

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

% *Judgment Reserved on: August 12, 2014*
Judgment Delivered on: August 26, 2014

+ **DEATH SENTENCE REF. 1/2014**

STATE Petitioner
Represented by: Mr.Varun Goswami, APP with Insp.
Sandeep Gupta, Ranjeet Dhaka,
SHO Bir Singh and ASI Nihal
Singh, PS Chhawla

versus

RAVI KUMAR & ORS. Respondents
Represented by: Mr.A.J.Bhambhani, Sr.Advocate
instructed by Mr.S.B.Dandapani,
Advocate/Amicus Curiae and
Ms.Bhavita Modi, Advocate for
Ravi
Ms.Saahila Lamba, Amicus Curiae
for Vinod @ Chottu
Mr.Vikas Padora, Advocate with
Mr.Chaman Lal, Advocate for
Rahul

CRL.A. 563/2014

RAHUL Appellant
Represented by: Mr.Vikas Padora, Advocate with
Mr.Chaman Lal, Advocate

versus

STATE OF DELHI Respondent
Represented by: Mr.Varun Goswami, APP with Insp.
Sandeep Gupta, Ranjeet Dhaka,
SHO Bir Singh and ASI Nihal
Singh, PS Chhawla

CRL.A. 726/2014

RAVI

..... Appellant

Represented by: Mr.A.J.Bhambhani, Sr.Advocate
instructed by Mr.S.B.Dandapani,
Advocate/Amicus Curiae and
Ms.Bhavita Modi, Advocate

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP with Insp.
Sandeep Gupta, Ranjeet Dhaka,
SHO Bir Singh and ASI Nihal
Singh, PS Chhawla

CRL.A. 1036/2014

VINOD @ CHHOTU

..... Appellant

Represented by: Ms.Saahila Lamba,
Advocate/Amicus Curiae

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP with Insp.
Sandeep Gupta, Ranjeet Dhaka,
SHO Bir Singh and ASI Nihal
Singh, PS Chhawla

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Anamica's (name changed) life of 17 years had seen their moments of drama and incidents. She had never before woken up in the knowledge that on February 09, 2012 her life would have a horrific end. She awoke in

the morning of February 09, 2012, with the sun smiling on the windowpane of her room. The yawns were as loud and deep as of all inhabitants of spaceship earth. Finishing her daily chores and returning home at about 8:45 PM in the company of her friends Pooja, Sangeeta and Saraswati, chatting and gossiping, a red indica car screeched to a halt near them and the door flew open. There was no near-miss. An unknown male slammed into Anamica knocking her off her feet and catapulting her into the car, arms windmilling, towards the void beyond life in a few hours thereafter.

2. So swift and furtive were the movements of the predators, like those of a trained blood hound picking out a scent, Pooja, Sangeeta and Saraswati, were left stunned and could not even note the number of the car. They could only see that it was a red coloured indica and had probably three or four boys inside.

3. This was when members of the society last saw Anamica when she was alive. She was seen by members of the society next on February 13, 2012. She was dead. But her dead body spoke. It was penned in the post-mortem report. It told that when the weak and helpless, shaken in mind and nerve, body of Anamica was snatched from the society, the hunter's mind was that of a hard, unyielding nature, and the predominant idea of finding a victim to rape and kill had taken such complete possession of the mind of the hunter that there was no room for any emotion. As the hunters satisfied their lust and executed their design to kill the helpless Anamica, lest she survives to nail them, they left a record upon the body as a sign of it not being a common rape followed by murder, whimsical and bizarre conceits of which kind are not common in the annals of crime. They have afforded valuable indications to us as to the criminals. The injuries on the

body as per post-mortem report Ex.PW-26/A, telling the story we have profiled, are as under:-

- “1. Swelling over Rt. Parietal region.*
- 2. Lacerated wound of size 2 cm x 1 cm on Rt. Parietal region.*
- 3. Lacerated wound of 1 x .5 cm on lateral angle of Rt eye.*
- 4. Contusion & swelling over Rt side of face & underlying ecchymosis.*
- 5. Contusion over right anterior side of neck, upper one third of size 10 cm in length and 5 cm in width on lateral side and 2 cm on medial aspect.*
- 6. Superficial incised wound two in number extending from middle of neck going downwards laterally to the right (6 cm in length)*
- 7. Bilateral swelling of eyes with congestion in right eye.*
- 8. Superficial incised wound extending from middle of abdomen of size 12 cm going laterally to the right with tailing on right side (3 cm below umbilicus)*
- 9. Superficial horizontal incised wound of size 11 cm on left side of abdomen (2 cm below umbilicus)*
- 10. Superficial horizontal incised wound of size 18 cm in length 4 cm in width above umbilicus.*
- 11. Contusion on bilateral knees.*
- 12. Multiple contusion of various length on right leg anterior aspect.*
- 13. Abrasion of 1cm x 1 cm on middle of the left leg.*
- 14. Abrasion of 1cm x .5 cm on just above injury No.13.*
- 15. Two horizontal post mortem burns of size 10 cm x 2.5 cm on right side of umbilicus and 9 cm x 2 cm on left side of umbilicus.*

16. Reddish contusion around right nipple with post mortem burns on bilateral nipples.

17. Circular post mortem burns 4 in number of size ½ cm in diameter, two on each side on both side of umbilicus.

18. Dry and clotted blood present over the face and bilateral nostril. On dissection fracture of right maxilla present.

19. Contusion over left clavicular area. On dissection underlined achymosis present with dislocation of sterno clavicular joint-rigor mortis present in lower limb in passing stage. Post mortem staining on dependent parts.

20. Small white eggs present in left eye.”

4. As per the prosecution Rahul, Ravi and Vinod were the men who had brutally extinguished the life of Anamica after raping her. They had thereafter used the spanner of the car after heating it to burn the right nipple of Anamica and brand her umbilicus, a fact evidenced from injuries No.15 to 17 recorded in the post mortem report, all of which are post mortem injuries. The three were sent for trial. Vide judgment dated February 13, 2014 the learned Trial Judge has opined that the prosecution has successfully established that :

“(1) The deceased has been kidnapped in a red colour Tata Indica car.

(2) The red colour Tata Indica car bearing registration No.DL 3C AF 4348 belonging to PW-10 was in the custody of accused Rahul from 07.45 am on 9.2.2012 till 9 a.m. on 10.2.2012 and from 11.2.2012 to 13.2.2012.

(3) The female hair strand was found on the rear seat of the aforesaid Tata Indica car and DNA generated from it was found similar to the DNA of the deceased implying that it was the hair of the deceased.

- (4) *The DNA generated from the semen spots found on the seat covers of the aforesaid Tata Indica car was similar to that of accused Rahul.*
- (5) *The dead body of the deceased was recovered from the fields of village Rodai at the instance of accused Ravi and Vinod on 13.2.2012.*
- (6) *A red colour purse containing some cash, ATM cards as well as PAN card and driving license in the name of Rahul were found near the dead body of the deceased.*
- (7) *The three accused had pointed out the spot, on which they had smashed the head of the deceased with a 'Matka' in order to kill her.*
- (8) *A Jack and pana were recovered from the boot of the aforesaid Tata Indica car bearing registration No.DL 3C AF 4348, which was having blood spots and DNA generated from the blood spots was found similar to that of the deceased implying that deceased was hit by said Jack and Pana.*
- (9) *The autopsy doctor (PW26) opined that the injuries found on the dead body of 'Anamica' could be possible by aforesaid Jack and Pana.*
- (10) *A broken piece of bumper of the aforesaid Tata Indica car bearing registration No.DL 3C AF 4348 was also recovered from near the dead body of the deceased in the fields of village Rodai.*
- (11) *The panty of the deceased was got recovered by accused Vinod from a vacant plot adjacent to house No.RZ-54, Palam Vihar, Sector-6, Dwarka, belonging to PW-11 where the three accused were residing as a tenant.*
- (12) *Accused Rahul had got recovered the broken mobile phone of the deceased from amongst the bushes on the central verge in front of the road near Karnal Cinema Hall, near Rajinder Dhaba, Delhi.*
- (13) *The vaginal swab of the deceased was found to have mixed male DNA profile, which was similar to that of accused Vinod as well as accused Ravi.*

(14) The location of mobile phones of the accused Rahul, accused Ravi and the deceased was around Jhajhar, Haryana in the night intervening between 09.2.2012 and 10.2.2012 when the deceased was kidnapped, raped and murdered.”

(NB We note that two incriminating circumstances of the DNA of a strand of hair recovered from Anamica’s dead body matching DNA of Ravi and DNA generated from semen spots found on seat cover of the Indica car matching DNA profile of Vinod have been overlooked by the learned Trial Judge)

5. The three have been convicted for offences punishable under Sections 302, 376(2)(g), 365, 367 and 201 IPC read with Section 34 IPC.

6. Vide order dated February 19, 2014 the three have been inflicted the capital punishment of death for having murdered Anamica. For having kidnapped Anamica they have been sentenced to undergo imprisonment for five years for the offence of having raped Anamica they have been sentenced to undergo imprisonment for life for the offence of kidnapping Anamica and subjecting her to grievous hurt they have been sentenced to undergo imprisonment for five years. For the offence of destroying evidence pertaining to the offence they have been sentenced to undergo imprisonment for three years.

7. The record has been sent to this Court for confirmation of the death sentence and the reference has been registered in this Court as Death Sentence Reference No.1/2014. The three convicted accused Rahul, Ravi and Vinod have filed the three above captioned appeals.

PREFACE

8. We commence our narratives from the beginning.

9. Process of criminal law was set into motion when at around 09.18 P.M. on February 09, 2012, HC Omkar Singh PW-32 working as the duty officer at PS Chhawla recorded DD No.27A, Ex.PW-32/A, noting therein that the wireless operator from the police control room has informed that a girl has been kidnapped by some persons in a red colour Indica car at Hanuman Chowk, Qutub Vihar and had sped towards Shyam Vihar.

10. Being entrusted with the investigation, armed with a copy of DD No.27A, accompanied by Ct.Rakesh Kumar PW-9, SI Prakash Chand PW-45 proceeded to Hanuman Chowk from where the girl was kidnapped. He met Saraswati PW-9 and recorded her statement Ex.PW-29/A and made an endorsement Ex.PW-32/C thereon, and at around 09.55 P.M. sent Ct.Rakesh Kumar for FIR to be registered. Ct.Rakesh Kumar took the rukka to the police station where HC Omkar Singh recorded the FIR No.35/2012 Ex.PW-32/B.

11. In her statement Ex.PW-29/A, Saraswati could only tell that she resides at House No.323/1, Qutub Vihar Phase-II, Hanuman Chowk, New Delhi with her family and works at DLF, Gurgaon. On February 09, 2012 at about 08.45 P.M. along with her friends Anamica, Pooja and Sangeeta she was returning home. As they were walking towards Hanuman Chowk suddenly a red colour Indica car having three or four boys inside came from behind and stopped near them. A boy opened the door of the car and caught Anamica by her arm and forcibly pulled Anamica inside the car. The car sped away. The message was flashed over the wireless to all police stations and the patrolling vans in Delhi in the hope that the red indica car would be intercepted. But destiny had willed otherwise for Anamica. No headway could be made. Public ire was targeted at the police of PS Chhawla. Agitated neighbours of Anamica and other public

spirited members of the civil society held demonstrations. But the police was clueless. Red colour indica cars plying in Delhi were obviously under the scanner of the personnel of Delhi Police.

12. ASI Rajinder Singh PW-12, was on patrolling duty at Sector-9, Dwarka on February 13, 2012. At 12:00 Noon he stopped a red colour Indica car bearing registration No.DL 3C AF 4348 near the metro station at Sector-9, Dwarka. Rahul was driving the car. ASI Rajinder Singh sensed that Rahul had got perplexed. He could not produce his driving license. ASI Rajinder Singh took Rahul and the car to PS Chhawla and handed him over to Insp.Sandeep Gupta PW-48. Upon interrogation Rahul confessed to his involvement in the kidnapping, rape and murder of Anamica. He named his brother Ravi and his friend Vinod as his accomplices. Rahul's disclosure statement Ex.PW-39/B was recorded by Insp.Sandeep Gupta in the presence of HC Kuldeep PW-39, SI Ashok Kumar PW-41 and SI Jitender Dagar PW-47. In the same it is recorded that Rahul could show the place where Anamica was murdered and get recovered her body. He disclosed that he could get recovered the broken mobile phone of Anamica. He disclosed that he could get recovered the clothes worn by him, Ravi and Vinod which they were wearing when Anamica was murdered as he had thrown the same.

13. Rahul was arrested formally at 02:00 PM the same day. His personal search resulted in the recovery of a mobile phone having number 9968988533 which was seized vide memo Ex.PW-39/L.

14. Inspector Sandeep Gupta searched the red coloured Indica car. A jack and a spanner were found in the dickey of the car which were seized vide memo Ex.PW-39/E. Inspector Sandeep Gupta then seized the car along with its key vide memo Ex.PW-39/D. The seized articles except the

car were handed over to HC Bharat Lal PW-15, Malkhana Moharrar who deposited the same in the Malkhana of PS Chhawla as recorded in the entry Ex.PW-15/A in the Malkhana Register. The car was deposited at PS Jafarpur Kalan as there was space constraint in PS Chhawla. But, the key of the car was deposited in the Malkhana of PS Chhawla.

15. The beat constables deployed at Beat No.3 Dwarka apprehended Ravi and Vinod from their residence at Palam Vihar Dwarka and produced them before Inspector Sandeep Gupta at PS Chhawla. The two were formally arrested : Vinod at 2:45 PM and Ravi at 3:00 PM as recorded in the arrest memos Ex.PW-41/B and Ex.PW-41/C.

16. Interrogated by Inspector Sandeep Gupta in the presence of HC Kuldeep, SI Ashok Kumar and SI Jitender Dagar, Vinod made a disclosure statement Ex.PW-39/A wherein he disclosed that he along with Rahul and Ravi had raped and murdered Anamica and had burnt the bag of Anamica and the SIM card and memory card of the mobile phone of Anamica in a parat (utensil). He said that he can get recovered the parat. He said that he had thrown the undergarment (panty) of Anamica and volunteered to get the same recovered. It is recorded in the statement that he can take the police to the place where dead body of Anamica was lying. Likewise, Ravi made a similar disclosure statement Ex.PW-39/C.

17. Ravi's personal search resulted in recovery of a mobile phone having number 8802090923 and the same was seized vide memo Ex.PW-39/M.

18. Leaving behind Rahul at the police station, taking along with them Vinod and Ravi a police party consisting of Inspector Sandeep Gupta PW-48, SI Ashok Kumar PW-41, SI Jitender Dagar PW-47, Ct.Arun Kumar

PW-30, ASI Attar Singh PW-36, Ct.Ramesh Chand PW-37, Ct.Vinod PW-38 and HC Kuldeep PW-39 proceeded to village Rodai, District Rewari, Haryana because this was the place disclosed where Anamica's dead body was left. For identification of the dead body, if discovered and recovered, they took along with them Kunwar Singh Negi PW-8 the father of Anamica and his friend Laxman Rawat PW-7. On the way a PCR van of Haryana Police was spotted and through the van a wireless message was got sent by Inspector Sandeep Gupta to PS Rodai informing that officers of Delhi Police are proceeding to village Rodai since they have information of Anamica's dead body lying hidden in the mustard fields. Therefore three officers from PS Rodai, ASI Balwan Singh PW-36, HC Vinod PW-34 and HC Aman Prakash PW-35 proceeded to the spot disclosed, the mustard fields near Karawara Phatak (rail crossing). The team of Delhi Police also reached the spot, which was the field of one Rohtash. Mahavir Singh PW-14 the brother of Rohtash was present for the obvious reason he and his family members were surprised that a large number of police contingent had come to their field. As per pointing out memo Ex.PW-14/B, Vinod, and as per pointing out memo Ex.PW-14/C, Ravi, pointed out the place where Anamica was murdered. Indeed, the dead body of a girl identified at the spot by Kunwar Singh Negi and Laxman Rawat as that of Anamica was recovered. Ct.Arun Kumar PW-30, a photographer took 18 photographs Ex.PW-30/A1 to Ex.PW-30/A18, negatives whereof are Ex.PW-30/B1 to Ex.PW-30/B18. Ct.Vinod PW-38 videographed the entire proceedings. ASI Balwan Singh of Haryana Police had also summoned a photographer Rajbir PW-31 who took six photographs Ex.PW-31/A1 to Ex.PW-31/A6. He had also summoned a forensic team which found a short strand of hair on Anamica's dead body which was seized by ASI Balwan Singh as recorded in the memo Ex.PW-34/A.

19. A thorough search of the field from where Anamica's dead body was recovered resulted in recovery of two plastic tumblers, an empty pouch of snack (namkeen), broken pieces of an earthen pitcher (matka), a broken piece of a bumper of a car, a red coloured wallet containing two ATM cards issued by Syndicate Bank and State Bank of India in name of Rahul, photocopy of PAN card of Rahul, original driving license of Rahul, photocopy of school leaving certificate of Rahul, several visiting cards, a receipt issued by Vishal Pharmacy and a cutting of newspaper on which some mobile numbers were written by hand which were seized as recorded in the memo Ex.PW-34/A. ASI Balwan Singh also lifted control earth and blood stained earth from the field and recorded even said fact in the memo Ex.PW-34/A. Of course, all exhibits seized were safely placed in different parcels.

20. The seizure memo Ex.PW-34/A reads as under:-

“In the presence of following witnesses the following articles have lifted from the place of occurrence and converted into separate parcels, sealed with seal of B. The memo is as under:

- 1. One parcel containing blood stained earth and earth near the place of occurrence.*
- 2. Two plastic tumblers along with one empty pouch of namkeen.*
- 3. One parcel containing broken pieces of water pitcher.*
- 4. One parcel containing black coloured plastic bumper having scratch.*
- 5. One parcel containing red coloured wallet having ₹365/- and articles as per the list.*
- 6. One parcel containing hair of deceased which were lifted by the forensic team from the dead body of Anamica and the same was handed over to me, the ASI.*

*The same were taken into police possession by means of this memo, as a piece of evidence.” **(Translated Version)**
(Emphasis Supplied)*

21. We simply highlight that at serial No.5 ASI Balwan Singh has clearly recorded that the articles recovered from the wallet were as per a list, which we find remains an unexhibited document at page No.315 of the Trial Court Record.

