

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 28th April, 2010*
Judgment Pronounced on: 7th May, 2010

+ **DEATH REF. 01/2010**

In the matter of:-

DEATH REFERENCE 01/2010 pertaining to Sessions Case No.6/2008.

In Re :

STATE

Through : Ms.Richa Kapoor, A.P.P.
and Mr.M.N.Dudeja, A.P.P.

AND

RANJEET

.....Accused
Through : Mr.Rajesh Mahajan, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. The post-mortem report Ex.PW-5/B of deceased Rakhi aged 5 years, proved at the trial by the author thereof Dr.S.Lal PW-5, not only proves that Rakhi was raped but also the fact that she was strangled to death. A vaginal tear

extended to the anus of the unfortunate young girl. 15 other injuries, most of them around the neck, had tell tale sign of nail marks evidencing the young girl being manually strangled. Muddy water had reached the bronchiole, establishing that the young girl had died due to asphyxia not resulting from manual strangulation but from drowning. Indeed, Sh.Rajesh Mahajan learned counsel for the accused Ranjeet did not dispute that Rakhi was raped and an attempt was made to manually strangle her to death and when the body became lifeless, not realizing that there was some life in Rakhi, her body was thrown in muddy water and the final cause of death of Rakhi was by drowning.

2. What was debated before us was whether it stands proved that the appellant is the rapist and the murderer of Rakhi as held by the learned Trial Judge and if yes, whether the appropriate sentence should be death penalty.

3. Vide impugned judgment and order dated 10.2.2010, Ranjeet has been convicted for the offence of having kidnapped Rakhi from near her house at around 9:00 PM on 3.9.2007 and thereafter committing rape upon Rakhi followed by murdering her. Vide order dated 3.3.2010, Ranjeet has been sentenced to death.

4. Accordingly, the learned Trial Judge has made a reference to this Court in compliance with Section 366 Cr.P.C.

5. As per the mandate of law we had perused the entire evidence with the assistance of learned counsel for the parties when the Reference was heard on 28.4.2010 and thus would be deciding the Reference noting the arguments advanced, uninfluenced by the findings returned by the learned Trial Judge, of course, we would be reflecting upon the reasoning of the learned Trial Judge as and when appropriate and if required to be so done. Indeed, in a case where penalty imposed is to hang the convict by the neck till he is dead i.e. death sentence, it is the duty of the Appellate Court to re-peruse the entire evidence and return reasoned findings.

6. The first document available which leads to the proof of Rakhi missing is Ex.PW-6/A; a PCR form filled up by Const.Anju Bala PW-6. The PCR form is in four parts and thus has been filled up at four different points of time; fairly close to each other. As deposed to by Const.Anju Bala PW-6, she was posted as a constable in the Police Control Room (HQ) from 8:00 PM on 3.9.2007 to 8:00 AM the next day and on 3.9.2007 at 9:06 PM she received a call from telephone No.9971247091. The caller disclosed his name as Suresh and informed her that his daughter Rakhi aged 5 years, shallow colour, wearing a

white vest and a black underwear but without footwear was missing from 7:45 PM, which time she inadvertently recorded in the PCR form Ex.PW-6/A as 8:45 PM. It may be noted that the first entry in the PCR form Ex.PW-6/A, apart from recording as afore-noted, further records that the address of the informant was Gali No.17, Gopal Pur in front of STD booth. She further deposed that a police control room van reached the place and a personnel in the van confirmed to her that aforesaid information was correct. It may be noted that the second entry in the PCR form Ex.PW-6/A records the time as 9:26 PM and arrival of the PCR van at the spot and that the information received and as recorded initially at the police control room is correct. There is another entry, being the third which is a very cryptic entry. It records that ASI Shiv Kumar had reached the spot at 9:36 PM. The last entry records in Devnagari script: *Paune saat se laapata hai*.

7. Unfortunately, neither the Public Prosecutor, nor the counsel for the accused questioned Const.Anju Bala as to on what basis and on whose information she wrote at the bottom of the form by way of the third entry therein that the child was missing since 6:45 PM.

8. For record it may be noted that the police control room conveying to the police station Timarpur the said

information of Rakhi being missing stands recorded vide DD No.65B, Ex.PW-10/A, proved by the author thereof HC Ranbir Singh PW-10, which records that the police control room has informed that Rakhi daughter of Suresh aged 5 years was missing since 8:45 PM from Gali No.17 Gopal Pur in front of the STD booth. That the child was wearing a white coloured vest and a black coloured underwear.

9. The second document which leads to the proof of Rakhi being missing and additionally throws light on the accused i.e. Ranjeet is the statement Ex.PW-1/A made by Suresh Shah, the father of Rakhi, and as recorded by ASI Shiv Kumar PW-18. It stands recorded in the statement Ex.PW-1/A that Suresh Shah is a rickshaw puller and resides as a tenant in the house of Zora Singh along with his family. Rakhi aged 5 years was his third daughter. Today evening at 7:45 PM when he was returning after plying rickshaw he saw Ranjeet with his daughter in his lap. He asked where was he taking his daughter. Ranjeet responded that he was taking her for a stroll. He went to his house at 9:00 PM and learnt from his wife that his daughter Rakhi was missing. He saw Ranjeet when Ranjeet reached his room and asked him where was Rakhi. Ranjeet replied that he had left Rakhi who may have gone to the house of her Naani. He and his wife went to the house of

Rakhi's Naani who also resides in Gopal Pur but learnt that Rakhi had not gone there. He and his wife returned to their house and found Ranjeet missing and thus he informed the police.

10. Making an endorsement Ex.PW-18/A beneath the statement Ex.PW-1/A, and as recorded therein, ASI Shiv Kumar PW-18 dispatched the rukka at 11:50 PM, recording therein that the time of the occurrence was 7:45 PM. Const.Bikker Singh PW-17 took the rukka to the police station where HC Dharam Singh PW-7 recorded the FIR Ex.PW-7/A and made a recording vide DD No.3A of FIR being registered. He made an endorsement Ex.PW-7/B on the rukka recording that he had entered DD No.3A at 00.10 hours on 4.9.2007 i.e. 10 minutes past midnight in the intervening night of 3rd and 4th September 2007.

11. We may note at the outset that Const.Anju Bala, HC Ranbir Singh, ASI Shiv Kumar, Const.Bikker Singh and HC Dharam Singh have deposed the relevant facts to prove the PCR form Ex.PW-6/A, DD No.65B Ex.PW-10/A, the statement Ex.PW-1/A, the endorsement Ex.PW-18/A beneath the statement Ex.PW-1/A, the endorsement Ex.PW-7/B on the endorsement Ex.PW-18/A and DD No.3A as also the FIR Ex.PW-7/A being recorded/prepared at the time mentioned therein.

None of them have been cross-examined on said aspect. However, we would be failing not to note that an argument was predicated upon the contents of the CDTs Trained Expert Report Ex.PW-9/A; with respect to the contents of said report that it was apparent that the FIR was ante timed. We would be highlighting the submission as we proceed along and reach the stage of our narratives pertaining to Ex.PW-9/A. Submissions were made that the FIR was ante timed based on the testimonies of Rajjo PW-2, Paramshila PW-3 and Deepak PW-11, which we shall be noting at the appropriate stage.

