



2026:CGHC:18096-DB



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 229 of 2024**

Kishan Yadav S/o Sahdev Yadav Aged About 31 Years R/o Ward No.
09, Dabhra, Police Station Dabhra, District Janjgir Champa (C.G.)

... Appellant(s)**versus**

State Of Chhattisgarh Through Police Station Dabhra District Janjgir
Champa (C.G.)

... Respondent(s)

For Appellant(s) : Mr. Chitendra Singh, Advocate

For Respondent(s) : Mr. Saumya Rai, Dy. G.A.

Hon'ble Mr. Ramesh Sinha, Chief Justice**Hon'ble Mr. Ravindra Kumar Agrawal, Judge****Judgment on Board****Per Ramesh Sinha, Chief Justice****21.04.2026**

- 1 Heard Mr. Chitendra Singh, learned counsel for the appellant as well as Mr. Saumya Rai, learned Deputy Government Advocate appearing for the State/respondent.



- 2 Today, the matter is listed for hearing on IA No. 2 of 2024, which is an application for suspension of sentence and grant of bail to the appellant. However, with the consent of learned counsel appearing for the parties, we proceed to hear the matter on merits.
- 3 The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (*for short, the Cr.P.C.*) questioning the judgment of conviction and order of sentence dated 01.11.2023 passed in Sessions Case No. 31/2022 by the learned Additional Sessions Judge, FTSC, Shakti, District- Janjgir- Champa (C.G.), by which the appellant has been convicted as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376(1) of the IPC.	R.I. for 10 years and fine of Rs.1,000/-, in default of payment of fine amount, additional R.I. for 06 months.
Under Section 376(2) (I)(m) of the IPC.	Imprisonment for life till natural death and fine of Rs.2,000/-, in default of payment of fine amount, additional R.I. for 01 year.
Under Section 376(A) of the IPC.	Imprisonment for life till natural death and fine of Rs.2,000/-, in default of payment of fine additional R.I. for 01 year.
Under Section 302 of the IPC	Imprisonment for life till natural death and fine of Rs.1,000/-, in default of payment of fine additional R.I. for 06 months.
<i>All the sentences were directed to run concurrently</i>	



- 4 The prosecution case, in brief, is that the deceased was a mentally unstable woman aged about 55 years, who used to reside in a vacant shed situated near Vimal Kirana Store and survived by wandering around Dabhra Chowk. She was occasionally provided food and water by one Radhabai Sidar. Her parents had predeceased her, and she had no known guardian.
- 5 On 05.04.2022, at about 11:30 a.m., the informant Dhaneshwar Chauhan, a volunteer at Community Health Centre (CHC), Dabhra, submitted a written report along with a hospital intimation issued by Dr. K.K. Sidar, Medical Officer, CHC, Dabhra, regarding the unnatural death of an unidentified woman. On the basis of the said information, merg intimation No. 22/2022 was registered under Section 174 of the Code of Criminal Procedure, and inquiry was set into motion.
- 6 During the course of inquiry, CCTV footage obtained from Vimal Kirana Store revealed that in the intervening night of 04/05.04.2022, at about 1:00 a.m., the appellant/accused Kishan Yadav was seen apprehending the deceased and dragging her towards a secluded place near the house of Radhabai Sidar. The footage further disclosed that at about 2:00 a.m., the accused was dragging the deceased by her hair and thereafter assaulted her by forcefully striking her head against a stone and delivering blows on her face, particularly near the eye region. As a consequence of



such assault, the deceased sustained grievous injuries, leading to brain hemorrhage and excessive intracranial bleeding, ultimately resulting in her death at about 10:30 a.m. on 05.04.2022.

- 7 The deceased was transported in an injured condition to CHC, Dabhra, by a 108 ambulance, where she was declared dead upon examination. Upon spot inspection, analysis of CCTV footage, and recording of statements of nearby residents during the inquest proceedings, a formal FIR was registered against the accused for the offence punishable under Section 302 of the Indian Penal Code.
- 8 During investigation, the Investigating Officer prepared the spot map and conducted inquest proceedings. The post-mortem examination of the deceased was carried out at CHC, Dabhra. The accused, in his memorandum statement (Ex.P-3), disclosed that he had forcibly committed sexual intercourse with the deceased, and when she resisted, he assaulted her by punching her on the face and eyes and thereafter intentionally struck her head against a stone with the intention to cause her death. He further stated that he inserted an iron rod into the private parts of the deceased, causing severe internal injuries and bleeding, and thereafter fled from the spot under the impression that she had died.
- 9 Pursuant to the said memorandum, several incriminating articles were seized, including blood-stained stones, plain stones, clothing



articles, an iron rod, and other materials from the scene of occurrence. CCTV footage and still photographs capturing the accused dragging the deceased were also seized. Biological samples, including semen slides and clothing of the accused, were collected and sent for forensic examination. The DVR and relevant registers were also seized, and cyber forensic analysis was conducted. The FSL reports corroborated the prosecution case.

- 10** Upon completion of investigation, charge-sheet was filed against the accused for offences punishable under Sections 302, 376, 376(2)(l)(m), and 376A of the Indian Penal Code before the learned Judicial Magistrate First Class, Dabhra, who committed the case to the Court of Sessions for trial.
- 11** The learned Trial Court framed charges against the accused under Sections 376(1), 376(2)(l)(m), 376(A), and 302 of the Indian Penal Code. The contents of the charges were read over and explained to the accused, who denied the same and claimed to be tried.
- 12** In his examination under Section 313 of the Code of Criminal Procedure, the accused denied all incriminating circumstances appearing against him in the prosecution evidence and pleaded innocence. He, however, did not choose to adduce any evidence in defence.