22. The body of Anamica was sent to the mortuary of Civil Hospital, Rewari, where on February 14, 2012 at about 12.30 P.M. Dr.Shivangi Parashar PW-26, Dr.Sandeep Yadav and Dr.Archana Yadav conducted the post-mortem and prepared the post-mortem report Ex.PW-26/A, recording the external injuries noted on Anamica’s dead body, which we have reproduced in paragraph 3 above. The following is further noted in the post-mortem report:-

*“Organs of generation Intact. 2 vaginal and 2 rectal swab taken & sent
External and internal for FSL examination. Hymen ruptured (admit 2 finger easily). Bleeding present on vaginal examination.”*

23. As regards the opinion formed by the doctors regarding the cause of Anamica’s death, and the probable time of death, it was recorded:-

“Opinion:- In our opinion, the cause of death in this case is due to head injury as described in PMR, which is ante mortem in nature and sufficient to cause death in normal course of life. However opinion regarding rape and sodomy is given after FSL report.

Probable time that elapsed.

(a) between injury and death

Variable

(b) between death & PM (72 Hr – 96 Hr). ”

24. Dr.Shivangi Prashar PW-26, handed over the clothes, nails, hairs, visera, vaginal and anal swabs and clothes of Anamica along with a phial containing her blood to HC Vinod PW-34, who in turn handed over the same to ASI Balwan Singh PW-46, vide memo Ex.PW-34/B. ASI Balwan Singh deposited the aforesaid articles in the malkhana of PS Rodai.

25. On February 14, 2012, Ct.Ramesh PW-37, Ct.Vinod PW-38 and HC Kuldeep PW-39, took Vinod, Rahul and Ravi respectively to Rao Tula Marg Hospital for a medical examination. The MLCs Ex.PW-5/A to Ex.PW-5/C of Vinod, Rahul and Ravi respectively prepared by Dr.Yogender Kumar Sharma PW-5, record that they are capable of performing sexual intercourse.

26. Dr.Yogender Kumar Sharma handed over the undergarments, blood sample, hair, pubic hair and semen sample of Ravi to HC Kuldeep PW-39 who in turn handed over the same to Inspector Sandeep Gupta PW-48, as recorded in the memo Ex.PW-39/F. Likewise, Dr.Yogender Kumar Sharma handed over undergarments, blood sample, semen sample, nail sample and hair of head of Vinod to Ct.Ramesh PW-37, who in turn handed over the same to Inspector Sandeep Gupta PW-48, recorded in the memo Ex.PW-37/B. Likewise, he handed over undergarments, blood sample, semen sample, nail sample and hair of head of Rahul to Ct.Vinod PW-38, who in turn handed over the same to Inspector Sandeep Gupta PW-48, recorded in the memo Ex.PW-38/A. On the same day Inspector Sandeep Gupta PW-48, deposited the aforesaid articles with HC Bharat Lal PW-15, Malkhana Moharrar, who kept the same in Malkhana of PS Chhawla as recorded in the entry Ex.PW-15/B in Malkhana register.

27. After sometime Ravi, Rahul and Vinod led the police party consisting of Inspector Sandeep Gupta PW-48, SI Jitender Dagar PW-47 and HC Kuldeep PW-39 to a vacant plot of land adjacent to their rented accommodation in Palam Vihar, Dwarka, wherefrom Rahul got recovered a polythene bag containing ashes which were seized as recorded in the memo Ex.PW-39/G. From the same vacant plot of land Vinod recovered a torn panty which was seized as recorded in the memo Ex.PW-39/H. Thereafter the three led the police party to their rented accommodation wherefrom Ravi got recovered utensil (parat) which was seized as recorded in the memo Ex.PW-39/I. Thereafter the three led the police party to the bank of a drain in Madhu Vihar wherefrom Rahul got recovered a T-shirt, sweater, jersey and jeans which were seized as recorded in the memo Ex.PW-39/J. Lastly, the three led the police party to a spot near a restaurant in Safdarjung Enclave wherefrom Rahul got recovered a broken mobile phone having IEMI Nos.910040992852058 and 910040992852066 which was seized as recorded in the memo Ex.PW-39/K. Pertinently, no SIM card was found in the mobile phone got recovered at the instance of Rahul.

28. On February 15, 2012 the investigation of the case was entrusted to Inspector Ranjeet Singh PW-49 who summoned a team from CFSL to inspect the red coloured Indica car bearing registration No. DL-3C-AF 4348 lying parked at PS Jafarpur Kalan. The team headed by Dr.A.K.Singla inspected the car in the presence of Inspector Ranjeet Singh PW-49 and ASI Hari Kishan PW-44. Dr.A.K.Singla lifted few strands of hair from the rear seat of the car which were seized vide memo Ex.PW-44/A. Thereafter Inspector Ranjeet Singh PW-49 seized ten seat covers and four footmats from the car as entered in the memo Ex.PW-44/B.

29. Inspector Sandeep Gupta PW-48 went to PS Rodai and collected the post-mortem report of Anamica and the articles seized as per memos Ex.PW-34/A and Ex.PW-34/B from ASI Balwan Singh PW-36. Upon his return Inspector Sandeep Gupta handed over the seized articles recorded in the memos Ex.PW-34/A and Ex.PW-34/B to HC Bharat Lal PW-15, Malkhana Moharrar, who deposited the same in Malkhana of PS Chhawla as recorded in the entry Ex.PW-15/E of the Malkhana Register.

30. On the same day i.e. February 16, 2012, a police party consisting of Inspector Ranjeet Singh PW-49, HC Govind PW-40 and HC Mohan Kumar PW-43 took accused Rahul to the fields of Rohtash in village Rodai where mustard was in full bloom and as recorded in the pointing out memo Ex.PW-40/A, Rahul pointed out the spot where he, Rahul and Vinod had murdered Anamica.

31. On February 23, 2012, Inspector Ranjeet Singh PW-49, took the jack and spanner recovered from the dicky of the red coloured Indica car bearing registration No.DL-3C-AF 4348 to Dr.Shivangi Prashar PW-26, Dr.Sandeep Yadav and Dr.Archana Yadav i.e. the doctors who had conducted the post-mortem of Anamica for their opinion regarding weapon of offence. Vide their opinion Ex.PW-26/B the three doctors opined that the injuries found on the person of Anamica were possible to have been inflicted by the jack and spanner found in the dicky of the car.

32. On February 27, 2012 all the articles seized during the investigation of the case were sent to the CFSL for forensic examination. The relevant findings contained in the report Ex.PW-23/A prepared by Dr.B.K.Mohapatra PW-23, Senior Scientific Officer, Biology Division, CFSL are being tabulated herein under:-

<i>S. No.</i>	<i>Description of the article during investigation</i>	<i>Finding contained in the CFSL report Ex.PW-23/A</i>
<i>1.</i>	<i>Jack seized from red coloured Indica car bearing registration No. DL-3C-AF 4348.</i>	<i>Blood is detected on jack. DNA profile generated from jack and female fraction DNA obtained from vaginal and anal swabs of Anamica is found to be female in origin and consistent with each other.</i>
<i>2.</i>	<i>Tenth seat cover seized from red coloured Indica car bearing registration No. DL-3C-AF 4348.</i>	<i>Blood is detected on seat cover. DNA profile generated from seat cover and female fraction DNA obtained from vaginal and anal swabs of Anamica is found to be female in origin and consistent with each other.</i>
<i>3.</i>	<i>Earth seized from the spot where body of Anamica was recovered.</i>	<i>Blood is detected on earth. DNA Profile generated from earth and female fraction DNA obtained from vaginal and anal swabs of Anamica is found to be female in origin and consistent with each other.</i>
<i>4.</i>	<i>Eighth seat cover seized from red coloured Indica car bearing registration No. DL-3C-AF 4348.</i>	<i>DNA profile generated from the Male Fraction DNA obtained from seat cover is consistent with the DNA profile of Rahul obtained from underwear, blood and semen sample and pubic hair of Rahul.</i>
<i>5.</i>	<i>Ninth seat cover seized from red coloured Indica car bearing registration No. DL-3C-AF 4348.</i>	<i>DNA profile generated from the Male Fraction DNA obtained from seat cover is consistent with the DNA profile of Vinod obtained from blood and semen sample, hair and pubic hair of Vinod.</i>
<i>6.</i>	<i>Vaginal swab of Anamica</i>	<i>A mixed DNA profile was generated from the male fraction DNA obtained from vaginal swab of Anamica. The mixed profile so generated could have been developed by mixture of alleles contributed by Ravi obtained from his blood sample and Vinod obtained from his blood sample.</i>
<i>7.</i>	<i>Hair found on body of</i>	<i>DNA profile generated from hair was</i>

	Anamica	<i>found to be male in origin and consistent with the DNA profile of Ravi obtained from his blood sample.</i>
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33. On April 20, 2012 another CFSL team headed by Subrat Kumar Chaudhary, Senior Scientific Officer-II (Physics), Physics Division, CFSL examined the red coloured Indica car bearing registration No.DL-3C-AF 4348. The report Ex.PA prepared by Subrat Kumar Chaudhary records that the broken bumper seized from the spot wherefrom body of Anamica was recovered is of the red coloured Indica car bearing registration No.DL-3C-AF 4348 for the reasons:- (i) the broken edges of the bumper seized from the spot wherefrom body of Anamica was recovered matched with the broken edges of the front bumper of the red coloured Indica car bearing registration No.DL-3C-AF 4348, and (ii) the scratches present along the edge of bumper seized from the spot wherefrom body of Anamica was recovered correspond to the scratches present along the edge of the front bumper of the red coloured Indica car bearing registration No.DL-3C-AF 4348.

34. The Investigating Officers recorded statements of various persons and seized the call records of the two mobile phones recovered from the personal search of Rahul and Ravi as also the call records of the telephone which Anamica was carrying with her on the fateful day. A charge sheet was filed against Rahul, Ravi and Vinod. Charges were framed against them for having committed offences punishable under Sections 365, 367, 376(2)(g), 377 and 302 IPC read with Section 34 IPC.

ANALYSIS OF THE EVIDENCE LED BEFORE THE TRIAL COURT

35. At the trial, the prosecution examined as many as 49 witnesses.

36. We need not note the testimony of the various police officers who took part in the investigation for they have deposed facts regarding the respective role played by them during investigation which have already been succinctly stated by us in the preceding paragraphs and in respect whereof not much submission was made during arguments. However, whenever necessary, to deal with the submissions made by the counsel for the State and the accused persons, such part of the testimony of the relevant witness would be noted. We would also be splitting, while noting, the testimonies of the witnesses, whenever required pertaining to the evidence throwing light on different facets/stages of the case of the prosecution.

37. With a view to have clarity in the analysis of the evidence led by the prosecution, we segregate the relevant witnesses into seven categories, clubbing in one category witnesses who have thrown light on the same issue.

38. But before we do that, to focus the attention of the reader of our opinion, we would highlight a fact evident from the incriminating circumstances found proved by the learned Trial Judge, that counsel for the three accused were conscious of the fact that DNA analysis was linking the three accused to the crime in the form of DNA profile of the semen sample from the vagina of Anamica matching that of Vinod and Ravi and DNA profile of the semen sample from the seat of the car matching that of Vinod and Rahul and additionally the strand of hair lifted from the dead body of Anamica matching DNA profile of Ravi. The report of the expert was not shaken by the counsel. The entire edifice of the defence was built on false implication and planting of the samples wherefrom DNA of the three was extracted and the lynch pin of the argument was a statement made by

Inspector Sandeep Gupta PW-48 when he was being cross examined by learned counsel for Rahul and Ravi. He said : -

“Accused Rahul was not taken to Rodai village as he needed to be further interrogated and for this reason he was detained in the police station. On 13.02.2012 I was the Investigating Officer of this case. No other person except the Investigating Officer or the team prepared for said purpose can interrogate an accused. Till my return from village Rodai, no disclosure statement of accused Rahul has been recorded.”

The argument was that if Rahul's disclosure statement was not recorded, as deposed to by Inspector Sandeep Gupta till he and the other police officers returned from village Rodai after recovering Anamica's dead body and after various exhibits were seized by the Haryana Police Officer, the entire edifice of the case of the prosecution fell because as per the prosecution Rahul's disclosure statement disclosed to the police the contours of the crime and the place where Anamica's body was thrown.

Witnesses who deposed regarding the incident of kidnapping of Anamica : Pooja Rawat PW-1, Vikas Singh Rawat PW-2, Vikas PW-4, Saraswati PW-29 and Sangeeta PW-42.

39. Pooja Rawat PW-1, deposed that on February 09, 2012 at about 8.45 PM when she was walking along with her friends Sangeeta, Saraswati and Anamica towards their house, suddenly a red coloured Indica car stopped near them and a boy dragged Anamica inside the car which sped away towards Hanuman Chowk and she could not see the face of the boy nor of other persons in the car. She immediately made a call to her brother Vikas but the call got disconnected and thus he made a call to her in return when she informed her brother of Anamica being kidnapped.

40. Pooja Rawat was not cross-examined on the aspect of Anamica being kidnapped in a red coloured Indica car.

41. Vikas Singh Rawat PW-2, brother of Pooja Rawat, deposed that on February 09, 2012 he had spoken to his sister Pooja on her mobile phone and she had informed him that she had left Chhawla and was returning home along with her three friends. After sometime he received a call from his sister but the same got disconnected. He then made a call to Pooja who informed him that her friend Anamica had been kidnapped in a red coloured Indica car. He immediately came out of his house situated very near to Hanuman Chowk. He saw a red coloured Indica car coming from Chhawla and turning towards Tajpur at a very high speed. He could not note the registration number of the car. He raised an alarm but the car raced away.

42. Vikas PW-4, deposed that on February 09, 2012 at about 08.30 P.M. he got down at the bus stand at Chhawla and was proceeding towards his house at Qutub Vihar. Near Chhawla temple he saw a red coloured Indica car going towards Chhawla. Three-four girls were walking ahead of the car. Three boys were sitting in the car. The car stopped near the girls and one girl was dragged inside the car. He rushed there and saw a boy amongst three boys sitting in the car standing on the road. He tried to intervene but was not successful. The boys managed to flee in the car with the girl inside. It being dark he could not recognize the boys.

43. We note that Vikas PW-4, was not cross-examined.

44. Saraswati PW-29, deposed in harmony with her statement Ex.PW-29/A. Additionally, she stated that she could not identify the boy who had dragged Anamica inside the car because it was dark. Since an argument

was advanced with respect to what Saraswati said during cross-examination, we note the relevant part. It reads:-

“I did not see that car properly and I cannot say with certainty that it was an Indica car but the people had seen the Indica car and people were saying that the girl had been kidnapped in Indica car...”

Deceased (name deleted) did not have any boyfriend and she had not spoken about it to me. She used to share some of her intimate talks with me. She had never told me that any boy is offering friendship to her or that she has developed friendship with any boy.”

45. Sangita PW-42, deposed in sync with Pooja Rawat and Saraswati.

Witnesses who deposed regarding ownership of red coloured Indica car bearing registration No.DL-3C-AF-4348 and employment of accused Rahul as driver: Birender Singh PW-6, Hari Om PW-10 and Raj Singh PW-13.

46. Birender Singh PW-6, Record Keeper, Transport Department, South Zone, Sheikh Sarai, New Delhi, with reference to the official record proved that a red coloured Indica car bearing registration No.DL 3C AF 4348 was registered in the name of Raj Singh. Raj Singh PW-13 deposed that he had purchased the car in the year 2005 and had sold it to Hari Om on December 25, 2011. Hari Om PW-10, deposed that he was running a travel agency in the name and style Om Tours & Travels and that he owned three vehicles including the red coloured Indica car having registration No.DL 3C AF 4348 which he had purchased from one Raj Singh in the month of December, 2011. The ownership of the car was not transferred in his name till the time the same was seized by the police. He deposed that accused Rahul was employed by him as a driver to drive the said red coloured Indica car since February 01, 2012. On February 09,

2012 at about 07.45 A.M. Rahul had taken the car to pick up one S.N.Gupta from Vikas Puri to drop him at the airport at about 04.30 P.M., during which time the car remained with Rahul. Thereafter Rahul went to his house in the car. On February 10, 2012 at about 09.00-10.00 A.M. Rahul met him and handed over the car to him. The car was not in a position to be sent for ferrying passengers since it was untidy from inside and outside and therefore he gave another Indica car to Rahul to ferry passengers. In the night of February 11, 2012 he had given the red coloured Indica car No. DL 3C AF 4348 to Rahul near MTNL Office, Sector-6, Dwarka. The car remained in Rahul's custody from the night of February 11, 2012 to February 13, 2012. During the investigation of the case he had handed over the booking/duty register Ex.PX to the police. The entry contained in page No.50 of the booking/duty register Ex.PX records that he had handed over the red coloured Indica car to Rahul on February 09, 2012. For the purposes of dealing with the submissions advanced by the accused, we note the following portion of the cross-examination of Hari Om:-

"I had seen the Indica car from outside only when accused Rahul brought the same to the office on 10.2.2012. It is correct that as a matter of routine, every car was cleaned and washed in the morning, if required, before sending it for booking.

It is incorrect that the aforesaid Tata Indica car was also cleaned and washed in the morning of 10.2.2012. I had not seen the vehicle from inside on 10.2.2012. The said car was not sent for booking on that day because it was not clean. It was not got cleaned and washed as no driver was available. On that day, the car remained in my office till 3 p.m. Thereafter I took it home and I alongwith my wife went to Talkatora Stadium in the same to watch a function organized by the school of my children. We did not notice any blood stains or any other articles in the car. The said car was not

sent any repairs between 10.2.2012 and 13.2.2012 as no repair was required. Its front Bumper had become loose which I had myself tightened. I had myself cleaned the car on 11.2.2012 and thereafter I had taken the same for a booking also...

