

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Neutral Citation No. 2024:PHHC:022975-DB

MRC-1-2021

State of Haryana
.....Appellant
Versus
Sanjeev Kaushik
.....Respondent

(2) CRA-D-223-2021

Sanjeev Kaushik
.....Appellant
Versus
State of Haryana
.....Respondent

Decided on :30.01.2024

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr. Pawan Girdhar, Additional Advocate General, Haryana
for the appellant in MRC-1-2021 and
for the respondent in CRA-D-223-2021.

Mr. Arshdeep Singh Cheema, Advocate
for the respondent in MRC-1-2021 and
for the appellant in CRA-D-223-2021.

Mr. Kirat Pal Dhaliwal, Advocate for
Mr. Pradeep Sharma, Advocate for the complainant.

G.S. Sandhawalia, J.

The present judgment shall dispose of MRC-1-2021 and criminal
appeal bearing CRA-D-223-2021 preferred by the accused against the
judgment of conviction passed by the Additional Sessions Judge, Faridabad
dated 12/17.03.2021, whereby the appellant-accused has been held guilty and
convicted under Section 302 IPC in FIR No.175 dated 17.03.2018 under
Sections 302, 201 IPC registered at Police Station Surajkund, District

Faridabad. The accused having caused injuries sufficient in the ordinary course of nature let to the cause death of his wife Anju Kaushik and it being a homicidal death, which took place in the house of the appellant, where the couple had recently resided, the Trial Court, resultantly, held that he had committed culpable homicide amounting to murder of his wife, within the meaning of Section 300 IPC. The exception having not been made out, it was, accordingly, held that there is no reason to fall back up on the provisions of Section 299 IPC. The prosecution's charge of Section 201 IPC was rejected, as there was no attempt to cause disappearance of the evidence of the commission of the offence and there had been only an attempt to abscond. Vide judgment/order dated 17.03.2021, keeping in view the facts and circumstances and the manner in which the crime was committed by severing the head from the body of the deceased and that the son of the appellant had lost his mother, it was held to be a rarest of rare case, while imposing extreme penalty of death.

2. Counsel for the appellant has, accordingly, argued that it is a case of circumstantial evidence and in the absence of any eye witness account, the appellant had wrongly been held guilty and sentenced, apart from the fact that the extreme penalty was not justified as the appellant was not a hardcore criminal and there are chances of his reformation and he has a son to look after. It was, accordingly, argued that the chain of circumstances is not complete in the manner prescribed under the law and, therefore, the benefit of doubt should have been granted, as the appellant had pleaded innocence and false implication, being a Government servant and, thus, there were enough mitigating circumstances not to impose extreme penalty. It was also argued that since the witnesses who had deposed against him are related to the

deceased, they had made false statement against him. It was his case that the son who was in custody of the complainant had been brain-washed by others, who had deposed with ulterior motive and, accordingly, submitted that the statement of the child witness was liable to be excluded, keeping in view the facts and circumstances, which the Trial Court had failed to do. It was, accordingly, argued that it is a case of an attempt to grab the property of the appellant, since the complainant and the child witness are closely related and were also in occupation of the property owned by the appellant.

The factual matrix:

3. The FIR (Ex.PA) in question was lodged on the basis of the statement of Brij Sharma brother of deceased Anju Kaushik resident of House No.751, Sector 23-A Gurugram. He stated that from the marriage in question his sister had a child, namely, Manan Kaushik aged 15 years and his brother-in-law Sanjeev Kaushik was working with MCD Delhi and was residing with the deceased on the First Floor of House No.3323, Block-C, Green Field Colony, Faridabad on rent for the last one week. The accused used to beat his sister regularly and on being told by her, he had tried to make him understand with the help of the relatives. However, the accused would remain nice for sometime and then again indulge in the same behaviour, due to which his sister had made calls to him on phone regarding the fact that he had attempted to kill her by strangulation. She was desperate to save her matrimonial life and had thus kept on enduring such violent acts of the accused. On the said date his nephew had called his sister, Manju Sharma and told her that his father had come in the morning and had given him his phone and told him not to go inside the house. The child had said that after giving him the phone the accused had gone and told him that he was going to get some clothes ironed.

He along with paternal uncle (Tauji) had come to the house but the main entrance door of the house was closed and his mother had not responded. The police was called by the paternal uncle of the child, who had broken the door open to find his mother lying in a pool of blood on the floor and her neck had been severed from her torso. On receiving the information, the complainant had reached on the spot and was convinced that his sister, the deceased, had been murdered by the accused with a sharp edged weapon by cutting her neck and, therefore, demanded that legal action should be taken against the accused.

4. The application had been given to the police party at 6:30 PM, which had been called by Nand Kishore, the paternal uncle (Tau) of the minor and SI Surender Singh, SI Karambir Singh alongwith HC Lokesh, HC Surinder and Constable Mahipal were already on the spot, who had broke open the door with the help of Avtar Singh, a Locksmith. The FIR was accordingly lodged at 19:10 hours. SI Surender Singh made the requisite application to the Medical Officer, B.K. Hospital, Faridabad, to know the cause of death, which was stated to be by a sharp edged weapon. The memo was accordingly prepared and a seal was put.

5. As per statement of PW 11, SI Surender Singh, he had received a telephonic call from Control Room that a woman in House No.3323, C Block, Green Field Colony, Faridabad had locked the door and direction was given to check the site. He alongwith above said police officials reached the spot. The main door of the above said house was found locked and a locksmith was arranged who broke open the door. When the police party entered in the house, the dead body of deceased Anju was lying on the floor in a decapitated condition. The FSL team was also informed, who came to the spot. The rough sketch plan of the place of occurrence (Ex.PK) was prepared and the

photographer also came there, who also captured the place of occurrence by videography which was stored in a DVD. The application moved by Brij Sharma had been sent to the police station for registration of FIR and then the requisite application (Ex.PL) had been moved with the hospital for conducting the postmortem. As per the statement, the police party had reached at the spot at 1:15 PM. The locksmith had been arranged by 2:00 PM and he had broke open the lock of main door with the help of hammer.

