defence is of innocence and false implication,

but no specific defence has been pleaded. It has been stated that he did not know the deceased and never stalked her. He did not know that she had died. Before the TIP was conducted, he was identified by the witness in the CBI office. He has stated that he was acquainted with Bunty (P.W. 5) and had given him some money for starting business. He has denied that he had ever lived in the temple complex at Booti Basti or had approached the deceased and her sister for a rented room. He has admitted implication in other criminal cases, but has pleaded that he was falsely implicated.

22. This is a case of brutal rape and murder which has all the hallmarks of a professional criminal. This is not a case where crime was the outcome of sudden spurt of passion, but was diabolically planned and ruthlessly executed. Evidence discloses that appellant stalked the deceased, attempted to take a room on rent in her house, and thereafter, stayed in a room in a nearby temple complex. He waited for the opportune moment and when the victim was alone in her house in the night of incidence, the offence was committed and immediately thereafter, the appellant absconded from the place of occurrence. Absconding is a circumstance relevant under Section 8 of the Evidence Act, and as no explanation has been offered to it, therefore an adverse inference is liable to be drawn for absconding after the crime. Each of these circumstances have been conclusively proved by eye witness accounts. No plausible explanation has been offered to these proved circumstances by the appellant, rather false answers have been given which adds to the chain of circumstance. The DNA profile generated from the vaginal swab has matched with that of the blood sample of the appellant.

23. Dictum of Hon'ble Supreme Court in *Ch. Razik Ram Versus Ch. Jaswant Singh Chouhan & Others*, AIR 1975 SC 667 need to be kept in mind while appreciating evidence in a criminal case. It was held,

“A grave and heavy onus therefore, rests on the accuser to establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt. It is true that there is no difference between the general rules of evidence in civil and criminal cases, and the definition of “proved” in Section 3 of the Evidence Act does not draw a distinction between civil and criminal cases. Nor does this definition insist on perfect proof because absolute certainty amounting to demonstration is rarely to be had in the affairs of life. Nevertheless, the standard of measuring proof prescribed by the definition, is that of a person of prudence and practical good sense. “Proof” means the effect of the evidence adduced in the case.(emphasis supplied)”

24. The overwhelming circumstantial and scientific evidence leads to an inescapable conclusion that it was this appellant and none else who was the author of the diabolical crime. Judgment of conviction is accordingly affirmed under Sections 302, 376, 449 and 201 of the IPC.

25. On the point of sentence, pivotal question is whether this is a fit case for confirming the capital punishment awarded by the learned trial Court.

26. Capital Punishment is sanctioned by the law of land and has been retained in new amended *Bhartiya Nyaya Sanhita, 2023*. Constitutionality of the Death Sentence has been upheld by Hon'ble the Supreme Court. The presumption attached to these laws is that they are meant to cater to the societal demands and meet the challenges of the time, for the legislature is presumed to be supremely wise and aware of such needs and challenges [Refer to *Vikram Singh @ Vicky & Another Versus Union of India & Others, (2015) 9 SCC 502*]. What follows is that there is a mandate of law for the Courts to award death sentence in appropriate cases as per the guidelines laid down by Hon'ble the Supreme Court. Personal views have to yield to societal demand and the statutory scheme [Refer to para-32 *Machhi Singh Versus State of Punjab, (1983) 3 SCC 470*].

27. Deterrence is one of the accepted object of penal law along with other objects like reformation and prevention of crime. Guidelines for inflicting capital punishment has been settled by long line of judicial precedents. The guidelines that have laid down in *Bachan Singh Versus State of Punjab, (1980) 2 SCC 684, Machhi Singh* (supra) and *Sushil Murmu Versus State of Jharkhand, (2004) 2 SCC 338* and subsequent authorities in order to determine the question of rarest of rare cases can be summed up as under:

- (a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence.
- (b) Are the circumstance of the crime such that there is no alternative but to impose death sentence.
- (c) Death sentence should not be inflicted except in gravest cases of extreme culpability.
- (d) The circumstance of the offenders also requires to be taken into consideration along with the circumstances of the crime.
- (e) Life imprisonment is the rule and death sentence is an exception.

- (f) A balance sheet of aggravating and mitigating circumstances has to be drawn up.
- (g) If the murder has been committed after previous planning and involves extreme brutality.
- (h) Both the crime and criminal have to be considered by court and only thereafter an appropriate order regarding sentence can be made.
- (i) In the rarest of rare cases even collective conscience of the community is shocked because of the enormous proportion of the crime. For instance when multiple murders, say of all or almost all the members of the family or the victim of murder is an innocent child or a helpless woman.
- (j) When the murder is committed for a motive which evinces total depravity and meanness e.g. murder for money or reward or a cold blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or any a position of trust.

