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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Reference No. 4 of 2014****Judgment Reserved on: 23/08/2016****Judgment Delivered on : 30/11/2016**

State of Chhattisgarh, Through Station House Officer, Police
Station Durg, District Durg, Chhattisgarh.

---- Appellant**Versus**

1. Ishwari Lal Yadav S/o Shri Kewal Ram Yadav Aged About 40 Years R/o Bhidora, Thana Bilaigarh Raipur, Present Address- Bajrang Chowk Ruabandha, Thana Bhilainagar, Distt. Durg C.G.
2. Smt. Kiran Yadav @ Gurumata W/o Ishwari Yadav Aged About 35 Years R/o Bhidora, Thana Bilaigarh Raipur, Present Address Bajrang Chowk Ruabandha, Thana Bhilainagar, Distt. Durg C.G.
3. Rajendra Kumar Mahar S/o Tukaram Mahar Aged About 26 Years R/o Ruabandha, Azad Chowk Bhilai, Thana Bhilainagar, Distt. Durg C.G.
4. Mahanand Yadav S/o Shri Janaklal Yadav Aged About 34 Years R/o Near Bajrang Mandir Bhathapara Hanoda, Thana Utai, Distt. Durg C.G.

---- Respondents**Criminal Appeal No. 1068 of 2014**

1. Ishwari Lal Yadav S/o Shri Kewal Ram Yadav Aged About 40 Years R/o Ruabandha, Bajrang Chowk, P.S. Bhilai Nagar, Distt. Durg C.G.
2. Smt. Kiran Yadav @ Gurumata W/o Ishwari Lal Yadav Aged About 35 Years R/o Bajrang Chowk, Ruabandha, PS Bhilainagar, Distt. Durg C.G.
3. Rajendra Kumar Mahar S/o Tukaram Mahar Aged About 26 Years R/o Ruabandha, Azad Chowk Bhilai, PS Bhilainagar, Distt. Durg C.G.

---- Appellants

Versus

State of Chhattisgarh, Through Station House Officer, Police
of Police Station Durg, District Durg, Chhattisgarh.

---- Respondent

For Accused/Appellants : Shri B.P.Singh, Shri A.N.Bhakta and Shri
Vivek Bhakta, Advocates.

For Respondent/State : Shri Prafull N Bharat, Additional Advocate
General and Shri Vinod Deshmukh,
Deputy Government Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Justice Sanjay K. Agrawal.

C.A.V. Judgment**Per Deepak Gupta, Chief Justice**

1. Criminal Appeal No. 1068 of 2014 filed by the Accused/Appellants is directed against the judgment dated 25.09.2014 passed in Sessions Trial No. 98 of 2011 whereby the learned Sessions Judge Durg, has convicted and sentenced the Appellants as follows:

Accused	Conviction U/s.	Sentence
Ishwari Lal Yadav	364/34 and 120B IPC	Imprisonment for life and fine of Rs. 5000/- In default of payment of fine, further rigorous imprisonment for four months.
	302/34 and 120B IPC	Death sentence and fine of Rs. 5000/-. In default of payment of fine, further rigorous imprisonment for four months.
	201 IPC	Rigorous imprisonment for five years and fine of Rs. 2000/-. In default of payment of fine, two months rigorous imprisonment.

Smt. Kiran Yadav @ Gurumata	364/34 and 120B IPC	Imprisonment for life and fine of Rs. 5000/- In default of payment of fine, further rigorous imprisonment for four months.
	302/34 and 120B IPC	Death sentence and fine of Rs. 5000/-. In default of payment of fine, further rigorous imprisonment for four months.
	201 IPC	Rigorous imprisonment for five years and fine of Rs. 2000/-. In default of payment of fine, two months rigorous imprisonment.
Rajendra Kumar Mahar	364/34 and 120B IPC	Imprisonment for life and fine of Rs. 5000/- In default of payment of fine, further rigorous imprisonment for four months.
	302/34 and 120B IPC	Death sentence and fine of Rs. 5000/-. In default of payment of fine, further rigorous imprisonment for four months.
	201 IPC	Rigorous imprisonment for five years and fine of Rs. 2000/-. In default of payment of fine, two months rigorous imprisonment.

2. Since the Accused/Appellants namely, Ishwari Lal Yadav (A-1), Smt. Kiran Yadav @ Gurumata (A-2), Rajendra Kumar Mahar (A-3) and Mahanand Yadav (A-4) were sentenced to death, the Sessions Judge also made a reference to this Court in terms of Section 366 of the Code of Criminal Procedure, 1973 for confirmation of death sentence. Both the appeal and the reference are being disposed of by this common judgment.