The register Ex.PX is maintained by me for my own personal record. I do not obtain signatures of the drivers on it. There is no entry in the register showing that the aforesaid Indica car was with accused Rahul on 13.2.2012."

Witness who deposed regarding arrest of accused Rahul, Ravi and Vinod: ASI Rajender Singh PW-12, HC Kuldeep PW-39, ASI Ashok Kumar PW-41, SI Jitender Dagar PW-47 and Inspector Sandeep Gupta PW-48.

47. Inspector Sandeep Gupta PW-48, deposed the facts relating to investigation conducted by him, which have already been stated by us in the factual narratives noted in the preceding paragraphs. Required to be noted to deal with the arguments advanced by the accused, we note the following portion of the cross-examination of the witness:-

"The Tata Indica car as well as its keys were seized by me....

It is correct that I had not prepared a separate pulinda of the key of the car. It is correct that I had not sealed the key hole of the car...

It is correct that on the day when the accused were arrested, the dead body had not been discovered. In this case, the FIR had initially been registered u/s. 363 IPC. On the basis of oral interrogation of accused Rahul, I mentioned sections 365/302/376(2)(g)/34 IPC on the arrest memo of the accused. It is correct that accused Rahul had not mentioned in his disclosure statement that he has forgotten his wallet near the dead body. I had found the wallet of accused Rahul near the dead body when the same was pointed out by accused Ravi and Vinod. Accused Rahul was not taken to Rodai village as he needed to be further interrogated and for this reason he

*was detained in the police station. On 13.2.2012 I was the Investigating Officer of this case. No other person except the Investigating Officer or the team prepared for the said purpose can interrogate an accused. **Till my return from village Rodai, no disclosure statement of accused Rahul had been recorded.***

X X X by Sh. S.S. Haider, Advocate for accused Vinod.

I had conducted a cursory examination of the Tata Indica car on 13.2.2012. I did not notice any blood spot on the interiors of the car. There were certain spots on the rear seat cover and front seat cover but I cannot say whether these were blood spot or any other spot.

I do not recollect the name of the Beat Constables who had brought accused Ravi and Vinod to the police station. I did not record statement of that Beat Constables....

It is correct that on 13.2.2012 accused Vinod was sent for hospital for medical examination. It is wrong to suggest that at that time semen sample of accused Vinod was obtained, kept without seal and was handed over to me by HC Kuldeep on return to the police station. It is wrong to suggest that blood sample, semen sample and pubic hair sample of all the three accused were obtained and kept without seal. Volunteered: on that day the three accused were got formally examined in the hospital before keeping them in the Lock-Up.”

48. ASI Rajender Singh PW-12, deposed the facts relating to the apprehension of accused Rahul by him, which have already been stated by us in the factual narratives noted in the preceding paragraphs. Pertinently, the red coloured Indica car bearing registration No.DL 3C AF 4348 stated to have been seized by ASI Rajender Singh was not shown to him since the counsel appearing for the accused did not dispute the identity of the car seized by him. Since argument was advanced by learned counsel for the accused, we note the following portion of the cross-examination of ASI Rajender Singh by accused Rahul:-

“Accused did not produce any document to prove his identity but he only disclosed his name as Rahul and parentage. I did not take search of the car. It is wrong to suggest that accused Rahul was not apprehended by me in the manner as stated above.” (Emphasis Supplied)

49. HC Kuldeep PW-39, deposed that on February 13, 2012 accused Rahul was brought to PS Chhawla by an officer of PS Dwarka North. Inspector Sandeep Gupta interrogated Rahul and arrested him. After sometime, beat staff brought accused Ravi and Vinod to PS Chhawla. Inspector Sandeep Gupta interrogated Ravi and Vinod and arrested them. Being relevant to deal with an argument advanced by learned counsel for the accused, we note the following portion of his cross-examination:-

“First arrest memo of accused Rahul was prepared, then his personal search memo and lastly his disclosure statement was recorded. The arrest memo of accused Rahul was prepared at about 2 p.m. the disclosure statement of accused Rahul was noted down on his dictation. It took about 30 to 40 minutes to record the disclosure statement of accused Rahul. It may be that the disclosure statement of accused Rahul was ready by 2.30 p.m. It is correct that the same is in the handwriting of SI Jitender Dagar. It is also correct that the disclosure statements of accused Ravi and Vinod are also in the handwriting of SI Jitender Dagar.

I am aware that the time of arrest of accused Ravi and Vinod mentioned in their arrest memo is 3 p.m. Their disclosure statements were recorded around the same time i.e. 3 p.m. I cannot tell when the arrest memos and personal search memos of accused Ravi and Vinod were prepared. Only there disclosure statements were recorded in my presence. Their disclosure statements were ready by 3.15 p.m. It is correct that all the paper work regarding all the three accused had been done by 3.15 p.m. The seizure memo of Indica car, Jack and Pana were also prepared before 3.15 p.m. No other memo was prepared in my presence after 3.15 p.m. Thereafter we had left for village Rodai at about 3.30 p.m.

X X X by Sh. S.S. Haider, Advocate for accused Vinod.

Accused Ravi and accused Vinod were produced in the police station by Beat Staff on 13.2.2012 at about 2 p.m. I do not know whether any DD entry had been recorded in this regard.”

50. ASI Ashok Kumar PW-41, deposed that on February 13, 2012 accused Rahul was brought to PS Chhawla by an officer of PS Sector 23, Dwarka. Inspector Sandeep Gupta interrogated Rahul and arrested him. After sometime, beat staff brought accused Ravi and Vinod to PS Chhawla. Inspector Sandeep Gupta interrogated Ravi and Vinod and arrested them. Being relevant to deal with an argument advanced by learned counsel for the accused, we note the following portion of his cross-examination:-

“The disclosure statements of the accused are in the handwriting of SI Jitender Dagar. I do not recollect in whose handwriting are the other memos. I do not recollect whether any other police official had prepared memos at that time. First of all, arrest memo and disclosure statement of accused Rahul was prepared. First arrest memo was prepared at 2 p.m. After that, personal search memo was prepared. It took five minutes to prepare arrest memo and personal search memo and thereafter recording of disclosure statement was started.

It took about 25 minutes to record the disclosure statement of accused Rahul. The arrest memo of accused Vinod was prepared at about 2.45 p.m. and that of accused Ravi at 3 p.m. The recording of their disclosure statement was started after preparation of their arrest memo and personal search memo. The recording of disclosure statement of accused Ravi was started after 3 p.m. It took about 20 to 25 minutes to record the same. The recording of disclosure statement of accused Vinod was started at about 2.45 p.m. It took 20 to 25 minutes to record the same. The recording of disclosure statement of all the accused was completed by 3.30 p.m. No other document was prepared in the police station in my presence.

We left the police station at about 3.30 p.m. It took us about ten minutes to reach the spot wherefrom the victim girl had been kidnapped. The pointing out memo was prepared at the spot. It is correct that the paper work at the spot was completed by 4 p.m.

Inspector Sandeep Gupta did not disclose any reason to me as to why accused Rahul was not taken to village Rodai.

X X X by Sh. S.S. Haider, Advocate for accused Vinod.

The accused Rahul was brought to the PS Chhawla on 13.2.2012 at about 1.30 p.m. Accused Ravi and Vinod were brought to the police station at about 2.30 p.m. I cannot tell the name of the Beat Staff who brought them. I do not know by what mode of conveyance had Beat Staff reached the police station. I do not know whether any DD entry had been recorded in the police station in this regard. Two Beat police officials had brought accused Ravi and Vinod to the police station.”

51. SI Jitender Dagar PW-47, deposed that the accused persons were arrested and interrogated by Inspector Sandeep Gupta in his presence. Being relevant to deal with an argument advanced by learned counsel for the accused, we note the following portion of his cross-examination:-

“First of all disclosure statements of the accused were recorded. Thereafter pointing out memos in respect of spot where from the deceased was kidnapped were prepared and lastly pointing out memos of the spot where dead body was recovered were prepared. Arrest memos were prepared before the preparation of the aforesaid memos. Accused Ravi was arrested last of all at 3 pm. It is correct that all memos were prepared after 3 pm. About fifteen memos were prepared in this case after 3 pm. All pointing out memos were prepared at their respective spots.

The disclosure statements of all the three accused are in my handwriting. It took me about one hour or 75 minutes to take down these disclosure statements. Immediately thereafter the accused was taken for pointing out the spot of kidnapping. It is correct that we may have left the police station at about

4.30 pm. It may have taken about 10 to 15 minutes to prepare these memos. The distance between the spot of kidnapping and our police station was about 1.5 to 2 km. We left that place at about 4.45 pm.

We had gone to Rodai via Pataudi village. The road was almost without traffic. We had gone to Rodai in police vehicle. It took us about one hour to reach there. We may have reached there at about 6 pm.

X X X by Sh. S.S. Haider, Advocate for accused Vinod.

On 13.2.2012 when I reached PS Chhawla all the three accused were present there. First disclosure statement of accused Rahul was recorded, thereafter that of Vinod and lastly of Ravi.”

Witnesses who participated in the recovery of the dead body of Anamica and seizure of articles from the place where body of Anamica was recovered on February 13, 2012 : Laxman Rawat PW-7, Kunwar Singh Negi PW-8, Mahavir Singh PW-14, Const.Arun Kumar PW-30, HC Vinod PW-34 and HC Aman Prakash PW-35, ASI Attar Singh PW-36, Const.Ramesh Chand PW-37, Const.Vinod PW-38, HC Kuldeep PW-39 and ASI Balwan Singh PW-46.

52. Laxman Rawat PW-7, the friend of the father of Anamica deposed that on February 13, 2012 he came to know that the dead body of Anamica is lying near Karawara Phatak whereupon accompanied by Anamica's father and some other persons and police personnel he went there and saw Anamica's body lying in the fields. Being relevant to deal with an argument advanced by learned counsel for the accused, we note the following portion of his cross-examination:-

“It is correct that no one else other than stated above, had gone with us. Nothing was seized in my presence”

53. Kunwar Singh Negi PW-8, father of Anamica deposed that on February 13, 2012 he came to know that the dead body of his daughter is lying near Karawara Phatak whereupon along with Prem Singh Negi and Umed Singh and the police went there and saw the body of Anamica lying in the mustard fields. He had identified the body of Anamica. Being relevant to deal with an argument advanced by learned counsel for the accused, we note the following portion of his cross-examination:-

“It is correct that no one else other than stated above, had gone with us. Nothing was seized in my presence”

54. It may be noted that the panty got recovered by Vinod and the broken mobile phone got recovered by Rahul was not put to Kunwar Singh Negi for dock identification, for the obvious reason a father would hardly be a witness for the purpose.

55. Mahavir Singh PW-14, deposed that on February 13, 2012 Delhi Police along with two persons informed him that one dead body is lying in the fields of his brother whereupon he went to the fields and saw the dead body of a female lying there. Being relevant to deal with an argument advanced by learned counsel for the accused, we note the following portion of his cross-examination:-

“I had gone to the fields but near the dead body so I cannot say what articles were lying around the body.”

56. Ct.Arun Kumar PW-30, deposed that on February 13, 2012 he had taken eighteen photographs Ex.PW-30/A1 to Ex.PW-30/A18 of the dead body of Anamica as also of the accused Ravi and Vinod pointing out the body of Anamica at Village Rodai, Haryana; negatives whereof are Ex.PW-30/B1 to Ex.PW-30/B18. The police team had reached the fields from where the body of Anamica was recovered at about 05.00 P.M. on

February 13, 2012 and remained there till about 06.30 P.M. On being cross-examined regarding the presence of the family members of Anamica when her dead body was recovered, he said : *'It is correct that no public person other than the accused was seated in our vehicle when we went to village Rodai. I do not know whether the father of victim girl and his two friends Prem Singh and Laxman were present in other two police vehicles.'* On being cross-examined as to the time when he took the photographs he said : *'I took the photographs between 6 pm to 6.30 pm and it was dark by that time. We had reached there at about 5 pm.'*

57. HC Vinod PW-34 and HC Aman Prakash PW-35, officials from Haryana Police deposed that on February 13, 2012 at about 05.30 P.M./06.00 P.M. along with ASI Balwan Singh they had gone to the fields from where body of Anamica was recovered. ASI Balwan Singh had lifted two plastic tumblers, an empty pouch of snack (namkeen), collectively exhibited as Ex.X1, broken pieces of an earthen pitcher (matka), collectively exhibited as Ex.X-2, a piece Ex.X-3 of bumper of a car, a red coloured purse, earth/soil near the spot from where Anamica's body was recovered. The body was stained with blood. The earth control and hair found on the body of Anamica were seized. All exhibits seized were recorded in the memo Ex.PW-34/A in their presence. That two ATM cards issued by Syndicate Bank and State Bank of India in name of Rahul, photocopy of PAN card of Rahul, original driving license of Rahul, photocopy of the school leaving certificate of Rahul, several visiting cards, a receipt issued by Vishal Pharmacy and a cutting of newspaper on which some mobile numbers were written in hand, collectively exhibited as Ex.X-4, were found in the purse seized by ASI Balwan Singh. (Pertinently, the witnesses were shown the articles found in the purse and

they identified the same to be the articles which were found in the purse. Be it noted here that the accused persons did not cross-examine the witnesses with respect to the seizure of a red coloured purse near the dead body of Anamica and the articles found in the said purse).

58. On being questioned about the seizure of the articles found at the place of recovery of Anamica's body, HC Vinod PW-34 and HC Aman Prakash PW-35, stated that: *'It is correct that Haryana Police had seized the articles lifted from the spot in village Rodai. It is correct that no official of Delhi Police had signed any memo prepared by Haryana Police'*.

59. ASI Attar Singh PW-36, an official of Delhi Police, deposed that on February 13, 2012 accused Vinod and Ravi got recovered the dead body of Anamica in his presence. A red coloured purse was lying near the body of Anamica. On being questioned regarding the time he reached village Rodai, he said: *'We reached the spot at village Rodai at about 5 pm. A PCR van of local police was parked at a turn about one kilometer before the spot.'* Be it noted here that the accused did not cross-examine the witness regarding the presence of a red coloured purse near Anamica's dead body.

60. Ct.Ramesh Chand PW-37, Ct.Vinod PW-38 and HC Kuldeep PW-39, officials of Delhi Police, deposed that on February 13, 2012 accused Vinod and Ravi got recovered the dead body of Anamica in their presence. On being questioned regarding the presence of family members of Anamica when her dead body was recovered, Ct. Ramesh Chand said: *'It is wrong to suggest that the father of the deceased girl and his two friends namely Laxman Singh and Prem Singh were present at the spot in village Rodai on 13.2.2012. They had not accompanied us to village Rodai from*

Delhi.’ On being questioned as to when he had reached village Rodai, Ct. Vinod PW-38, said: *‘I started taking video at about 5.45 pm or 6 pm. It is correct that we had reached village Rodai at about 5 pm’.* On being questioned as to when he had reached village Rodai, HC Kuldeep PW-39 said: *‘We reached village Rodai around 5 p.m.’*

61. ASI Balwan Singh PW-46 deposed that on February 13, 2012 he was posted at PS Rodai. On receipt of DD No.24 along with HC Vinod and HC Amar Prakash he reached the fields near Karaura Railway Phatak, Rewari where Inspector Sandeep Gupta from PS Chhawla, Delhi and his staff were present. The dead body of Anamica was lying in the fields. He lifted two plastic tumblers, an empty pouch of snack (namkeen), broken pieces of an earthen pitcher (matka), a piece of bumper of a car, a red coloured purse, earth/soil near the spot where body of Anamica was recovered, along with blood stained earth and control earth as recorded in the memo Ex.PW-34/A. A hair found on Anamica’s body by the forensic team was also seized by him as entered in the memo Ex.PW-34/A. Two ATM cards issued by Syndicate Bank and State Bank of India in name of Rahul, photocopy of PAN card of Rahul, original driving license of Rahul, photocopy of school leaving certificate of Rahul, several visiting cards, a receipt issued by Vishal Pharmacy and a cutting of newspaper on which some mobile numbers were written by hand were found in the purse seized by him. Being relevant to deal with an argument advanced by learned counsel for the accused, we note the following portion of his cross-examination:-

“I received DD no.24 at about 11.30 AM or 12 Noon. I do not remember the contents of the DD. I had reached the spot where the dead body was lying at about 4.30 PM....

It is wrong to suggest that dead body was first spotted by Haryana Police pursuant to DD no.24 and the purse of the dead girl was found near the dead body which contained the residential phone number of the girl and we contacted and called her parents. It is wrong to suggest that purse recovered from the spot belongs to dead girl and not to any of the accused.”

Witnesses who proved the call details of accused Rahul, Ravi and Anamica: Saraswati PW-29, Kunwar Singh Negi PW-8, Shishir Malhotra PW-19, Deepak PW-20, Pawan Singh PW-21, Sandeep Chaudhary PW-22, Kuldeep PW-24 and R.S. Yadav PW-28.

62. Saraswati PW-29, the friend of Anamica, deposed that the mobile number of Anamica was 9540594640, which was corroborated by Kunwar Singh Negi PW-8, the father of Anamica.

63. Kuldeep Singh PW-24, turned hostile and denied that he sold a mobile phone with the sim card of the number 8802090923 to accused Ravi. He resiled from his statement under Section 161 Cr.PC.

64. Shishir Malhotra PW-19, Nodal Officer, Aircel Limited, produced the record pertaining to mobile number 8802090923. On the basis of said record he deposed that the number is registered in the name of one Urmila Devi, R/O ND-73, Qutub Vihar, Goyola Dairy, New Delhi – 110 071. He produced the call details record Ex.PW-19/B pertaining to said number for the period from February 09, 2012 to February 13, 2012. He also produced Cell ID Chart Ex.PW-19/C, which indicates the location of various towers installed by cellular company Aircel in Delhi and NCR.

65. Deepak PW-20, Nodal Officer, Vodafone Mobile, deposed that Cell ID address of Cell ID 40483 is Ward No.12, Main Chitarkund, VPO, Jatauli, Tehsil Pataudi, District Gurgaon.