Reason for conviction :

6. The Trial Court formulated four points for determination under Section 354(1)(b) Cr.P.C. and gave reasons to come to the conclusion that the death of Anju was homicidal death in the house of the appellant on 17.03.2018 and the prosecution had proved the fact that the appellant had committed culpable homicide and the defence had failed to prove the case that it fell within any general exception or special exception as provided under Section 300 IPC. The benefit was given to the appellant that there was no disappearance of any evidence under Point No.4 and, accordingly held that there was only an attempt to abscond and, therefore, benefit under Section 201 IPC was granted and it acquitted the appellant from that charge. The Trial Court had, thus, come to the conclusion that it is a case of circumstantial evidence and while summing up the case on the principles laid down by the Apex Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116**, wherein it has been held that there must be chain of circumstances so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and they should be conclusive in nature and every possibility could be excluded. The

incriminating circumstances, which were twelve in number, on the basis of which the conviction was recorded, read as under:-

- “i) that he had strained relationship with his wife deceased Anju and he used to ill-treat her;
- ii) that the bickerings and confrontations were quite common between the two;
- iii) that on 22.1.2018 deceased Anju with her son, being unable to bear further torture and cruelty in the hands of accused and his sisters, left the house of accused. The FIR in that regard came to be registered by accused-husband wherein in her statement under section 164 Cr.P.C., Anju deceased deposed about the cruelty meted out to her;
- iv) that on 10.3.2018, the couple along with their son shifted to house no. C-3323, 1st Floor, Green Field Colony, Faridabad. Since 12.3.2018 their son Manan- PW5 was living with his paternal uncle (tau)- Nand Kishore, so on 16/17.3.2018 accused and deceased alone were residing in their house on the first floor;
- v) CCTV footage showed that in the evening of 16.3.2018 accused Sanjeev Kaushik entered his said house and in the morning at about 11.20 a.m. of 17.3.2018, he came out from there. And Anju deceased was killed between 1.00 a.m. of 16/17.3.2018 and about 11.00 a.m.;
- vi) the call details record of Nand Kishore Sharma Ex. PAT clearly show that on 17.3.2018 at about 11.30 a.m., he was called up by the accused from mobile 9582927498, which further fortifies the version of PW5- Manan that accused gave call to his paternal uncle telling that he-PW5 be not sent to the house where Anju deceased was found dead;
- vii) that on 17.3.2018 PW5- Manan was told by the accused Sanjeev Kaushik not to go to the house where Manan's mother was residing with the accused;

viii) that the house of accused was found locked on 17.3.2018 by their son- Manan at about 11.30/45 a.m.;

ix) that at about 1.00 p.m. on 17.3.2018 when the main door of the said house was got opened after breaking the lock on iron gate, dead body of wife- deceased Anju with head separated from her torso was found lying in the pool of blood inside the house of accused;

x) that the accused from that day disappeared and was not traceable for about four days thereafter until he surrendered before the Court;

xi) that during the investigation or trial accused has not plausibly explained as where was he on 16.3.2018 to 20.3.2018;

xii) that even after his arrest, the accused did not offer any explanation as to when he parted the company of his wife nor offered any explanation to discharge the burden under section 106 of the Evidence Act.”

Incriminating factors :

7. A perusal of the record would go on to show that it is not disputed that the couple had started residing on the First Floor at House No.3323, Block-C, Green Field Colony, Faridabad, from where the body of the deceased severed from neck had been found on 17.03.2018 after breaking the lock. It is a matter of record that the couple had been married in the year 2001 and from the wedlock, a son, Manan Kumar was born on 22.01.2003.

8. The prosecution has examined Dr. Umesh Trivedi as PW-18 to prove the factum that he was the owner of the said premises situated on the first floor and the appellant had taken the premises on rent a few days prior to the said occurrence and was residing with his family. The rent deed had not been executed, as the appellant told him that his family had not liked the place and they would vacate the house shortly. His statement was recorded by the

police on 22.05.2018 under Section 161 Cr.P.C. Similarly, PW-28 Sanjeev Pundir, who was residing in the same block on the second floor of the building stated that the appellant alongwith his wife and son had come to reside on the first floor of the building, with whom he had no social interaction. On 17.03.2018 at about 12:30 PM, the police, son and elder brother of the appellant had come to their flat, as the first floor of the house was locked. The police had called the locksmith and got the metal gate of the said flat opened. The said eye witness had gone inside the flat and saw the decapitated body of the deceased, who was wife of the appellant. In cross-examination, he further stated that there was very foul smell emitting from the flat when the door was opened and the police had gone inside the flat.

9. Thus, apart from the statement of these two persons, the son of the appellant, PW-5 also deposed on the same lines of earlier strained relationship and the separation as such. He had further stated that they started living at their maternal grand-mother's house, where his father had started visiting and repeatedly apologized and assured that he would not do anything in future and cried in front of his mother, the deceased, who had got emotional. They had then accompanied the appellant to the rented premises which had been arranged by Nand Kishore Sharma, the elder brother of the appellant and they shifted to the same on 10.03.2018. On account of the dispute inter se the parents, as the food was not being cooked regularly and meals were not prepared, he was living in the house of his above said paternal uncle, which was at a distance of 4-5 minutes by walk.

10. Similar is the statement of PW-12, Brij Sharma, the complainant and brother of the deceased, regarding the strained relationship, demand of money on account of compensation having been received by the family in lieu

of land acquired in Manesar, which was given to all the siblings, who were six in number. He stated that there was separation between appellant and the deceased, prior to living together in House No.3323, first floor, Block-C, Green Field Colony, Faridabad and confirmed that the child staying with his paternal uncle and visiting his mother. He further stated that on the day of occurrence at about 1:30 PM he had received a telephonic call from his nephew, Manan that his mother had been done to death and they had reached the said house from Gurugram at about 3:30 PM to identify the body.

11. Similar is the statement of PW-13, Manju Sharma, sister of the deceased, who was also resident of Gurugram, who stated that she had received a call from the son of the deceased stating that his father had come to the house and handed over his phone to him and asked him not to come to the house as he was going to get his clothes ironed. She further stated that Manan had then called her up to inform that his mother was not opening the door from inside the room, when he had gone to the house and had been told to request his paternal uncle Nand Kishore to come and help him or to take the help of police to open the door. Thereafter, she again received a call from Manan, who informed that his mother had been murdered and the father had absconded. She had then come to Faridabad. It is also a matter of record that in the inquest proceedings dated 18.03.2018 (Ex.PJ) duly prepared by the Investigating Officer, SI Surender Singh, the presence of Manju Sharma had been recorded, who had identified the body. She further verified the factum of the presence and her deposition that the couple was residing in the said premises. Therefore, it can be safely said that the Trial Court has not erred in any manner to come to this conclusion.

The Motive Aspect:

12. Apparently, there was a grudge on account of the fact that the wife was residing separately alongwith the minor child with their close relative being the brother-in-law (husband of sister of the appellant). This unnatural conduct as such of the deceased who had chosen to reside separately with a male member alongwith the minor further provided a motive for the strained relationship, which would be a conclusive factor for the appellant to nurse a grudge on account of having been humiliated in the family that his wife had stayed with a male member separately from him. This aspect has been amply proved from the earlier statement of the wife herself, which was recorded in the proceedings in the Court and the lodging of the FIR when she allegedly went missing.

13. A perusal of FIR No.100 lodged on 24.01.2018 (Ex.PU) under Section 346 IPC which was lodged at Police Station, Sector-7, Faridabad would go on to show that the appellant had stated that he was working in MCD, Delhi as Baildar and on 22.01.2018 at about 8:00 AM his wife alongwith his son had left the house and they had gone somewhere at their own will. He had searched for them, but could not find them and, therefore, prayed that missing report be registered. He had given description of his wife and son, who were aged 41 years and 15 years.