3. Briefly stated facts of the case are that on 23.11.2010, one small male child namely Chirag Rajput was found missing from his house. The allegation of the prosecution is that the parents of the child lodged a missing person report in Police Station, Bhilai Nagar, District Durg and thereafter, they were searching for their child. Later, in the afternoon, on 23.11.2010, they heard extremely loud music being played in the house of Ishwari Lal Yadav (A-1) and his wife Smt. Kiran Yadav (A-2). The people of the locality became suspicious and entered the house of Ishwari Lal Yadav. At that time, in the said house, they found these two persons alongwith some other persons. There was a freshly dug mound of earth and Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) admitted that they had killed Chirag. According to the prosecution, this child-Chirag had been killed for witchcraft (Tantra-Mantra) so that Smt. Kiran Yadav (A-2) who was a Tantric could attain "*siddhi*". Thereafter, during the investigation of this case, one of the accused in the case namely Mahanand Yadav (A-4) made a statement to the police that about seven/eight months earlier, he had kidnapped one small girl on the asking of A-1 and A-2. He had brought the girl to the house of Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2). The said girl had been killed by way of human sacrifice and her body was buried in the compound of the first two Accused. On 24.11.2010, one Constable of Bhilai Nagar Police Station made 'O' entry to the effect that an information has been received that the kidnapped girl had been killed by way of human sacrifice and her skeletal remains were recovered alongwith the clothes which she was wearing. This is

evident from the Dehati merg intimation (Exhibit P-28) and merg intimation (Exhibit P-29). On the said date, *Dehatinalishi* (Exhibit P-15) was also recorded. On the basis of this statement, investigation was done and the skeletal remains of a small girl were recovered.

4. Prior to this, on 04.03.2010, Beeru Dewar (PW-2) had lodged a missing person report to the effect that his six year old daughter, Ku. Manisha is missing. After recovery of the skeletal remains, DNA profile test was conducted and it was determined that the skeletal remains found in the house of Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) were those of Ku. Manisha who was earlier reported to be missing. Thereafter, the three Appellants- (A-1), (A-2) and (A-3) and Accused-Mahanand Yadav were charged with having conspired to kidnap a minor child and also murdering the child by way of human sacrifice. They were also charged for concealing evidence of their crime by burying the body of the child in the house of Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2). After trial, the three Appellants, (A-1), (A-2) and (A-3) and the Accused-Mahanand Yadav were convicted and sentenced as aforesaid.
5. Smt. Durga Bai (PW-3) states that Ku. Manisha was her daughter, aged about 6 years. About 1 ½ years earlier (her statement was recorded on 16.11.2011) she had gone to Kasaridih at about 06:00 pm for begging. Her daughter was wearing one red coloured two piece set. At about 08:00 pm, when the *pooja* was over in the temple, her daughter Ku. Manisha stated that she wanted to defecate. The witness made her daughter sit for defecation near the electric pole and she came back to beg near the temple to beg.

After some time when she went back to the electric pole where her daughter was defecating, she did not find her there. Then she searched for her daughter near the temple and when she did not find her, she went and told her husband about the daughter being missing. Then they reported the matter to the police. About 8 months after her daughter went missing, some police officials came and took her and her husband to the house of Ishwari Lal Yadav (A-1) at Ruabandha. There, they found that a grave had been dug inside the house and the clothes of her daughter were lying there alongwith some pieces of bones. She identified the clothes to be that of her daughter Ku. Manisha.

6. Beeru Dewar (PW-2) is the husband of Smt. Durga Bai (PW-3). He has also given the same version. He also states that when they went to the house of Ishwari Lal Yadav (A-1), there were small bones lying in a grave. He identified the clothes to be of his daughter Ku. Manisha. From this, it is established that the daughter of these two witnesses namely Ku. Manisha was missing for quite sometime.
7. The prosecution case revolves around the recovery of skeletal remains of Ku. Manisha. As far as identity of skeletal remains is concerned, the same has been proved by PW-12, Dr. Raj Kumar Singh. The same stands proved on the basis of DNA test. As per the statement of Jhanak Lal Sahu (PW-17), Exhibit P-35 is the memorandum sent from the office of the Superintendent of Police, Durg to the Center for DNA finger printing and Diagnostics, Hyderabad (hereinafter called 'the CDFD'). According to this memo,

on 24.11.2010, skeletal remains of a small child allegedly of Ku. Manisha aged about 6 years were exhumed from the house of Ishwari Lal Yadav (A-1). After autopsy, femur bone was preserved for DNA profiling. After this memorandum was sent, the CDFD sent a communication (Exhibit P-36) dated 07.02.2011 to the Superintendent of Police, Durg, stating therein that blood sample of one of the relatives of the suspected deceased be sent to establish the identity of the child. Thereafter, permission of the Chief Judicial Magistrate, Durg was sought to take blood samples of mother- Durga Bai (PW-3). These samples were taken with the consent of Smt. Durga Bai (PW-3) (Exhibit P-43) and sent to CDFD. Thereafter, a report was received that as per the DNA profiling, femur bone of the unidentified skeleton of a female child matched with the sample of Smt. Durga Bai (PW-3). This establishes that the skeleton was of Ku. Manisha.

8. The case of the prosecution is that Smt. Kiran Yadav (A-2) was a Tantric. She is also known as 'Gurumata'. It is alleged that she wanted to sacrifice a female child. She asked her disciples Rajendra Kumar Mahar (A-3) and Mahanand Yadav (A-4) to search for a small girl child. Thereafter, Rajendra Kumar Mahar (A-3) and Mahanand Yadav (A-4) went to Sai Mandir at Kasaridih and brought one 5-6 years old child to the house of Ishwar Lal Yadav (A-2). The child was kept there for three days and thereafter, she was sacrificed.

9. The memorandum statement of all the Accused including one juvenile Accused were recorded by the police. Smt. Kiran Yadav

(A-2) in the memorandum stated that she alongwith her husband Ishwari Lal Yadav (A-1) reside at Bajrang Chowk, Ruabandha. She and her husband are engaged in Tantric siddhi. She also stated that about 6-7 months earlier, for the well being of her own family and to ensure that no evil shadow falls on her family, she asked her husband and Accused-Rajendra Kumar (A-3), Mahanand Yadav (A-4) and the juvenile Accused, who were her disciples to help her in this Tantric cause. As per this plan, Rajendra Kumar (A-3) and Mahanand Yadav (A-4) were sent to bring a 5-6 years old girl. A-3 and A-4 took the motor-cycle of Ishwari Lal Yadav (A-1) and returned at 10:00 -11:00 pm with a girl. The girl was kept in the house for 2-3 days and thereafter, at the Devsthan within the house, preparations were made to sacrifice the girl. She also stated that her husband Ishwari Lal Yadav (A-1) caught hold of the head of the girl, while Rajendra Kumar (A-3) and Mahanand Yadav (A-4) caught hold of her feet and thereupon she used a *gandasa* / sword to cut the neck of the minor girl. Since she could not cut the entire neck, her husband (A-1) used another sword to totally cut the neck. Thereafter, Rajendra Kumar (A-3), Mahanand Yadav (A-4) and the juvenile Accused dug a grave inside the house. She gave *prashad* from the Devsthan in the form of bhabhut, coconut, amulet (*tabij*), red clothes, and earth to her disciples. The girl was buried in the house itself. She also stated that she had kept the *gandasa* / sword hidden and she could get the sword recovered.

10. Similar is the memorandum of Ishwari Lal Yadav (A-1). He also stated that he could get the sword recovered which he had hidden under the asbestos sheet.
11. Mahanand Yadav (A-4) had made a statement to the effect that Smt. Kiran Yadav (A-2) is Gurumata. According to him, 5-6 months earlier, Smt. Kiran Yadav (A-2) had expressed a desire to sacrifice a female child. Thereupon, he and Rajendra Kumar (A-3) took the motor-cycle of Ishwari Lal Yadav (A-1) and went to Sai Mandir at Kasaridih where a small girl child was playing there. They caught hold of the child and brought her to the house of Smt. Kiran Yadav (A-2). The child was kept for three days and on fourth day, she was sacrificed.
12. As far as the so-called disclosure statements of the accused are concerned, they cannot be used against them because they are totally hit by Section 25 of the Evidence Act. They are in the nature of confessional statements. As per the prosecution, some *prasad* was given by Smt. Kiran Yadav (A-2) to the other accused, was recovered on the basis of the statements. The said *prasad* is in the form of earth and it cannot be said with certainty that this is the same earth which was found from the house of Accused Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2). As far as Accused Rajendra (A-3) and Mahanand (A-4) are concerned, there is virtually no evidence against them if the disclosure statements are discarded.
13. Dilip Thakur (PW-11) states that about one year earlier, one boy namely Chirag of Ruabandhawas missing. An announcement was

made that one child is missing and the people of the locality were searching for the said boy. At that time, extremely loud music was being played in the house of Ishwari Lal Yadav (A-1) on a music system (Deck). They became suspicious that why extremely loud music was being played when there had been an announcement that a child was missing. The crowd then went inside the house of Ishwari Lal Yadav (A-1), and found a mound of earth and there was blood in a small vessel (*Katori*). They dug up the mound of earth and found the dead body of Chirag. At that time, both Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) confessed that earlier they had sacrificed one small girl child whom they had brought from Kasaridih and that she had been buried in their house. In cross-examination, in reply to some question, he stated that the grave in which Manisha's body was found was dug on the next day and he has also helped in exhumation of the body. A lot of police people were there and public was also present. According to him, only bones and some clothes were found there.

14. Dr. Raj Kumar Singh (PW-12) carried out the postmortem on the skeletal remains. He stated that red coloured underwear and red coloured frock had been shown to him alongwith skeletal remains which he sealed. He stated that because the remains were only bones, he could not clearly state that how death had occurred. He has clearly stated that all bones were of one human being and that human being was a female child aged about 6 years. According to him, the age could vary by one year on either side. He also stated that there were fractures on the skull and from the skull, he could

make out that injury had been caused by a hard but sharp edged object. According to him, the fractures on some bones were due to hard blunt object. He however could not state whether the injuries were antemortem or postmortem. If the injuries were antemortem, they were sufficient in the ordinary course of nature to cause death. He proved his postmortem report (Exhibit P-23).

15. Shrikant Gawander (PW-13) states that on pointing out by Ishwari Lal Yadav (A-1), some mound in the courtyard was dug up and inside the same, skeletal remains were found alongwith red coloured frock and red coloured underwear. He has clearly stated that the area from which skeletal remains were recovered was pointed out by Ishwari Lal Yadav (A-1). He has proved the recovery. In cross-examination, he stated that on the day after the body of Chirag was found, the police brought Ishwari Lal Yadav (A-1) to the spot and then Ishwari Lal Yadav (A-1) pointed out a place and on digging that place, some skeletal remains were found.
16. Shiv Kumar Rajak (PW-14) states that on 23-24.11.2010, Ishwari Lal Yadav (A-1) made a statement to the police that he had got one girl Manisha through his disciples near Kasaridih Sai Mandir. He also stated that this girl was buried just next to the place where the body of Chirag was found. Next day morning, that place was also dug up and skeletal remains were found there alongwith red coloured frock and red coloured underwear. He had proved the memorandum of recovery (Exhibit P-21) signed by him. He also stated that Smt. Kiran Yadav (A-2) also made a statement to the similar effect. In cross-examination, he has clearly stated that

alongwith the skeletal remains, one frock and underwear were also there. In reply to further question, he stated that when the skeletal was dug up, it did not come out as one whole skeleton but most of the bones were separate.