12. It may be noted here itself, an argument which we would be dealing at the appropriate stage, that with reference to the fourth entry in the PCR form Ex.PW-6/A where it was recorded: *Paune saat se laapata hai*, it was argued that somebody must have said that and in all probability that somebody has to be Suresh Shah and this means that Rakhi was missing since 6:45 PM and thus Suresh Shah could not have seen her with Ranjeet at 7:45 PM as stands recorded in the statement Ex.PW-1/A of Suresh Shah.

13. It is apparent that if Rakhi had to be found out, Ranjeet had to be traced. As deposed to by ASI Shiv Kumar PW-18, Suresh Shah told him that Ranjeet used to drive trucks of kilns in the area of Mukherjee Nagar and suggested that

they should look for Ranjeet in that area and accordingly he i.e. ASI Shiv Kumar PW-18 accompanied by Suresh Shah PW-1 and Const.Bikker Singh PW-17 proceeded to Mukherjee Nagar where trucks used to be parked and as deposed to by the three, Ranjeet was spotted near jhuggi of Nand Lal in Mukherjee Nagar and was apprehended and immediately arrested as per arrest memo Ex.PW-1/B, which records the time of arrest as 1:30 AM i.e. the middle of the intervening night of 3rd and 4th September 2007 and thus the date mentioned on the arrest memo is 4.9.2007. Further, as deposed to by ASI Shiv Kumar, Const.Bikker Singh and Suresh Shah; on being interrogated by ASI Shiv Kumar, Ranjeet made a disclosure statement Ex.PW-1/D, not only admitting to the crime but disclosing that after raping Rakhi at a secluded place near Gopal Pur cut he pressed the mouth of Rakhi and threw her in a water pond having water and also threw her underwear which he had removed before raping her and that a towel which he was wearing when he raped Rakhi got stained with blood which he could get recovered from his house and that he could also get recovered the underwear of Rakhi and could lead them to the place where he had thrown the dead body of Rakhi.

14. Thus, through the mouth of Ranjeet facts came to the knowledge of ASI Shiv Kumar which showed that two more cognizable offences of rape and murder were committed and hence the information was passed on by him to the police station, a fact deposed to by ASI Shiv Kumar and confirmed by Insp.Ram Pal Singh PW-19, who immediately proceeded to Gopal Pur for the reason as per the departmental instructions issued in the National Capital Territory of Delhi, cognizable offence of murder has to be investigated by an officer not below the rank of Inspector. Needless to state, in the FIR which had stood registered for the offence punishable under Section 363 IPC, Section 201 IPC, Section 376 IPC and Section 302 IPC were added.

15. Indeed, as deposed to by Insp.Ram Pal Singh, ASI Shiv Kumar, Const.Bikker Singh and Suresh Shah, Ranjeet led the four to a pond near Gopal Pur at a distance of about 20 to 25 meters from the turning from Gopal Pur towards Ring Road. As recorded in the pointing out memo Ex.PW-1/E the dead body of Rakhi was recovered on the pointing out of the spot by Ranjeet. The body was fished out from the pond. Thereafter, Ranjeet pointed to a spot a little away from the pond, where from a pink coloured underwear Ex.P-1 was seized as entered in the memo Ex.PW-1/F. As deposed to by Insp.Ram Pal Singh

he drew up the memos and as deposed to by ASI Shiv Kumar and Suresh Shah they signed as witness since they had witnessed the recovery of the dead body of Rakhi as also that of the underwear Ex.P-1. As deposed to by Insp.Ram Pal Singh he summoned the Crime Team.

16. Insp.Sube Singh PW-9 was posted as in-charge Mobile Crime Team, North District, and as deposed to by him he reached Gopal Pur and saw the dead body of a young girl near a pond and he inspected the spot and got the scene photographed and finally prepared the 'CDTS Trained Expert Report' Ex.PW-9/A. Photographer Const.Ramesh PW-8 who was a part of the Crime Team took photographs Ex.PW-8/A1 to Ex.PW-8/A5, and as deposed to by him, negatives thereof were Ex.PW-8/B1 to Ex.PW-8/B5. The photographs are obviously hazy since they were shot in the darkness of the night. A flash was used and over exposure to the light has resulted. This is visible to whosoever sees the photographs, but what needs to be noted is that the photograph Ex.PW-1/A5 shows the pond adjacent to where the dead body of Rakhi was lying. The other photographs of Rakhi show her without an underwear and only with a vest.

17. Relevant would it be to note, since an argument was advanced with reference to the contents of Ex.PW-9/A,

that against Column No.2 where it is printed: '*FIR/DD No.*' it has been written 65. Against Column No.8 where it is printed: '*Date and Time of Examination*' it stands recorded: 4.9.07 - 2:30 AM to 3:30 AM. The argument advanced relatable to this document was that where was the question of the FIR being registered till 3:30 AM as claimed by the prosecution for the reason had it been so, the Crime Team which filled up the form Ex.PW-9/A would have so done after inspecting the spot and since time recorded in the Form when the team remained at the spot is 2:30 AM to 3:30 AM it was apparent that the Form was filled up after 3:30 AM. Learned counsel highlighted that since only DD entry was referred to in the Form it had to be inferred that the FIR was ante timed.

18. As deposed to by Const.Bikker Singh PW-17, Insp.Ram Pal Singh handed over the dead body of Rakhi to him for being taken to the Subzi Mandi mortuary and thus he parted company. Insp.Ram Pal Singh, ASI Shiv Kumar and Suresh Shah, as deposed to by the three, came to the room on rent with Ranjeet, which happened to be in the same building in which Suresh Shah resided and as recorded in the pointing out-cum-recovery memo Ex.PW-1/G Ranjeet picked up a towel Ex.P-2 which was hung on a peg on the wall inside the room

and handed over the same to Insp.Ram Pal Singh stating that this was the towel which he was wearing when he raped Rakhi.

19. Though referred to as a towel, Ex.P-2 would be better described in vernacular. It is a gamcha, a multipurpose piece of cloth which can be used as a male wrap-around, a towel, a sheet spread and if needed after folding, as a head rest.

20. As deposed to by Insp.Ram Pal Singh he filled up the inquest papers, which we note have not been exhibited but are to be found at pages No.409 and 413 of the Trial Court Record. Since an argument was advanced in relation to the contents thereof, it may be noted that in the brief facts pertaining to the inquest it was written that as per the confession of Ranjeet he had raped and strangulated Rakhi and on the other document pertaining to the inquest against Column No.12 where it was indicated that information be sought as to in what manner or by what weapon or instrument marks or injuries appear to have been committed, it stands written: *'Strangulation by hand.'* The argument was that Insp.Ram Pal Singh having not sought an opinion whether death could be by drowning suggested that he was not even aware that the body was fished out from a pond and thus his claim of being present when the pointing out-cum-recovery

memo Ex.PW-1/E and other relatable memos were drawn is suspect.

21. As noted in para 1 above, post-mortem on the dead body of Rakhi was conducted by Dr.S.Lal PW-5, who, as deposed to by him handed over the vest of Rakhi as also her blood sample on a gauze with vaginal and rectal swabs to the investigating officer.