66. Pawan Singh PW-21, Nodal Officer, Idea Cellular Limited, produced the record pertaining to mobile number 9540594640. On the basis of said record, he deposed that the said number is registered in the name of one Kunwar Singh. He produced the call details record Ex.PW-21/A pertaining to mobile number 9540594640 for the period from February 09, 2012 to February 10, 2012. He also produced Cell ID Chart Ex.PW-21/C, which indicated the location of various towers installed by cellular company Idea in Delhi and Haryana. He deposed that Cell ID address of Cell ID 9043 is Jahangir Pur, Haryana.

67. We note that a cumulative reading of the call details record Ex.PW-19/A and testimonies of Deepak PW-20 and Pawan Singh PW-21 shows that the mobile number 8802090923 was on roaming in Haryana on 22.00.36 hours on February 09, 2012 and 3.51.41 and 3.53.18 hours on February 10, 2012.

68. A cumulative reading of the call details record Ex.PW-21/A and cell ID Chart Ex.PW-21/B shows the location(s) of the mobile number 9540594640 between the period from February 09, 2012 to February 10, 2012, which is being tabulated herein under:-

<i>S. No.</i>	<i>Time</i>	<i>Location</i>
1.	20:44 hours on February 09, 2012	Tajpur, Delhi
2.	20:55 hours on February 09, 2012	Tajpur, Delhi
3.	22:39 hours on February 09, 2012	Machharauli, Haryana
	22:40 hours on February 09, 2012	Machharauli, Haryana
4.	22:44 hours on February 09, 2012	Khudan, Haryana
5.	22:46 hours on February 09,	Patauda, Haryana

	<i>2012</i>	
6.	<i>22.49 hours on February 09, 2012</i>	<i>Gorawara, Haryana</i>
7.	<i>22.50 hours on February 09, 2012</i>	<i>Gorawara, Haryana</i>
8.	<i>22.54 hours on February 09, 2012</i>	<i>Palwalhas, Haryana</i>
9.	<i>22.57 hours on February 09, 2012</i>	<i>Palwalhas, Haryana</i>
10.	<i>23.00 hours on February 09, 2012</i>	<i>Palwalhas, Haryana</i>
11.	<i>23.03 hours on February 09, 2012</i>	<i>Roharai, Haryana</i>
12.	<i>23.06 hours on February 09, 2012</i>	<i>Chillar, Haryana</i>
13.	<i>23.09 hours on February 09, 2012</i>	<i>Mastpur, Haryana</i>
14.	<i>23.13 hours on February 09, 2012</i>	<i>Mastpur, Haryana</i>
15.	<i>23.16 hours on February 09, 2012</i>	<i>Roharai, Haryana</i>
16.	<i>23.20 hours on February 09, 2012</i>	<i>Mastpur, Haryana</i>
17.	<i>01.16 hours on February 10, 2012</i>	<i>Chillar, Haryana</i>
18.	<i>01.17 hours on February 10, 2012</i>	<i>Chillar, Haryana</i>

69. Sandeep Chaudhary PW-22, JTO (MSC), Panipat, Haryana deposed that on April 25, 2012 he had provided Cell ID for roaming CDRs of the mobile number 9968988533 to MTNL. As per record of BSNL, the location of mobile number 9968988533 was main Telephone Exchange Machhrauli, Jhajhar, Haryana at 22.10, 22.26 and 22.27 hours on February 09, 2012 and Dadri Toye, Bahadurgarh, Haryana at 22.26 hours on February 09, 2012. **(Be it noted here that Cell ID stated to have been**

provided by the witness to MTNL was neither produced nor proved by the said witness.)

70. R.S. Yadav PW-28, JTO MTNL, Tis Hazari Telephone Exchange, Delhi produced the record pertaining to mobile number 9968988533. On the basis of said record, the witness deposed that the said number is registered in the name of accused Rahul. Additionally, he produced the call details record Ex.PW-28/F pertaining to said number for the period from February 09, 2012 to February 13, 2012. He also produced Cell ID Chart Ex.PW-28/I, which indicated the location of various towers installed by MTNL in Delhi. **(Be it noted here that Cell ID Chart stated to have been provided by Sandeep Chaudhary PW-22, to MTNL was neither produced nor proved by the said witness. However, we find that the same i.e. Cell ID Chart of towers of BSNL installed in Haryana is lying in the Trial Court Record).**

Witnesses to prove the residence of the accused persons: Triloki PW-11.

71. Triloki PW-11, deposed that in the month of February, 2012 he had let out one room in the first floor of his house bearing Municipal No.RZ-54, Palam Village, Sector-6, Dwarka, Delhi to the accused. Three-four days before February 14, 2012 the accused were burning clothes in the room let out to them. When his wife objected to the smoke emanating from their room the accused extinguished the fire and threw the ash in a vacant plot near to his house. The accused got recovered a parat (utensil), polythene containing ash and cloth in his presence.

Residual Witnesses: HC Bharat Lal PW-15, Dr.B.K. Mohapatra PW-23, Dr.Shivangi Prashar PW-26, SI Madan Pal PW-33 and Inspector Ranjeet Singh PW-49.

72. HC Bharat Lal PW-15, Malkhana Moharrar, deposed the facts regarding deposit/taking out of the exhibits seized by the police in the present case in/from Malkhana of PS Chhawla, which have already been stated by us in the factual narratives noted in the preceding paragraphs. Additionally, he deposed that so long as the exhibits remained in his custody the same were intact and nobody tampered with the same. He also deposed that on February 16, 2012 Inspector Ranjeet Singh PW-49, along with CFSL Team came to PS Chhawla. He accompanied Inspector Ranjeet Singh and CFSL Team to PS Jafarpur where he handed over keys of Indica car DL 3C AF 4348 (deposited in Malkhana of PS Chhawla) and garage of PS Jafarpur where Indica car was lying parked to Inspector Ranjeet Singh. After inspection of car was over, Inspector Ranjeet Singh handed him back keys of car and garage and he deposited the same in Malkhana of PS Chhawla. **Most significantly, the witness was not cross-examined by the accused persons.**

73. Dr.B.K.Mohapatra PW-23, Senior Scientific Officer, Biology Division, CFSL proved the CFSL report Ex.PW-23/A. Additionally, he deposed that on February 28, 2012 he received thirty-nine sealed parcels relating to FIR No.35/2012 registered at PS Chhawla. The seals on parcels were intact and tallied with the specimen seals. **Most significantly, the witness was not cross-examined by the accused persons.**

74. Dr.Shivangi Prashar PW-26, proved the post-mortem report Ex.PW-26/A of Anamica and opinion Ex.PW-26/B regarding the weapon of offence. Being relevant to deal with an argument advanced by learned

counsel for the accused, we note the following portion of his cross-examination:-

“It is correct that there was no injury present on the private part of the deceased. However, there were injuries on the middle of left leg as injury No.13 and 14 mentioned in the report and bleeding was present on vagina. It is possible that bleeding could have been due to menstruation.”

75. SI Madan Pal PW-33, deposed that on February 27, 2012 he had prepared the site plan Ex.PW-33/A to scale of the place from where Anamica’s body was recovered. He said that he had destroyed the rough notes on the basis of which he had prepared the site plan Ex.PW-33/A.

76. Inspector Ranjeet Singh PW-49, deposed the facts relating to investigation conducted by him, which have been already stated by us in the factual narratives noted by us in the preceding paragraphs. Being relevant to deal with an argument advanced by learned counsel for the accused, we note the following portion of his cross-examination:-

“It is correct that accused Rahul was arrested on 13.2.2012. I cannot say why he was not taken to the spot where dead body of the deceased was found for pointing out the same till 16.2.2012. Since the investigation of this case was entrusted to me on 15.2.2012, I noticed this fact from the file and accordingly took the accused Rahul to the said spot in village Rodai on 16.2.2012. Inspector Sandeep Gupta did not tell me any particular reason why accused Rahul was not taken to the aforesaid spot in village Rodai for pointing out the same.

I cannot tell any particular reason why the seat covers were not sent to the CFSL before 27.2.2012....The pullindas could not be sent to CFSL before 27.2.2012 as the investigation of the case was in progress. Also for the reason that the subsequent opinion of the doctor had to be taken on the jack and pana, which I obtained on 23.2.2012.

It is correct that when I saw the tata indica car in PS Jafarpur Kalan, there was no seal on its door locks. It is also correct that the keys of the car produced by MHC (M) were not in any sealed pullinda. It is possible that the car could have been opened by those keys by any person who was in possession of the keys. It is correct that I also did not seal the keys as well as the door locks of the car after 16.2.2012.

X X X by Sh. S.S. Haider, Advocate for accused Vinod.

The motive for the accused in committing the crime, as mentioned by me in the charge sheet, was revealed from the disclosure statement of the accused. No other witness had stated anything about the friendship of the deceased and accused Vinod. I tried to verify each and every circumstance but I did not get hold of any evidence verifying the aforesaid fact. It is wrong to suggest that the motive of the crime as mentioned by me in the charge sheet has been manipulated and fabricated.”

77. In the backdrop of aforesaid evidence led by the prosecution, the accused were examined under Section 313 Cr.P.C.

78. Rahul stated that he was innocent and had been falsely implicated. He said that he never knew Anamica. He said that on February 09, 2012 at about 04.30 P.M. he dropped one S.N.Gupta at the airport. Thereafter various persons boarded his car and he dropped them at various places in Dwarka and parked the car at about 09.00 P.M. at Taxi Stand, Sector-9, Dwarka. Next day, at about 10.00 A.M. the police officials stopped the red coloured Indica car being driven by him and took him to the police station. On being questioned he informed the police officials that he and his brother Ravi are involved in a criminal case. The police officials noted down his name and other particulars as also inspected the car driven by him and let him go. On February 13, 2012 he was beaten in the police station and his thumb impression was taken on same papers. On February 14, 2012 he, Ravi and Vinod were taken to PS Rodai. On said day, media

was called at the police station and police officers claimed to have solved the case. A police officer had taken their i.e. his, Ravi's and Vinod's blood samples in the police station. Being relevant, we note following questions put to Rahul in his statement under Section 313 Cr.PC. and the answers given thereto:-

“Q.22 It is in evidence against you that in the meanwhile a red colour Indica car bearing RC No.DL 3C AF 4348 stopped at the metro station. The driver of the said car i.e. you accused Rahul was appearing to be in perplexed condition and on seeing you ASI Rajinder Singh immediately went there and asked the documents of vehicle including the DL from the said person. However, you failed to produce any such document and told ASI Rajinder Singh that the documents were in other vehicle and you would bring the same. What have you to say?”

Ans: It is incorrect. On that day, my brother accused Ravi had been lifted by the police officials from our house during the day. In the evening, I reached the police station in the said Tata Indica car to enquire about Ravi. On reaching the police station, the Tata Indica car was seized by the police officials and I was arrested in the said case.

Q.41 It is in evidence against you that from the spot ASI Balwan Singh lifted two plastic glasses, one earthenware pot (Matka), one empty pouch of Namkeen (snacks), one broken piece of a bumper of a vehicle and one red colour purse containing ₹365/- in cash. ASI Balwan Singh also lifted the blood stained soil, soil, hairs etc from the dead body of the deceased which were kept in separate six pullindas and were sealed with the seal of B and were seized vide memo Ex.PW-34/A. What have you to say?

Ans: I do not know.

Q.23 It is in evidence against you that an ATM card in name of you accused Rahul of SBI Dwarka, another ATM card, a photocopy of PAN card, original driving license in your name, an identity card issued in your name by Sen. Sec. School, a visiting card of Ramji Lal, receipt of some

medicines and one news paper cutting on which two mobile phone numbers were written in pen were also found lying in the aforesaid purse. What have you to say?

Ans: It is incorrect. These articles were taken away by the police officials in the police station at the time of my arrest.”

79. In his examination under Section 313 Cr.P.C., Ravi stated that he was innocent and had been falsely implicated. He denied knowing Anamica. He said that on February 13, 2012 the police officials lifted him from his house and brought him to the police station and arrested him.

80. In his examination under Section 313 Cr.P.C., Vinod stated that he was innocent and had been falsely implicated. He denied knowing Anamica. He claimed that on February 09, 2012 he had gone to Jind, Haryana to distribute invitation cards of the marriage of his cousin Appu. He claimed to have stayed there in the night and returned to Delhi in the afternoon of February 10, 2012. He said that on February 13, 2012 the police officers falsely arrested him.

81. In defence, Vinod examined one Sri Bhagwan DW-1, Assistant (Legal), Nav Bharat Times. He proved the report Ex.DW-1/A published in page No.5 of Nav Bharat Times, Hindi Edition on February 15, 2012. The report Ex.DW-1/A reports that the police had solved the case of Anamica being kidnapped and raped and named Rahul, Ravi and Vinod as the accused. With respect to which evidence, no arguments were advanced by counsel for Vinod during arguments in the reference. That apart we may note that in Newspaper report as to who solved a crime is neither here nor there. Further, the report refers to the police solving the case and not that Haryana Police solved the case.

ARGUMENTS ADVANCED BY THE COUNSEL FOR THE ACCUSED

82. Learned counsel for the accused made wide and varied submissions which can conveniently be divided into two broad categories:-

I Arguments pertaining to the correctness of the finding of guilt returned by the learned Trial Judge.

II Arguments pertaining to the correctness of the punishment awarded by the learned Trial Judge.

83. Arguments pertaining to the correctness of the finding of guilt returned by the learned Trial Judge: - Under this head, following 11 arguments were advanced by the learned counsel:-

A The first submission advanced by the counsel for the accused related to the arrest of accused Ravi and Vinod. It was argued that the case of prosecution (as deposed by Inspector Sandeep Gupta PW-48, SI Ashok Kumar PW-41, SI Jitender Dagar PW-47 and HC Kuldeep PW-39) was that firstly Rahul was arrested on February 13, 2012, who on interrogation admitted to his guilt and disclosed regarding the involvement of Ravi and Vinod in the crime, pursuant where to Ravi and Vinod were arrested at 2.45/3.00 P.M. on February 13, 2012 and the two got recovered the dead body of Anamica from village Rodai. Counsel argued that aforesaid case of the prosecution is completely falsified from the fact that Inspector Sandeep Gupta PW-34, during his cross-examination categorically admitted : *‘Till my return from village Rodai, no disclosure statement of accused Rahul had been recorded.’* Counsel argued that when the disclosure statement of Rahul was recorded after returning from village Rodai i.e. much after 05.00 P.M. on February 13, 2012, then how come the police came to know about the involvement of Ravi and Vinod and arrested them at about 2.45 – 03.00 P.M. on February 13, 2012. According

to the learned counsel, the aforesaid circumstance is strongly indicative of the false implication of Ravi and Vinod by the police since they happened to be the brother and friend/roommate respectively of Rahul who was already in the net of the police. The argument was dovetailed with the submission that the possibility of not only Ravi and Vinod but even Rahul being falsely implicated and everything planted on them thereafter cannot be ruled out.

B The second submission advanced by the counsel was that the beat constables who are stated to have arrested Ravi and Vinod were material witnesses for the reason only they could have thrown light on the circumstance leading to the apprehension of Ravi and Vinod. Counsel urged that an adverse inference needs to be drawn against the prosecution on account of not examining the beat constables in terms of illustration (g) to Section 114 of The Evidence Act on the reasoning, had the beat constables been examined they would not have supported the case of prosecution. Counsel further submitted that no details regarding the identity of said beat constables has come on record. (In this regard, the counsel had drawn our attention to the depositions of Inspector Sandeep Gupta PW-48, SI Ashok Kumar PW-41 and HC Kuldeep PW-39, wherein they failed to recall the names of the beat constables). Counsel argued that the elusiveness of the beat constables who are stated to have apprehended Ravi and Vinod is another pointer indicating the false implication of Ravi and Vinod.

C The third submission advanced by the counsel for the accused was that the prosecution claims that Rahul, Vinod and Ravi were arrested at 02.00 P.M., 2.45 P.M. and 03.00 P.M. respectively on February 13, 2012. Counsel pointed out that ASI Ashok Kumar PW-41 and HC Kuldeep PW-

39, deposed that it took 25 minutes (as per Ashok Kumar)/30-40 minutes (as per HC Kuldeep) to record the disclosure statement of Rahul. Meaning thereby, that the recording of the disclosure statement of Rahul concluded only at about 2.25 P.M. or around 2.40 P.M. on February 13, 2012. Counsel argued that the time gap of mere ten-fifteen minutes between the conclusion of the disclosure statement of Rahul and arrest of Ravi and Vinod belies the claim of the prosecution that the disclosure statement of Rahul was recorded which disclosed the complicity of Ravi and Vinod pursuant to which they were picked up from their house in Dwarka and brought to PS Chhawla and arrested.

D The fourth submission advanced by the counsel related to the arrest of Rahul. Counsel appearing for Rahul argued that the defence taken by Rahul in his statement under Section 313 Cr.P.C. was that his brother Ravi was arrested by the police on February 13, 2012 after which he had gone to PS Chhawla in the evening of February 13, 2012 to enquire about his brother when he too was arrested. Counsel argued that the defence of Rahul that he was arrested subsequent to the arrest of his brother Ravi gets probalised by the facts that Ravi and Vinod were taken to Village Rodai to recover the body of Anamica and Rahul was left in the police station despite the fact that as per the prosecution Rahul was the first one to be arrested and he disclosed the place where the dead body of Anamica could be found, and that no explanation had been given by Inspector Sandeep Gupta PW-48 for not taking Rahul to PS Rodai. In this regards, counsel also pointed out that ASI Ashok Kumar PW-41 and Inspector Ranjeet Singh PW-49, who were closely associated with the investigation of the case, stated that Inspector Sandeep Gupta did not disclose to them the

reason as to why Rahul was not taken to village Rodai on February 13, 2012.

E The fifth submission advanced by the counsel was that the recovery of the dead body of Anamica from the fields in village Rodai cannot be attributed to Ravi and Vinod because the dead body of Anamica had already been recovered by Haryana Police before it was pointed out by Ravi and Vinod. It was argued that the circumstances which have emerged in the present case show that on February 13, 2012 at about 11.30 – 12.00 P.M. information was received at PS Rodai that a dead body is lying in a field whereupon a police party from PS Rodai consisting of ASI Balwan Singh PW-46 and two other police officers proceeded to the field and found the dead body of Anamica lying there. The purse of Anamica and not of Rahul, was lying near the dead body and in all probability contained a document indicating her residence or the mobile number of her family member, and thus ASI Balwan Singh was able to contact Anamica's father and inform him about the recovery of Anamica's body. Thereupon Anamica's father in turn informed Delhi Police regarding the recovery of the body of Anamica. On receipt of said information the police officers of PS Chhawla took Ravi and Vinod, who had been arrested by that time, to the field and wrongly showed the recovery of the dead body of Anamica at the instance of Ravi and Vinod. The circumstances, which according to counsel, were indicative of the recovery of the body of Anamica by the Haryana Police before it was pointed out by Ravi and Vinod are as follows:- (i) ASI Balwan Singh PW-46, stated that he reached the field in question when he received DD No.24 at about 11.30 – 12.00 P.M. on February 13, 2012. Counsel pointed out that as per the case of the prosecution Delhi Police came to know about the location of the dead body

of Anamica only after the arrest of Rahul at 02.00 P.M. on February 13, 2012. Meaning thereby, Haryana Police got information about the dead body of Anamica at least two hours before Delhi Police learnt of said fact; (ii) ASI Balwan Singh PW-46, stated that he reached the field in question at about 04.30 P.M. on February 13, 2012. It is inconceivable that ASI Balwan Singh who got information about the dead body of Anamica at about 11.30 – 12.00 noon on February 13, 2012 would wait for nearly four hours before going to the field in question; (iii) assuming ASI Balwan Singh PW-46, is correct in stating that he reached the field in question at about 04.30 P.M. on February 13, 2012, the fact remains that all the officers of Delhi Police associated with the recovery of the dead body of Anamica viz. Ct.Arun Kumar PW-30, ASI Attar Singh PW-36, Ct.Ramesh Chand PW-37, Ct.Vinod PW-38, HC Kuldeep PW-39, SI Ashok Kumar PW-44, Inspector Sandeep Gupta PW-48 and SI Jitender Dagar PW-49 claimed to have reached the field at about 05.00 P.M. on February 13, 2012, by which time ASI Balwan Singh and his team would have surely recovered the dead body of Anamica; (iv) the deposition of SI Jitender Dagar PW-47 shows that the Delhi Police had not reached the field at village Rodai at about 05.00 P.M. on February 13, 2012 as claimed by the prosecution but much after 06.00 P.M.; (v) Haryana Police has prepared the memo Ex.PW-34/A regarding seizure of the articles from the field and the same does not contain signature(s) of even a single police official from Delhi Police; (vi) Mahavir Singh PW-14, deposed that Delhi Police had informed about the presence of the dead body of Anamica in the fields of his brother, but Inspector Sandeep Gupta PW-48, deposed that Mahavir Singh along with other villagers reached the field in question on coming to know about the arrival of Delhi Police in the field of his brother; and (vii) the signature of Mahavir Singh PW-14 appears on various

pointing memos prepared at the field, but he stated in his cross-examination that he cannot say whether any articles were lying near the dead body of Anamica.

F The sixth submission advanced by the learned counsel for Vinod was that from evidence on record it emerges that Anamica's dead body was recovered pursuant to the disclosure statements made by both Ravi and Vinod and hence no reliance can be placed upon said recovery upon them. In said regards, reliance was placed upon the decision of Supreme Court reported as AIR 2005 SC 3820 State vs Navjot Sandhu.

G The seventh submission advanced by the learned counsel was that the seizure of articles from the car and place of recovery of Anamica's dead body and lifting of samples of the accused is shrouded in suspicion, for the reasons:- (i) there was a delay of 11/14 days in sending the seized articles to CFSL, inasmuch as articles were seized on February 13/16, 2012 but the same were sent to the CSFL only on February 27, 2012; (ii) Tata Indica car was got inspected by CFSL team only on February 16, 2012 i.e. after the samples of the accused persons had been obtained by the Delhi Police and after the exhibits lifted from the field and those lifted by the doctors who conducted Anamica's post-mortem were taken possession of by Delhi Police; (iii) the depositions of Hari Om PW-10, the owner of Indica car, was that on February 10, 2012 he and his wife had travelled to Talkatora stadium in said car but did not notice any blood stains or any other articles in the car and that he had cleaned the car on February 11, 2012 and had made available the same for booking to ferry passengers is a clear indication of planting of semen samples of accused persons and Anamica's hair in the car by the police, particularly when seen in conjunction with the deposition of Inspector Sandeep Gupta PW-48 that he

had cursorily examined the Indica car on February 13, 2012 and that he did not notice any blood spots in the interiors of the car; (iv) the key and key holes of the car were not sealed by the police as admitted by Inspector Sandeep Gupta PW-48 and Inspector Ranjeet Singh PW-49 meant that the car was accessible to the police officers for anything to be planted therein; and (v) the defence of Vinod that Inspector Sandeep Gupta PW-48, got him i.e. Vinod medically examined on February 13, 2012 and obtained his semen sample and handed over the same to HC Kuldeep who then planted it in the car and the vaginal swab of Anamica gets probabalized by the fact that Inspector Sandeep Gupta PW-48 had admitted in his cross-examination that Vinod was medically examined on February 13, 2012 though the MLC prepared after the arrest of Vinod is dated February 14, 2012.

H The eighth submission advanced by the counsel was that the list of articles found in the purse recovered from near the dead body of Anamica referred to in seizure memo Ex.PW-34/A has not been annexed/exhibited along with said seizure memo and thus cannot be admitted into evidence; nor its contents.

I The ninth submission advanced by the counsel was that call details record Ex.PW-28/F of the mobile number of Rahul shows that Rahul was in Delhi at 10.30 P.M. on February 13, 2012 whereas at the same time Anamica was present in Haryana, a fact evident from the call details record Ex.21/A of the mobile number of Anamica. The aforesaid contradiction demolishes the case set up by the prosecution against Rahul.

J The tenth submission advanced by the counsel was that no injuries were found on the private parts of Anamica which according to them a clear pointer to the fact that Anamica was not raped.

K The last and the eleventh submission advanced by the counsel was that the motive for the crime by the accused projected by the prosecution was that Anamica had rejected Ravi's proposal for friendship and had spurned Ravi and he decided to take revenge from Anamica and Rahul and Vinod had helped him in taking revenge. No evidence whatsoever has emerged on record to show that Ravi had proposed friendship to Anamica and that she had rejected his proposal, meaning thereby, the police had spun a false story against the accused.

84. The first four submissions advanced by the learned counsel relating to the arrest of the accused are being dealt together.

85. It is claimed by the prosecution that Rahul was arrested first and pursuant to his disclosure statement Ravi and Vinod were arrested. Whether the statement of Inspector Sandeep Gupta PW-48 during cross-examination, that : *'till my return from village Rodai, no disclosure statement of accused Rahul had been recorded'* and failure of Inspector Sandeep Gupta PW-48, to take Rahul to village Rodai on February 13, 2012 belies the claim made by the prosecution?

86. The learned counsel appearing for the State argued that Rahul, Ravi and Vinod were arrested on February 13, 2012 and disclosed that they had murdered and thrown the body of Anamica in the fields at village Rodai. It was possible that the accused may not have correctly disclosed the location of the dead body of Anamica. The police officers many a times experience such a situation. Thus, a decision being taken to leave Rahul behind, to be further interrogated, if the police could not locate Anamica's dead body in the fields in village Rodai, on the belief that he would reveal the correct spot cannot belie the claim of the prosecution.

87. The aforesaid explanation furnished by the counsel for the State for not taking Rahul to village Rodai on February 13, 2012 is plausible, particularly when we find that the police officers associated with the arrest of accused viz. HC Kuldeep PW-39, SI Ashok Kumar PW-41 and SI Jitender Dagar PW-47, were cross-examined at length by the learned counsel for the accused but nothing tangible could be elicited therefrom which could dent their testimonies that Rahul was arrested first on February 13, 2012 and pursuant to his disclosure statement wherein he disclosed about the involvement of Ravi and Vinod they too were arrested.

88. As regards the submission predicated upon the statement of Inspector Sandeep Gupta PW-48 that : *'till my return from village Rodai, no disclosure statement of accused Rahul had been recorded'*, we again note the following portion of the cross-examination of Inspector Sandeep Gupta PW-48:-

*"It is correct that on the day when the accused were arrested, the dead body had not been discovered. In this case, the FIR had initially been registered u/s. 363 IPC. On the basis of oral interrogation of accused Rahul, I mentioned sections 365/302/376(2)(g)/34 IPC on the arrest memo of the accused. It is correct that accused Rahul had not mentioned in his disclosure statement that he has forgotten his wallet near the dead body. I had found the wallet of accused Rahul near the dead body when the same was pointed out by accused Ravi and Vinod. Accused Rahul was not taken to Rodai village as he needed to be further interrogated and for this reason he was detained in the police station. On 13.2.2012 I was the Investigating Officer of this case. No other person except the Investigating Officer or the team prepared for the said purpose can interrogate an accused. **Till my return from village Rodai, no disclosure statement of accused Rahul had been recorded.**"*

89. A careful reading of the afore-noted portion of the cross-examination of Inspector Sandeep Gupta PW-48 shows that questions regarding his omission to take Rahul to village Rodai on February 13, 2012 were being put to Inspector Sandeep Gupta PW-48 who answered that he did not take Rahul to village Rodai and left him at the police station as he was to be further interrogated.

90. Let us pause here for a moment. Now and again a case turns up before a Court which is a little more complex. Rules of deduction may be invaluable, but observation is also important.

91. The events which transpired on February 13, 2012 in the instant case have been video-graphed and a CD thereof has been placed on record.

92. During the course of arguments we had seen the CD in question. The CD shows that in the morning of February 13, 2012 a large crowd had gathered outside PS Chhawla and was protesting against the inaction of the police in finding Anamica. The CD shows that the atmosphere outside PS Chhawla at that time was highly tense and there was a lot of unrest amongst the crowd.

93. On February 13, 2012 the police officers associated with the investigation, particularly Investigating Officer Inspector Sandeep Gupta PW-48, must have been highly stressed on account of the unrest in the crowd gathered at PS Chhawla.

94. It is worth noting that Inspector Sandeep Gupta PW-48, had stated that no disclosure statement of Rahul was recorded till his return from village Rodai while answering questions relating to his failure to take Rahul to village Rodai on February 13, 2012. As already noted hereinabove, Inspector Sandeep Gupta answered that Rahul was left in the

police station since he was required to be interrogated further. The next question, contours whereof we can gather from the answer was obviously : Was any further disclosure statement of Rahul recorded? And he answered that no disclosure statement of Rahul was recorded. To appreciate our reasoning we frame a question before each sentence for the reason each sentence is an answer by itself. The position would be :

Q. Why was Rahul not taken to Rodai village?

Ans. Accused Rahul was not taken to Rodai village as he was needed to be further interrogated and for this reason he was detained in the police station.

Q. Who was the Investigating Officer of this case on February 13, 2012?

Ans. On February 13, 2012, I was the Investigating Officer of this case.

Q. Who can interrogate an accused?

Ans. No other person except the Investigating Officer or the team prepared for the said purpose can interrogate an accused.

Q. Was any further disclosure statement of accused Rahul recorded till you returned from village Rodai?

Ans. Till my return from village Rodai, no disclosure statement of accused Rahul had been recorded.

95. We terminate the discussion simply highlighting that the sentence picked upon by learned counsel for Rahul relates to a paragraph of a statement of Insp.Sandeep Gupta with the center of focus of the questions and the answered being the reason for not taking Rahul to village Rodai

and whether during the interregnum period i.e. when the police team left for village Rodai and returned back to the police station any disclosure statement, which obviously had to be a further disclosure statement, of Rahul was recorded.

96. Whether non-examination of beat constables who apprehended Ravi and Vinod is fatal to the case of prosecution?

97. The answer to the above question lies in the undernoted observations made by Supreme Court in the decision reported as AIR 2001 SC 2328

Takhaji Hiraji vs. Thakore Kubersing Chamansing:-

“So is the case with the criticism leveled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, which would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness which though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the Court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the Court ought to scrutinise the worth of the evidence adduced.

The Court of facts must ask itself -- whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already

examined are reliable and the testimony coming from their mouth is unimpeachable the Court can safely act upon it uninfluenced by the factum of non-examination of other witnesses.”

98. Merely because a witness is not examined by the prosecution, a criminal court would not lean to draw an adverse inference that if he was examined he would have given a contrary version. The illustration (g) to Section 114 of The Evidence Act is only a permissible inference and not a necessary inference. Unless there are other circumstances to facilitate the drawing of an adverse inference it should not be a mechanical process to draw an adverse inference merely on the strength of non-examination of a witness, even if the witness is a material witness.

99. In the instant case, even if it is assumed that beat constables who had apprehended Ravi and Vinod from their house and had brought them to the police station were material witnesses, the same would not be fatal to the case of the prosecution if the prosecution has otherwise been able to establish the apprehension of Ravi and Vinod followed by their arrest. We reiterate that the police officers associated with the arrest of the accused viz. HC Kuldeep PW-39, SI Ashok Kumar PW-41 and SI Jitender Dagar PW-47, were cross-examined at length by learned counsel for the accused but nothing tangible could be elicited therefrom which could dent their testimonies that Rahul was arrested first on February 13, 2012 and pursuant to his disclosure wherein he disclosed the involvement of Ravi and Vinod they were also arrested.

100. As regards the argument relating to alleged elusiveness of the beat constables who apprehended Ravi and Vinod, we again highlight that the police officers associated with the arrest of Ravi and Vinod on February 13, 2012 were highly tense at the time of arrest of Ravi and Vinod on

account of unrest amongst the crowd gathered at the police station. In such a situation, it is quite conceivable that the police officers associated with the arrest of Ravi and Vinod viz. HC Kuldeep PW-39, SI Ashok Kumar PW-41 and SI Jitender Dagar PW-47, Inspector Sandeep Gupta PW-48, did not pay much attention to the beat constables who brought Ravi and Vinod to the police station since their endeavour on said day i.e. February 13, 2012 was to find Anamica and thus were not able to recall the names of the beat constables. Lastly merely because they could not remember the names of the beat constables does not dent the creditworthiness of the four police officers.

101. The third submission advanced by the counsel for the accused proceeds on the premise that the beat constables were directed to apprehend Ravi and Vinod only after conclusion of the recording of the disclosure statement of Rahul. This would not be the correct position. The correct sequence of events would be that on being interrogated Rahul would have disclosed the complicity of Ravi and Vinod. The recording of the disclosure statement of Rahul would have commenced after his interrogation. The moment Rahul disclosed about the complicity of Ravi and Vinod the police officers, who were interrogating Rahul, would have flashed a wireless message which was obviously passed on to the beat constables because they were the police personnel nearest to the place of residence of Ravi and Vinod and hence the beat constables apprehended the two and brought them to the police station.

102. The fifth submission relating to the recovery of Anamica's dead body, we note that HC Vinod PW-34, HC Aman Prakash PW-35 and ASI Balwan Singh PW-46, categorically deposed that a purse was found near the dead body of Anamica and ATM cards, driving license, photocopies of

school leaving certificate and PAN card of Rahul were lying therein, which depositions have not been seriously controverted by the accused. Not even a single suggestion has been given to HC Vinod PW-34, HC Aman Prakash PW-35, that the purse found near the dead body of Anamica was not of Rahul but that of Anamica. The father of Anamica, Kunwar Singh Negi PW-8 and his friend Laxman Rawat stepped into the witness box as PW-8 and PW-7 respectively. The accused neither put any question nor gave any suggestion to Anamica's father and his friend that Haryana Police had informed them about the recovery of dead body of Anamica and in turn had informed Delhi Police about the same. The basis of the argument was a sequitur to the first four submissions. The argument was that if Rahul's disclosure statement was recorded after the Delhi Police Personnel had returned from village Rodai after recovering Anamica's dead body and since it was their claim that Ravi's and Vinod's involvement was disclosed to them by Rahul it has to necessarily follow that even Ravi and Vinod were apprehended after Rahul was apprehended. Thus, the only conceivable manner in which Delhi Police could proceed to village Rodai is information given to them by police personnel from Haryana that Anamica's body was found by them and the source of knowledge to Anamica's identity would be something recovered from the purse at the spot. The first four submissions having been noted and rejected by us, the substratum of the fifth submission obviously fall. Besides, it is settled law that the prosecution has to establish its case and need not meet every hypothesis put forward by the accused. We simply note the observations of the Supreme Court in the decision reported as (1992) 2 SCC 86 State of U.P. vs. Ashok Kumar Srivastava.

“This Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a

very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. 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. The circumstance 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. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however farfetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise."
(Emphasis Supplied)

103. It needs to be highlighted at this stage, and for which the eighth submission advanced concerning the exhibits seized when dead body of Anamica was recovered and as entered in the seizure memo Ex.PW-34/A, could also be conveniently dealt with here and now. It was argued that the list of articles found in the purse recovered from near dead body of Anamica referred to in seizure memo Ex.PW-34/A has not been put to Rahul in his statement under Section 313 Cr.P.C. and thus the same cannot be used against him. The omission to put the list of articles found in the purse recovered from near dead body of Anamica referred to in seizure memo Ex.PW-34/A to Rahul in his statement under Section 313 Cr.P.C. is of no consequence for the reason the articles referred to in said list have put to Rahul in his statement under Section 313 Cr.P.C. (See Question No.23 put to Rahul in his statement under Section under Section 313 Cr.P.C. noted by us in the preceding paragraphs).

104. Even otherwise, it is settled legal position that prejudice must be shown by an accused before it can be held that he is entitled to acquittal

over a defective and perfunctory statement under Section 313 Cr.P.C. (See the decision of Supreme Court reported as (2011) 6 SCC 1 Satyavir Rathie v CBI). In the instant case, no prejudice whatsoever has been caused to Rahul on account of omission to put the list of articles found in the purse recovered from near dead body of Anamica referred to in seizure memo Ex.PW-34/A to Rahul in his statement under Section 313 Cr.P.C. inasmuch as the articles referred in the list in question have been put to Rahul in his statement under Section 313 Cr.P.C.