17. Arvind Singh (PW-15) states that on the date when Chirag's body was found, Smt. Kiran Yadav (A-2) and Ishwari Lal Yadav (A-1) also confessed that about six months earlier, they had sacrificed a small girl namely Manisha who had been brought to them by their disciples – Rajendra Kumar (A-3) and Mahanand Yadav (A-4). It is important to note that the counsel for the Accused Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) made the following suggestion to this witness “it is correct that when Accused Ishwari Lal Yadav and Smt. Kiran Yadav gave information about the place where they had buried Chirag, at the same time they had indicated to the adjoining place and had told that six months earlier they had sacrificed Manisha at that place”. The witness admitted this suggestion which has been made on behalf of the Accused. According to him, this place where the skeletal remains were found was dug up in the next morning. He however states that he does not know why the place was not dug on the same day. He also admits that this statement was made by Smt. Kiran Yadav (A-1) and Ishwari Lal Yadav (A-2) in the presence of police at about 08:00 – 09:00 pm on the date when Chirag's body was recovered. He also states that Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) are known to be engaged in witchcraft.

18. Lakhan Lal Tandon (PW-16) is the Assistant Sub Inspector. He has proved that on 24.11.2010, at about 03:00 pm, he recorded the merg intimation (Exhibit P-28) and (Exhibit P-29). Since Ishwari Lal Yadav (A-1) and Mahanand (A-4) in the memorandum had stated that the body was of Ku. Manisha who belonged to Kasaridih of Durg district, he took permission of the Sub Divisional Magistrate to exhume the body. The skeletal remains of a small child were recovered. Some red clothes were attached to this skeletal. The cloth had rotted and was stuck to the bones. Beeru Dewar (PW-2) and Smt. Durga Bai (PW-3) were called because the accused had named the child and had told that the child was Ku. Manisha. They identified the clothes of their child and therefore, Dehati merg intimation (Exhibit P-28) was recorded and in the police station, merg intimation (Exhibit P-29) was recorded. The witnesses were called on the spot vide Exhibit P-24. He seized and sealed the skeletal remains and clothes. He had put the bones in five different packets according to their size and shape. In cross-examination, he stated that the place was dug up with the help of labourer. He stated that at the time when the body was exhumed, Manisha's parents were present.
19. Janaklal Sahu (PW-17) is the Sub Inspector. He has carried out some of the investigation. He also got the map of the site prepared through Patwari. He also sent a letter to Tahsildar, copy of which is Exhibit P-30, requesting him to depute a Patwari. He also sent the sealed packets to various officials.

20. Domar Singh Thakur (PW-18) is the Inspector, who has recorded memorandum of Rajendra Kumar (A-3) (Exhibit P-28) on 24.11.2010 at 11:30 am. On the same day, at about 8:50 am, he had recorded the memorandum of Mahanand Yadav (A-4) (Exhibit P-29).
21. Ramshiromani Tripathi (PW-19) is the another Assistant Sub Inspector. He stated that on 23.11.2010, at about 09:40 pm, he had recorded the memorandum (Exhibit P-26) of accused Ishwari Lal Yadav (A-1) wherein Ishwari Lal Yadav had also stated that he could identify the place where the body has been buried, as a Trident (*Trishul*) has been planted there. On the next day, i.e. 24.11.2010, at about 10:00 am, he recorded the memorandum statement (Exhibit P -27) of Smt. Kiran Yadav (A-1) who also stated that the body of Ku. Manisha was buried under the place where a Trident (*Trishul*) had been planted. He further stated that Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) were taken to the house of Ishwari Lal Yadav and they all went to the Pooja Room and pointed out the place where the body of Ku. Manisha had been buried. When this place was dug up, skeletal remains were recovered which were found to be of Ku. Manisha.
22. Kirit Ram Sinha (PW-20), is the Sub Inspector, who stated that in the year 2010, he was posted as Chowki Incharge at Police Out Post Padmanabhpur under Police Station Durg. On 24.11.2010, he got an information from Bhilai that accused Ishwari Lal Yadav (A-1) Smt. Kiran Yadav (A-2) and Mahanand Yadav (A-4) are stating that they had abducted one girl Ku. Manisha from his area and later

sacrificed her. He then contacted the parents of Ku. Manisha and took them to Bhilai from where they went to Ruabandhato the house of Ishwari Lal Yadav (A-1). In the said house, an area was being dug up and after digging was complete, skeletal remains were found on which two pieces of red colour two piece cloth and a red colour underwear were found. The mother of the girl Smt. Durga Bai (PW-3) stated that the clothes were of her daughter. He has prepared identification sheet (Exhibit P-18). He also proved Exhibit P-21, an entry in *Rojnamchasanha* dated 04.03.2010 in Police Out Post Padmanabhpur with regard to missing of Ku. Manisha. He recorded the statement of Ishwari Lal Yadav (A-1) in which he admitted the entire occurrence. He also stated that he could get the sword recovered with which he had cut the throat of Ku. Manisha. The sword was lying behind the asbestos sheet in his house. He also recorded the memorandum sheet of Mahanand Yadav (A-4) which led to recovery of items allegedly given as *prasad* by Accused-Smt. Kiran Yadav (A-2). He also recorded the statements of Accused-Rajendra Kumar (A-3) and the juvenile Accused to the similar effect.