Dhananjay Chatterjee @ Dhanna Versus State of West Bengal, 1994

(2) SCC 220:

“In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime, the conduct of the criminal and the defenseless and unprotected state of the victim. Imposition of the appropriate punishment is the manner in which Courts respond to the society’s cry for justice against the criminal. Justice demands that Court should impose befitting the crime so that courts reflect public abhorrence of the crime. The Courts must not only keep in view the rights of the criminal but also the rights of victim of crime and the society at large while considering imposition of appropriate punishment”

Sevaka Perumal, Etc. Versus State of Tamil Nadu, (1991) 3 SCC 471

“10. *Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats. If the courts did not protect the injured, the injured would then resort to private vengeance. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.”*

In ***State of Rajasthan Versus Mohan Lal and Another, 2018 SCC Online 773***, it was held that imposing inadequate sentences will do more harm to the justice system. Sentence should be appropriate, adequate, just, proportionate and commensurate with nature and gravity of crime and the manner in which crime is committed. Gravity of crime, motive for crime, nature of crime and all other attending circumstances have to be borne in mind while imposing the sentence. Court cannot afford to be casual while imposing

sentence, in as much as both crime and criminal are equally important in the sentencing process. Courts must see that public does not lose confidence in the judicial system.

Further, in **State of M.P. Vs Udham (2019) 10 SCC 300**

Sentencing for Crime has to be analyzed on the touch stone of three tests viz.

A. Crime Test---Crime Test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus if any, role of the accused, antisocial or abhorrent character of the crime, state of victim. Seriousness of the crime need to be ascertained.

B. Criminal Test--- It involves assessment of factors, such as age of the criminal, gender of the criminal, economic conditions or social background, motivation for crime, availability of defence, state of mind, instigation by the deceased or any one from the deceased group, adequate representation in the trial, disagreement by Judge in the appeal process, repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor.

C. Comparative proportionality Test.

Shivu & Another Versus R.G., High Court of Karnataka & Another, (2007) 4 SCC 713. Where the two accused had attempted to commit rape twice on village girls, had been admonished by village panchayat, thereafter raped a girl aged 18 years and committed her murder, Hon'ble Supreme Court held the Case fell in the rarest of rare category, death sentence awarded by trial Court was confirmed.

28. In the present case, victim was a girl of 19 years and a student of engineering. Learned trial Court has noted as many as nine aggravating circumstance in para 43 of the Judgment. Appellant had come prepared with cable cord and electric wire to strangulate the victim and also with three jerrycans of lubricant oil to set her on fire after the incidence. Strangulation was so intense that cable cord and electric wire got embedded in the neck of the victim. Thereafter, he poured lubricant oil over the body and sets her on fire. All this was done on a helpless victim, by this appellant with whom the victim had no past enmity, and after the act, he simply slipped out and absconded.

29. This is not the first case of the appellant, in Mahila P.S. Case No.21/2013 under Sections 376, 380 of the IPC and Section 66/66 A of the IT Act (Exhibit 21), he had raped a minor girl and even filmed the incidence to make it viral. In this case, he got bail to attend Shradha ceremony of his grandmother and then absconded. From Exhibit 24 to 24/3, 26 to 26/4 and Exhibit 30, it is evident that he was involved in a number of cases of theft of mobiles, computers and other electronics goods which were instituted against

him at Patna, Lucknow and Ranchi. In most of these cases, he was charge-sheeted. He was arrested by the Lucknow Police in Lucknow P.S. Case No.152/19 in which large number of stolen mobiles and other articles were recovered, and from this case he was remanded in the present case. In order to conceal his identity, he was using stolen mobiles. These are cases which relate to the period both before and after the present incidence which took place in 2016. Conduct of the appellant does not reflect a semblance of remorse and any hope for reform.

30. Against the weight of these aggravating circumstances, it is indeed difficult neigh impossible, to ferret any mitigating circumstance.

31. Victimology is not all about victim compensation, which cannot be a recompense for valuable life lost to crime in such circumstance. It is also to inflict punishment proportionate to the nature and gravity of offence. We will fail the victim and the society if capital punishment is not awarded in such cases.

Horrendous act of the appellant demands capital punishment under Section 302 of the IPC, and accordingly Death Sentence awarded by the learned trial Court is confirmed. In view of the Death Sentence awarded, no separate sentence is awarded under Sections 449, 376 and 201 of the IPC. **In the result,**

- (i) Death Reference (D.B.) No.06 of 2019 is answered in the affirmative and the Death Sentence is confirmed;**
- (ii) Criminal Appeal (D.B.) No. 180 of 2020 stands dismissed.**

Pending Interlocutory Application, if any, is disposed of.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.

(Gautam Kumar Choudhary, J.)

Per Ananda Sen, J. I agree.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi

Dated, 9th September, 2024

AFR/Anit