- 13** The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 01.11.2023, convicted the appellant for offences under Sections 376(1), 376(2)(l)(m), 376(A) and 302 of the IPC and sentenced them as aforementioned, against which, this criminal appeal has been filed.
- 14** Learned counsel appearing for the appellant submits that the judgment of conviction and order of sentence passed by the learned Trial Court are contrary to law and facts on record and, therefore, unsustainable. It is contended that the prosecution has failed to establish its case beyond reasonable doubt, and the findings recorded by the Trial Court suffer from serious infirmities arising out of misappreciation of evidence. It is further urged that the learned Court below has not properly considered the circumstances existing prior to and at the time of the alleged incident, thereby vitiating the conclusions drawn. Emphasis is laid on the fact that the present case is devoid of any direct ocular evidence, and the conviction has been primarily based upon CCTV footage, which, according to the appellant, has not been duly proved in accordance with law nor conclusively establishes the guilt of the accused. It is also submitted that the Trial Court has failed to properly appreciate the evidence brought on record, including material omissions and contradictions elicited during cross-examination of prosecution witnesses. The conviction, it is argued, rests merely on conjectures and surmises rather than on



cogent and reliable evidence. Learned counsel further contends that none of the prosecution witnesses have fully supported the prosecution story in material particulars, and despite such deficiencies, the Trial Court has erroneously ignored these vital aspects and proceeded to convict the appellant, which, in the submission of the appellant, renders the impugned judgment liable to be set aside.

- 15** On the other hand, learned counsel appearing for the State vehemently contends that the prosecution has succeeded in establishing the guilt of the accused beyond all reasonable doubt by leading cogent, reliable and unimpeachable evidence, forming a complete and unbroken chain of circumstances. It is submitted that the case, though based on circumstantial evidence, fully satisfies the settled principles laid down in *Sharad Birdhichand Sarda v. State of Maharashtra*, inasmuch as each incriminating circumstance has been firmly proved and all such circumstances, when taken cumulatively, point unerringly towards the guilt of the accused and exclude every possible hypothesis consistent with innocence. It is further submitted that the “last seen” evidence supported by CCTV footage, duly proved through electronic evidence in compliance with Section 65-B of the Evidence Act, clearly establishes that the deceased was last seen alive in the company of the accused, who was seen dragging her in a brutal manner in the dead of night. The authenticity of such electronic evidence stands fortified by the Cyber Forensic Laboratory report,



thereby eliminating any possibility of fabrication or tampering. The prosecution further relies upon the admissible portion of the memorandum statement under Section 27 of the Evidence Act, pursuant to which the recovery of blood-stained clothes and the iron rod being the weapon of offence was effected at the instance of the accused, thus constituting a highly incriminating circumstance linking the accused directly with the commission of the crime.

- 16** It is further submitted that the medical and forensic evidence lends complete corroboration to the ocular and circumstantial evidence on record. The testimony of the medical expert conclusively establishes that the deceased sustained grievous injuries, including rupture of uterus and fatal head injuries, which are consistent with forcible sexual assault and homicidal violence. The presence of human blood on the seized articles, including the weapon and clothes of the accused, as confirmed by the FSL report, further strengthens the prosecution case, particularly in the absence of any explanation from the accused under Section 106 of the Evidence Act. Learned State counsel submits that the barbaric nature of the act, coupled with the vulnerability of the victim and the brutality inflicted, squarely brings the case within the category of heinous offences warranting strict judicial response. Accordingly, it is prayed that this Court be pleased to hold the accused guilty for the offences charged and impose punishment commensurate with the gravity and brutality of the



crime.

- 17 We have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.
- 18 The first question for consideration would be whether the deceased died under unnatural circumstances ?
- 19 In order to adjudicate the present point, this Court has undertaken a detailed scrutiny of the ocular evidence of prosecution witnesses (PWs), duly corroborated by documentary exhibits (Exhibits) and medical evidence.
- 20 At the outset, the prosecution has examined several independent witnesses who have consistently deposed regarding the condition in which the deceased was found on the morning of 05.04.2022.
- 21 Roop Singh Chandra (PW-1), an independent witness acquainted with the deceased, has categorically stated that the deceased was a mentally unstable woman living alone and was found lying near the house of Radhabai (PW-2) in a grievously injured condition. He has specifically deposed that blood was oozing from her head as well as from below her waist and that it appeared that someone had crushed her head with a stone. He further stated that the deceased was taken to the hospital through a 108 ambulance and was later declared dead. Notably, this witness has withstood the test of cross-examination, and no material contradiction or omission has been elicited so as to discredit his



testimony.

- 22** Similarly, Radhabai (PW-2), in whose vicinity the deceased was found, has deposed that on 05.04.2022 at about 6:30 a.m., she noticed the deceased lying on a stone, groaning in pain, with blood coming out from her private parts and being unable to speak. She immediately informed Sudarshan (PW-6), following which the deceased was shifted to the hospital. Her testimony, being natural and proximate to the place of occurrence, carries significant evidentiary value and has remained unshaken in cross-examination.
- 23** Rajeshwari Singh (PW-3) has also corroborated the prosecution case by stating that the deceased was found lying near her house with bleeding head injuries and swelling near the eye. She confirmed that the deceased was in a serious condition and was later taken to the hospital, where she succumbed to her injuries.
- 24** Bhim Yadav (PW-4) and Sudarshan Prasad (PW-6) have further supported the prosecution version by stating that the deceased was found lying in a pool of blood with injuries on her head and waist region, and that arrangements were made to shift her to the hospital through the 108 ambulance service.
- 25** Damyanti Bai (PW-11) has also corroborated the above facts by stating that the deceased was lying near Radhabai's house in a blood-stained condition and was taken to the hospital by the ambulance. Importantly, the testimonies of all these witnesses are



consistent, natural, and free from material contradictions, and they have remained uncontroverted in cross-examination, thereby lending strong credence to the prosecution case.

- 26** The evidence of Uday Singh Ratre (PW-12), driver of the 108 ambulance, and Manas Khunte (PW-13), further fortifies the prosecution case. They have stated that upon receiving information, they reached the spot and found the deceased in an injured condition with visible bleeding injuries and transported her to the Community Health Centre, Dabhra. Their testimony establishes the continuity of events from the place of occurrence to the hospital.
- 27** The documentary evidence in the form of hospital intimation report (Ex.P-18) and merg intimation (Ex.P-20) assumes importance. From these exhibits, it is evident that on 05.04.2022 at about 10:30 a.m., information regarding the death of an unknown woman was communicated by Dr. K.K. Sidar (PW-10) to the police through hospital staff Dhaneshwar Chauhan (PW-14). This clearly establishes that the deceased was brought to the hospital in an injured condition and was declared dead upon arrival.
- 28** Aditya Pratap Singh (PW-15), the Investigating Officer, has proved the inquest proceedings vide notice Ex.P-21 and inquest panchnama Ex.P-22. He has further proved the application for postmortem (Ex.P-13), thereby establishing due compliance with



procedural requirements.