22. Ranjeet was taken to Aruna Asaf Ali Hospital where Dr.Preeti PW-4 examined him at 9:30 AM on 4.9.2007, as recorded on the MLC Ex.PW-4/A. She noted no external injury on Ranjeet and hence so wrote on the MLC Ex.PW-4/A. As deposed to by Dr.Preeti PW-4 she seized the undergarments which Ranjeet was wearing and handed over the sealed packet to the investigating officer. As per endorsement Ex.PW-5/A at the rear of the MLC Ex.PW-4/A, and as deposed to by Dr.S.Lal PW-5, Ranjeet was produced before him at 11:00 AM and after examining Ranjeet he wrote his observations and opinion pertaining to the physical examination of Ranjeet vide endorsement Ex.PW-5/A. He wrote in the endorsement that there were multiple reddish bluish bruises intermingling with each other, forming a large wound on the gluteal region of Ranjeet as also linear reddish bluish bruise of size 6 cm x 1 cm over back of right lower chest. He opined, a fact deposed to

by him, that he found nothing which was suggestive or determinative of the incapacity of Ranjeet to indulge in sexual intercourse. Relevant would it be to note qua said injuries that on being cross-examined Dr.S.Lal stated that it was correct that said injuries could be possibly caused by a linear object i.e. a '*danda*'.

23. The various exhibits which were seized as afore-noted i.e. the underwear Ex.P-1 of Rakhi, the towel Ex.P-2 got recovered by Ranjeet, the vest of Rakhi, her blood sample on a gauze and her vaginal and anal swab as also the undergarments of Ranjeet which Dr.Preeti claims to have handed over to the investigating officer as per memo Ex.PW-4/B were sent for forensic examination and as per report Ex.PX human blood group whereof was 'A' were detected on the blood stained gauze i.e. was the blood group of Rakhi; human blood of same group was detected on the towel Ex.P-2 as also the vest (stated to be that of Ranjeet). On the underwear, stated to be that of Ranjeet, only human blood could be detected and not the group thereof. No blood could be detected on the underwear Ex.P-1 and the vest of Rakhi. Semen could be detected only on the underwear of Ranjeet.

24. The controversy pertaining to the underwear and the vest alleged to be worn by Ranjeet when he was

apprehended may be noted. Neither the vest nor the underwear of Ranjeet were produced in Court and identified as the ones which were seized.

25. Suresh Shah PW-1 deposed facts in complete conformity with his statement Ex.PW-1/A and no improvements, contradictions or embellishments were pointed out to us between his testimony in Court and the statement Ex.PW-1/A. Inter alia he deposed that at 7:45 PM on 3.9.2007 he saw Ranjeet carrying his daughter slightly away from his house and that he parked his rickshaw in a garage and returned to his house at 9:00 PM. In addition to the facts disclosed in his statement Ex.PW-1/A he proved by deposing that he witnessed the arrest of Ranjeet who made a disclosure statement Ex.PW-1/D and pursuant thereto led the police to a pond near Gopal Pur Road cut and pointed out the place wherefrom the dead body of his daughter was recovered as also pointed out the place wherefrom the underwear Ex.P-1 of his daughter was recovered and that thereafter he led the police to his house and got recovered the towel Ex.P-2. He affirmed his signatures on all pointing out cum recovery memos. During cross-examination he clarified that apart from himself and Ranjeet there were 10-15 other tenants in the building owned by Zora Singh. He clarified that the distance

between his house and the garage where he parked his rickshaw was a 10-15 minutes walk. He stated that the towel Ex.P-2 was hung on a peg outside the room of Ranjeet. On being questioned as to who all were present at the place where the dead body of his daughter was found he replied that no public person and none of his relatives was present.

26. Smt.Rajjo PW-2 the mother-in-law of Suresh deposed that on 3.9.2007 her son-in-law Suresh came to her house searching for his daughter. During cross-examination she stated that she reached the house of Suresh at 8:00 PM by which time the police came. It may be noted that the learned Trial Judge has noted his observations qua Smt.Rajjo by recording that she is hard of hearing and is understanding the questions with great difficulty and that she does not understand Hindi properly.

27. Smt.Paramshila PW-3, wife of Suresh deposed that on the 3rd of a month in the year 2007 which month she could not recollect by the English calendar but was the month of Bhadrapad her daughter Rakhi went missing at around 8:00 PM. Her husband came home at 9:00 PM and told her that Rakhi was with Ranjeet. Around same time Ranjeet returned and upon inquiry from her husband replied that Rakhi may have gone to her Naani's house. She and her husband went to

her mother's house who told them that Rakhi had not come to her house. They returned to their house and saw Ranjeet missing. The husband informed the police. On being cross-examined she deposed that Rakhi was playing outside at 7:30 PM and she alone searched for Rakhi till 3:00 AM and since Rakhi could not be found, as advised by her brother she slept.

28. Dr.Preeti PW-4 proved the MLC Ex.PW-4/A and stated that she handed over the undergarments of Ranjeet to Const.Jogender after duly sealing the same. Dr.Preeti has not been cross-examined. Dr.S.Lal PW-5 proved the post-mortem report Ex.PW-5/B of Rakhi and his endorsement Ex.PW-5/A at the back of Ranjeet's MLC Ex.PW-4/A and during cross-examination stated that injuries noted by him on Ranjeet could possibly be caused by a '*danda*'. Const.Anju PW-6 proved the PCR form Ex.PW-6/A with the clarification as noted in para 6 above. HC Ranbir Singh PW-10 deposed that he recorded DD No.65B, Ex.PW-10/A when he received wireless message from the PCR of Rakhi D/o Suresh missing. He has not been cross-examined. HC Dharam Singh PW-7 deposed that he received the tehrir and registered the FIR Ex.PW-7/A at 12:10 midnight and hence recorded the date 4.9.2007. He deposed that the endorsement Ex.PW-7/B on the tehrir was in his handwriting. Relevant would it be to note that no suggestion regarding ante

timing of the FIR was given to HC Dharam Singh and the only suggestion given was that he did not register the FIR, a fact denied by him. Const.Ramesh PW-8 deposed that he took the photographs, negatives whereof were as noted in para 16 above. Insp.Subey Singh PW-9 proved the report Ex.PW-9/A, contents whereof and the controversy relating thereto have been noted in para 17 above.

29. Const.Bikker Singh PW-17, ASI Shiv Kumar PW-18 and Insp.Rampal Singh PW-19 deposed facts pertaining to the investigation conducted and various exhibits seized and as noted by us in paragraphs 9 to 23 above and in spite of cross-examination nothing could be brought out to demolish their credibility.

30. Deepak PW-11, brother of Paramshila deposed that he saw Rakhi's dead body on the bank of the pond in Gopal Pur near ring road and identified the dead body as that of his niece.

31. It is time to note the submissions urged by learned counsel for Ranjeet.

32. It was firstly urged that not only in the PCR form Ex.PW-6/A but even in Suresh Shah's statement Ex.PW-1/A a positive statement stands recorded that the underwear which

Rakhi was wearing was black in colour but the underwear Ex.P-1 is pink in colour and hence it is apparent that the underwear has been planted. Counsel urged that this shows a tainted investigation and hence a benefit of doubt needs to be extended to the accused.