23. Khuman Singh Sahu (PW-21) stated that he knows Accused-Ishwari Lal Yadav (A-1) and his wife Smt. Kiran Yadav (A-2) who are his neighbours. He also stated that other Accused-Rajendra Kumar (A-3) and Mahanand Yadav (A-4) used to visit the house of Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2). According to him, both (A-1) and (A-2) were engaged in witchcraft. Rajendra Kumar (A-3) and Mahanand Yadav (A-4) are the disciples of (A-1) and (A-2). The witness stated that in the year 2010, one small child namely Chirag

aged about 2 years went missing in his neighbourhood. They were all searching for Chirag. At that time, they heard extremely loud music being played in the house of Ishwari Lal Yadav (A-1) on a music system (Deck). This aroused their suspicion and then the people of the locality went to the house of A-1. When they entered the house, they saw that there was freshly dug earth which had some blood on it. There were six-seven other persons in the house alongwith Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2). He stated that Mahanand Yadav (A-4) and Rajendra Kumar (A-3) were also there. According to him, Accused-Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) stated that they had sacrificed Chirag. Then the people asked the Accused how many people they had sacrificed. At that time, all four accused Ishwari Lal Yadav (A-1), Smt. Kiran Yadav (A-2), Rajendra Kumar (A-3) and Mahanand Yadav (A-4) stated that one girl by name Manisha, who had been kidnapped from Kasaridih by A-3 and A-4 and had been sacrificed by them. They also confessed that they had buried that girl next to the place where Chirag's body has been buried. The next day, the body was exhumed alongwith the police. According to this witness, the Accused had stated that they had done this act to achieve *siddhi* and for their well being. In cross-examination, he stated that his house is two houses away from the house of A-1 and A-2. He further stated that A-1 and A-2 had shifted to their locality two-three years earlier and he knew them only since then. He further stated that all the people in the locality knew that Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) used to engage in witchcraft (*tantra*-

mantra). He further stated that prior to the occurrence, he only knew Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) by name and none of the other Accused persons. He had never told the names of other Accused persons to the police officers. He also stated that before the police came, the public had already arrived at the scene.

24. The defence has also examined one witness namely Anand Ram Sahu (DW-1), who is a Head Constable. He stated that on 24.11.2010, he had recorded entry No. 15 in *Rojnamchasanha* at 02:10 pm to the effect that an information has been received from the Control Room that the Accused had made a statement that 6-7 months earlier, he had kidnapped one girl and had killed and buried her in Bajrang Chowk, Ruabandha. In cross-examination, he has admitted that in entry No. 15, it is also mentioned that Accused-Mahanand Yadav (A-4), who was also accused in Crime No. 515 of 2010, had made a statement that he had abducted a six years old girl from Sai Mandir, Kasaridih about six months earlier whose body is buried in the house of Ishwari Lal Yadav (A-1) at Bajrang Chowk, Ruabandha. Information has also been received that one skeleton of a child has been recovered from the house of Ishwari Lal Yadav (A-1).

25. From the evidence discussed hereinabove, it is established beyond doubt that Ku. Manisha, daughter of PW-2 and PW-3 was missing since 04.03.2010. This is evident from the *Rojnamcha* entry No. 82 (Exhibit P-21) recorded in the Police Out Post Padmanabhpur, Durg on 04.03.2010. Thereafter, Ku. Manisha was never found.

26. It also stands proved that when the public of Ruabandhawere trying to trace out another minor boy child Chirag, aged 2 years, they entered the house of Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) where A-1 and A-2 not only admitted that they had killed Chirag but on further questioning by the public also stated that earlier also, they had sacrificed one small girl who had allegedly been kidnapped by Rajendra Kumar (A-3) and Mahanand Yadav (A-4) from Sai Mandir, Kasaridih. Reference may be made to the memorandums (Exhibit P-27), (Exhibit P-28A) and (Exhibit P-29A) under Section 27 of the Evidence Act. These memorandums have been recorded by the police officials. Therefore, that portion of the memorandums which amounts to confession are hit by Section 25 of the Evidence Act and cannot be looked into. However, discovery of any fact or material object pursuant to these statements would be admissible in evidence in terms of Section 27 of the Evidence Act. It is proved that Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) pointed out the place where Ku. Manisha had been buried.

27. On the basis of the statement of Ishwari Lal Yadav (A-1) one sword (Exhibit P-10) was recovered. On the basis of statement of Smt. Kiran Yadav (A-2), one old iron sword/*gandasa* (Exhibit P-13) was also recovered. The body of Manisha was also recovered from the house which was occupied by Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2). The map of the scene of occurrence (Exhibit P-19) was prepared. A young girl has been buried in this house and the skeletal remains which were found were taken into possession (Exhibit P-24 and P-25). The memorandums prepared in Crime

No. 515 of 2010 relating to murder of Chirag were also exhibited in this case. Skeletal remains were seized and were sent for DNA profiling which have been found matching with the blood samples of Smt. Durga Bai (PW-3). The parents have also identified the clothes that their daughter was wearing and which clothes have also been described in the missing report lodged by them six months earlier. In the missing report, it was mentioned that the child was wearing a same colour two piece frock and underwear. One red colour two piece frock and one underwear of red colour has been found on the skeletal remains. Therefore, it stands established beyond reasonable doubt that the skeletal remains are of Ku. Manisha. Even the Doctor had opined that the skeletal remains are of a girl aged about 6 years and the age could vary one year below or above. When the public entered the scene of occurrence even before the police had arrived, accused especially Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) on questioning admitted that they had earlier sacrificed a girl aged about 6 years. A sword and *gandasa* had been recovered at the instance of Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) and they matched with the injuries as found by the Doctor.

28. The only defence taken by the Accused is that they were falsely implicated because of some dispute they had with the Corporator of the area. However, no suggestion in this behalf was put to any of the witnesses.
29. From the prosecution evidence, it stands proved that the skeletal remains of the missing girl Ku. Manisha were recovered from the

house of Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2); the skeletal remains have been identified and proved to be of Ku. Manisha and her clothes have also been identified by the parents. From the statement of Chandan Devraj (PW-4), it is apparent that all the four Accused and the juvenile Accused were questioned by the police where they made certain confessional statement. Though, the confessional part of the statement made is not admissible, recoveries made on the basis of the statement are admissible in evidence. On the basis of statement made by Ishwari Lal Yadav (A-1), one sword was recovered which was hidden behind the asbestos sheet. On the basis of statement made by Smt. Kiran Yadav (A-2), one sword/*gandasa* was recovered. As far as the other two accused are concerned, what has been recovered is some *pooja* material, such as *bhabhuti*, coconut, red colour cloth etc. These are common articles of use and it cannot be said that they are related to crime. However, the sword / *gandasa* had been found to be blood stained.

30. A question has been raised that why was the body of Ku. Manisha was not taken out on 23.11.2010 itself. In our view, that is not material because on 23.11.2010, people were concerned with recovery of Chirag, who may have been alive at that time. At that time, a statement was made by Accused persons that earlier they had killed a girl child, whose body was buried nearby. The police needed permission from the Magistrate which was taken in the next morning and then the body was exhumed. It is also established that

both the accused, Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) used to engage in witchcraft (*tantra-mantra*).

31. According to Dilip Thakur (PW-11), when they went looking for Chirag, at that time Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) made a statement to the public that six months earlier they had killed Ku. Manisha. This has also been stated by Arvind Singh (PW-15). Similar is the statement of Khuman Singh Sahu (PW-21) that all the four Accused had made a statement that they had killed Ku. Manisha earlier and her skeletal remains were found in the house of Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2). This virtually amounts to an extra-judicial confession. The police had not arrived at the scene when the crowd first entered the house of Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2). This extra-judicial confession was made only by A-1 and A-2 and this can be relied upon.
32. The extra-judicial confession is corroborated by recovery of the dead-body of a small child within the house of Accused-Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2). They have not given any explanation as to how the dead body of his minor girl was found in the compound of their house just next to the place where they have buried Chirag.
33. Therefore, on a careful analysis of the entire prosecution evidence, we are firmly of the view that the prosecution has proved that Accused-Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) either kidnapped or got the minor girl Manisha kidnapped and thereafter killed her in the form of human sacrifice to propitiate the gods.

Thereafter, they buried her dead body within the compound of their house to hide evidence of murder. Therefore, they are held guilty of the offences under Sections 364/34 read with Section 120-B, 302/34 read with Section 120-B and Section 201 IPC. Their conviction is accordingly upheld.

34. However, as far as Rajendra Kumar (A-3) and Mahanand Yadav (A-4) are concerned, no recovery has been made which could directly link them to the crime. The statements of the Accused so far as they relate to kidnapping of Manisha, are inadmissible under Section 25 of the Evidence Act. Even the witnesses to the extra-judicial confession have ascribed the confession to Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) and not to other two accused. Even though the finger of suspicion may strongly point out to these Accused, but it cannot be said with certainty that they had kidnapped Ku. Manisha and brought her to the house of Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2). Therefore, the Accused-Rajendra Kumar (A-3) and Mahanand Yadav (A-4) are acquitted.
35. That brings us to the issue of sentence to be imposed upon Accused-Appellant Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2). It has been urged that the Accused-Appellants were not provided proper legal assistance. They are illiterate, belong to a poor background and have no source of income. It has been urged that they have three minor children and therefore, the sentence of death be not imposed upon them.
36. The issue is whether we should uphold the sentence of death as imposed by the learned Trial Court or not?

37. The law in this regard is now fairly well settled. The Apex Court in a large number of cases has laid down principles which must be considered while deciding whether capital punishment should be awarded or not. The Court is required to consider the aggravating and mitigating circumstances. The Court is also required to take into consideration other factors, such as, age of the Accused, possibility of reformation, lack of intention etc.

38. In *Bachan Singh v. State of Punjab* {AIR 1980 SC 898} the Apex Court dealing with the issue of death penalty held that the provisions providing for death penalty do not violate either the letter or the ethos of Article 19 of the Constitution of India. The Apex Court however laid down certain guidelines and held that the death penalty should only be imposed in the rarest of rare cases. The aggravating circumstances have been set down as follows:

“179. Soon after the decision in *Furman*, the Georgia Legislature amended its statutory scheme. The amended statute retains the death penalty for six categories of crime: murder, kidnapping for ransom or where victim is harmed, armed robbery, rape, treason, and aircraft hijacking. The statutory aggravating circumstances, the existence of any of which may justify the imposition of the extreme penalty of death, as provided in that statute, are:

(1) The offence of murder, rape, armed robbery, or kidnapping was committed by a person with a prior record of conviction for a capital felony, (or the offence of murder was committed by a person who has a substantial history of serious assaultive criminal convictions).