29 The most decisive evidence is the medical evidence adduced through Dr. K.K. Sidar (PW-10), who conducted the postmortem examination of the deceased. The postmortem report (Ex.P-14) reveals the following crucial findings:

- * Multiple lacerated wounds on the head, including injuries measuring approximately 3×2×1 inches and 4×2×1 inches.
- * Fracture of the skull bone at the posterior region with inward depression.
- * Presence of blood clots and hemorrhage in the brain.
- * Severe contusion and swelling around the left eye.
- * Bleeding from the mouth with deformation of upper jaw.
- * Multiple injuries to the genital region, including scratches and continuous bleeding.
- * Rupture of the uterus, indicative of grievous internal trauma.

30 The doctor has categorically opined that all injuries were ante-mortem in nature and caused by hard and blunt objects. The cause of death has been opined as brain hemorrhage due to head injury, and the antecedent cause as traumatic assault. Most importantly, the doctor has unequivocally opined that the nature of death was homicidal. The postmortem report (Ex.P-14) fully corroborates the ocular evidence and remains unshaken in cross-



examination. The suggestion put by the defence regarding accidental injury (such as a vehicular accident) has been specifically denied by the medical expert.

- 31** Upon cumulative consideration of the consistent testimonies of PWs 1, 2, 3, 4, 6, and 11, duly corroborated by PWs 12 and 13 regarding the immediate aftermath, and further substantiated by documentary evidence (Ex.P-18, Ex.P-20, Ex.P-21, Ex.P-22, Ex.P-13) and the conclusive medical evidence (Ex.P-14), this Court finds that the prosecution has successfully established that the deceased sustained multiple grievous ante-mortem injuries caused by external force.
- 32** The nature, multiplicity, and severity of injuries, particularly the skull fracture and genital trauma, unequivocally rule out any possibility of natural or accidental death. The medical opinion clearly attributes the cause of death to violent assault.
- 33** Accordingly, this Court holds that the prosecution has proved beyond reasonable doubt that the death of the deceased was unnatural and homicidal in nature.
- 34** Now, the question for consideration would be whether on the intervening night of 04/05.04.2022 between 01:00 a.m. to 02:00 a.m., at the place situated near the house of Radhabai Sidar in village Dabhra, within the jurisdiction of Police Station Dabhra, the accused committed forcible sexual assault/rape upon the deceased, who was a woman of unsound mind and incapable of



giving valid consent, by penetrating his penis or inserting any object, including a rod, into her private parts against her will and without her consent, and in the course of the same transaction, caused grievous injuries and ultimately her death by assaulting her and striking her head against a stone, thereby committing offences punishable under Sections 376, 376(2), 376A and 302 of the Indian Penal Code?

35 In the present case, admittedly there is no direct ocular evidence to the occurrence and the prosecution case rests entirely on circumstantial evidence. It is well settled that in cases based on circumstantial evidence, each circumstance relied upon by the prosecution must be fully established, and all such circumstances must form a complete chain pointing unerringly towards the guilt of the accused and excluding every hypothesis consistent with his innocence. In this regard, the principles laid down by the Hon'ble Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra**¹ are required to be borne in mind. It is equally settled that though motive assumes importance in such cases, failure to prove motive is not always fatal where the chain of circumstances is otherwise complete and convincing.

36 Keeping the aforesaid principles in view, this Court proceeds to evaluate the circumstantial evidence adduced by the prosecution, which primarily consists of (i) last seen together, (ii) electronic evidence in the form of CCTV footage, (iii) identification of the

¹ (1984) 4 SCC 116



accused, and (iv) corroboration by medical evidence.

Last Seen Together and Seizure of CCTV Footage

- 37** Aditya Pratap Singh, Sub-Inspector (PW-15), has deposed that during the inquest proceedings in Merg No. 22/2022, after receiving information from the Community Health Centre, Dabhra, he prepared the inquest panchnama (Ex.P-22). During such proceedings, upon inquiry from local witnesses, he came to know about the existence of CCTV footage installed at Vimal Kirana Store. On viewing the footage of the intervening night of 04/05.04.2022 between 01:30 a.m. to 02:30 a.m., it was revealed that the accused was seen dragging the deceased and assaulting her. On the basis of such material, FIR (Ex.P-24) came to be registered against the accused.
- 38** The said witness (PW-15) has further proved that he seized two 32 GB pen drives containing CCTV footage and four photographs depicting the accused dragging the deceased, vide seizure memo (Ex.P-4). Despite lengthy cross-examination, nothing material has been elicited to discredit the seizure, and the suggestion that no such seizure was made has been specifically denied.
- 39** Saurabh Agarwal (PW-5), the owner of Vimal Kirana Store, has corroborated the prosecution case by stating that he downloaded the CCTV footage of the relevant time period and handed over the same to the police, which was seized vide Ex.P-4. He has further



stated that the CCTV system consisted of multiple cameras capable of recording even during night hours and that the footage was stored in a DVR with hard disk. Though he stated that he signed the certificate under Section 65-B of the Evidence Act (Ex.P-19) at the instance of police, the contents thereof have not been challenged in cross-examination, nor has any suggestion of tampering been substantiated.

- 40** The seizure of CCTV footage is further corroborated by Roop Singh (PW-1), who has clearly stated that the police seized pen drives and photographs from Saurabh Agarwal, and his signatures appear on Ex.P-4. Though Lalit Kewat (PW-20) turned partially hostile, the seizure stands independently proved by the consistent testimony of PW-1 and PW-5.
- 41** It has further come in evidence that the original DVR and hard disk of the CCTV system were seized vide seizure memo (Ex.P-5), as proved by PW-15 and Station House Officer Derharam Tandon (PW-19), and corroborated by witnesses PW-1 and PW-4. The seized DVR has been marked as Article-8.

Identification of Accused and Authenticity of CCTV Footage

- 42** The prosecution has further established identification of the accused and the deceased in the CCTV footage through identification panchnamas (Ex.P-6 and Ex.P-7). Roop Singh (PW-1) has categorically stated that upon viewing the footage and



photographs, he identified the deceased as well as the accused Kishan Yadav. His testimony has remained unshaken in cross-examination.