14. PW-17 ASI Sanjay Kumar, who was the Investigating Officer of the said FIR, proved the factum of lodging of the said FIR and he had stated that on 18.02.2018 he had received a secret information that the wife and son of the appellant were residing in Karnal and he had accordingly brought them to Faridabad. The deceased had made a statement (Mark-A) before the Legal Aid Counsel, which was attested by him at Point-A1. He further stated that on

the next day she had been produced before the Duty Magistrate for recording the statement under Section 164 Cr.P.C, where her statement was recorded by Ms. Sakshi Saini, JMIC, Faridabad. Similarly, the statement of Manan had been recorded under Section 164 Cr.P.C., which were brought on record as Mark-B & C and resultantly, a cancellation report (Ex.PV) had been prepared.

15. A perusal of the said cancellation report would go on to show that the untraced report was written by the SHO on account of the fact that the missing persons had been traced and their statements had been recorded under Section 164 Cr.P.C. before the Court. The said report further goes on to show that during the investigation the bank account of the missing woman had been frozen and she had been recovered from House No.460, Sector-7, Karnal, after receiving secret information. The call details had also been called, since the mobile number were duly provided.

16. A perusal of the statement of the deceased recorded before the JMIC dated 19.02.2018 (Ex.PA II) would go on to show that the deceased had stated that she had studied upto Class 12th and her marriage was solemnized 17 years before and her husband used to beat her. Her sisters-in-law also used to abuse her and her character was also attacked and she had named her three sisters-in-law Nishi, Mamta and Shalini who used to blame her that she had affairs with other persons, due to which she was very upset. She had left her home for going to her mother's house, but then went to Karnal with her brother-in-law (Nandoi), as per her own wish, as he was helping her to take the house on rent. Similarly, the statement of the son was also recorded by the same JMIC on 19.02.2018 (Ex.PAB) and the Magistrate had taken the necessary precaution to question the minor as to whether he was able to understand the meaning and sanctity of oath. Thereafter, he had recorded the

statement, whereby the son had stated that the appellant was used to tease him and the deceased and on 22.01.2018 his mother had left the house for going to his maternal grandmother's house, but went to Karnal alongwith his uncle (Fufaji).

17. A perusal of the orders passed by the Magistrate on 19.02.2018 (Ex.PAC and Ex.PAE) would go on to show that adequate time had been given to the deceased to make her statement under Section 164 Cr.P.C. Before recording the statement after half an hour and ensuring all police personnel and Court staff had left, the proceedings had been conducted in camera and statement was recorded by the Magistrate in her own hand. Similarly, same precautions had been taken while recording the statement of the minor and giving half an hour time by asking him that as to whether he would want to make any statement, vide order dated 19.02.2018 (Ex.PAF and Ex.PAG). His statement was also recorded in camera by the Magistrate, who had recorded that the said persons were under no threat, coercion or undue influence. The said Magistrate was also examined as PW-23 to prove the said documents.

The factum of the strained relationship and the bickering as such have also been proved by three witnesses in question namely, the son PW-5 Manan, the complainant/brother of the deceased, PW-12 Brij Sharma and PW-13 Manju Sharma, sister of the deceased. The categorical averments are that the appellant was working as a Class-IV Employee in the MCD, Delhi and there was demand of money by him and they were staying in House No.182-C, Hari Nagar Ashram, New Delhi and then shifted to Faridabad. The son in his statement stated that on 21.02.2018 there was a major altercation which had taken place with one of the sisters-in-law namely Shalini Sharma @ Shama, due to which she had left the house on 22.01.2018 and met the brother-in-law

Rajesh Sharma, who had taken them to Karnal, where they had rented a Two BHK Flat, where in one room the son used to live with his mother and in another room his uncle used to live, till they were traced by the Police on 18.02.2018. The factum of the statements being recorded before a lady Judge had been duly proved. Thereafter, they started living at his maternal grandmother's house, where the father had come and apologized.

18. Similar is the statement of PW-12, Brij Sharma, brother of the deceased that at the time of marriage they had given dowry in the form of motorcycle and even they had paid money for the construction of the house at Hari Nagar Asharam, Delhi and the appellant used to beat his sister, thereafter, his father had stopped paying money. On account of the dispute the sister and his nephew had left the house and had gone to Karnal, as the appellant had threatened that he would kill his sister no matter where she goes. He further stated that her sister had made a statement before the Magistrate that her three sisters-in-law were responsible for her leaving the matrimonial home. Thereafter, the appellant apologized for his conduct and then on 10.03.2018 they had started living in a house where the incident had taken place. PW-13 Manju Sharma, sister of the deceased, stated that she was aware of the fact that the appellant had lodged a missing person's report, but did not know the details, as there were strained relationship also between them. She further stated that she did not know when the couple had shifted to Faridabad and she was not on talking terms.

19. The factum of the strained relationship, thus, has been rightly proved by the prosecution inter se the deceased and the appellant. The presence of the accused and being last seen in the vicinity has further been proved by the statement of the witnesses. Merely because Nand Kishore

Sharma, the real brother of the appellant was not examined, would not be a ground as such to discard the evidence of the child witness. The factum of the appellant having Mobile No.9582927498 had been got proved by examining PW-25, Saurabh Aggarwal, Nodal Officer, Vodafone Idea. A perusal of Ex.PAO which was a Prepaid Customer Application Form in the name of the appellant, would go on to show that the address as such of the appellant is House No.182C, Hari Nagar, South Delhi.

The last seen circumstances and the presence at the spot

20. The son-Manan had specifically stated that on 17.03.2018 when the dead body was discovered, he was present in the house of his paternal uncle namely Nand Kishore Sharma, where his uncle had received a call on his mobile phone from his father who asked his uncle not to send him to the house in question, as he was going out for some work. Then his father had come to the house of his uncle and called his name. He was holding two bags, out of which one was his office bag and told him that he was coming from the house. The appellant then had handed over his mobile phone to him and told him that he was going to give clothes for ironing and then told him to not to go to the house. He, however, went to the house, as directed by his uncle. He knocked on the door, but no response was received and then he had peeped through the window and found that the door of his mother's room was closed. He had then contacted his uncle (Tauji) that his mother not giving any response. His uncle had directed him to call his Manju Mausi, who had advised him that to get the door broken with the help of some elder person. His Tauji had talked with the police official and after sometime police officials reached the place of occurrence and made the arrangement for breaking up the lock. The help of one Sardar Ji was taken for the said purpose and body of his mother was found

in two parts and the head was lying at a distance of one foot from the rest of the body. He informed his maternal uncle about the death of his mother through mobile phone. In cross-examination also he stated that he had gone to his house firstly between 11:15/11:30 AM and then returned to house of the uncle since nobody had opened the door. Around 10-15 persons gathered at the time when the door was broken, but he did not know the name of those persons. The factum of call being received by the police personnel has also come on record and the fact that call was received from the mobile phone which had been handed over to the son of the appellant.