(2) The offence of murder, rape, armed robbery, or kidnapping was committed while the offender was engaged in the commission of another capital felony, or aggravated battery, or the offence of murder was committed while the offender was engaged in the commission of burglary or arson in the first degree.

(3) The offender by his act of murder, armed robbery, or kidnapping knowingly created a great

risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(4) The offender committed the offences of murder for himself or another, for the purpose of receiving money or any other thing of monetary value.

(6) The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.

(7) The offences of murder, rape, armed robbery, or kidnapping was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim.

(8) The offence of murder was committed against any peace officer, corrections employee or fireman while engaged in the performance of his official duties.

(9) The offence of murder was committed by a person in, or who has escaped from, the lawful confinement.

(10) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another.”

The Supreme Court further considered what can be considered to be the mitigating circumstances in paragraph 204 of the said judgment as under:

“204. Dr. Chitale has suggested these mitigating factors:

Mitigating circumstances. In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:

1. That the offence was committed under the influence of extreme mental or emotional disturbance.
2. The age of the accused. If the accused is young or old, he shall not be sentenced to death.
3. The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

4. The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

5. That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

6. That the accused acted under the duress or domination of another person.

7. That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.”

39. Thereafter, the Apex Court after referring to *Bachan Singh* (Supra) in *Machhi Singh v. State of Punjab* {(1983) 3 SCC 470} held as follows:

“38. In this background the guidelines indicated in *Bachan Singh*'s case (supra) will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from *Bachan Singh*'s case:-

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life Imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances;

(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.”

40. This view was followed in *Sushil Murmu v. State of Jharkhand* {2003 AIR SCW 6782}. The Apex Court gave certain further guidelines and summarized the law in the following terms:

“15. The following guidelines which emerge from Bachan Singh case will have to be applied to the facts of each individual case where the question of imposition of death sentence arises: (SCC p. 489, para 38)

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the “offender” also require to be taken into consideration along with the circumstances of the “crime”.

(iii) Life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

16. In rarest of rare cases when the collective conscience of the community is so shocked that it will expect the holders of the judicial power center to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances:

1. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.

2. When the murder is committed for a motive which evinces total depravity and meanness e.g. murder by a hired assassin for money or reward or a cold-blooded murder for gains of a person vis-à-vis whom the

murderer is in a dominating position or in a position of trust, or murder is committed in the course of betrayal of the motherland.

3. When murder of a member of Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of “bride-burning” or “dowry deaths” or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

4. When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

5. When the victim of the murder is an innocent child, or a helpless woman or an old or infirm person or a person vis-à-vis whom the murderer is in a dominating position or a public figure generally loved and respected by the community.”

41. In *Asharfi Lal & Sons v. State of UP* {AIR 1987 SC 1721}, the Apex Court held that it is duty of the Court to impose proper punishment depending upon the degree of criminality and in the case of gruesome murder of two innocent girls, the Court imposed death penalty. The relevant portion of the judgment reads as follows:

“3. We have heard learned counsel for the appellants mainly on the question of sentence but we are not impressed with his submission. The two appellants Ashrafi Lal and Babu were guilty of a heinous crime out of greed and personal vengeance and deserve the extreme penalty. This case falls within the test ‘rarest of rare cases’ as laid down by this Court in *Bachan Singh v. State of Punjab* (1980) 2 SCC 684 : (AIR 1980 SC 898) as elaborated in the later case of *Machhi Singh v. State of Punjab* (1983) 3 SCC 470 : (AIR 1983 SC 957). The punishment must fit the crime. These were cold- blooded brutal murders in which two innocent girls lost their lives. The extreme brutality with which the appellants acted shocks the judicial conscience. Failure to impose a death sentence in such grave cases where it is a crime against the society particularly in cases of murders committed with extreme brutality will bring to naught the sentence of death provided by S. 302 of the Penal Code. It is the duty of the Court to impose a proper punishment depending upon the degree of

criminality and desirability to impose such punishment. The only punishment which the appellants deserve for having committed the reprehensible and gruesome murders of the two innocent girls to wreak their personal vengeance over the dispute they had with regard to property with their mother Smt. Bulakan is nothing but death. As a measure of social necessity and also as a means of deterring other potential offenders the sentence of death on the two appellants Asharfi Lal and Babu is confirmed.”

42. In *Subhash Ramkumar Bind @ Vakil & Another v. State of Maharashtra* {AIR 2003 SC 269}, the Apex Court held that in every incident of murder, brutality is involved but that brutality by itself will not bring it within the ambit of rarest of rare cases for imposition of death penalty. The prosecution must prove and the Court must hold that the brutality exceptionally falls within the category of rarest of rare cases before it can impose death sentence.
43. In *Dhananjay Chatterjee v. State of W.B.* {(1994) 2 SCC 220}, the Apex Court upheld the award of death sentence and held as follows:

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

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

44. While dealing with the question of imposition of death sentence affirmed by the Supreme Court, the Supreme Court in the matter of *Sonu Sardar v. State of Chhattisgarh* {(2012) 4 SCC 97}, in which case death sentence upon young male had been imposed, held that the appellant though young but having no consideration for human lives and his criminal propensities being beyond reform, is a menace to the society, death sentence is proper being a case of rarest of rare, and observed as follows: -

"18. As against these aggravating circumstances, the trial court did not find any mitigating circumstance in favour of the appellant to avoid the death penalty. This is, therefore, not one of those cases in which the trial court has not recorded elaborate reasons for awarding death sentence to the appellant as contended by the learned counsel for the appellant.