- 43** Radhabai (PW-2) has also identified the deceased in the CCTV footage, though she expressed inability to identify the accused. However, considering that both witnesses were well acquainted with the deceased, there remains no doubt that the woman seen in the footage was the deceased.
- 44** The prosecution has further strengthened its case by obtaining photographs of the accused after his arrest, which were proved through panchnama (Ex.P-12) by PW-19 and corroborated by witnesses PW-7 and PW-24, as well as photographer Pankaj Sahu (PW-9). These photographs (Articles 2–6 and 13–17) were used for comparison with the CCTV footage.

Forensic Examination of Electronic Evidence

- 45** The electronic evidence has been duly examined by the Cyber Forensic Lab, Police Headquarters, Raipur. Vikram Dhruv (PW-30), Cyber Expert, has proved the examination report (Ex.P-40) and certificate under Section 65-B (Ex.P-41). As per his report:
- * The footage retrieved from the original DVR (Exhibit-A / Article-8) contains video of the incident,
 - * The footage in the pen drive (Exhibit-C) matches the original DVR footage,



* The person appearing in the CCTV footage is identical to the accused as per photographic comparison (Exhibit-D).

- 46 Though in cross-examination the expert stated that it is not possible to conclusively rule out tampering, he clarified that no tampering was found in the retrieved footage. Thus, the integrity and authenticity of the electronic evidence stands established.

Last Seen Circumstance

- 47 Upon perusal of the CCTV footage (Exhibit-C and Article-18), as well as the original DVR (Article-8), it is clearly established that at about 02:12 a.m., the accused was seen holding the deceased with both hands and dragging her out of the range of the CCTV camera. This fact has been duly noticed by the Trial Court and also verified by this Court.
- 48 It is further established from the testimony of Radhabai (PW-2) and other witnesses that at about 06:30 a.m., the deceased was found lying in an injured condition near the place of occurrence. Thus, the time gap between the deceased being last seen with the accused and her being found grievously injured is minimal.
- 49 In this regard, in the judgment in ***Dharamdev Yadav v. State of U.P. 2014 (5) SCC 509***, it has been said that if there is a time gap between the time when the accused and the deceased were last seen together and the deceased was found dead, then when the time gap is found, then the accused is not guilty of the crime. If



the gap is small, then in such a situation the possibility that anybody other than the accused could have committed the crime would be less. However, in such cases it would be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together.

- 50 Similarly, while referring to the judgment in ***Bodhraj v. State of Jammu and Kashmir 2002 (8) SC/ST 45***, the Hon'ble Supreme Court said that the last seen theory comes into play where time - gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.
- 51 Elaborating the principle of “***last seen alive***” in ***State of Rajasthan vs. Kashi Ram, (2006) 12 SCC 254***, the Court held as under:-

“23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be



held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain.”

Failure of the Accused to Explain (Section 106 Evidence Act)

- 52** In view of the above, since the deceased was last seen alive in the exclusive company of the accused, the burden shifted upon the accused under Section 106 of the Evidence Act to explain the circumstances in which the deceased sustained fatal injuries.
- 53** However, in his statement under Section 313 CrPC, the accused merely denied the allegations and failed to offer any plausible explanation. His vague plea that the CCTV footage was false and manipulated has remained unsubstantiated. Such failure to explain constitutes an additional incriminating circumstance



against him.

Medical Corroboration

- 54** The medical evidence of Dr. K.K. Sidar (PW-10) (Ex.P-14) clearly establishes that the deceased sustained grievous head injuries leading to brain hemorrhage, along with severe injuries to her genital organs, including rupture of uterus. All injuries were ante-mortem and caused by hard and blunt objects, and the nature of death was homicidal. This medical evidence fully corroborates the prosecution case and the circumstances emerging from the CCTV footage.
- 55** From the cumulative appreciation of the evidence of PWs 1, 2, 4, 5, 15, 19, and 30, along with documentary evidence Ex.P-4, Ex.P-5, Ex.P-6, Ex.P-7, Ex.P-12, Ex.P-19, Ex.P-40, Ex.P-41, and the medical report Ex.P-14, this Court is of the considered view that the prosecution has successfully established the “last seen together” circumstance and the authenticity of the CCTV evidence.
- 56** The chain of circumstances is complete and unbroken, leading to the only irresistible conclusion that it was the accused who was last seen with the deceased and who caused the injuries leading to her death. The prosecution has thus proved this circumstance beyond reasonable doubt.

Circumstance of Memorandum under Section 27 of the



Evidence Act and Recovery of Incriminating Articles.

- 57 In the present case, the prosecution has relied upon the memorandum statement of the accused recorded under Section 27 of the Indian Evidence Act and the consequential recovery of incriminating articles.
- 58 In this regard, Derharam Tandon, Inspector (PW-19), has deposed that after taking the accused Kishan Yadav into custody, he recorded his memorandum statement on 09.04.2022 at Police Station Dabhra, which is proved as Ex.P-3. In the said memorandum, the accused disclosed in detail the manner of commission of the offence, stating that on the intervening night of 04/05.04.2022, at about 01:30 a.m., he noticed the deceased sleeping in the verandah of Vimal Kirana Store and thereafter, when the place became deserted, he dragged her by her hair to a secluded place near Murli Lodge. He further disclosed that he forcibly committed sexual intercourse with her and, upon resistance, assaulted her by fists, inserted an iron rod into her private parts, and thereafter struck her head repeatedly against a stone, believing her to be dead before fleeing from the spot. He also stated that he had concealed the clothes worn by him and the iron rod used in the commission of the offence in bushes near the canal bridge and could get the same recovered. The memorandum Ex.P-3 bears the signatures of the witness as well as the accused.



- 59** Acting upon the information furnished by the accused in his memorandum, PW-19 has further deposed that on 09.04.2022 at about 09:30 a.m., the accused led the police party and witnesses to the place indicated by him, i.e., bushes near Shamshan Road Canal Par, Dabhra, and got recovered the incriminating articles, namely: (i) one full shirt with red and white stripes stained with blood, (ii) one black jeans pant with white shade, torn in front and stained with blood, and (iii) one iron rod having a nut at one end and stained with blood. The said articles were seized vide seizure memo Ex.P-2, which bears the signatures of the witness and the accused. The witness has categorically denied in cross-examination the suggestion that the memorandum was fabricated or that the recovery was not effected at the instance of the accused.
- 60** The testimony of PW-19 finds substantial corroboration from independent witnesses. Roop Singh Chandra (PW-1), who is a witness to both memorandum (Ex.P-3) and seizure (Ex.P-2), has clearly deposed that the accused, in his presence, disclosed the manner in which he committed the offence and stated that he had concealed the rod and clothes near the canal bridge. He further stated that the police, acting on such disclosure, proceeded to the said place along with the accused and recovered the iron rod and blood-stained clothes, which were seized and sealed in his presence. His signatures on Ex.P-2 and Ex.P-3 have been duly proved. In cross-examination, this witness has firmly denied the



suggestion that he had signed the documents at the police station or that the recovery was not effected in his presence, thereby lending credibility to the prosecution case.

- 61** Similarly, Bhim Yadav (PW-4), another independent witness to the memorandum and seizure, has corroborated the prosecution version by stating that after the arrest of the accused, he was present when the accused disclosed before the police that he had committed rape upon the deceased and caused injuries by inserting a rod and striking her head. He further stated that the accused informed the police about concealing the rod and clothes in bushes near the canal bridge and led the police party to the said place, from where the articles were recovered and seized vide Ex.P-2. His signatures on the memorandum (Ex.P-3) and seizure memo (Ex.P-2) have been duly proved. Despite cross-examination, no material contradiction has been elicited to discredit his testimony.
- 62** From the consistent and cogent evidence of PW-19, duly corroborated by independent witnesses PW-1 and PW-4, it stands established that the accused, while in police custody, voluntarily made a disclosure statement leading to the discovery of incriminating articles. The recovery of blood-stained clothes and the iron rod at the instance of the accused is a relevant fact under Section 27 of the Evidence Act and constitutes a strong incriminating circumstance against him.



- 63** It is significant to note that the articles so recovered are directly connected with the commission of the offence, particularly the iron rod, which corresponds with the nature of injuries found on the private parts of the deceased as per medical evidence (Ex.P-14). The recovery of blood-stained clothes further lends corroboration to the prosecution case and strengthens the chain of circumstances.
- 64** The defence has failed to elicit any material contradiction or infirmity in the evidence relating to the memorandum and recovery. The mere suggestion that the memorandum was fabricated or that the recovery was planted has not been substantiated by any cogent evidence. On the contrary, the prosecution witnesses have consistently supported the recovery proceedings.
- 65** Thus, this Court finds that the prosecution has successfully proved that pursuant to the memorandum statement (Ex.P-3) made by the accused, incriminating articles, namely blood-stained clothes and iron rod (Ex.P-2), were recovered at his instance from a concealed place known only to him. This circumstance forms a vital link in the chain of circumstantial evidence.
- 66** Accordingly, it is held that the prosecution has proved beyond reasonable doubt that the recovery of incriminating articles at the instance of the accused under Section 27 of the Evidence Act is genuine and reliable, and the same further connects the accused



with the commission of the offence, thereby strengthening the prosecution case.

Motive and Medical/Forensic Corroboration

- 67** The prosecution has asserted that the accused was driven by the motive of satisfying his sexual lust and, upon resistance by the deceased, committed her brutal murder. The surrounding circumstances, including the CCTV footage, medical evidence, and conduct of the accused, clearly establish such motive.
- 68** The CCTV footage (Exhibits A, B, C) retrieved from the DVR of Vimal Kirana Store, duly proved by PW-30 (Cyber Expert) and supported by certificate under Section 65-B (Ex.P.-41), clearly depicts the accused dragging the deceased in a helpless condition. The footage, corroborated by independent witnesses and forensic examination, establishes the conduct of the accused immediately prior to the commission of the crime.
- 69** The medical evidence of Dr. K.K. Sidar (PW-10), particularly Ex.P.-17, reveals the presence of scratch marks on the chest of the accused, which strongly corroborates the prosecution case that the deceased resisted the assault. These injuries on the accused are consistent with the prosecution story and further establish the occurrence of a violent struggle.
- 70** The doctor was also queried vide Ex.P.-34 regarding the nature of injuries and the possibility of their being caused by the seized iron



rod. In response, the doctor opined that the injuries to the private parts of the deceased could have been caused by the seized rod and that the blood stains on the rod and clothes could be human blood, subject to chemical examination.

- 71** This medical opinion conclusively links the seized weapon (iron rod) with the injuries sustained by the deceased, thereby establishing a direct nexus between the accused, the weapon, and the crime.
- 72** Further, the seizure of blood-stained concrete pieces from the spot vide Ex.P.-8, duly proved by PW-2 and PW-3, corroborates the prosecution case that the deceased's head was struck against a hard surface, causing fatal injuries.
- 73** The FSL report (Ex.P.-38) confirms the presence of human blood on the iron rod, the clothes of the accused, and the stone pieces recovered from the spot. The accused has failed to offer any explanation under Section 313 CrPC regarding the presence of blood on his clothes, which constitutes an additional incriminating circumstance.
- 74** The medical examination of the accused (PW-10) further establishes that he was physically capable of performing sexual intercourse, thereby ruling out any defence to the contrary.
- 75** The contention of the defence regarding absence of spermatozoa is devoid of merit in view of the statutory definition of rape under



Section 375 IPC, which clearly includes insertion of any object into the vagina. The medical evidence clearly establishes rupture of uterus and grievous injuries to the genitalia, which conclusively prove penetration by a foreign object.

- 76** In the present case, the manner in which the offence has been committed by subjecting the deceased, a helpless and mentally unsound woman, to brutal sexual assault, inserting a rod into her private parts and thereafter causing fatal injuries clearly reflects extreme depravity and inhuman conduct. The Hon'ble Supreme Court in the judgment of ***Mukesh v. State (NCT of Delhi)***, ***reported in (2017) 6 SCC*** has held that such barbaric acts, involving brutal sexual violence and physical torture, shock the collective conscience of society and fall within the gravest category of offences. It has further been held that rape is not merely a crime against an individual but against society at large, and where the victim is vulnerable and incapable of resistance, the offence assumes aggravated proportions. The medical evidence in the present case, showing grievous injuries to the private parts and head of the deceased, further corroborates the prosecution case and establishes the brutal nature of the assault. Relevant paras of the judgment are reproduced herein-below:

“363. Now, we shall focus on the nature of the crime and manner in which it has been committed. The submission of Mr. Luthra, learned senior counsel, is that the present case amounts to devastation of social trust and



completely destroys the collective balance and invites the indignation of the society. It is submitted by him that that a crime of this nature creates a fear psychosis and definitely falls in the category of rarest of the rare cases.