21. PW-14, ASI Naresh Kumar has deposed that on 17.03.2018 at about 12:55 PM, he had received a call from Nand Kishore from the number in question i.e. 9582927498 that one lady had locked the room from inside and was trying to commit suicide and quarrel had taken place between husband wife and request had been made to send the police. The entry regarding receipt of information had been made in Register No.4 at Page No.250. The call had been attended by SPO Jagdish, who informed the Incharge, Police Post Green Field Colony, Faridabad. Thus, the factum as such of the usage of the mobile phone to call the police personnel has been duly proved. It has also come on record that the said mobile phone was used to make a call to Nand Kishore on his mobile phone No.9990688099, as has also been deposed by Manan, which goes on to show the presence of the appellant at the place of occurrence.

22. The Nodal Officer proved the usage of the phone inter se, which would be clear from the statement of PW-25. The factum of the subsequent number i.e. 9990688099 being in the name of Nand Kishore Sharma has accordingly been proved by bringing on record Ex.PAS, the Idea Customer Form, which also goes on to show that the identification of two numbers was

also of House No.182-C, Hari Nagar Ashram, New Delhi, which was the prime address of the appellant and his brother. Relevant necessary certificate under Section 65B of the Indian Evidence Act, 1872 (for short 'Evidence Act') (Ex.PAU) was also brought on record. The print outs of the call details (Ex.PAU) of the said numbers 9990688099 from 15.03.2018 to 19.03.2018 had been produced and its contents had been verified by the Nodal Officer that the same were reproduction of the original to the best of his knowledge. The location chart (Ex.PAY) had also been proved. Similarly certificate under Section 65B of the Evidence Act of the telephone number being used by the appellant was also brought on record as Ex.PAQ, which certified the call details for the period from 15.03.2018 to 20.03.2018 regarding mobile numbers 9582927498, 8373961055 and 9582862903. The said witness had been recalled after an application under Section 311 Cr.P.C. was allowed, vide order dated 12.02.2021, in which as many as four witnesses were re-called including Dr. Upender Bhardwaj, PW-11 SI Surender Singh, PW-26 SI Jameel Ahmad and PW-25. The purpose was for verifying the location of the mobile phone of the accused during the occurrence and after that, as the phones were not recovered during investigation. The Trial Court has noticed in detail the change in location of the said phone, as the appellant would have moved from the house to reach his brother's house, as has been stated by the son of the appellant also. Relevant observations of the Trial Court regarding this aspect read as under:-

“43. More so, the clear and categoric deposition of PW5 that on 17.3.2018 his father (accused) had come to meet PW5 and handed over his mobile phone has also gone un-assailed and is corroborated by the fact that the phone given by accused to PW5 was in fact used in informing the police at

Control Room, Sector-12, Faridabad. The accused has utterly failed to explain as to how his mobile phone came in the possession of PW5 on that day.

44. Moving ahead, PW25-Nodal Officer, Vodafone Idea Ltd. In his chief-examination has proved the locations of the said mobile phone no. 9582927498 in the name of accused Sanjeev Kaushik on 16.3.2018 and 17.3.2018. According to PW-25 Nodal Officer, on 16.3.2018 after 17:38:59, the physical address of the tower, in whose range the mobile was at that time was not available. On 17.3.2018 at about 11:30:29 hours, the subscriber was in the range of tower ID 40411300421116 having physical address of tower as plot no. U-69, khasra no. 61/18, Green Field, Faridabad. At 11:51:50 hours the tower location of the above said mobile number changed to tower ID 40411300255832 having physical address as khasra no. 55/10, plot no. W-56, Green Field Colony, Faridabad. This change of location of the said mobile phone of accused Sanjeev Kaushik was significant noticing that during that time he came out of his house and was proceeding to the house of his brother Nand Kishore to meet his son.

45. On 17.3.2018 at 11:55:13 hours, the subscriber came in the range of tower ID 40411300421117 with physical address of plot U-69, Green Field, Faridabad, and then at 12:55:23 hours the said mobile phone came in the range of tower ID 40411300421116 i.e. the same tower ID in range of which the said mobile phone was at 11:30:29 hours. Worth noting, as per PW14- ASI Naresh Kumar, at about 12:55 hours on 17.3.2018, the phone call mentioning that a woman was locked inside the house was received at Control Room from that mobile phone number only, on which police team reached the spot, where PW5 Manan and his paternal uncle were found present outside the locked house of accused Sanjeev Kaushik. So it is amply established that the house of accused at Green Field Colony, Faridabad fell within the range of tower ID 40411300421116. Accordingly, as per location of the mobile phone of the accused at about 11.30 a.m. on 17.3.2018 given by PW25- Nodal Officer, the accused was near or around his

house at Green Field Colony, Faridabad, and this factum has been cogently and firmly established by the electronic evidence of unimpeachable character. The accused has nowhere pleaded that on 17.3.2018 he was not carrying his mobile phone at that time. His location around that area at that time would definitely corroborate CCTV recordings relied by the prosecution adding more credibility and authenticity to the same. It further indicates that the version given by PW5 regarding meeting the accused approximately during that time and handing over the mobile phone to him by the accused is trustworthy and fully reliable. The electronic evidences are indubitably superior to human testimony of facts.”

23. The presence of the appellant as such at that point of time at the place of occurrence had further been proved, as the Trial Court has also relied upon the CCTV footage, which showed that on 16.03.2018 at 21:27:14 hours, a person was seen coming to the house carrying a poly- bag and another bag in his hand entering the main gate and thereafter was seen closing the door from inside and the same person was also seen coming out of the building at 11:16:20/21 hours on 17.03.2018. The said footage had been seen from the CD (Ex.PT/1) which had been prepared by Ravi Sharma, CCTV Engineer, Securitech Solutions. He was examined as PW-16, whereby he had stated that he was working at Securitech Solutions in Sector-9 Faridabad and on the asking of the police had come to Green Field Colony to take the CCTV footage of the camera, which was installed at the pole opposite House No.3323, Block-C, Green Field Colony, Faridabad. He had prepared the CD of the footage in Impression Lab and handed over the CD, pendrive to the police on 19.03.2018, which were taken into possession by the Investigating Officer by a seizure memo. He had, accordingly, prepared certificate (Ex.PT) under Section 65B of the Evidence Act. The same CD had been played in the Court

and witnessed by the Trial Court. The Trial Court has recorded that though it may not be very clear, but the person who was entering in the house and coming out from the house was of same stature, physique, height and complexion, as to be that of the appellant. In such circumstances, the Trial Court has come to the conclusion that question of any other person entering and leaving the house at the same time and the appellant having left the house earlier for work, is something which had to be explained by the appellant, which has not been done.