105. Referring back to the point from where we made a detour while discussing the fifth submission advanced, the argument would mean that Officers from Haryana Police had planted two ATM cards, one issued by Syndicate Bank and the other by State Bank of India in the name of Rahul, photocopy of PAN card of Rahul, original driving license of Rahul, photocopy of the school leaving certificate of Rahul and several visiting cards of Rahul. This would mean that officers of Haryana Police had obtained the same from Rahul. It would also mean that one strand of hair lifted by the forensic team of Haryana Police from Anamica's dead body, DNA generated wherefrom matched that of Ravi was also planted by the officers of Haryana Police. Now, no suggestion whatsoever has been given to the three police personnel from Haryana Police that they had planted the incriminating exhibits. In his testimony ASI Rajinder Singh PW-12 has deposed that when he flagged down Rahul who was driving the red coloured Indica car and asked him to produce the driving license, Rahul could not produce one. Obviously, Rahul having lost his purse at the place where Anamica's dead body was thrown could not produce the driving license because it was inside the purse. He never told ASI

Rajinder Singh that some police personnel from Haryana Police has taken the driving license from him.

106. The sixth argument concerns the legal position pertaining to joint disclosure statements as discussed by the Supreme Court in the decision reported as AIR 2005 SC 3820 State v Navjot Sandhu in the following terms:

“Before parting with the discussion on the subject of confessions under Section 27, we may briefly refer to the legal position as regards joint disclosures. This point assumes relevance in the context of such disclosures made by the first two accused viz. Afzal and Shaukat. The admissibility of information said to have been furnished by both of them leading to the discovery of the hideouts of the deceased terrorists and the recovery of a laptop computer, a mobile phone and cash of ₹ 10 lacs from the truck in which they were found at Srinagar is in issue. Learned senior counsel Mr. Shanti Bhushan and Mr. Sushil Kumar appearing for the accused contend, as was contended before the High Court, that the disclosure and pointing out attributed to both cannot fall within the Ken of Section 27, whereas it is the contention of Mr. Gopal Subramaniam that there is no taboo against the admission of such information as incriminating evidence against both the informants/accused. Some of the High Courts have taken the view that the wording "a person" excludes the applicability of the Section to more than one person. But, that is too narrow a view to be taken. Joint disclosures to be more accurate, simultaneous disclosures, per se, are not inadmissible under Section 27. 'A person accused' need not necessarily be a single person, but it could be plurality of accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person

would have stated so substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the first person. Or, two persons in custody may be interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody go out of the purview of Section 27 altogether. If information is given one after the other without any break almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27. However, there may be practical difficulties in placing reliance on such evidence. It may be difficult for the witness (generally the police officer), to depose which accused spoke what words and in what sequence. In other words, the deposition in regard to the information given by the two accused may be exposed to criticism from the stand point of credibility and its nexus with discovery. Admissibility and credibility are two distinct aspects, as pointed out by Mr. Gopal Subramaniam. Whether and to what extent such a simultaneous disclosure could be relied upon by the Court is really a matter of evaluation of evidence. With these preparatory remarks, we have to refer to two decisions of this Court which are relied upon by the learned defence counsel.

107. From the afore-noted observations, it is clear that in order to place reliance upon a recovery made pursuant to a joint disclosure statement it is important that the witness to the recovery in question should state about the words spoken by the accused in their disclosure statements and the sequence in which they pointed out the object which was recovered.

108. In the instant case, none of the witnesses to the recovery of dead body of Anamica have stated as to what were the words spoken by Ravi and Vinod when they got Anamica's dead body recovered or the sequence

in which they pointed out the body. In such circumstances we have to accept the argument being the sixth submission advanced and hold that keeping in view the manner in which evidence has been led, the recovery of Anamica's dead body cannot be attributed to Ravi and Vinod in the manner sought to be proved by the prosecution. But would hasten to add that at least it would be evidence admissible under Section 8 of The Evidence Act of the conduct of Ravi and Vinod of leading the police party to a spot wherefrom Anamica's dead body was recovered.

109. The seventh submission regarding delay in sending the seized articles to CFSL deserves to be rejected for the reason HC Bharat Lal PW-15, Malkana Moharrar, had deposed that the articles seized in the present case remained intact and were not tampered till the time the same remained in his custody i.e. till they were sent to CFSL. The testimony of HC Bharat Lal PW-15, has not been controverted by the accused inasmuch as the accused have not cross-examined said witness. Further, Dr.S.K.Mohapatra PW-23, who had examined the seized articles has deposed that he had received the articles seized in the present case in CFSL in sealed condition on February 28, 2012. Again, the testimony of Dr.S.K.Mohapatra, has not been controverted by the accused inasmuch as the accused have not cross-examined said witness. In this view of the matter, the testimonies of HC Bharat Lal PW-15, that the articles seized in the present case remained intact and were not tampered till the time the same remained in his custody i.e. till they were sent to CFSL and Dr.S.K.Mohapatra PW-23, that articles seized in present case were received by him in a sealed condition has to be taken as correct. In this view of the matter, nothing turns on the fact that articles seized in the present case were sent to CFSL after 11/14 days of their seizure.

110. As regards the eighth submission, we have already discussed a part of the same while discussing the fourth submission relating to planting Ravi's hair on the body of Anamica and planting of other exhibits incriminating Rahul. Dealing with the limb of the submission that a hair of Anamica was planted in the car and after taking semen of the accused the same was planted in the vaginal swab of Anamica, suffice would it be to note that the post-mortem of Anamica was got conducted by Haryana Police and vaginal swab, blood sample of Anamica was handed over to HC Vinod PW-34, an official of Haryana Police, in a sealed condition, who in turn handed over the same to ASI Balwan Singh. After the post-mortem, the dead body of Anamica was handed over to her family. Thus, Delhi Police had no occasion to access the body of Anamica and thus could not have obtained and planted the hair sample of Anamica in the car. Further, the 'sealed' swab, samples etc. of Anamica were handed over by ASI Balwan Singh PW-46, to Inspector Sandeep Gupta PW-46, on February 16, 2012 who deposited the same in Malkhana of PS Chhawla on the same day. HC Bharat Lal PW-15, had deposed that samples of Anamica were received by him in the Malkhana in a sealed condition, which deposition has not been controverted by the accused.

111. Likewise, submissions relating to planting of samples of accused in the car is premised on the possibility of Inspector Sandeep Gupta planting the semen of Rahul and Vinod and for which it was urged that the testimony of PW-10 would evidence that he had cleaned the car and it is not possible that Inspector Sandeep Gupta failed to notice the semen stains are neither here nor there for the reason there is no evidence that Inspector Sandeep Gupta had with him the semen of the two accused. Further, Hari OM PW-10, owner of car, denied having washed the car between February

10, 2012 (when car was returned to him by Rahul) and February 13, 2012 (when car was seized by the police) due to non-availability of a driver and that he had merely cleaned the car on February 11, 2012. Also, the uncontroverted testimony of HC Bharat Lal PW-15, brings out that although the car was lying parked in garage of PS Jafarpur due to space constraints at PS Chhawla the keys of car as also garage of PS Jafarpur was deposited in Malkhana of PS Chhawla and was taken out from Malkhana after February 13, 2012 only on two occasions on February 16, 2012 and April 20, 2012 when the car was examined by CFSL Team, firstly when semen stain exhibits and hair were lifted and on the second occasion when the broken piece of bumper was matched. Thus ruling out possibility of planting of semen of Rahul and Vinod in the car as also planting of the hair of the deceased in the car. As regards the medical examination of Vinod which was conducted on February 13, 2012, Inspector Sandeep Gupta PW-48, has clarified in the subsequent portion of his cross-examination that all the accused were got medically examined by him on February 13, 2012 before producing them before the Magistrate within 24 hours of his arrest in compliance of the directions of Supreme Court in D.K. Basu's case and were again medically examined for purposes of obtaining their samples on February 14, 2012. There is no evidence that semen of the three accused was taken by the doctor. For purposes of DNA their blood samples were taken.

112. In order to deal with submission relating to broken piece of bumper of car found near the dead body of Anamica it would be most apposite to again note the following portion of the cross-examination of Hari Om PW-10, the owner of Indica car in question:-

*“The said car was not sent any repairs between 10.2.2012 and 13.2.2012 as no repair was required. Its front Bumper had become loose which I had myself tightened.” (**Emphasis Supplied**)*

113. The aforesaid deposition of Hari Om PW-10, in fact corroborates the case of the prosecution that a portion of the bumper of car in question got broken and was found near the dead body of Anamica. The aforesaid deposition of Hari Om PW-10, that the front bumper of his car had become loose and he had tightened the same clearly brings out that something was wrong with the front bumper of his car.

114. It is true that the call details record Ex.PW-28/F of mobile number of Rahul shows the presence of the mobile phone of Rahul in Delhi at 10.30 P.M. on February 09, 2012 whereas at the same time mobile phone number of Anamica was present in Haryana as evident from call details record Ex.PW-21/A of the mobile phone of Anamica. What has happened is this. Rahul’s mobile number is an MTNL number and whenever it is on roaming, while making or receiving a call it is connected to BSNL network. Whereas the BSNL network call details which were handed over by Sandeep Chaudhary PW-22 to MTNL, which regrettably have not been exhibited show that during the time in question Rahul’s mobile phone was in Jhajjar Haryana, there is a problem with the call record details generated by MTNL for the reason the working of the servers of MTNL, as in most government departments, is on an outdated technology. The memory stored in the servers of BSNL is transferred to the servers of MTNL and in the process the data gets corrupted. At best Rahul would be entitled to the benefit of call records pertaining to his mobile number being liable to be ignored as incriminating evidence against him.

115. Regarding absence of injuries on private parts of Anamica suffice would it be to state that it has been held in plethora of judgments by the Supreme Court that the absence of injuries on private parts of victim of rape does not imply that the victim has not been raped. (See the decision reported as 2012 (12) SCALE 506 Radhakrishna Nagesh v State of A.P.)

116. The submission pertaining to motive of the accused to commit the crime in question is a fallacious argument inasmuch as the prosecution has not projected the motive of the accused to commit the crime.

117. The facts would bring out that as feral beasts the three accused were on the prowl looking for a prey. They spotted one in Anamica. The plucked her out of the company of her friends. They had to feed their sexual desire. After satisfying the sexual desire they brutally murdered Anamica. They defiled her dead body evidenced by injuries No.15, 16 and 17. They heated the spanner of the car, in all probability by putting it in the silencer of the car when the car was on, they then branded the dead body around the right nipple and the umbilicus.

118. From the evidence on record we separately list what has been proved against each accused. But before that would highlight that Pooja Rawat PW-1 and Vikas PW-4, have deposed that on February 09, 2012 at about 08.45 P.M. Anamica was kidnapped by three persons in a red coloured Tata Indica car, which depositions have not been controverted by the accused. Thus, it stands established that on February 09, 2012 at about 08.45 P.M. Anamica was kidnapped by three persons in a red coloured Tata Indica car.

CASE AGAINST RAHUL

119. On February 09, 2012 ASI Rajinder Singh had apprehended Rahul while he was driving the red coloured Tata Indica car bearing registration No.DL 3C AF 4348 as he appeared to be in a perplexed condition. Pertinently, Rahul has not disputed that he was apprehended by ASI Rajinder Singh but has disputed the manner in which he was apprehended by ASI Rajinder Singh. (See the suggestion: *'It is wrong to suggest that accused Rahul was not apprehended by me in the manner as stated above'* given to ASI Rajender Singh PW-12, in his cross-examination by Rahul). Rahul has not been able to make good his case that ASI Rajinder Singh had not apprehended him in the manner as stated by him. Thus, it stands established that on February 09, 2012 ASI Rajinder Singh had apprehended Rahul while he was driving the red coloured Tata Indica car bearing registration No.DL 3C AF 4348.

120. A jack, spanner and a strand of hair were found in Tata Indica car bearing registration No.DL 3C AF 4348 being driven by Rahul. Jack was found to be stained with blood. DNA profile generated from jack and hair found in car and female fraction DNA obtained from vaginal swab of Anamica was found to be female in origin and consistent with each other, meaning thereby that the DNA of Anamica was found on the jack and hair found in the car. The injuries found on the person of Anamica were possible to have been caused by jack and spanner found in the car coupled with the fact that said jack was found to be stained with blood and DNA generated from said blood implied that Jack found in the car was used to hit Anamica. (The accused have not disputed the correctness of the report Ex.PW-23/A inasmuch as they have not cross-examined the author of said report viz. Dr.S.K.Mohapatra PW-23).

121. A broken piece of bumper was found near the dead body of Anamica, which bumper was opined to be the piece of the bumper of the red coloured Indica car bearing registration No.DL 3C AF 4348.

122. The facts that DNA of Anamica was found on the jack and hair found in the car coupled with the fact that the piece of the bumper of the red coloured Tata Indica car bearing registration No.DL 3C AF 4348 was recovered near the dead body of Anamica leaves no manner of doubt that the red coloured Tata Indica car bearing registration No. DL 3C AF 4348 was the red coloured Tata Indica car in which Anamica was kidnapped by three persons.

123. From the testimony of Hari Om PW-10 it is established that the car was with Rahul from 7:45 AM from January 09, 2012 till around 10:00 AM of February 10, 2012 i.e. during the period when the crime was committed.

124. Rahul's semen was detected on the seat cover of the TATA Indica car, meaning thereby that Rahul had raped Anamica in the car.

125. Rahul's purse containing two ATM cards, his driving license, photocopies of school leaving certificate and PAN card was found near the place where Anamica's dead body was recovered.

126. There is enough circumstantial evidence to sustain the verdict of guilt against Rahul.

CASE AGAINST RAVI

127. Against Ravi the incriminating evidence is his strand of hair recovered from Anamica's dead body and DNA extracted from his blood sample matching DNA extracted from the semen in the vaginal swab of

Anamica. It is true that even Vinod's DNA was extracted from the vaginal swab, but the report Ex.PW-23/A has categorically opined that the mixed profile so generated could have been developed by mixture of alleles contributed by Ravi and Vinod. Notwithstanding prosecution not being able to prove because Kuldeep PW-24 turned hostile that telephone No.8802090923 was with Ravi, but the testimony of the police officers show, as corroborated by his personal search memo that when he was arrested Ravi was carrying a mobile phone which was having said number. The prosecution was not to prove who owned the mobile number. As long as it was proved that the mobile phone having said number was with Ravi when he was arrested, onus was him to explain when and how he came in possession of the phone. The call records would evidence that during the period Anamica was removed from Delhi and her body dumped in village Rodai the said phone was around the area of village Rodai. There is sufficient evidence to sustain the conviction against Ravi.

CASE AGAINST VINOD

128. Against Vinod the incriminating evidence is the DNA profile from the semen extracted from the vaginal swab of Anamica matching his DNA profile and his semen being detected on the seat cover of the TATA Indica car. These, coupled with the fact that they were three persons who abducted Anamica is sufficient evidence to conclusively opine against his guilt.

129. We now turn to the issue of appropriate sentence to be imposed.

130. At the outset, we note that learned senior counsel appearing for Ravi submitted that in cases premised on circumstantial evidence, as the present case, death sentence ought not to be imposed by the Courts.

131. The said submission is only noted to be rejected in view of the clear enunciation of law by the Supreme Court in the judgment reported as (2008) 15 SCC 269 Shivaji alias Dadya Shankar Alhat v. State of Maharashtra, wherein concern was expressed by the Court on the rising number of cases involving rape and murder of young girls and it was pertinently observed:-

“27. The plea that in a case of circumstantial evidence death should not be awarded is without any logic. If the circumstantial evidence is found to be of unimpeachable character in establishing the guilt of the accused, that forms the foundation for conviction. That has nothing to do with the question of sentence as has been observed by this Court in various cases while awarding death sentence... In the balance sheet of such circumstances, the fact that the case rests on circumstantial evidence has no role to play. In fact in most of the cases where death sentence are awarded for rape and murder and the like, there is practically no scope for having an eye witness. They are not committed in the public view. But very nature of things in such cases, the available evidence is circumstantial evidence. If the said evidence has been found to be credible, cogent and trustworthy for the purpose of recording conviction, to treat that evidence as a mitigating circumstance, would amount to consideration of an irrelevant aspect...”[Emphasis Supplied]

132. We may give quietus to the said issue by also taking note of a decision of a Three Judge Bench of the Supreme Court reported as (2008) 13 SCC 767 Swamy Shraddhananda (2) alias Murli Manohar Mishra v. State of Karnataka, wherein the Court sounded a note of caution that there is no absolute rule that death sentence cannot be imposed in a case proved by circumstantial evidence.

133. In the decision reported as (2008) 11 SCC 113 Bantu v. State of Uttar Pradesh, whilst upholding the death sentence imposed on the

appellant for the offence of rape, coupled with murder, the Supreme Court cited with approval the observations of Lord Justice Denning- Master of Rolls and J.J. Rousseau; the legendary socio-political theorist. It would be apposite to reproduce the said observations:-

“23. Lord Justice Denning, Master of the Rolls of the Court of Appeals in England said to the Royal Commission on Capital Punishment in 1950:

Punishment is the way in which society expresses its denunciation of wrong doing; and, in order to maintain respect for the law, it is essential that the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishments as being a deterrent or reformatory or preventive and nothing else.... The truth is that some crimes are so outrageous that society insists on adequate punishment, because the wrong doer deserves it, irrespective of whether it is a deterrent or not.”

In J.J. Rousseau's The Social Contract written in 1762, he says the following:

Again, every rogue who criminally attacks social rights becomes, by his wrong, a rebel and a traitor to his fatherland. By contravening its laws, he ceases to be one of its citizens: he even wages war against it. In such circumstances, the State and he cannot both be saved: one or the other must perish. In killing the criminal, we destroy not so much a citizen as an enemy. The trial and judgments are proofs that he has broken the Social Contract, and so is no longer a member of the State.”[Emphasis Supplied]

134. The said observations unequivocally evince and bring to fore the sublime philosophy underlying the imposition of sanction (punishment) upon the wrong-doer when he is found guilty of commission of heinous crimes that imperil and endanger the very existence of the civilized society.

135. The Court also observed that undue sympathy to impose inadequate sentence would do incalculable harm to the justice system and undermine the public confidence in the efficacy of law. The society could not endure long under such serious threats and it was therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed.

136. As highlighted by us previously, the sordid facts of the present case reveal that the victim after having been abducted in public gaze and consequently removed from society, was ravished and murdered. The tale of malignity was far from its conclusion as thereafter the sadistic perpetrators grotesquely stamped the breast and the umbilical region of the deceased by using the heated spanner.

137. At this juncture, it would not be out of place to take notice of two decisions of the Supreme Court wherein the post crime conduct of the accused that evidenced his disregard for the human body was factored as a relevant circumstance, amongst others, while awarding the penalty of death.

138. In the decision reported as (2012) 4 SCC 37 Rajendra Pralhadrao Wasnik v. State of Maharashtra it was observed by the Court that the accused had left the deceased in a badly injured condition in the open fields without even clothes and the said fact reflects the most unfortunate and abusive facet of human conduct, for which the accused was to blame no one else than his own self. The Supreme Court took into consideration the said conduct of the accused amongst other features of the case and confirmed the sentence of death awarded by Courts below. The Court also reiterated the consistent view that a balance sheet of aggravating and mitigating circumstances was to be drawn by the Court and due weightage was to be accorded to the said circumstances. The Court would be required

to strike a balance between the two and assess towards which side the balance of justice tilts. It was also emphasized that the principle of proportion between the crime and the punishment is the principle of ‘*just deserts*’ that serves as the foundation of every criminal sentence that is justifiable.

139. Even earlier the Supreme Court in its decision reported as (1999) 9 SCC 581 Molai & Anr. v. State of Madhya Pradesh while confirming the death sentence took into consideration the fact that by throwing the dead body of the victim into septic tank, the accused totally disregarded the respect for the human body.

140. The learned senior counsel drew attention of this Court to the judgments of a two Judge Bench of the Supreme Court reported as (2013) 2 SCC 452 Sangeet v. State of Haryana and (2013) 5 SCC 546 Shankar Kisanrao Khade v. State of Maharashtra to contend that this Court may consider awarding consecutive sentences to the appellants for the offences, if found guilty, rather than confirming the extreme penalty of death. It was highlighted before us that in Sangeet’s case (supra), the Bench expressed reservations on the practice adopted by the Courts in awarding sentences of imprisonment wherein the possibility of release of the convict on remission was foreclosed for a prescribed period such as 20 years or 30 years. The learned senior counsel submitted that in view of the said observations comprised in Sangeet’s case (supra), the Supreme Court was pleased to award consecutive sentences upon the appellant as an alternative to death sentence in Khade’s case (supra).

141. Apropos the submission canvassed by the learned senior counsel predicated upon the observations contained in Sangeet’s case (supra), suffice would it be to highlight in the decision reported as (2013) 9 SCC 778 Sahib Hussain alias Sahib Jan v. State of Rajasthan the Supreme

Court has in this regard held that in light of the decision of the Larger Bench in Swamy Shraddananda's case, the observation made in Sangeet's case are not warranted. It was further observed that though the Division Bench in Sangeet's case raised a doubt about the decision of a Three Judge Bench in Swamy Sharaddananda's case, yet the same has not been referred to a Larger Bench and would hold the field.

142. The learned senior counsel also contended that death penalty ought not to be imposed in a case where even a single mitigating circumstance accrues in favour of the accused. The said submission was sought to be planked on certain observations contained in Khade's case (supra).

143. While advertent to our consideration to the said submission, it would be pertinent to take note of the observations of a Three Judge Bench of the Supreme Court comprised in its decision reported as (2014) 4 SCC 292 Mahesh Dhanaji Shinde v. State of Maharashtra wherein in para 26 and 31 it was observed:-

“26....The decision of this Court in Shankar Kisanrao Khade v. State of Maharashtra- (2013) 5 SCC 546 (para 52) has been relied upon to contend that:

"52...To award the death sentence, the "crime test" has to be fully satisfied, that is, 100% and "criminal test" 0%, that is, no mitigating circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc. the "criminal test" may favour the accused to avoid the capital punishment."

x x x

31...All that would be necessary to say is that the Constitution Bench in Bachan Singh(supra) had sounded a note of caution

against treating the aggravating and mitigating circumstances in separate water-tight compartments as in many situations it may be impossible to isolate them and both sets of circumstances will have to be considered to cull out the cumulative effect thereof. Viewed in the aforesaid context the observations contained in para 52 of Shankar Kisanrao Khade (supra) noted above, namely, 100% crime test and 0% criminal test may create situations which may well go beyond what was laid down in Bachan Singh (supra).”[Emphasis Supplied]

144. The said observations of the Three-Judge Bench of the Supreme Court furnish a complete answer to the submission canvassed by the learned senior counsel and judicial discipline obliges this Court to respectfully follow the law authoritatively laid down by a Five-Judge Bench of the Supreme Court in (1980) 2 SCC 684 in Bachan Singh v. State of Punjab in light of the observations contained in Shinde’s case (supra).

145. The recent decision delivered by a Three-Judge Bench of the Supreme Court in Shindes’s case (supra) also creases out the vexing ambiguities arising in connection with the legal principles governing the award of death sentence. The Division-Bench in Khade’s case (supra) highlighted cases/instances, which in the view of the Court constituted ‘departures’, wherein the principles applied earlier were not adhered to by the Court. The Court in Shinde’s case after taking note of the said observations in Khade’s case (supra) proceeded to clarify the position as reproduced below:-

“33. Though such departures may appear to give the sentencing jurisprudence in the country a subjective colour it is necessary to note that standardisation of cases for the purposes of imposition of sentence was disapproved in Bachan Singh (supra) holding that: "195...it is neither practicable nor desirable to imprison the sentencing discretion of a judge or jury in the strait-jacket of exhaustive and rigid standards".

34. In this regard, the observations with regard to the impossibility of laying down standards to regulate the exercise of the very wide discretion in matters of sentencing made in *Jagmohan Singh* (supra), (Para 29 hereinabove) may also be usefully recalled. In fact, the absence of any discretion in the matter of sentencing has been the prime reason for the indictment of Section 303 Indian Penal Code in *Mithu v. State of Punjab*: AIR 1983 SC 473...

35. In a recent pronouncement in *Sunil Dutt Sharma v. State (Govt. of NCT of Delhi)*: 2013 (12) SCALE 473 it has been observed by this Court that the principles of sentencing in our country are fairly well settled-the difficulty is not in identifying such principles but lies in the application thereof. Such application, we may respectfully add, is a matter of judicial expertise and experience where judicial wisdom must search for an answer to the vexed question--whether the option of life sentence is unquestionably foreclosed? The unbiased and trained judicial mind free from all prejudices and notions is the only asset which would guide the judge to reach the 'truth'."[Emphasis Supplied]

146. We would be failing not to note that in *Khade*'s case (supra), the court had analyzed the species of cases where the victim was raped and murdered. The analysis of the various decisions shows that the deadlock between a life sentence and a death sentence was resolved mostly by looking at whether the offence of rape and murder was a momentary lapse or was it pre-meditated and further whether the victim dies as a consequence and not because any overt act by the accused.

147. The said observations of the Supreme Court are a lodestar and guide us to charter our course through the thickets of the legal conundrum posed before us.

148. We look to current thinking and legislative trends abroad with reference to violent sexual crimes against women with not only rape being

the wrong act but followed by violent death and even a continued wrong in the form of violence against the dead body of the victim. It is obvious that such kinds of crimes would be psychopathic crimes.

149. Psychopathic personality disorder occupies a position at the heart of both forensic psychiatry and psychiatric criminal jurisprudence. This is because psychopaths lie at the intersection between the so-called ‘mad’ and ‘bad’- that is, between those who clearly warrant treatment (the seriously mentally ill) and those who should properly receive punishment. Psychopaths are thought to be peculiarly and inherently untouched by therapeutic or rehabilitative interventions - two of the commonly accepted diagnostic criteria for psychopathic personality disorder being a failure to learn from experience and a failure to show remorse. Psychopathy comprises forms of egotism, immaturity, aggressiveness, low frustration tolerance and inability to learn from experience that places psychopaths at high risk of clashing with any community that depends upon co-operation and individual responsibility of its members for its continued existence.

150. The hallmark of psychopathy is abnormal or deficient emotional responding. Cleckley’s (1955) classic diagnostic criteria for psychopathy include absence of nervousness, egocentricity, lack of remorse or shame, incapacity for love and general poverty in major affective reactions. There exists in them an abnormality in the processing of emotional stimuli. Psychopaths are persons with a personality disorder which is characterised solely or principally by abnormally aggressive or seriously irresponsible conduct.

151. The standard tool psychiatrists use for diagnosing psychopathy is the Hare’s ‘Psychopathy Checklist – Revised’ (PCL-R). This test is used as evidence of psychopathy in accused persons in courts of law in countries

like USA. The PCL-R consists of 20 criteria. Traditionally these criteria are divided into two subsets or 'factors'. Factor one comprises emotional deficiencies, such as lack of guilt and lack of empathy. Factor two is concerned with lifestyle issues such as impulsivity and parasitic lifestyle. 'Primary psychopaths' score highly on factor one criteria and 'secondary psychopaths' have high factor two scores.

PSYCHOPATHS AND CRIMINAL RESPONSIBILITY – 'mad' or 'bad'

152. It is believed that crimes of sexual psychopaths are motivated by sexual desires and impulses to commit violent acts that supposedly are difficult to control. This assumption is sometimes conflated with the idea that persons with such desires and impulses suffer from psychopathy or sociopathy, a deep-seated personality disorder or condition which can manifest as immoral or 'evil' behaviour. Hence the long-standing controversy over whether persons so afflicted are 'mad' or 'bad'. The psychiatric profession may be divided about the status of psychopathy and matters are further complicated by the absence of any generally agreed psychiatric definition of mental disorder, however most criminal justice systems understand that psychopathy is not a genuine disorder and that psychopaths are simply 'bad' not 'mad'. While legal definitions of disorder should be informed by relevant psychiatric expertise, it is vital that such definitions are also appropriate to the context of criminal responsibility. When psychiatrists frame definitions of disorder they often have ideas in mind that are not relevant to criminal responsibility. Many jurisdictions justify excluding psychopathy from mental non-responsibility on the basis that it was merely a volitional disorder which impairs (but does not eliminate) self-control. Only a cognitive disorder, rendering the individual

unable 'to appreciate the nature and wrongfulness of criminal conduct' (as is the law in India) could provide grounds for a complete excuse.

153. It is the dominant view among psychiatrists and the law that psychopathy should not mitigate or remove criminal responsibility. Robert Hare a leading researcher in psychopathy notes that in most jurisdictions psychopathy is considered to be an aggravating rather than a mitigating factor in determining criminal responsibility. In line with this stance researches suggest that a diagnosis of psychopathy may result in harsher judicial sentencing or may even be used to justify imposition of the death penalty rather than a life sentence. Psychopathy is said to aggravate rather than mitigate responsibility because of the diagnostic features and clinical description of psychopathy. Psychopaths are callous, manipulative, deceitful, indifferent to the rights of others and lacking in empathy and remorse. A diagnosis of psychopathy looks to be evidence not of impairment but of the offender's lack of any redeeming qualities that the court could take into account. A number of recent researches and papers in psychiatry and law have argued that the impairments observed in psychopathy should not be considered to be exculpating.

DEALING WITH PSYCHOPATHS - COMMUNITY PROTECTION APPROACH

154. A key aspect of sexual psychopathy is that it is often believed to be virtually untreatable (at best 'burning out' with old age) and thus requires long-term confinement or other means of incapacitation. The approach of most countries to control criminal psychopaths has been predicated on the notion that they constitute a particularly dangerous class of offenders. This is based on the combination to commit grave harm i.e physical, psychological and moral against a vulnerable segment of population

particularly women and children and a high probability of repeating crimes unless special controls are exercised. The notion of dangerousness as propensity plus probability or risk underlies special legislations for sex offenders in countries like USA, UK and Canada. The legislations of these countries includes not only special measures for those offenders at the high end of the spectrum of risk (who are variously categorized as criminal sexual psychopaths, sexually dangerous persons, dangerous sexual offenders, dangerous offenders, sexually violent predators, high-risk offenders, or long-term offenders), but also ensure measures such as registration and notification covering all or most persons who have been convicted of a sexual offence and are capable of repeating their crimes in future. The community protection model suggests that the best way to deal with the risk posed by sex offenders is through the use of a combination of social controls, both during incarceration and after release into the community. Such mechanisms of risk management include: longer sentences and detention until warrant expiry date, intensive community supervision orders restricting freedom of movement and association, community notification of the release of sex offenders, sex offender registration, legislatively mandated chemical castration (in the USA), and civil and criminal commitment allowing for indeterminate confinement based on a designation of extreme dangerousness and severe personality disorder. In countries like USA and Canada the clinical models of dangerousness emphasizing diagnosis and treatment of psychopathology have been supplanted by approaches emphasizing actuarial risk assessment and risk management. Also concerns with fundamental justice issues, such as due process, proportionality, and privacy rights, have given way to community protection concerns. There is an effort to enact and enforce

public-safety measures that seek to prevent crime by ‘regulating’ criminal defendants.

RATIONALE FOR PUNISHMENT- PREVENTION/PUNISHMENT DISTINCTION - The Jurisprudence of Prevention

155. The goals of punishment are retaliation, recognition of victim status, confirmation of societal values, victim security, and societal security. The theories of the purposes and justifications of punishment divide broadly into the retributive and the utilitarian. While utilitarian theories are forward looking and focused on the beneficial consequences for society and the individual that may be brought about by punishment, retributivist or desert theories are fundamentally backward looking with focus on the agent and their relation to the wrongful act.

156. The utilitarian theories are concerned with deterrence and protection of the community. The utilitarian theory justifies the need to protect society against psychopathic offenders since they are dangerous and calculated predators and commit significantly more crimes which are violent and aggressive. Their propensity for violent crimes is higher so are their chances of repeating crimes making them a strong and continuing threat to society. Psychopathy is a significant predictor of violent recidivism. Thus psychopathy is an aggravating rather than mitigating factor in sentencing and results in harsh judicial sentencing or has even been used to justify imposition of death penalty rather than life sentence.

157. The society considers sexual psychopaths also referred to as sexual predators as mentally or at least biologically stunted individuals who act upon uncontrollable urges, and therefore present a continuing, unmanageable and amorphous threat as instinct-driven and dangerous animals. Sexual psychopaths are set apart not only from the general

population but even from other criminals. While the public empathizes with the victims and their families, its fear of ‘sexual predators’ stems from the difficulty of detecting them, concern about their re-offending and the perceived impossibility of curing them. As a consequence of the conceptualization of sexual offenders as ‘predators’, desert-based sentencing becomes largely irrelevant. Even though retributory ideals and the proportionality principle are thought to dominate most modern sentencing regimes, punishment does not play a large part in the present discourse over what to do with sexual offenders. Instead incapacitation is at the heart of the presumed solution because sexual psychopaths are perceived as a persistent threat. While incapacitation implies primarily long-term imprisonment or indeterminate civil commitment, often combined with ineffective or almost non-existent treatment programs, proposals to mandate biological anchor chemical castration stem from the same desire to prevent recidivism.

158. Criminal justice systems have rejected the notion that detention is necessarily punitive and have adopted the view that liberty restrictions based on predictions of future dangerousness may fall on the regulatory side of the dichotomy between prevention and punishment. Recent legislative developments with respect to the disposition of sexual offenders have been driven by the desire to guarantee public safety. They have shifted the balance ‘away from the adjudication of demonstrated blameworthiness and due process in favour of the prediction of future dangerousness and crime control. They have shifted the balance away from the adjudication of demonstrated blameworthiness and due process in favour of the prediction of future dangerousness and crime control being essentially ‘preventive’ rather than ‘punitive’.

DANGEROUS OFFENDER LEGISLATIONS IN USA, CANADA & UK–EXECUTING THE COMMUNITY PROTECTION APPROACH

USA

159. In the **USA** comprehensive community protection measures as a solution to the problems posed by predatory sex offenders came into being with the enactment of **Washington’s Community Protection Act in 1990**. This legislation was a reaction to several high-profile sexual assaults, most notably the brutal sexual assault in 1989 of a seven-year-old boy by Earl Shriner, a violent and sadistic pedophilic offender who had completed his sentence for a previous brutal assault but was deemed ineligible for commitment under state mental health laws despite a history of mental disorder. The Community Protection Act was conceived of as a set of measures (notably sex offender registration, community notification, and civil commitment of sexually violent predators) that could prevent predatory sexual assaults. Legislations enabling the civil commitment of persons designated as sexually violent predators has since been enacted in most states in USA. **Sex offender registries (SORs)** have been enacted, these are databases of information about persons convicted of sex offences who have received probation or completed the incarceration portion of their sentence and now reside in the community. SORs can also include patients released into the community after being found criminally insane for a sex offense and committed to a psychiatric hospital. *SORs are predicated on the belief that sex offenders, more than other kinds of offenders, have an enduring disposition to offend and therefore should have their rights to privacy and freedom of movement severely limited in the interests of public safety.* The assumptions are that convicted sex offenders released into the community will be under police supervision and

that current reliable information on their whereabouts and life circumstances will act both as a deterrent for the offender and as an investigative tool for the police to help them identify and apprehend previously convicted persons who are suspected of new sexual offenses. SORs typically require individuals to register with the local police, provide personal details, and report any changes in the information presented. Personal details may include information such as the offender's photo, description, date of birth, aliases, offense type(s), and home address. Registrants are required to report to the local authorities at designated time intervals to update their information. For most jurisdictions, this occurs annually, although some high-risk offenders in the United States are required to register every few months. Any change in residence or plans for travel requires the registrant to alert authorities of the change within a given period of time. In 1994, the movement to register offenders in the United States became national with the enactment of the **Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act (JWA)**. State sex offender registries are premised on the claim that sex offenders require special monitoring because of their supposed enduring propensity to engage repeatedly in sex offenses. In 1996, the **Pam Lychner Sexual Offender Tracking and Identification Act** was passed as an amendment to the JWA. This Act required lifetime registration for offenders convicted of one or more sexual offenses involving penetration of a victim below the age of twelve, whether or not force or threat was used, or any penetrative sex act involving the use of force or threat against persons over the age of twelve. The Lychner Act also mandated the FBI to create, within three years, a national sex offender registry (NSOR) that would link the registries of individual states and enable the tracking of sex offenders across state lines. In 2005, the **Dru Sjoдин National Sex**

Offender Public Database Act, or ‘Dru’s Law’, was enacted which mandated the United States Department of Justice to create a database of registrants, accessible to the public via the Internet, which would allow users to specify a search radius that crosses state lines. In 2006, the United States Congress repealed the Jacob Wetterling Act and replaced it with the **Adam Walsh Child Protection and Safety Act**. The Walsh Act requires that the dangerousness of offenders be ranked using a three-tier system. Those considered most dangerous in terms of such factors as the likelihood of their reoffending, the gravity of their offenses, and the age of their victims are designated Tier Three and required to register for life; those deemed Tier Two, or somewhat more dangerous than those in Tier One, are required to register for twenty- five years; and those deemed Tier One, or least dangerous in terms of the criteria specified in the legislation, are required to register for fifteen years. There are no provisions for a petition for change of tier or removal from the registry. Other components of the Act include a requirement for the offender to register no more than three days after custodial release, registration of juveniles convicted of aggravated sexual assault, and the collection of DNA samples. Information on all sex offenders must be distributed to local law enforcement agents where the offender lives, works, or attends school.

160. **Community notification** - In USA there some states have a formal mechanism to notify the community about the presence of sex offenders. This theme of community members’ ‘right to know’ about the presence of sex offenders in their neighborhoods was central in the spread of this type of legislation across the United States. In 1996, a federal community notification provision called **Megan’s Law (the Child Sexual Abuse Registry Act)** was signed by President Clinton. The Megan’s Law amendment to the JWA requires all states to ‘release relevant information’

necessary to protect the public and provides penalties for all states failing to comply within three years with the new notification requirement, in the form of a ten percent reduction in federal law enforcement funds. Courts have generally upheld notification laws on the basis that they are not intended to punish sex offenders but rather are regulatory measures designed to protect the public.

161. **Sexually Violent Predator (SVP) Statutes** The SVP designation is intended as a measure for the ‘small but extremely dangerous group’ of violent sex offenders considered highly likely to commit further serious personal injury offenses after being released from prison following completion of their sentences. An SVP application can also be used for persons meeting the statutory criteria who have been released from a psychiatric hospital on the basis that they do not meet the criteria for hospitalization—that is, a diagnosis of active mental disorder and an assessment of imminent dangerousness. These statutes, by using the terms ‘personality disorder’ and ‘mental abnormality’, rather than ‘mental disorder’, primarily target individuals who (however aberrant and dangerous), did not meet the criteria for involuntary hospitalization under civil mental health law. The constitutionality of such statutes have been upheld on the ground that the legislation was civil and not criminal in nature, since its manifest intention was not to punish the convict for his condition, but rather to protect the public by preventing him from committing sexual offenses.

162. **Legislation Providing for the Chemical Castration of Sex Offenders as a Condition of Probation or Parole** In contrast with Europe, there has been a great reluctance in both the United States and Canada to allow surgical castration to be used for sex offenders, mainly

because the permanence of such a procedure is seen by many medical doctors to pose ethical problems. Currently, chemical castration using antiandrogens (often combined with cognitive behavioral relapse prevention therapy) is frequently used in sexoffender treatment. Antiandrogens (usually a synthetic progesterone such as Depo-Provera or a gonadotropic releasing hormone such as Luprolide) reduce serum testosterone levels in males with the aim of reducing their sex drive. The concern that many sex offenders are irredeemably dangerous and can neither be deterred by fixed prison sentences nor reliably cured by psychotherapies and behavioral therapies alone has led to *mandatory antiandrogen treatment as a probation or parole condition in the interest of community protection*. Antiandrogen treatment is intended to complement community risk-reduction methods, such as registration and notification, and perhaps be used in cases where post-sentence civil commitment is not deemed to be appropriate. In the United States, there has been, since the 1980s, a shift in jurisprudence away from an emphasis on due process to an emphasis on crime control.

CANADA

163. In Canada the Dangerous Sexual Offender (DSO) legislation was applied to offenders convicted of a serious personal injury offense who manifested a pattern of persistent aggressive behaviour or an inability to control their sexual impulses. The status of dangerous offender, once applied, remains in force for life and a released dangerous offender is subject to lifetime parole. In 1994, the Federal Government enacted Bill C-126 to enable judges to issue life-long probation orders prohibiting sex offenders from frequenting playgrounds and other areas where children might be present. More significant in terms of the development of a

Canadian community protection model was the application of the principle of 'preventative justice' in § 810 of the Criminal Code, which allowed the court to issue an order (variously referred to as a peace bond, judicial restraint, or recognizance order) placing restrictions on a person's freedom of movement and associations, his place of residence, and his access to firearms or alcohol. A common condition is that a particular person not contact others he or she was deemed to be at risk of harming and not frequent places where such harm was deemed likely to occur. A peace bond under § 810 is intended to be preventive, not punitive. It can be applied both to someone who has already been penalized after being convicted of an offense and to someone who has not been convicted of an offense, if there is evidence suggesting substantial risk that he might do so. In September 1996, the federal government announced the introduction of Bill C-55, the High-Risk Offenders Initiative, to amend the existing Dangerous offender (DO) legislation in three ways: removal of judicial discretion to combine a DO designation with a determinate sentence; assessment of offenders considered for a DO designation by a multi-disciplinary team rather than experts for the prosecution and defense; and extension of initial eligibility for parole from three to seven years. In addition, a new long-term offender (LTO) designation was created. This allowed the courts, using the same criteria for a DO designation, to issue (in addition to the regular sentence) a probation order of up to ten years to individuals at high risk to reoffend who did not require indeterminate confinement as a DO because their risk of reoffense could be managed in a community setting. An offender who does not comply with the terms of an LTO supervision order is liable to receive a prison term of up to ten years. In contrast with the United States, where sex offender registries preceded the development of formal provisions for community notification, various

Canadian provinces set up community notification systems without setting up a registry. Some police officials and victims' groups argued that the community has the right to know such information, especially when corrections officials have identified a released sex offender as likely to reoffend. In 2000, the Government of Ontario acted on its own to introduce 'Bill 31, An Act, in memory of Christopher Stephenson, to establish and maintain a registry of sex offenders to protect children and communities.' Under § 3 of Christopher's Law (the sex offender registry provision), persons resident in Ontario who have been convicted (or found not guilty by reason of mental disorder) of specified sex offenses are required to provide information about themselves to the police for the purpose of registration. This information includes the person's name, birth date, and address, and must be provided within fifteen days of release from a prison or psychiatric hospital, fifteen days before coming or ceasing to be a resident of Ontario, and within fifteen days of a change of address. The federal Sex Offender Information Registration Act(SOIRA) creating a national sex offender registry under the control of the RCMP was finally passed in 2004.The latest is a legislation in 2005 mandating a hearing to consider the imposition of a DO designation following a third conviction for one or more of a designated list of offenses. Under the terms of this legislation, the onus is on the offender to give evidence as to why a DO designation should not be imposed and an LTO designation or a determinate sentence imposed instead. The legislation was passed by the Canadian Senate in the fall of 2007. Under the same legislation, the term of a § 810 order was increased from one year to two.

164. Thus in countries like USA and Canada the dangerousness of sex offenders has been attempted to be managed through community protection legislative initiatives; treatment, including cognitive behavioral

therapy and pharmacotherapy, such as the use of antiandrogens; or restorative justice alternatives, such as Circles of Support and Accountability (CoSA). Special legislation providing indeterminate sentences for criminal sexual psychopaths, dangerous sexual offenders, and dangerous offenders was intended to incapacitate and treat offenders deemed to be unable to control their impulses to offend sexually and/or violently.

UNITED KINGDOM

165. **Sex Offender Act 1997** required offenders who have committed sexual offenses against children to register with police authorities throughout the United Kingdom. The act further required these offenders to notify the police of a change of address or name. **The Sexual Offences Act 2003** (like the Sex Offenders Act 1997, which it replaced) aims at protecting society from sexual offenders, provides that persons are required to notify their local police force of their name, address and other details (and any changes to those details) if, in respect of certain sexual offences, they are: convicted of the offence; or found not guilty of the offence by reason of insanity; or found to be under a disability and to have done the act he or she is charged with; or (in England, Wales or Northern Ireland) cautioned for the offence

166. The details are recorded by the police on a ‘register’, and this assists the police in monitoring the whereabouts of any sex offenders living in their community. The notification requirement for sex offenders is not a ‘sentence’ imposed by the courts and, therefore, does not attract a rehabilitation period. The length of the notification period depends on whether the person was cautioned or convicted for the offence and any term of imprisonment to which the person was sentenced.

167. Under this Act a court may make a Sexual offences prevention orders (SOPO) in certain cases where a person falls within the categories above and the person's behaviour since the relevant date makes it necessary to make an order to protect the public (or a specific member of the public) from serious sexual harm from the offender. As with notification orders, the police can also apply for a SOPO to be made. A SOPO contains specific prohibitions designed to protect the public from serious sexual harm. It remains in effect for the period specified in the order. A SOPO will be in force for a period of not less than 5 years. Where a person is already subject to the notification requirements of the Sex Offenders Register, the notification period is extended until such time as the SOPO ceases (even if the notification period would have ceased while the SOPO was in force). Where a SOPO is made in respect of a person who is not already subject to any notification requirements, that person will become subject to the notification requirements.

168. The **Mental Health Act 1983**(now amended by the Mental Health Act, 2007) in section 1(2) (pre amendment) defined psychopathic disorder as:

‘psychopathic disorder’ means a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned”.

169. Ever since ‘psychopathic disorder’ was introduced by the Mental Health Act 1959 as a category of mental disorder, some doctors and lawyers have harboured doubts about its proper status whilst others have regarded it as an authentic disorder which can in some cases be treated. The Mental Health Act 1983 sought to restrict the making of hospital

orders upon psychopathic offenders to those cases in which the court is satisfied that the offender's condition is 'treatable'.

170. **The Crime (Sentences) Act 1997** superficially adjusts the balance between psychopaths and society in order better to protect members of the public. The introduction of the 'hospital and limitation direction' under section 46 of the Crime (Sentences) Act 1997, amending section 45 of the Mental Health Act 1983, allows courts to sentence offenders suffering from psychopathic disorder to a period of imprisonment, whilst directing that they be admitted to hospital for treatment. In short, the 'hospital direction' gives the courts the power (in cases where the sentence is not fixed by law) to impose a sentence of imprisonment and yet direct that the offender be sent to hospital forthwith. The 'limitation direction' constrains the powers of the Responsible Medical Officer (RMO) and places the preponderance of control with the Secretary of State (as set out in section 41 of the Mental Health Act 1983). Before making the hospital and limitation direction certain technical conditions must be fulfilled. In particular, two registered medical practitioners (they are not required to be forensic psychiatrists, general psychiatrists, or even section 12(2) 'approved') must give oral or written evidence:

- “(a) that the offender is suffering from psychopathic disorder*
- (b) that the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment:*
and
- (c) that such treatment is likely to alleviate or prevent a deterioration of his condition.”*

171. Notably, these are also the standard admission criteria for a hospital order. Section 45A(4) also requires the attendance of one of the medical practitioners to give evidence orally (mirroring the requirement for a

restriction order with a hospital order). Once in hospital, the offender will be dealt with as if subject to a section 47/49 order (that is, as a sentenced prisoner transferred to hospital but subject to a restriction direction). Section 45B(2) makes it plain that hospital and limitation directions are to have the same effect as transfer and restriction directions respectively. Thus, after admission, 'hospital and limitation' direction patients are to be treated not as hospital order patients but as if they had been transferred from prison during a sentence of imprisonment. In turn, this means that they may either serve their entire sentence in hospital, where the RMO is satisfied that they continue to benefit from treatment, or, on the recommendation of the RMO, they may be transferred to prison (under HO warrant section 50(1) of the Mental Health Act 1983) to finish their sentence. Hospital direction patients will also be in a curious position by virtue of their right to have their cases reviewed by the Mental Health Review Tribunal (MHRT). The tribunal may decide that they would ordinarily be entitled to be conditionally discharged (were they not also on a concurrent sentence of imprisonment) but that, given such 'discharge' would, in their particular circumstances, imply going to prison (without comprehensive mental health facilities) rather than to the community (with such facilities) the tribunal may nonetheless recommend that the offender continue to be detained in hospital (even though not needing hospital treatment). If the tribunal does not so recommend, the hospital direction patient will be transferred back to prison (with whatever detrimental consequences that may entail).

172. To make a distillate, the literature on the subject guides us that sex offenders can be classified as criminal sexual psychopaths who are least dangerous and who would be the peeping Tom voyagers or those who evince exhibitionism. The next category would comprise sexually

dangerous persons and in this category would fall those who commit violent rape with brutality. They may not intend to cause the death of the victim, but death results from the brutality inflicted. The third category which is the most dangerous to the society, would be the dangerous and violent sexual predators and offenders who lack empathy and remorse. The first category would be depraved, the second would be heinous and the last would be horrible. The first category does not inflict any physical pain on the victim. The second category, while perpetrating the crime cause grotesque suffering in the victim. The last category causes not only grotesque suffering in the victim but even defiles the victim after the crime. The third category is the extreme form of sadomasochism. Society has to be protected from such sexually violent, dangerous predator sexual offender. The dominant view is that psychopathy, far from mitigating criminal responsibility is considered to be an aggravating factor. Protection of the society from psychopathic offenders who are calculated predators has to be given primacy. Legislations world over for brutal assaults are aimed at insuring that sexual predators and specially if they are of the violent kind, are far removed from society - to protect the society, to the extent that they be kept in detention till death or till age overtakes them and incapacitate them. Experts draw a distinction between criminal sexual psychopaths and dangerous sexual offenders, the latter being considered a greater threat to society.

173. Societies may do their best, there will still remain, after all has been said and done, one problem that has to be faced. One may minimise the difficulty every way, and indeed it is everybody's duty to do so, but no amount of hopefulness can make us blink the fact that when all has been done and every chance has been offered, there will still remain a residuum of men and women who have, whether from heredity or custom or

hopeless demoralization, become reprobates. The science of humans guides that some persistent habits tend to convert a human, from a being with freedom of action and will, into a mere automation. There are some cases which emerge which seem to confirm that somewhat dreadful verdict, by which a man appears to be a lost soul, to be put on the other side of the earth : grave. There are humans so incorrigibly lazy that no inducement that you can offer will tempt them to work; so eaten up by vice that virtue is abhorrent to them, and so inveterately dishonest that theft is to them a master passion. Such a human being has reached a stage where there is perhaps left only one course that can be rationally pursued. Sorrowfully, but remorselessly, it must be recognized that this human has become lunatic, morally demented, incapable of self-government, and that upon him therefore, must be passed the sentence of permanent seclusion from a world in which he is not fit to be at large. Indeed, it would be a crime against the society to allow those who are so inveterately depraved the freedom to wander, in fact their fellows, prey upon society, and to multiply their kind. Whatever else society may do, and suffer to be done, this thing it ought not to allow, any more than it should allow the free perambulation of a mad law.

174. In India, taking cognizance that some violent sexual offenders believe that every woman on the street belongs to their league and hence was available to satisfy the lust, the Criminal Law (Amendment) Act, 2013 substituted Section 376A in the Penal Code with effect from February 03, 2013, prescribing that whoever commits an offence punishable under sub-Section 1 or sub-Section 2 of Section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in an persistent vegetative state shall be punished with vigorous imprisonment for a term which shall not be less than 20

years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death. Of course, the latter to be imposed in the rarest of rare case keeping in view the reasoning in Bachhan Singh's case (supra).

175. We refer back to the first three paragraphs of our decision which brings out that the three accused moved as trained blood hounds, picking out a scent. They got one when they saw Pooja, Sangeeta, Saraswati and Anamica. So swift and furtive were their movements that the other three girls could hardly react. It was not as if the three accused saw a lonely woman on the street and the evil in them overtook the good in them. It is not that they acted upon a sudden impulse. They were predators moving on the streets and were looking for a prey. The three snatched Anamica from the society. Their hunter's mind was hard and unyielding. The predominant idea of finding a victim to rape and then kill her had taken such complete possession of their mind that there was no room for any emotion. Satisfying their lust and executing their design to kill the helpless Anamica, the record which they left upon her dead body was a sign : this is not a common rape followed by murder. It is a whimsical and bizarre crime, conceits of which kind are not common in the annals of crime. After raping unfortunate Anamica, they battered her to death. They then defiled her body. Their acts revealed the intention to carry out a crime for the excitement of a criminal act. From the injuries caused to Anamica which led to her death it is apparent that the duration of Anamica's physical suffering was prolonged, it is apparent that the three accused intended to traumatize the victim emotionally, maximizing terror through humiliation, all for experiencing pleasure of the criminal action and the pain and suffering of Anamica and benefit from the excitement of the criminal act.

176. The legislative response to such kind of crime with effect from February 03, 2013 cannot be applied in the instant case because the crime was committed prior to the law being amended. But we cannot ignore that in a rarest of rare case where the crime and the criminal test are satisfied, sentence of death can be inflicted for a violent rape followed by murder and specially when the accused have acted as predators, have snatched a member of the society from the society to commit the crime. Having committed the crime the predators have defiled the body of the victim. Society has to be protected. It cannot be forgotten that punishment is a moral sanction by the society, not merely a penalty such as a parking fine, which may be imposed without the moral weight of a finding of criminal responsibility.

177. The three criminal appeals filed by Rahul, Vinod and Ravi are dismissed. The death reference is answered by affirming the sentence of death imposed upon the three for the offence punishable under Section 302 IPC. The sentences for the other offences are also affirmed.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 26, 2014

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