364. It is necessary to state here that in the instant case, the brutal, barbaric and diabolic nature of the crime is evincible from the acts committed by the accused persons, viz., the assault on the informant, PW-1 with iron rod and tearing off his clothes; assaulting the informant and the deceased with hands, kicks and iron rod and robbing them of their personal belongings like debit cards, ring, informant's shoes, etc.; attacking the deceased by forcibly disrobing her and committing violent sexual assault by all the appellants; their brutish behaviour in having anal sex with the deceased and forcing her to perform oral sex; injuries on the body of the deceased by way of bite marks (10 in number); and insertion of rod in her private parts that, inter alia, caused perforation of her intestine which caused sepsis and, ultimately, led to her death. The medical history of the prosecutrix (as proved in the record in Ex. PW-50/A and Ex. PW-50) demonstrates that the entire intestine of the prosecutrix was perforated and splayed open due to the repeated insertion of the rod and hands; and the appellants had pulled out the internal organs of the prosecutrix in the most savage and inhuman manner that caused grave injuries which ultimately annihilated her life. As has been established, the prosecutrix sustained various bite marks which were observed on her face, lips, jaws, near ear, on the right and left breast, left upper arm, right lower limb, right inner groin, right lower thigh, left thigh lateral, left lower anterior and genitals. These acts itself demonstrate the mental perversion and inconceivable brutality as caused by the



appellants. As further proven, they threw the informant and the deceased victim on the road in a cold winter night. After throwing the informant and the deceased victim, the convicts tried to run the bus over them so that there would be no evidence against them. They made all possible efforts in destroying the evidence by, inter alia, washing the bus and burning the clothes of the deceased and after performing the gruesome act, they divided the loot among themselves.

365. As we have narrated the incident that has been corroborated by the medical evidence, oral testimony and the dying declarations, it is absolutely obvious that the accused persons had found an object for enjoyment in her and, as is evident, they were obsessed with the singular purpose sans any feeling to ravish her as they liked, treat her as they felt and, if we allow ourselves to say, the gross sadistic and beastly instinctual pleasures came to the forefront when they, after ravishing her, thought it to be just a matter of routine to throw her alongwith her friend out of the bus and crush them. The casual manner with which she was treated and the devilish manner in which they played with her identity and dignity is humanly inconceivable. It sounds like a story from a different world where humanity has been treated with irreverence. The appetite for sex, the hunger for violence, the position of the empowered and the attitude of perversity, to say the least, are bound to shock the collective conscience which knows not what to do. It is manifest that the wanton lust, the servility to absolutely unchained carnal desire and slavery to the loathsome beastility of passion ruled the mindset of the appellants to commit a crime which can summon with immediacy “tsunami” of shock in the mind of the collective and destroy the civilised marrows of the



milieu in entirety.

366. When we cautiously, consciously and anxiously weigh the aggravating circumstances and the mitigating factors, we are compelled to arrive at the singular conclusion that the aggravating circumstances outweigh the mitigating circumstances now brought on record. Therefore, we conclude and hold that the High Court has correctly confirmed the death penalty and we see no reason to differ with the same.”

- 77** The evidence on record also establishes that the deceased was a mentally unsound and vulnerable woman, as deposed by PW-2 and other witnesses, and therefore incapable of giving valid consent, bringing the case squarely within aggravated circumstances.

Conclusion on Chain of Circumstances

- 78** From the aforesaid discussion, the following chain of circumstances stands fully established:

- * The death of the deceased was homicidal.
- * The accused was last seen with the deceased in CCTV footage at 2:12 AM.
- * The deceased was found grievously injured within a short time thereafter.
- * The accused made a disclosure statement leading to recovery of incriminating articles (Ex.P.-2 & Ex.P.-3).



* The recovered articles were found stained with human blood
(Ex.P.-38).

* Medical evidence confirms injuries consistent with the prosecution case.

* The accused failed to explain incriminating circumstances under Section 313 CrPC.

79 The chain of circumstantial evidence is complete and unbroken, leading only to the hypothesis of guilt of the accused and ruling out any possibility of innocence.

80 We may also make a reference to a decision of the Supreme Court in **C. Chenga Reddy and Ors. v. State of A.P., (1996) 10 SCC 193**, wherein it has been observed thus:

“In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....”.

81 In **Padala Veera Reddy v. State of A.P. and Ors., AIR 1990 SC 79**, it was laid down by the Supreme Court that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:



“(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

- 82** In ***State of U.P. v. Ashok Kumar Srivastava, (1992 CrLJ 1104)***, it was pointed out by the Supreme Court that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.
- 83** Sir Alfred Wills in his admirable book “Wills’ Circumstantial Evidence” (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts



alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted”.

- 84** Five golden principles which constitute *Panchseel* of proof of case based on circumstantial evidence have been laid down by the Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116** which state as under :-

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned “must” or “should” and not “may be” established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;



(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

85 The Supreme Court in the matter of **Suresh and Another v State of Haryana, (2018) 18 SCC 654** has observed that cases of circumstantial evidence, the courts are called upon to make inferences from the available evidence, which may lead to the accused's guilt. The court at paras 41 and 42 has observed thus :

“41. The aforesaid tests are aptly referred as Panchsheel of proof in Circumstantial Cases (refer to Prakash v. State of Rajasthan). The expectation is that the prosecution case should reflect careful portrayal of the factual circumstances and inferences thereof and their compatibility with a singular hypothesis wherein all the intermediate facts and the case itself are proved beyond reasonable doubt.

42. Circumstantial evidence are those facts, which the court may infer further. There is a stark contrast between direct evidence and circumstantial evidence. In cases of circumstantial evidence, the courts are called upon to make inferences from the available evidence, which may lead to the accused's guilt. In majority of cases, the inference of guilt is usually drawn by establishing the case from its initiation to the point of commission wherein each factual link is ultimately based on evidence of a fact



or an inference thereof. Therefore, the courts have to identify the facts in the first place so as to fit the case within the parameters of “chain link theory” and then see whether the case is made out beyond reasonable doubt. In India we have for a long time followed the “chain link theory” since Hanumant case, which of course needs to be followed herein also.”

- 86** The Supreme Court in the matter of **Sailendra Rajdev Pasvan and Others vs. State of Gujarat Etc., AIR 2020 SC 180** observed that in a case of circumstantial evidence, law postulates two-fold requirements. Firstly, that every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt and secondly, all the circumstances must be consistent pointing out only towards the guilt of the accused. We need not burden this judgment by referring to other judgments as the above principles have been consistently followed and approved by this Court time and again.
- 87** Upon a meticulous and comprehensive evaluation of the entire oral and documentary evidence on record, including the testimonies of prosecution witnesses, exhibited documents, material objects/articles, and the scientific reports, this Court records that at the outset, it stands firmly established that the present case is one resting entirely upon circumstantial evidence, there being no direct eyewitness to the occurrence. In such cases,



the law as laid down in ***Sharad Birdhichand Sarda (supra)*** mandates that the chain of circumstances must be so complete as to exclude every hypothesis except the guilt of the accused. Applying the said principles, this Court proceeds to examine whether the prosecution has succeeded in establishing an unbroken chain of incriminating circumstances.

88 From the evidence of Roop Singh (PW-1), Radhabai (PW-2), Saurabh Agarwal (PW-5), Aditya Pratap Singh (PW-15) and Derharam Tandon (PW-19), duly corroborated by CCTV footage (Ex.P-4, Ex.P-5, Ex.P-40) and material Articles, it stands conclusively proved that:

- * The deceased was last seen alive in the company of the accused at about 2:12 a.m. on 05.04.2022,

- * The accused was seen dragging the deceased by her hair and taking her out of the CCTV camera range.

89 The authenticity and integrity of the CCTV footage has been scientifically corroborated by the Cyber Forensic Lab report (Ex.P-40) and certificate under Section 65-B (Ex.P-41), thereby ruling out any possibility of tampering.

90 Further, the memorandum statement of the accused (Ex.P-3), proved through PW-19 and corroborated by independent witnesses PW-1 and PW-4, led to the recovery of:

- * Blood-stained iron rod



* Blood-stained shirt and jeans under seizure memo Ex.P-2.

- 91 The recoveries made pursuant to the disclosure statement of the accused constitute a highly incriminating circumstance admissible under Section 27 of the Evidence Act and lend strong corroboration to the prosecution case.
- 92 Now coming to the medical and forensic evidence, the medical evidence of Dr. K.K. Sidar (PW-10), supported by postmortem findings and FSL report (Ex.P-38), establishes that:
- * The deceased sustained severe head injuries leading to brain hemorrhage,
 - * There was rupture of uterus and grievous injury to genitalia,
 - * The injuries were consistent with insertion of a rod-like object,
 - * Human blood was found on the seized rod and clothes of the accused.
- 93 The medical opinion clearly supports the prosecution case that the injuries were homicidal in nature and sufficient to cause death.
- 94 The contention of the defence regarding absence of sperm is devoid of merit. Reliance is placed upon the judgment of the Hon'ble Supreme Court in ***Lillu @ Rajesh & Anr. v. State of Haryana, reported in (2013) 14 SCC***, wherein it has been held that absence of injuries or spermatozoa does not disprove rape and that outdated medical tests and past sexual history are irrelevant for determining consent. Relevant paras of the judgment are reproduced hereinbelow:



"11. In Narender Kumar v. State (NCT of Delhi), AIR 2012 SC 2281, this Court dealt with a case where the allegation was that the victim of rape herself was an unchaste woman, and a woman of easy virtue. The court held that so far as the prosecutrix is concerned, mere statement of prosecutrix herself is enough to record a conviction, when her evidence is read in its totality and found to be worth reliance. The incident in itself causes a great distress and humiliation to the victim though, undoubtedly a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The Court further held as under:

"26. Even in cases where there is some material to show that the victim was habituated to sexual intercourse, no inference of the victim being a woman of "easy virtues" or a women of "loose moral character" can be drawn. Such a woman has a right to protect her dignity and cannot be subjected to rape only for that reason. She has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. Merely because a woman is of easy virtue, her evidence cannot be discarded on that ground alone rather it is to be cautiously appreciated. (Vide: State of Maharashtra & Anr. v. Madhukar Narayan Mardikar, AIR 1991 SC 207; State of Punjab v. Gurmit Singh & Ors., AIR 1996 SC 1393; and State of U.P. v. Pappu @ Yunus & Anr., AIR 2005 SC 1248).

27. In view of the provisions of Sections 53 and 54 of the Evidence Act, 1872, unless the character of the prosecutrix itself is in issue, her character is not a relevant factor to be taken into consideration at all".



12. *In State of Punjab v. Ramdev Singh*, AIR 2004 SC 1290, this court dealt with the issue and held that rape is violative of victim's fundamental right under Article 21 of the Constitution. So, the courts should deal with such cases sternly and severely. Sexual violence, apart from being a dehumanizing act, is an unlawful intrusion on the right of privacy and sanctity of a woman. It is a serious blow to her supreme honour and offends her self-esteem and dignity as well. It degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries, but leaves behind a scar on the most cherished position of a woman, i.e. her dignity, honour, reputation and chastity. Rape is not only an offence against the person of a woman, rather a crime against the entire society. It is a crime against basic human rights and also violates the most cherished fundamental right guaranteed under Article 21 of the Constitution.

13. In view of International Covenant on Economic, Social, and Cultural Rights 1966; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, rape survivors are entitled to legal recourse that does not retraumatize them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper



measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with his privacy.

14. Thus, in view of the above, undoubtedly, the two finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, be given rise to presumption of consent.”

95 Further, Section 375 IPC clearly provides that insertion of any object into the vagina to any extent constitutes rape. In the present case:

- * The medical evidence proves insertion of a rod,
- * The injuries to genitalia corroborate violent penetration,
- * The conduct of the accused and surrounding circumstances establish absence of consent.

96 Additionally, the deceased being a mentally unsound and vulnerable woman, the question of valid consent does not arise.

97 The conduct of the accused, as reflected from CCTV footage, his memorandum statement, recovery of incriminating articles, and failure to explain circumstances under Section 106 of the Evidence Act, clearly indicates that the accused acted with the intention of satisfying his sexual lust and, upon resistance by the victim, caused brutal injuries resulting in her death.

98 The prosecution has successfully established the following chain:

1. Deceased was last seen with the accused (CCTV evidence),



2. Shortly thereafter found grievously injured and later died,
3. Recovery of weapon and blood-stained clothes at instance of accused,
4. Medical evidence corroborating assault and rape,
5. Forensic evidence linking accused with crime,
6. Failure of accused to offer any plausible explanation.

99 The above circumstances form a complete and unbroken chain, pointing unerringly towards the guilt of the accused and ruling out any hypothesis of innocence.

100 The present case reveals extreme brutality wherein a mentally unstable and helpless woman was targeted, she was dragged, sexually assaulted in a barbaric manner, a rod was inserted into her private parts, her head was smashed against a stone, leading to death. Such conduct reflects depravity of the highest order. The Hon'ble Supreme Court in ***Mukesh & Anr. v. State (NCT of Delhi) (supra)*** has held that crimes of this nature shock the collective conscience of society and warrant strict judicial response.

101 Reliance is placed upon the judgment of the Hon'ble Supreme Court in ***Dhananjoy Chatterjee v. State of West Bengal (1994) 2 SCC***, wherein it has been held that in cases of heinous offences like rape followed by murder, the Courts must respond to the collective conscience of society and impose punishment proportionate to the gravity of the offence. Relevant paras of the judgment are reproduced hereinbelow:



“14. In recent years, the rising crime rate against women has made the criminal sentencing by the courts a subject of concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility. Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.

15. 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 defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the 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 the victim of crime and



the society at large while considering imposition of appropriate punishment.

16. The sordid episode of the security guard, whose sacred duty was to ensure the protection and welfare of the inhabitants of the flats in the apartment, should have subjected the deceased, a resident of one of the flats, to gratify his lust and murder her in retaliation for his transfer on her complaint, makes the crime even more heinous. Keeping in view the medical evidence and the state in which the body of the deceased was found, it is obvious that a most heinous type of barbaric rape and murder was committed on a helpless and defenceless school-going girl of 18 years. If the security guards behave in this manner who will guard the guards? The faith of the society by such a barbaric act of the guard, gets totally shaken and its cry for justice becomes loud and clear. The offence was not only inhuman and barbaric but it was a totally ruthless crime of rape followed by cold blooded murder and an affront to the human dignity of the society. The savage nature of the crime has shocked our judicial conscience. There are no extenuating or mitigating circumstances whatsoever in the case. We agree that a real and abiding concern for the dignity of human life is required to be kept in mind by the courts while considering the confirmation of the sentence of death but a cold blooded preplanned brutal murder, without any provocation, after committing rape on an innocent and defenceless young girl of 18 years, by the security guard certainly makes this case a "rarest of the rare" cases which calls for no punishment other than the capital punishment and we accordingly confirm the sentence



of death imposed upon the appellant for the offence under Section 302 IPC. The order of sentence imposed on the appellant by the courts below for offences under Sections 376 and 380 IPC are also confirmed along with the directions relating thereto as in the event of the execution of the appellant, those sentences would only remain of academic interest. This appeal fails and is hereby dismissed.”

- 102** In view of the foregoing discussion, this Court is of the considered opinion that the prosecution has proved beyond reasonable doubt that the accused committed rape upon the deceased by inserting a rod into her private parts without her consent, the accused caused grievous injuries endangering her life and the accused intentionally caused the death of the deceased.
- 103** This Court is conscious of the fact that the present case is not merely an instance of a criminal act resulting in the death of a woman, but a grave assault on the fundamental values of human dignity, bodily integrity and the rule of law. The deceased, a mentally unsound and destitute woman, was entitled to the same constitutional protection of life and dignity as any other citizen. The barbaric acts committed upon her person, as proved on record, reflect a complete disregard for these foundational principles. The Hon’ble Supreme Court in *Mukesh & Anr. v. State (NCT of Delhi)* has emphasized that crimes of sexual violence are not merely offences against an individual but are offences against society at large, as they erode the moral fabric and collective conscience of the community.



- 104** The evidence on record unmistakably establishes that the deceased was a woman suffering from mental instability, living in conditions of extreme vulnerability. Such individuals require protection, care and societal support. Instead, the accused exploited her helpless condition for the gratification of his sexual lust and subjected her to inhuman violence. The law does not countenance such acts and, rather, treats them as aggravated forms of offence, warranting stern judicial response. The absence of resistance or inability to offer meaningful consent in such circumstances further aggravates the culpability of the accused.
- 105** The manner in which the offence has been committed i.e., dragging a helpless woman in the dead of night, subjecting her to brutal sexual assault by insertion of a rod, and thereafter inflicting fatal injuries shocks the conscience of this Court. Such acts not only destroy the life of the victim but also instill fear and insecurity in society, particularly among vulnerable sections. As held by the Hon'ble Supreme Court in *Dhananjoy Chatterjee (Supra)*, the Courts are duty-bound to respond to such crimes in a manner that reflects the collective conscience of society and ensures that justice is not diluted by misplaced sympathy.
- 106** The criminal justice system must send a clear and unequivocal message that crimes of such heinous nature shall be met with stern consequences. The punishment imposed must not only be proportionate to the gravity of the offence but must also serve as a deterrent to potential offenders. Any leniency in such cases



would amount to a failure of justice and would undermine public confidence in the judicial system.

- 107** Therefore, we are of the considered opinion that the prosecution has proved its case beyond reasonable doubt and the trial Court has rightly convicted the accused/appellant for the offence punishable under Sections 376(1), 376(2)(l)(m), 376(A) and 302 of the IPC. Thus, we do not find any illegality or irregularity in the findings recorded by the trial Court.
- 108** For the foregoing reasons, the criminal appeal being devoid of merit and is liable to be and is hereby **dismissed**.
- 109** It is stated in the appeal that the appellant is in jail, he shall serve out the sentence as ordered by the learned trial Court.
- 110** Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the Appellant is undergoing the jail term, to serve the same on the Appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee
- 111** Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Manpreet

Sd/-

(Ramesh Sinha)
Chief Justice