The statement of child witness, son of the deceased and the appellant and the factum of the house being locked and dead body of the deceased having been found on breaking up the lock:

24. A perusal of the statement of Manan, son of the appellant, who was stated to be around 15 years when he deposed in December, 2018, nine months after the incident, would go on to show that there was a strained relationship between husband and wife and frequent quarrels took place and the appellant used to demand money from the deceased, since he was working as Class-IV employee with the Municipal Corporation, Delhi. He categorically stated that after the recording of the statement by the lady Judge, they had started staying at his maternal grandmother's house, where the appellant had come and apologized and cried in front of the deceased, who got emotional and agreed to accompany him. The rented premises namely, the place of occurrence, then being arranged by elder brother of the appellant namely Nand Kishore and they had shifted on 10.03.2018 a week earlier to the day of the incident. He used to stay with his uncle as nobody used to cook in the house, as the disputes were still carrying on. His uncle was residing at a walking distance of 4-5 minutes and he used to visit his mother daily. On

17.03.2018, the day of incident, his uncle had received a telephonic call on his mobile phone, from the appellant who had asked his uncle not send him to the house in question, as he was going out for some work. The appellant had come to the house where the witness was staying and given his mobile phone on account of the fact that he had some problem in operating it and then gone in the opposite direction of the washer-man booth and then he became suspicious, as his father had stopped him from going to home by stating that he was going to get some clothes ironed. In such circumstances, the witness had gone to the house where his parents were residing and on finding it bolted from inside and not being able to contact his mother, he had then peeped through the window and found the room closed. On getting no response, he had contacted his uncle, who had directed him to call his mother's sister, his maternal aunt, namely PW-13 Manju Sharma, who told him to get the door broken with the help of the some elder person. The brother of the appellant then called the police and the police officials reached the spot and made arrangement for breaking open the door with the help of Sardar Ji, where the body of his mother was found lying inside the room in two parts. It was thereafter the maternal uncle namely PW-12 Brij Sharma was called.

25. In cross-examination, it was put to the said child witness that his maternal uncle/complainant was running a Saloon on the ground floor for the last about one and half year at House No.182-C, Hari Nagar, which was the ancestral property of his father, where the family used to reside earlier on the first floor. The witness replied that he did not know about the rent which was being paid, but they had rented the house and the rental amount of the saloon shop was being paid by his maternal uncle as told by his father/appellant.

They had also lived in the house of Shama Bua situated in Sector-8 for 2-3

months. In examination-in-chief, he has categorically stated that on account of some dispute, the said Shama Bua had tried to strangle his mother and there was altercation on that account between the deceased and the appellant also. His credibility as such was sought to be shattered by referring to some photographs where he was found consuming liquor with family members. He stated that 10-15 people had gathered at the time door was opened and he did not know the name of the person, but he could identify them and he had met the police officials in connection with this case.

26. PW-6 HC Lokesh Kumar had proved the fact that he had accompanied SI Surender Singh, SI Karambir, HC Surender and Constable Mahipal for breaking open the door and arranged a locksmith and when they had entered the house they had seen the body in decapitated form. He stated that the lock was in-built in the door and the locksmith was arranged by HC Surender. The locksmith had broken open the door with the help of hammer and *Chhaini* and there was a mark on the door due to the hammer. He also mentioned the presence of Constable Mahipal, who was examined as PW-7, who also deposed in the same way regarding the presence of SI Surender Singh and HC Surender and the lodging of the FIR.

27. PW-10 SI Karambir also deposed about arrangement of locksmith and discovery of dead body and being accompanied SI Surender Singh and also regarding the presence of the son of the appellant and his paternal uncle Nand Kishore being present. In cross-examination he stated that the locksmith had broken open the door with the help of the hammer and photographs had also been taken at the time of breaking open the lock of the main door. He denied the suggestion that son of the appellant and the paternal uncle Nand

Kishore were not present at the spot.

28. Similar is the statement of PW-11 SI Surender Singh that on account of getting a telephonic call from the control room that there was a woman, who had locked herself in House No.3323, Block-C, Green Field Colony, Faridabad and the gate was locked, direction was given to check the site. The police party had reached the said place alongwith SI Karambir, HC Lokesh, HC Surender Singh and Constable Mahipal and arranged a locksmith, who had opened the main door of the first floor of the house and the dead body had been found. The FSL team had been called and senior officials had been informed. The inquest report had then been prepared and the body had been shifted to BK Hospital and the photographs had been taken of the place of occurrence by photographer Suryakant, who had handed over photographs Ex.PN to Ex.PN/11 and DVD Ex.PN/12 during the course of investigation alongwith certificate under Section 65-B of the Indian Evidence Act. The locksmith is stated to have come present at about 2:00 PM since the police party reached the spot at about 1:15 PM, having been accordingly arranged thereafter. His statement refers to the breaking open of the main door with the help of hammer. He stated that the lock of the main door was a interlock in nature and was fixed in the main door. The FSL crime team had reached the spot at about 2:30/3:00 PM and nothing was lifted from the spot before the FSL team inspected the spot and there was no key present with the son of the deceased. The witness voluntarily stated that the son of the appellant had stated that his father is in possession of the keys.

29. The said witness was recalled after an application under Section 311 Cr.P.C. was allowed. He had referred to the report of the CCTV Camera prepared by PW-16 Ravi Shekhar and the identification of the appellant on seeing the same CCTV footage and also the identification by Brij Sharma, the

brother of the deceased. He stated regarding moving of the application Ex.PW30/A alongwith sealed parcel of scissors which had been duly sealed and recovered from the spot, vide memo Ex.PG. A perusal of which goes on to show that the said recovery memo was attested HC Lokesh and SI Karambir.

30. Similarly, PW-14 ASI Naresh Kumar, Incharge of the Control Room had stated regarding receiving of a call from Nand Kishore, brother of the appellant from Mobile No.9582927498 that one lady had locked her room at House No.3323, Second Floor in the Green Field Colony to commit suicide as quarrel had taken place between husband and wife and the necessary entry had been made in Register No.4. The call had been attended by SPO Jagdish and he had informed the Incharge, Police Post, Green Field Colony, Faridabad.

31. PW-20 Suryakant Sharma, the photographer, who was running a photo studio in the name of Mayaji Digital Photo Studio at Dayal Nagar, Faridabad had stated that he was summoned by the police on the day of incident and he had taken photographs Ex.PN to Ex.PN/11. He also prepared DVD Ex.PN/12 and issued certificate Ex.PN/13 under Section 65B of the Indian Evidence Act. He had stated that he spent about 2½ to 3 hours, whereas he had taken about 30 minutes to take the photographs and the scissor which was visible in one of the photograph was lying near the body.