33. Second submission urged was by picking on the fourth recording in the PCR form Ex.PW-6/A where after recording that ASI Shiv Kumar had reached the spot at 9:36 PM it stands recorded in Hindi: '*paune saat se laapata hai*'. Counsel urged that it was apparent that somebody said said fact to the PCR operator who could not have otherwise recorded the same. Hyperlinking this to the admission of Smt.Rajjo, who during cross-examination stated that she reached the house of her son-in-law by which time it was 8:00 PM and police had arrived, learned counsel submits that what emerges is that Rakhi was found missing at 6:45 PM and said information had been conveyed to the police and thus the police reached the house of Suresh Shah by 8:00 PM by which time the relatives of Rakhi had searched for her long enough and panic had set in. Further hyperlinking the submission by referring to the testimony of Suresh Shah and his admissions in cross-examination wherein Suresh Shah stated that he was near his house at 7:45 PM when he saw his daughter Rakhi in

the lap of Ranjeet and that he parked his rickshaw in his garage which was at a distance of 10-15 minutes walk from his house, learned counsel urged that if this be so, Suresh Shah would be back at his house by around 8:05-8:10 PM (travelling time on rickshaw being far less than time consumed to cover a distance while walking) and this probablizes the time of 8:00 PM disclosed by Smt.Rajjo; in any case urged the counsel that the first information given to the police by Suresh Shah of Rakhi missing is admittedly at 9:06 PM, the time recorded on the PCR form Ex.PW-6/A. It was urged that the statement of Paramshila that she searched for her daughter till 3.00 AM and then slept shows that by said time Rakhi's body was not found. The sum total of all aforesaid submissions, urged the counsel, was that in all probability Rakhi's absence was detected by around 6:45 PM and somebody truthfully said said fact to ASI Shiv Kumar who conveyed the same to Const.Anju Bala and hence the recording on the PCR form: '*paune saat se laapata hai*'. Further extending this submission, learned counsel urged that everything contemporaneously recorded at the police station pertaining to FIR being registered at 10 minutes past 12 in the midnight of the intervening night of 3rd and 4th September, 2007 is suspect qua the timing thereof and thus there are reasonable grounds to suspect the FIR being ante

timed. Counsel very heavily relied upon the 'CDTS Trained Expert Report', Ex.PW-9/A wherein against column 8 the time during which the crime team remained at the spot was recorded as 2:30 AM to 3:30 AM and the date as 4.9.2007 and against column No.2 where reference to FIR/DD No. had to be entered, the FIR No. was not written and only the number of the DD entry with letter 'B' missing and only the number 65 stood written. Thus, the argument was as noted in para 17 above. Another facet emerging from the testimonies and falling in the cauldron of the submission that the recording of the documents and the FIR was ante timed was the submission that Suresh Shah stated during cross-examination that when Rakhi's body was found no public person or his relative was present, but Deepak PW-11, brother-in-law of Suresh Shah claimed to be present when dead body of Rakhi was discovered. Relatable submission thereto was that it was apparent that the dead body of Rakhi has been noticed by somebody else and hence Deepak reached the pond on getting said information and thus the possibility of the police otherwise getting to know about Rakhi's dead body lying in the pond but putting source of knowledge thereof in the mouth of Ranjeet.

34. The third submission urged was that in the inquest papers, though not proved but at page No.409 and 413 of the Trial Court record, Insp.Rampal Singh had indicated that the information which he sought was whether Rakhi was strangled by hand and not the information whether she died due to drowning. The exact submission urged was as noted in para 20 above.

35. The fourth submission urged was that it was a case of an over-zealous investigation and said over-zealousness could have possibly tainted the investigation. The act of over-zealousness was, apart from the argument of an underwear of Rakhi being planted, injuries caused to Ranjeet after 9:00 AM and before 11:00 AM on 4.9.2007 evidenced, as per the learned counsel, by the fact that in the MLC Ex.PW-4/A when Dr.Preeti examined Ranjeet at 9:30 AM no injuries were noted by her on Ranjeet and by 11:00 AM when Dr.S.Lal examined Ranjeet, injuries as noted in para 22 above were detected by Dr.S.Lal with a clarification that the said injuries could be possibly caused by beating with a stick. Counsel urged that by inflicting the injuries on the gluteal region and the chest of Ranjeet it is apparent that the investigating officer was wanting to create injuries on such part of the body of Ranjeet

wherefrom it could possibly be argued that they were the result of the victim fending of the sexual assault on her.

36. Pertaining to the recovery of the towel Ex.P-2 it was urged that it is against natural conduct of a person who has raped and murdered a girl to return to his room in a building where 10-15 other tenants are residing. Nobody would like to be seen near his house and that too with a towel wrapped around having blood stains thereon, urged the counsel. It was additionally urged that the place wherefrom the towel was recovered has been discrepantly disclosed by the witnesses to the recovery; whereas Suresh Shah claims that it was picked up from a peg outside the room of Ranjeet, other witnesses have deposed that it was picked up from within the room.

37. The last but one submission urged by the learned counsel for the appellant was that neither the underwear nor the vest of the appellant was produced in the Trial Court. The rule of evidence being that the seizures of articles need to be proved by producing such articles before the Court, the same not having been done in the instant case, the semen and the blood detected on the underwear and the vest respectively of the appellant are of no incriminating value. It was urged that in the absence of any semen or blood being detected on the underwear and the vest of the deceased Rakhi as also on the

anal and vaginal swab of Rakhi, it was apparent that no semen was ejaculated and even on said account presence of semen on the underwear of Ranjeet was doubtful. The last submission was that if Ranjeet is found guilty, it is not a case where the sentence of death should be inflicted.

38. The first submission with respect to the colour of the underwear Ex.P-1 being pink and it being disclosed by Suresh Shah that his daughter was wearing a black underwear does not lead to any inference that the over-zealous investigating officer planted the underwear Ex.P-1. Had he wanted to plant one, what prevented him from not planting a black coloured underwear? Obviously nothing. Now, a father who is peddling a rickshaw and sees his child in the company of his neighbour may not exactly remember the colour of the underwear his child was wearing and perhaps may be guided by some faint impression in the mind that probably the colour was of a particular kind and hence would so state. We find that Suresh Shah has not been cross-examined on this aspect of the controversy and thus we see no scope for any further debate. Of course, if Suresh Shah had been quizzed on the issue and had volunteered an answer, then one could have debated on the issue with the focus being the answer or the explanation furnished by Suresh Shah.

39. The second submission, as noted in para 33 above, has various facets, some of which are directly hyperlinked to the other and some independent of each other, but all falling in the cauldron of whether the FIR was ante timed for the reason Rakhi was actually missing since 6:45 PM and was never last seen with Ranjeet at 7:45 PM as claimed by Suresh Shah and thus a story had to be cooked up and probably before a story could be cooked up the dead body of Rakhi was noticed by somebody and information thereof was given to the police and only thereafter, working backward by planting first a suspect and then giving him colour of an accused the record was fabricated.