19. Regarding the role of the appellant in the commission of the offence of dacoity and murder, we have already found that the turban and T-shirt of the appellant, which were seized and sent for examination to the Forensic Science Laboratory, had presence of human blood. We have also found that the axe and the iron rod, which were recovered pursuant to the statement of the appellant, had also bloodstains. We have also found from the evidence of PW-1 that when her mother was cooking food and came out on hearing the commotion, the appellant was demanding money from her father and her father gave to the appellant all the money which he was having in his pocket.

20. There is, therefore, clear and definite evidence in this case to show that the appellant not only participated in the

crime, but also played the lead role in the offence under Section 396 IPC. This is, therefore, not a case where it can be held that the role of the appellant was not such as to warrant death sentence under Section 396 IPC.

21. In a recent judgment in *Sunder Singh v. State of Uttaranchal*³¹ this Court found that the accused had poured petrol in the room and set it to fire and closed the door of the room when all the members of the family were having their food inside the room and, as a result, five members of the family lost their lives and the sixth member of the family, a helpless lady, survived. This Court held that the accused had committed the crime with premeditation and in a cold-blooded manner without any immediate provocation from the deceased and all this was done on account of enmity going on in respect of the family lands and this was one of those rarest of rare cases in which death sentence should be imposed.

22. The facts in the present case are no different. Five members of a family including two minor children and the driver were ruthlessly killed by the use of a knife, an axe and an iron rod and with the help of four others. The crime was obviously committed after premeditation with absolutely no consideration for human lives and for money. Even though the appellant is young, his criminal propensities are beyond reform and he is a menace to the society. The trial court and the High Court were therefore right in coming to the conclusion that this is one of those rarest of rare cases in which death sentence is the appropriate punishment.”

45. In *Ramnaresh & Others v. State of Chhattisgarh*, {(2012) 4 SCC 257} the Apex Court summarized the aggravating and mitigating circumstances in the following terms:

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

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

Aggravating Circumstances:

- (1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.
- (2) The offence was committed while the offender was engaged in the commission of another serious offence.
- (3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.
- (4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.
- (5) Hired killings.
- (6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.
- (7) The offence was committed by a person while in lawful custody.
- (8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 CrPC.
- (9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.
- (10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.
- (11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold-blooded murder without provocation.

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

Mitigating Circumstances:

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

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

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

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

(5) The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

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

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though the prosecution has brought home the guilt of the accused.”

The Supreme Court has summarized following principles for consideration for imposition of capital sentence: -

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

(2) In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be

completely inadequate and would not meet the ends of justice.

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

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

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

The Apex Court, in para 79 further went on to hold as follows:

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

46. In *Shankar Kishanrao Khade v. State of Maharashtra* {(2013) 5 SCC 546}, the Apex Court held that there could be no exhaustive list aggravating and mitigating circumstances. It held that the test which should be satisfied is the Court should be fully satisfied that it is a 100% case for award of death penalty and there are no mitigating circumstances favouring the accused and R-R test (rarest of rare case test) must also be applied. It laid down certain guidelines in the following terms :

"52. Aggravating Circumstances as pointed out above, of course, are not exhaustive so also the Mitigating Circumstances. In my considered view that the tests that we have to apply, while awarding death sentence, are “crime

test”, “criminal test” and the R-R Test and not “balancing test”. To award 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. Even, if both the tests are satisfied that is the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the Rarest of Rare Case test (R-R Test). R-R Test depends upon the perception of the society that is “society centric” and not “Judge centric” that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the Court has to look into variety of factors like society’s abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of minor girls intellectually challenged, suffering from physical disability, old and infirm women with those disabilities etc.. Examples are only illustrative and not exhaustive. Courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the Judges.”

47. We are required to consider what punishment is to be imposed keeping in view the aggravating and mitigating circumstances, crime test, R-R test (rarest of rare case test) etc.
48. On due consideration of the aforesaid entire case law, we are unable to hold that this case falls within the category of rarest of rare case or one in which death sentence should be imposed. Though it is proved that Ku. Manisha was killed in the house of Accused-Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) and it is also proved that these two Accused used to indulge in witchcraft, there is no further evidence to show that Ku. Manisha was murdered or killed only for this purpose.

49. Accordingly, the death sentence imposed upon Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) is converted to one of imprisonment for life. The conviction and sentence of Appellants- Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) under other Sections are upheld. It is however made clear that keeping in view the nature of offence, the Accused shall not be entitled to any remission or parole.
50. The Accused-Appellants Rajendra Kumar (A-3) and Mahanand Yadav (A-4) are directed to be released forthwith, if not required in any other case.
51. In view of the above, the reference is answered in the aforesaid terms and the appeal filed by the Appellants is allowed in part.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay K. Agrawal)
JUDGE