32. PW-27 Avtar Singh, Locksmith, who had broke open the door stated that his shop was situated opposite Power House, Village Gurukul. He further stated that it was an iron gate with a welded internal lock and the same was locked from inside. He broke open the door with the help of hammer and an iron piece (Chhaini). There was wooden door in between iron gate and they pushed the handle of the wooden door, which had not been locked. He further stated that he was asked by the police official to go inside the flat.

There were two rooms and decapitated dead body of the lady was lying in the room on the left.

33. The neighbour PW-28 Sanjeev Pundir was also examined, who proved the fact that police had called one locksmith and metal gate of the flat being opened. He had also gone inside the flat and had seen the decapitated body, which was of the wife of the appellant.

34. The cumulative effect of the statements of the witnesses goes on to prove the factum of the body of the deceased being discovered on breaking open the door on a suspicion having arisen in the mind of the child witness, on account of being told by his father not to go to the house of the mother. The said statements directly point towards the presence of circumstances in which the house was locked from within and the key being taken away by the appellant and the dead body having been discovered on breaking open the door. It is to be noticed that the said factors had been put to the appellant. The only explanation as such was given that it is a false case and because of monetary greed he had been falsely implicated and the family of his deceased wife had poisoned the mind of his son and turned the child against him and they had grabbed his property during the pendency of the case and were illegally taking the rent from the tenants and mis-utilizing the money for his personal gain and benefits. The circumstances as such regarding the strained relationship and the factum of going missing has not been explained in his statement, apart from an explanation given that he had given the shop to his brother-in-law free of rent, as he had been thrown out from his previous employment on account of allegations of misappropriation. He had denied the fact that he had made any demand from his father-in-law and was not aware regarding the FDs in the name of of his wife. However, he had stated that his

wife had eloped with one of his relatives and was apprehended by the police in Karnal, after he had lodged a report that his wife had left the house and was untraceable. He also admitted the factum that his sister's husband namely Rajesh Sharma had offered to help his wife to settle at Karnal and he also resided at Karnal in the same two bed room flat alongwith his son. He had also admitted the factum that for the sake of his son they had started living at Faridabad and that if he had made an issue, the family life of his sister would have been ruined. It was his case that he was falsely implicated under the influence of his wife's family. It was his version that he had surrendered in the Court on 20.03.2018, as the police was not willing to listen and he denied regarding making any disclosure statement Ex.PQ and Ex.PAX or demarcating the place vide Ex.PR when he was taken into custody. As per his disclosure statement Ex.PQ dated 20.03.2018, he had stated that his wife had gone to Karnal and Mussoorie with his brother-in-law without informing him and returned back home after one month and from that day onwards he thought about killing her. He fled away after leaving the scissor in the flat and had taken three mobile phones of his wife and hid them in the park near Kashmiri Gate, Delhi. He had lost the keys and had left the blood stained clothes at the flat itself, which were worn at the time of incident. He volunteered that he could recover the mobile phones from Kashmiri Gate, Delhi.

35. The statement of the appellant in Ex.PAX on 23.03.2018 was also in terms of the same as Ex.PQ, apart from giving the details that he had inflicted the injuries on her neck with scissor and he had kept cutting the neck till the head got separated from torso. He had broken the three mobile phones of his wife and his two mobile phones and thrown them at different places

while crossing the Lajpat Nagar Delhi flyover and, therefore, he had no articles with him to get recovered. The demarcation was got done vide Ex.PR, a day after the surrender.

Invocation of the provisions of Section 106 of the Indian Evidence 1872:

36. Thus, the explanation given regarding his going missing after the incident on 17.03.2018 and surrendering after 4 days would go on to show that the appellant had much to hide and only on realizing there was no choice, he duly surrendered thereafter. The provision of Section 106 of the Indian Evidence can be thus invoked and the lack of explanation, which he has failed to give. The burden of proof has to be on the prosecution, but certain facts there being known to the accused which are not possible for the prosecution to prove the same and it is only on the basis of circumstantial evidence that the conviction had been recorded. The circumstances as such were which led to the body being discovered, thus, had to be properly explained by the accused, which he had failed to do so, though closely related.

37. The Apex Court in **Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 10 SCC 681**, upheld the conviction which had been recorded by the High Court which had interfered in the order of acquittal of the Trial Court by holding that once the murder is committed in complete secrecy inside the house, the burden as such to give a cogent explanation as to how the crime was committed would be on the inmates of the house. The appellant living in the house alongwith his wife has been proved beyond any shadow of doubt and, therefore, the said judgment would be directly applicable in the facts and circumstances.

38. Reliance can also be placed upon the judgment in **State of Rajasthan Vs. Thakur Singh, (2014) 12 SCC 211**, which was also a case of

death of the wife and the acquittal had been recorded by the High Court, which was set aside. Resultantly, while placing reliance upon the judgment passed in **Gian Chand Vs. State of Haryana, (2013) 14 SCC 420** and **State of West Bengal Vs. Mir Mohammad Omar, (2000) 8 SCC 382** it was held that there was very strong presumption that the husband was responsible for the murder of the wife, who had been done to death by strangulation. It was resultantly, held that the appellant was to explain the unusual situation of the unnatural death of his wife in their room, but no attempt had been made to do so. That in **Wazir Khan Vs. State of Uttarakhand, AIR 2023 SC 3778** provisions of Section 106 were invoked while upholding the judgment of the High Court, which had reversed the order of acquittal and held the appellant guilty of the murder of his wife, who had received 17 incised wounds on her body. While falling back on the statement of the accused under Section 313 Cr.P.C. also the Apex Court noticed that defence of the appellant as such was of robbery and the robbers attacking his wife but he had failed to give a proper explanation regarding the fact that shortly before the commission of crime they were seen together and the offence had taken place in the house where the husband normally resides.

39. The manner in which the crime had been committed has already been noticed by the Trial Court to bring it within the ambit of rarest of rare cases. The extreme brutality of the crime as such is another factor which has to be kept in mind. Even it was a case of theft or some other person having been responsible for the cause, though nothing has come forth to prove the same. There would be no reason for some other person to sever the neck of the deceased and separate it from the body. It was only a case of extreme frustration of broken relationship *inter se* husband and wife, on account of the

wife having left with his close relative and insult having been faced within the family. Thus, in such circumstances the Trial Court has come to the finding that the accused severed the head of the deceased from her torso after causing multiple injuries on her vital parts. There is no valid reason to differ with the same to the extent that the manner in which the deceased had been done to death would not have been possible until the motive as such was there. The background as such has already been discussed and, therefore, we can safely say that the motive as discussed above would have given a cause to the appellant to inflict the injuries in the manner the same have been done and, therefore, no fault can be found regarding the findings recorded by the Trial Court regarding this aspect.