40. While briefly noting the deposition of the police witnesses, we have already noted that HC Ranbir Singh PW-10 who has recorded DD No.65B at 9:24 PM on 3.9.2007 has not been cross-examined. Similarly, testimony of Const.Anju Bala PW-6 of having recorded at 9:06 PM on the PCR form Ex.PW-6/A that a person called Suresh Shah has rung up to inform that his daughter was missing since 7:45 PM has not been challenged during cross-examination as also her clarification that by mistake she wrote the time 8:45 PM. Similarly, HC Dharam Singh PW-7 who has proved the FIR Ex.PW-7/A has not

been challenged with respect to his testimony that he registered the FIR at 10 minutes past 12:00 midnight.

41. Having not challenged the testimony of the aforementioned three police officers, we see no debate on the issue of the FIR being ante timed.

42. But since submissions were made on the debate and as recorded in para 33 above, we would be fair to the accused by dealing with the same. The recording '*paune saat se laapata hai*' at the end of the PCR form Ex.PW-6/A is undoubtedly to be found on the form Ex.PW-6/A. Let us explain the format of the form. The form is divided into 4 distinct components. The first component requires the person at the police control room briefly penning the information conveyed when the Police Control Room No.100 is rung up. The second component requires the person at the police control room to briefly record information conveyed over the wireless by the PCR van in charge which reaches the place of the incident. The third component requires information to be filled up that what has been received at the police control room has been passed on to the police station concerned. The fourth component requires report received by the police officer of the local police station who has reached the spot and as conveyed to the police control room.

43. It is in the fourth component of the PCR form Ex.PW-6/A that it stands recorded '*paune saat se laapata hai*'. As noted in para 7 above, nobody has questioned Const.Anju Bala as to under what circumstances she wrote the said words in part 4 of the PCR form. Everybody, including ourselves, were left to guess as to what was intended to be meant or conveyed when Const.Anju Bala wrote the said words. But there is some probable cue to unravel the mystery. Suresh Shah has claimed that he saw his daughter in the lap of Ranjeet at 7:45 PM and in vernacular it would be '*paune aath*'. In vernacular 6:45 PM would be '*paune saat*'. There is some phonetic similarity between '*aath*' and '*saat*'. The issue of phonetic similarity has to be considered not in the context of the speaker and the listener being face to face i.e. within audible distance of each other, for in said situation, phonetically similar words can be discerned by the ear. The issue of phonetic similarity, in the instant case, has to be considered with reference to the situation of information being conveyed over the wireless. Have we not experienced humming sound over wireless sets intermingling with the words spoken through the wireless? Yes we have. It is thus possible that the words '*paune aath se laapata hai*' being heard and hence written as '*paune saat se laapata hai*'. It is

settled law that where the attention of a witness is not drawn to a discrepant fact stated by the witness or recorded by the witness thereby denying the witness an opportunity to explain, no brownie points can be claimed by the opposite side.

44. If the first limb of the second submission is answered as above, it is apparent that the second limb by way of hyperlinking to the first would have no hyperlink as was urged and as noted in para 33 above. But with or without a hyperlinking, from the observations recorded by the learned Trial Judge while recording the testimony of Smt.Rajjo which have been noted by us in para 26 above it is apparent that Rajjo is a rustic lady and had a language problem. She understood neither English nor Hindi. Thus, her statement that she was in the house of her son-in-law at 8:00 PM by which time the police had arrived cannot be stretched to mean that information of Rakhi being missing was with the police who for mala fide reasons chose not to enter the same in the daily diary register. Not only that no such suggestion has been given to HC Ranbir Singh PW-10 the scribe of DD 65B or to any other police officer associated with the investigation. Lastly, Rajjo is the only witness who has not deposed in sync with other witnesses who have deposed to on the said issue being Suresh Shah PW-1, Smt.Paramshila PW-3, Const.Bikker Singh

PW-17 and ASI Shiv Kumar PW-18, all of whom have consistently deposed that ASI Shiv Kumar and Const.Bikker Singh reached the house of Suresh Shah in Gali No.17, Gopal Pur post 9:30 PM after DD No.65B was registered at the police station at 9:24 PM. The next hyperlink with reference to Suresh Shah saying that the distance of his garage where he used to park his cycle rickshaw from his house was 10-15 minutes walk and if Suresh Shah had seen Ranjeet with Rakhi at 7:45 PM when he passed by near his house and was proceeding to his garage, he ought to have returned by 8:05 or 8:10 PM and his claim of returning at 9:00 PM is obviously to fill up the time gap and this extra time was used to spin a fabricated story is premised on three assumptions being (i) that the journey time till the garage on the rickshaw would be about 5 minutes and (ii) Suresh Shah just parked his rickshaw in the garage and spent the least possible time in the garage and immediately walked back to his house and lastly (iii) Suresh Shah was keeping a record of the time as a time keeper would do. All three assumptions cannot be assumed for the reason in a given circumstance the only assumption which a Court may assume is that normal course of conduct or events was followed. Suresh Shah is a rickshaw puller and would be referring to the time in an un-officious manner. In

crowded streets in Delhi we have seen pedestrians move ahead of crawling traffic. After parking a vehicle people have been seen standing at the parking place having polite conversation. People do stop by on the way to their house to have a smoke or chat with a friend on the street. That apart, no suggestion has been given to Suresh Shah that after parking his rickshaw he immediately returned to his house and spent no time on any other activity. The next hyperlink sought to be created with reference to the CDTs Trained Expert Report, Ex.PW-9/A, is with reference to the fact that in the said report reference is made to the daily diary entry No.65 and not the FIR. The document records the fact that the crime team remained at the spot from 2:30 AM to 3:30 AM i.e. during the intervening night of 3rd and 4th September 2007. But from said fact it cannot be inferred that it establishes the FIR not being registered till 3:30 AM. It assumes importance that Insp.Subey Singh PW-9, the author of the report has not been put any question as to under what circumstances he filled up column No.2 of the form by recording the DD number. To explain what possibly has happened it needs to be understood that where a crime is detected and tehrir sent for FIR to be registered, in the tehrir itself request is made to the duty officer to send the crime team and the crime team leaves with a copy of the DD

entry and thus enters the DD number in the CDTs form ignoring the fact that by the time the crime team has completed its investigation at the spot, the FIR has been registered. Sometimes, as in the instant case, when events happen with quick succession, one forgets that with the passage of time, it may have happened that the FIR was registered. The omission in the instant case has to be, in all probability, in the latter category because in the instant case the FIR has been registered for the offence of kidnapping at 10 past 12:00 in the midnight and in the tehrir on basis whereof the FIR has been registered there is no request to send any crime team because obviously there was no requirement of the crime team to be sent. This requirement arose when Ranjeet was apprehended at around 1:30 in the middle of the night and he made a disclosure. It is around this time, as deposed to by ASI Shiv Kumar that the offence of rape and murder surfaced and hence the requirement of the crime team to reach the place where the crime was committed. What appears to have happened is that the duty officer handed over a copy of DD No.65B to Insp.Subey Singh who innocently recorded on the CDTs Trained Expert Report Form that his report pertained to the matter under investigation relatable to DD No.65B. The last hyperlink that Suresh Shah stated that no

public person or relative was present when dead body of Rakhi was recovered at the pointing out of Ranjeet but his brother-in-law Deepak PW-11 claimed of being present at the spot and hence there is a possibility that the dead body was noted by somebody else and information was given to the police and the word spread of Rakhi being found and this leading Deepak to the pond wherefrom Rakhi's dead body was recovered, is again a submission of building a castle with straws. Deepak has simply deposed: *Rakhi was daughter of my sister whose age was 5 years. On 4.9.2007 I saw dead body of Rakhi lying on the bank of a pond in Gopal Pur near ring road and I identified the dead body. My statement to this effect is Ex.PW-11/A which bears my signatures at point 'A'.* Now, Deepak has not stated that he accompanied the police to the spot to which the police was led by Ranjeet. He does not depose to any pointing out or Rakhi's body being fished out from the pond. He only claims that he saw the dead body of Rakhi on the bank of a pond. From the testimony of Paramshila, sister of Deepak it is apparent that Deepak was with her for Paramshila has deposed that her brother had advised her to go to sleep when everybody was looking around for Rakhi. It is apparent that Deepak was comforting his sister in her house. The house is in Gopal Pur. Rakhi's dead body was recovered from a pond in

Gopal Pur at the spot where the road from Gopal Pur made a cut into ring road. Information reaching Deepak who was in the house of his sister that Rakhi's dead body was found is a probable fact and this made him move towards the pond and reach the pond. The last limb of this submission that Paramshila's claim of searching for Rakhi till 3:00 AM also establishes that Rakhi's body was discovered late and everything was ante timed is rejected for the reason Paramshila is a rustic housewife of a rickshaw puller and we find nothing absurd in her being a little gibberish on the issue. All other persons i.e. Suresh Shah, ASI Shiv Kumar, Const.Bikker Singh and Insp.Rampal Singh have all deposed in unison and in harmony with each other. The credibility of their testimonies on this issue cannot be rendered nugatory by reacting it with the blemished testimony of Paramshila.

45. We conclude this discussion by once again noting that the scribe of DD No.65B HC Ranbir Singh, the scribe of the FIR HC Dharam Singh, as also the scribe of the PCR form Const.Anju Bala have not been challenged on their testimony that they recorded DD No.65B, the FIR and the PCR form at the time as mentioned in the respective documents.

46. The third submission pertaining to the inquest papers and as recorded in para 34 above has to be rejected for

the reason as held in the decision reported as 2007 (15) SCC 372 Ravi Vs. State and the decision reported as 2010 (2) SCC 583 Aftab Ahmad Ansari Vs. State of Uttaranchal, the purpose of inquest is to ascertain prima facie nature of death and to find out whether there are injuries on the dead body as also the cause of death. Inquest panchnama cannot be treated akin to statements of witnesses wherein facts seen by the witness have to be narrated. The purpose of an inquest proceedings is to find out whether the death was homicidal or not and not for making a note in regard to identifying facts relating thereto. In the disclosure statement Ex.PW-1/D it stands recorded that the appellant told ASI Shiv Kumar that after raping Rakhi he strangled her and threw the body in the pond. Obviously, this has led Insp.Rampal Singh to have sought an opinion from the doctor who was to conduct post-mortem on the dead body of Rakhi, whether she was strangled. We read no further into this controversy for the law on the subject has been herein before noted.

47. The fourth submission that the investigating officer has been over-zealous is on the fact brought out and as noted in para 35 above. The first facet of Rakhi's underwear Ex.P-1 being planted has already been dealt with and rejected by us in para 38 above and we need not reiterate our reasoning.

The second facet was of the injuries on the person of Ranjeet which were not in existence when Dr.Preeti examined Ranjeet at 9:30 AM and surfaced when Dr.S.Lal examined Ranjeet at 11:00 AM. The facet of the argument is as noted in para 35 above.

48. It is obvious that the thrust of the argument is that Insp.Rampal Singh was wanting to create some injuries on the appellant and connect the same as possibly sustained when Rakhi was raped. The argument ignores that the purpose of getting Ranjeet medically re-examined was the omission by Dr.Preeti in not recording any opinion qua the capacity of Ranjeet to indulge in sex. The MLC Ex.PW-4/A penned by Dr.Preeti is silent on a very vital and important aspect i.e. proof of the potency of Ranjeet and for this purpose Ranjeet was got re-examined by a doctor. It is unfortunate that in the interregnum Ranjeet was subjected to some third degree treatment by the police and for which we leave it open for Ranjeet to take resort to a civil action.

49. The submission pertaining to the recovery of the towel Ex.P-2 and as noted in para 36 above has two facets. In para 19 above we have explained that Ex.P-2 is actually a gamcha, a multipurpose clothing which can be used as per the need of the owner, as a towel, as a male wrap around and as a

head rest. Humble folks are often seen with a gamcha wrapped around with the same frequency with which we see humble folks with tehmad wrapped around. Ranjeet moving around with a gamcha would not be something unnatural to attract the attention of anybody, but moving around with a gamcha which got stained with blood would certainly be something which may attract the attention of people around and thus if Ranjeet's gamcha got stained with blood it would become his compulsion to change the same and this would be the explanation of his compulsion to return to his room after the crime was committed. We find nothing unnatural in this conduct of Ranjeet. Of the three persons who have deposed to the recovery of Ex.P-2, two of them namely, Insp.Rampal Singh and ASI Shiv Kumar have deposed in harmony that the gamcha was recovered at the pointing out by Ranjeet from a peg inside his tenanted room and only Suresh Shah has deposed at variance that the exhibit was picked up on being pointed out by Ranjeet from a peg outside the room. This in our opinion is not such material contradiction which renders the recovery of the exhibit as a doubtful recovery.

50. The last but one submission noted in para 37 above is well accepted by us pertaining to the underwear of the appellant and thus we hold that the incriminating evidence

used by the learned Trial Judge pertaining to the underwear of the appellant which was seized by Dr.Preeti is to be excluded. But from the fact that neither blood nor semen was detected on the vaginal swab and anal swab of Rakhi, no inference either way can be drawn for the reason the post-mortem report of Rakhi carries tell tale evidence of her being brutally raped. The tear in her vagina extends to the anus. It is possible that the ejaculation took place not when the male sex organ of Ranjeet was inside the vagina of Rakhi, but when it was pulled out.

51. Having dealt with the submissions urged, running through the evidence led we find that at the instance of Suresh Shah a cryptic information stood recorded at the police control room at 9:06 PM that Rakhi was missing which was conveyed to the local police station at 9:24 PM. ASI Shiv Kumar accompanied by Const.Bikker Singh reached Gali No.17, Gopal Pur where Suresh Shah resided who told them by around 9:30 or 9:40 PM that he had seen his daughter in the lap of Ranjeet who was his neighbour at around 7:45 PM and he rang up the police when on returning to his house at 9:00 PM he did not see Rakhi and the appellant informed him that she may be with her Naani and the visit to the Naani's house in the same colony resulted in information that Rakhi had not gone to the

house of her Naani and simultaneously Ranjeet went missing. This information stands recorded in the statement Ex.PW-1/A which as per the endorsement Ex.PW-18/A was dispatched from the spot at 11:50 in the night. As held in the decision reported as 2007 (15) SCC 79 Ram Pal Vs. State of UP, prompt lodging of FIRs lends credence to the evidence of the lodger of the information for the reason it gives least possible time for a false story to be cooked up. No motive of false implication has surfaced for Suresh Shah to falsely state before ASI Shiv Kumar that he had seen his daughter in the lap of Ranjeet. Thereafter, ASI Shiv Kumar has promptly got lodged the FIR at 10 minutes past 12:00 which fact has emerged with pristine truth through the testimony of HC Dharam Singh PW-7. The subsequent events unfolded with unimaginable speed in the natural setting of events. Suresh Shah told ASI Shiv Kumar that Ranjeet could be possibly located where trucks were parked in Mukherjee Nagar since Ranjeet used to drive trucks of brick kiln owners. Ranjeet was located by around 1:30 in the night. The fact that the crime team reached the place where Rakhi's dead body was found proved through the testimony of Insp.Subey Singh shows that by that time Ranjeet's disclosure statement had already been recorded in which he has disclosed that he had raped Rakhi and after

strangulating her had thrown her body in a pond in Gopal Pur adjoining the cut where Gopal Pur road intersected ring road. The photographer of the crime team Const.Ramesh has taken five photographs which show the photographs being taken in pitch dark. We have, while narrating the events and reproducing the summary of the evidence and while dealing with the arguments advanced, returned a finding that the evidence led is credible and variations here and there are explainable and not of a kind which discredits the case of the prosecution. What is most crucial and clinching against Ranjeet is proof of the fact that Rakhi was found missing at 9:00 PM and prior thereto at 7:45 PM was seen in the company of Ranjeet. Her dead body was admittedly recovered at around 1:30 in the night. It was pitch dark at that time. By 7:45 PM it gets pitch dark in Delhi in the month of September, the month when the crime was committed. Thus, Rakhi was seen with Ranjeet when it was dark; the time was 7:45 PM and her body was recovered within less than 6 hours thereof and during all these 6 hours it was dark. The body was inside a shallow pond having muddy water and the pond was at a distance of about 20-25 meters from the cut where Gopal Pur road intersected ring road. The body inside the pond could thus not be visible to a person moving either on ring road or

on Gopal Pur road. Knowledge of Ranjeet that dead body of Rakhi was in the pond could possibly not be the source of somebody else telling him so. So proximate is the time that one automatically reaches the irresistible conclusion that Ranjeet was the culprit. Further, Ranjeet's knowledge that Rakhi was attempted to be manually strangled evidenced by his disclosure statement in which it stands recorded that Ranjeet told ASI Shiv Kumar that he strangled Rakhi and then threw her body in the pond is a fact which stands confirmed when post-mortem was conducted on the body of Rakhi, meaning thereby, Ranjeet having knowledge of the physical condition of Rakhi's dead body would make applicable Section 27 of the Evidence Act not only to the recovery of the dead body of Rakhi and knowledge of the appellant of the place where the dead body was but also the knowledge of the appellant about the condition of the dead body. After all, a dead body is nothing but an object. In the decisions reported as AIR 1947 PC 67 Pullukuri Kottaya & Ors. Vs. Emperor, 1989 Cri. LJ (NOC) 200 (Gauhati) Chakidhar Paharia Vs. State of Assam, 1986 Cri. LJ 220 Parimal Banerjee Vs. State & Anr. and AIR 1963 SC 1074 Ram Lochan Ahir Vs. State of West Bengal recovery of dead body at the instance of an accused from a place hitherto fore not in the knowledge of the police have

attracted the applicability of Section 27 of the Evidence Act to the confessional statements made by accused to a police officer. Thus we see no escape from the conclusion that the learned Trial Judge has rightly returned a verdict of guilt.

52. Concurring with the judgment and order dated 10.2.2010 holding Ranjeet guilty of the charge of having kidnapped Rakhi, of the charge of having raped Rakhi and of the charge of having murdered Rakhi, we express our disagreement with the order on sentence dated 3.3.2010.

53. No doubt, every rape is detestable and as against many other penal offences manifests depravity; no doubt rape of a minor girl invites greater repulsion; no doubt rape followed by murder aggravates the meanness and the depravity of the act, but the moot question would be whether it should invite the extreme penalty required to be inflicted in the rarest of the rare case. The power of the State to put to death its citizen who has committed a penal offence has to be tampered with the mercy power of the State to give an opportunity to a deviant citizen to reform himself. Only when the crime is so abhorrent that the collective conscious of the society seeks retribution, personal predilections of a Judge have no place in a sentencing policy.

54. The learned Trial Judge has referred to the various decisions in the order on sentence and we certainly find no uniformity in the sentence imposed by various Judges in India while imposing the capital sentence.

55. A coordinate division Bench of this Court, of which one of us; namely Pradeep Nandrajog, J. was a member of, had put in a tabular form various decisions highlighting the aggravating and the mitigating circumstances. The said decision was in Death Reference No.1/2008 State Vs. Raj Kumar Khandelwal decided on 8.5.2009. In para 80 the chart was summarized as under:-

56. 1. CIRCUMSTANCES PERSONAL TO THE OFFENDER-

Sr. No.	MITIGATING FACTORS	AGGRAVATING FACTORS
1.	Lack of prior criminal record. <u>Re Butters'</u> [2006] EWHC 1555 (QB), [2006] All ER (D) 128 (Jul) <u>Williams v. Ozmint</u> , 494 F.3d 478, 2007 U.S. App. LEXIS 17934	Previous convictions. <u>Re Miller</u> , [2008] EWHC 719 (QB), [2008] All ER (D) 357 (Apr)
2.	Character of the offender as perceived in the society by men of social standing. <u>Reyes V. The Queen</u> , [2002] UKPC 11, [2002] 2 AC 235	Future danger/threat of accused, menace to the society considering aspects like criminal tendencies, drug abuse, lifestyle, etc.

	<u>Bachan Singh v State of Punjab</u> (1982) 3 SCC 24	<u>Renuka Bai @ Rinku @ Ratan and Anr. v. State of Maharashtra;</u> AIR2006SC3056 <u>Re Miller</u>, [2008] EWHC 719 (QB), [2008] All ER (D) 357 (Apr)
3.	The age of the offender i.e. too young or old. <u>Ediga Anamma v. State of Andhra Pradesh</u> AIR1974SC799 <u>Roper v. Simmons</u> 543 U.S. 551 (2005)	Abuse of a position of trust; offender in a dominating position to the victim. <u>Machhi singh vs. State of Punjab</u> [1983] 3 SCC 470
4.	Mental condition of accused: Anxiety, depressive state, emotional disturbance which lower the degree of culpability. <u>Ediga Anamma v. State of Andhra Pradesh</u> AIR1974SC799 <u>R v Chambers</u>, 5 Cr App R (S) 190, [1983] Crim LR 688, <u>Atkins v. Virginia</u> 536 U.S. 304 (2002)	Anti-social or socially abhorrent nature of the crime; When offence is committed in circumstances which arouse social wrath. Offence is of such a nature so as to shake the confidence of people. <u>Bheru Singh S/o Kalyan Singh Vs. State of Rajasthan</u>; (1994) 2 SCC 467, [1994] 1 SCR 559 <u>Machhi singh vs. State of Punjab</u> [1983] 3 SCC 470

5.	Probability of the offender's rehabilitation, reformation and readaptation in society. <u>Re Miller</u>, [2008] EWHC 719 (QB), [2008] All ER (D) 357 (Apr)	
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2. PRE-OFFENCE CONDUCT OF THE OFFENDER- IN PARTICULAR THE MOTIVE OF THE OFFENCE

Sr. No.	MITIGATING FACTORS	AGGRAVATING FACTORS
1.	A belief by the offender that the murder was an act of mercy. <u>Janki Dass v. State (Delhi Administration)</u> 1994 Supp, (3) SCC 143	When the murder is committed for a motive which evince total depravity and meanness for instance Motive of the crime being financial gain. <u>Machhi singh vs. State of Punjab</u> [1983] 3 SCC 470 <u>Williams v. Ozmint</u>, 494 F.3d 478, ; 2007 U.S. App. LEXIS 17934
2.	That the accused believed that he was morally justified in committing the offence. <u>Bachan Singh v State of Punjab</u> (1982) 3 SCC 24	Significant degree of planning or premeditation. <u>Holiram Bordoloi v. State of Assam</u> AIR2005SC2059 <u>In Re Rock</u>, [2008] EWHC 92 (QB), [2008] All ER (D) 290 (Feb)
3.	Offence at the spur of the moment/ lack of premeditation.	

	<u>A. Devendran v. State of Tamil Nadu</u> AIR 1998 SC 2821 <u>Re Rahman</u> , [2008] EWHC 36 (QB), [2008] All ER (D) 50 (Jan)	
4.	The offender was provoked (for example by prolonged stress) in a way not amounting to a defence of provocation. <u>Re Rahman</u> , [2008] EWHC 36 (QB), [2008] All ER (D) 50 (Jan)	
5.	That the accused acted under the duress of domination of another person.	

3. CONTEMPORANEOUS CONDUCT OF THE OFFENDER WHILE COMMITTING THE OFFENCE

Sr. No.	MITIGATING FACTORS	AGGRAVATING FACTORS
1.	Intention to cause serious bodily harm rather than to kill.	Magnitude of the crime- number of victims. <u>Machhi singh vs. State of Punjab</u> [1983] 3 SCC 470 <u>Williams v. Ozmint</u> , 494 F.3d 478, ; 2007 U.S. App. LEXIS 17934
2.	The fact that the offender	Brutal Manner of killing- in

	acted to any extent in self-defence.	an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. <u>Holiram Bordoloi v. State of Assam</u> AIR2005SC2059 <u>Bheru Singh S/o Kalyan Singh Vs. State of Rajasthan</u>; (1994) 2 SCC 467, <u>State of Maharashtra Vs. Haresh Mohandas Rajput</u>; (2008) 110 BOMLR 373 <u>Machhi singh vs. State of Punjab</u> [1983] 3 SCC 470 <u>Re Miller</u>, [2008] EWHC 719 (QB), [2008] All ER (D) 357 (Apr)
3.		Mental or physical suffering inflicted on the victim before death. <u>In Re Rock</u>, [2008] EWHC 92 (QB), [2008] All ER (D) 290 (Feb)
4.		The use of duress or threats against another person to facilitate the commission of the offence.

4. POST OFFENCE CONDUCT OF THE OFFENDER

	<u>CONDUCT OF OFFENDER</u>	<u>CONDUCT OF OFFENDER</u>
1.	Guilty Plea/ Voluntary surrender. <u>In Re Rock</u> , [2008] EWHC 92 (QB), [2008] All ER (D) 290 (Feb)	Concealment, destruction or dismemberment of the body. <u>State of Maharashtra Vs. Haresh Mohandas Rajput</u> ; (2008) 110 BOMLR 373
2.	Genuinely remorseful. <u>In Re Butters'</u> [2006] EWHC 1555 (QB), [2006] All ER (D) 128 (Jul)	Lack of any actual remorse. <u>Holiram Bordoloi v. State of Assam</u> AIR2005SC2059 <u>In Re Rock</u> , [2008] EWHC 92 (QB), [2008] All ER (D) 290 (Feb)

5. ROLE OF THE VICTIM IN COMMISSION OF THE CRIME

Sr. No.	MITIGATING FACTORS	AGGRAVATING FACTORS
1.	That the victim provoked or contributed to the crime. <u>Kumudi Lal v. State of U.P.</u> , AIR1999SC1699	That the victim was particularly vulnerable because of age or disability (victim is an innocent child, helpless woman or old or infirm person). <u>Bheru Singh Vs. State of Rajasthan</u> ; (1994) 2 SCC 467, [1994] 1 SCR 559 <u>State of Maharashtra Vs. Haresh Mohandas Rajput</u> ; (2008)110BOMLR373 <u>Machhi singh vs. State of Punjab</u> [1983] 3 SCC 470

2.		Victim was a peace officer/ The fact that the victim was providing a public service or performing a public duty. <u>Roberts v Louisiana</u> (1977) 431 US 633
3.		The attacking and overpowering a sovereign democratic institution by using powerful arms and explosives and imperiling the safety of a multitude of peoples' representatives, constitutional functionaries and officials of Government of India and engaging into a combat with security forces is a terrorist act of gravest severity. <u>Navjot Sandhu @ Afsan Guru v. State</u> (2003) 6 SCC 641

6. NATURE OF THE EVIDENCE

Sr. no.	MITIGATING FACTORS	AGGRAVATING FACTORS
1.	In cases of circumstantial evidence the guilt, not being established beyond reasonable doubts, a lenient	In cases of direct evidence the guilt being established beyond reasonable doubt.

	view should be taken; Conviction solely resting on circumstantial evidence, which contributes to the uncertainty in the culpability calculus, must attract negative attention while deciding maximum penalty for murder. <u>Swamy Sharaddananda @ Murali Manohar Mishra Vs. State of Karnataka</u>; AIR 2007 SC 2531 <u>Shivu & Anr. Vs. R.G. High Court of Karnataka & Anr.</u>; 2007 CriLJ 1806	
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57. In the decision reported as 2001 (2) SCC 28 Mohd.Chaman Vs. State (NCT of Delhi) for a similar offence of a depraving rape of a minor girl aged 1½ years followed by the victim being murdered the Supreme Court did not concur that it was an extreme rarest of the rare variety case and hence sentence of death was reduced to imprisonment for life. It was held that the solitary stray conduct of Mohd.Chaman, though serious, heinous, dirty and perverted was not to warrant a conclusion that he was such a dangerous person that to spare his life would endanger the community.

58. We answer the death reference by affirming the conviction of the appellant but do not confirm the sentence of

death and instead impose upon Ranjeet the sentence to undergo RI for a period of 7 years for the offence of having kidnapped Rakhi. We sentence him to undergo RI for 3 years for the offence of concealing evidence. For the offence of rape and murder we sentence him to undergo imprisonment for life with further direction that Ranjeet would not be eligible for any parole nor would he be entitled to be considered for remission before undergoing an actual sentence for a period of 20 years.

59. Since Ranjeet has been confined to Central Jail Tihar we direct that a copy of this decision be sent to the Superintendent Central Jail Tihar to be supplied to Ranjeet.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

MAY 07, 2010
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