The Investigation factum having been duly proved:

40. The factum of incident having happened as put up by the prosecution stands duly proved. The police party on breaking open the lock had prepared the site plan as Ex.PC from where it would be clear that Mark-A is the place where the torso of the deceased was lying in the bed room whereas the head was lying at Mark-B. The scissor was also found in the room at Mark-C which is also clear from the photographs (Ex.PN to Ex.PN/11). The blood stained clothes of the appellant including the pant, shirt and Banyian were found at Mark-E, which were taken into custody vide Ex.PF, duly attested by HC Lokesh alongwith SI Karambir and SI Surender Singh. The recovery of scissor was also done vide Ex.PG, which was also attested by the same witnesses. The total length of the scissor was 21.5 cm and the steel blade was of 11 cm and plastic handle was 10.5 cm, which had blood on it. The pillow stained with blood was taken into custody vide Ex.PH, which was also attested by the same witnesses. The requisite application was moved

immediately, Ex.PL for conducting the postmortem of dead body of the deceased to the Medical Officer, BK Hospital, Faridabad, wherein it had been mentioned that head was separated from her torso and death was stated to be occurred by sharp edged weapon to prove the cause of death.

41. The prosecution had also examined PW-29 Anju Bala, Senior Scientific Officer, who had confirmed the factum of receiving 7 parcels on 20.04.2018 and had given her medical examination report Ex.PX and Ex.PX/1. A perusal of the said reports would go on to show that the pillow, Ex.2 alongwith Ex.6a, the white banyian, one shirt Ex.6b and one black pant, Ex.6c were stained with blood. Similarly, the clothes worn by the deceased were stained with blood, which were Ex.7a, her gown and Ex.7b, one brown petticoat, Ex.7c one torn brassier alongwith an underwear, Ex.7d. Blood was detected on Ex.5, the scissor, whereas the blood was not detected on Ex.3, Kirpan, Ex.4a, Toy Pistol and Ex.4b, Magnet. The blood group on the scissor, banyian, shirt and gown were found to be of Group-A, which would be clear from Ex.PX/I, whereas blood group on other other parcels was inclusive. The said witness further stated that no DNA samples were taken, as no such request was received.

42. PW-30 Dr. Upender Bhardwaj was the Medical Officer, Faridabad, upon whom an application had been served, Ex.P30/B on 22.03.2018 that information be given whether the neck of the deceased could be cut and separated by the scissor which had been recovered from the place of occurrence. The fact remains that he had given an opinion on 22.03.2018, Ex.P30/A that the injury could be inflicted with the scissor or sharp edged weapon, however, he had opined that injury inflicted upon the victim would take a long time. The said fact has been proved by examining the said witness,

who had been examined by allowing an application under Section 311 Cr.P.C. He stated that decapitation could take place without cutting the bone also and he did not remember that whether the scissor was blood stained or not, since that was at an earlier point of time. He denied the suggestion that no scissor had been shown to him and volunteered that opinion regarding the scissor shown to him by the IO may not be happily worded.

43. PW-24 Dr. Harish Kumar Arya, Medical Officer, Civil Hospital, Faridabad, who had conducted the postmortem, Ex.PAJ proved the same. He was examined regarding the discrepancies in the same regarding the fact that the level of vertebra at which neck was severed was not noted and neither in the spinal cord the thickness of the vertebra was mentioned. A perusal of the same would go on to show that the persons who had identified the deceased were Manju Sharma, the sister PW-13 and Giriraj Sharma, who is stated to be the sister's husband. The postmortem report shows that head was decapitated from body and the head matched the rest of body in skin tone and margins of incision on head and body coincided. The details of the injuries as such read as under:-

“1. HEAD DECAPITATED FROM BODY. HEAD MATCHES REST OF BODY IN SKIN TONE AND MARGINS OF INCISION ON HEAD AND BODY COINCIDE.
2. LACERATION 1CMX 0.5CM ON LOWER LIP RIGHT SIDE
3. FIVE CUT MARKS OF SIZE 1.5CMX 0.5CM SCATTERED ON RIGHT CHEEK.
4. SCALP HEMATOMA ON RIGHT PARIETAL REGION.
5. CUT WOUND SPINDLE SHAPED 3CM X 1CM ON RIGHT DELTOID REGION.
6. CUT WOUND 5CM X 1CM ON RIGHT LOWER ARM LATERAL ASPECT.
7. ABRASION 1CM X 1CM ON RIGHT SHOULDER.
8. LACERATION 1CM X 0.5CM ON LEFT RING FINGER DIPJ.
9. SIX CUT WOUNDS 1CM X 0.5CM X 0.5CM ON SCATTERED ON LEFT SCAPULAR AND INFRA SCAPULAR AREA.”

44. Resultantly, the opinion was given that the cause of death was shock and hemorrhage due to decapitation with injury to vital organs, which was antemortem in nature and was sufficient to cause death in ordinary course of nature. The issue was raised at large for not examining the elder brother of the appellant, namely, Nand Kishore and who was an important witness. However, it is to be noticed that in defence also the appellant had examined as many as five witnesses, but chosen not to examine the said witness. The prosecution in its wisdom might have not wanted to upset the case, since the appellant is brother of the said witness and may not have supported them on material issues and it was always for the appellant also to ensure the examination of said witness, if he wanted to repel the case of the prosecution, which he had failed to do so.

45. The statement of the Investigating Officer, PW-11 would further confirm the manner in which the investigation was done and the door being broken open, the recovery having been done of the blood stained items, which were lifted and the scissor, apart from the Air Pistol. Thus, proper care was accordingly also taken by calling the Photographer, PW-20 Suryakant Sharma and the crime scene was duly proved by examining the said witness, who had stated that he was called by the police and he had handed over the photographs Ex.PN to Ex.PN/11 after developing the same to the Investigating Officer. PW-16 Ravi Shekhar, CCTV Engineer had also been examined for deposing regarding the footage which was taken into custody. The said witness had stated that he had taken the CCTV footage of the camera and transferred the same into CD, Ex.PT/1. The said CCTV footage was also obtained from the data being recorded in the normal course of business and reliance had been rightly placed upon it by counsel for the prosecution.

46. An attempt as such to argue that conviction could not be recorded on the basis of statement of child witness also would not as such take the appellant very far, since it has been time and again held that it is the duty of the Court to examine the statement with appropriate care and find out whether child witness is a competent witness or not.

47. The factum of child witness remains to be examined with due care as has been held by the Apex Court on several occasions that merely because the witness is a child his statement cannot be rejected, but it should be subjected to a close scrutiny. The duty of the Court is desirable to corroborate the same from other dependable evidence, as conviction can be based on it. The factum of the child witness being amenable to tutoring and sufficient intelligence is to be noticed by the Trial Court, though there is no principle of law if witness is a child, his statement has to be rejected. As noticed it is a case of circumstantial evidence, the statement of the child witness to the extent of presence of the appellant at the time of incident, has been duly corroborated by the call details of his phone, which he left behind and the CCTV footage. The factum of going missing for three days before his arrest is also another aspect. The Apex Court in **Yogesh Singh Vs. Mahabeer Singh and others, (2017) 11 SCC 195** has held that minor discrepancies are not to be given undue emphasis and the evidence of a child witness must be evaluated more carefully.

48. The statement as such of the child witness examined by us in detail, which would go on to show that it was subjected to long cross-examination by the defence counsel post lunch, after having been examined-in-chief, in pre-lunch session. He has given the detail regarding the factum of strained relationship and going away and staying separately with his mother

and paternal uncle. He has categorically stated that as to how his father had asked him not to come to the house, due to which he became suspicious and had gone there and on not being able to contact his mother, he had contacted his maternal uncle and also his maternal aunt, apart from the fact that he has also got in touch with his paternal uncle, who had further directed him to call his maternal aunt. These facts would go on to show that the child who was examined on 18.12.2018, was a well developed person having maturity and was a student of 9th Class and had deposed within 9 months of the incident having taken place and the memory was still sharp. He was put to major cross-examination, but nothing substantial could be elicited from him. Even though an attempt was made to discredit him regarding the family and the fact that he was deposing at the behest of his maternal uncle, who wanted to grab the property of his father.

49. It is also to be noticed that an application was also filed at the same point of time just before his deposition on 03.12.2018 (Ex.D-6), which he had given against his uncle, but in spite of the filing of the said complaint against his maternal uncle and the fact that he was trying to grab his property, did not deter him from making his statement in examination-in-chief as to how the incident had taken place. Therefore, there is no such reason to disbelieve the statement of the child witness, who has only proved one of the circumstances in chain.

50. The Apex Court has time and again laid down the principles that the judgment cannot be recorded only on the basis of circumstantial evidence.

In **Pawan Kumar @ Monu Mittal Vs. State of Uttar Pradesh and another, (2015) 7 SCC 148** it was held that circumstantial evidence consists of chain of facts which are closely associated with the fact in issue and leading to chain of

circumstances linking the accused with the commission of offence. Similarly, the Apex Court in **Pattu Rajan Vs. State of Tamil Nadu, (2019) 4 SCC 771** has held that factors like last seen, identification of the dead body and explanation by the witness to the delay were factors which can lead to the conviction. In the present case the last seen evidence theory also goes on to show that there is a short time gap between when the appellant left the area and the body was found immediately thereafter and there is no plausible reason that somebody else would have been able to enter the flat at that point of time and commit the heinous offence without any motive and, therefore, the possibility of any other person than the appellant being the author of the crime would not be possible.

Quantum of Punishment:

51. However, in the facts and circumstances since it could not be pointed out that the appellant is a person of criminal antecedents and, therefore, we do not think it is not a case which would fall in the category of rarest of rare case where the punishment of death sentence is liable to be imposed. Reliance can be placed upon the judgment in **Machhi Singh and others vs. State of Punjab, (1983) 3 SCC 470**, where a three-Judge Bench as such examined the issue that the collective conscience of the community, if is shocked, and the murder is extremely brutal, grotesque, diabolical and revolting and committed in a dastardly manner, the principle of 'the rarest of rare cases' would be attracted. The Court was dealing with the loss of 17 lives in the series of 5 incidents in 5 different villages in one night and resultantly while examining each individual person's role also went on to uphold the death penalties of some of the appellants.

52. Another three-Judge Bench, in **Swamy Shraddananda vs. State**

of Karnataka, (2008) 13 SCC 767, the Apex Court was considering the reference of the trial Court whereby the death sentence had been imposed upon the appellant. Keeping in view the law laid down, the Apex Court substituted the death sentence awarded by the trial Court after noting that on the earlier occasion, two of the Judges hearing the case as such had differed on the death penalty which had been imposed and resultantly directed that the imprisonment would be for life and the convict was not to be released from prison for the rest of his life.

53. In **Manoharan vs. Inspector of Police, (2019) 7 SCC 716**, where two innocent children aged 7 years and 10 years had lost their lives and also been seriously abused, the death sentence which had been confirmed by the High Court was modified by a three-Judge Bench of the Apex Court. The aggravating and mitigating circumstances had been kept in mind wherein there was a cleavage of opinion to the extent that the majority opinion confirmed the death sentence whereas there was a minority view that it was not a rarest of rare case and by coming to the conclusion that it did not fall within the category of 'the rarest of rare cases'.

54. In **Mohd. Mannan @ Abdul Mannon vs. State of Bihar, (2019) 16 SCC 584**, keeping in view the provisions of Section 354(3) Cr.P.C. and keeping in mind that the case falls within the category of 'the rarest of rare cases', the brutality and the heinous nature of the crime and the gruesome manner in which it was committed it was held not to be the sole criteria. It was held that the Court was also to take into consideration the criminal state of his mind, social and economic background while awarding death sentence which is an exception. Thus, the principle which has been laid down by the

Apex Court is that the snuffing out the life of the person under Section 354(3) Cr.P.C. is not to be taken lightly.

55. In **Lochan Shrivastava vs. State of Chhattisgarh, 2022 (1) RCR (Criminal) 328**, another three-Judge Bench commuted the death penalty to life imprisonment for the rest of the life upholding the conviction under Section 363, 366, 376(2)(i), 377, 201 and 302 read with Section 376A IPC and Section 6 of the POCSO Act. In the said case, the victim as such was three years old and the appellant as such was the neighbour who was a resident of the same building. The case was also based on circumstantial evidence and the conviction was accordingly upheld while dealing with the issue of capital punishment. It was noticed that the appellant was a young man of 23 years and there were no criminal antecedents and it was the first offence committed which is heinous but he was not a hard core criminal and, therefore, the possibility of being reformed and rehabilitated and foreclosing the option of a lesser sentence was kept in mind.

56. In **Pappu vs. State of Uttar Pradesh, (2022) 10 SCC 321**, another three-Judge Bench of the Apex Court, while dealing with the murder and rape of a minor girl, came to the conclusion that the death sentence awarded was liable to be commuted into imprisonment for life with the stipulation that the appellant shall not be entitled to pre-mature release or remission before actual imprisonment for a period of 30 years while noting that the appellant was known to the child, whom she used to address as an uncle. In **Kashi Nath Singh @ Kallu Singh vs. The State of Jharkhand, (2023) 7 SCC 317**, for the rape and murder of a 14 years old girl, the death penalty as such was converted into a fixed term sentence for 30 years without any benefit of remission keeping in view the fact that he was 26 years of age.

57. In such circumstances, we decline the reference i.e. **MRC-1-2021** as such regarding the sentencing to death and modify the same and thus partly allow the criminal appeal i.e. **CRA-D-223-2021** by converting the death sentence to a sentence of life imprisonment without remissions for the remainder of his natural life.

(G.S. SANDHAWALIA)
JUDGE

(LAPITA BANERJI)
JUDGE

30.01.2024
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes