

**IN THE HIGH COURT OF CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

DEATH REFERENCE NO. 01 OF 2023

STATE OF WEST BENGAL

... APPELLANT

Vs.

SAMAR PATRA

... RESPONDENT

With

C.R.A. (DB) 86 Of 2023

SAMAR PATRA

... APPELLANT

Vs.

STATE OF WEST BENGAL

... RESPONDENT

For the Appellants : Mr. Soumik Ganguli, Adv.
Mr. Supriyo Shasmal, Adv.

For the State : Mr. Debasish Roy, Ld. P.P.
Mr. Rudradipta Nandy, Ld. APP
Mr. Santanu Talukdar, Adv.

Hearing Concluded on : 10.06.2025

Judgment on : 26.06.2025

MD. SHABBAR RASHIDI, J.:-

1. Death Reference and the Appeal is directed against judgment of conviction dated March 21, 2023 and the order of sentence dated March 22, 2023 passed by learned 2nd Additional Sessions Judge, Kakdwip, in Sessions Trial No. 204 (8) of 2018 arising out of CIS Session Trial No. 55 of 2018.

2. By the impugned judgment of conviction, the appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code. By the impugned order of sentence, the convict was sentenced to death penalty with a fine of ₹5,000/- and in default of payment of fine, the convict was directed to undergo rigorous imprisonment for a further period of 6 months.

3. The manager of Hotel Moumita, Bakkhali, lodged a written complaint with the Frazerganj police station on April 12, 2018, stating interalia, that on April 11, 2018 at about 3.00 in the evening, two persons being the appellant Samar Patra and one Durga Rani Majhi Barui checked in his hotel in Room No. 5 by producing copy of Voter's Identity Card as identity proof. On the following day i.e. April 12, 2018, the room boy of the hotel informed the de facto complainant that Room No.5 was closed from inside and no one was opening the room. In such situation, the de facto complainant informed the police. On arrival of police, the door of the room was broke open whereupon, it was discovered that the girl was lying dead on the bed. The boy was

not there. The window of the bathroom was found devoid of glasses. The de facto complainant also stated in the written complaint that there was a thick black glass mark on the neck of the girl. According to him, the boy killed the lady by strangulation and fled away by removing the window glasses of the bathroom.

4. On the basis of such written complaint, Frazerganj Police Station Case No. 30/2018 dated April 12, 2018 under Section 302 of the Indian Penal Code was started against the appellant named in the First Information Report. Police conducted investigation of the case and on completion thereof, submitted charge sheet against the appellant. Accordingly, on the basis of materials in the case diary, charge under Section 302 of the Indian Penal Code was framed against the appellant on August 28, 2018. The appellant pleaded not guilty to the charge and claimed to be tried.

5. It was submitted by learned advocate representing the appellant that the prosecution has not been able to bring home the charge framed against the appellant beyond all reasonable doubts, sufficient enough to secure his conviction. He further submitted that there are material contradictions in the evidence adduced on behalf of the prosecution vis-à-vis the witnesses per se as well as the case made out in the written complaint telling upon the veracity of the case of the prosecution.

6. Referring to the evidence of PW 3, learned advocate for the appellant submits that as per the case made out in the first information report, the appellant is said to have fled away removing the glasses of the bathroom window whereas, PW 3 in his deposition, speaks of ventilator. It was also submitted that the finger print expert went to the place of occurrence after several days of the incidence and was able to develop two chance finger prints of the appellant on a drinking glass. Learned advocate for the appellant submitted that recovery of chance finger prints on April 4, 2018 where the incident took place on April 12, 2018 is suspicious and doubtful.

7. Learned advocate for the appellant also submitted that the prosecution had failed to produce the CCTV footage of the place of occurrence at the trial which raises doubts with regard to involvement of the appellant in the incidence of murder of the victim. Learned advocate for the appellant also submitted in reference to the evidence of PW2 that such witness cannot be trusted. He has made contradictory statements. In his deposition, such witness had stated to have seen the window of the bathroom in broken condition but subsequently, he made a statement that the glass of such window was found to be broken.

8. Learned advocate for the appellant also contended that in view of the quality of evidence led at the trial as well as in consideration of the facts and circumstances brought forth, the case does not fall

within the category of 'rarest of rare case' and as such, death penalty imposed upon the appellant is not sustainable. To such proposition, learned advocate for the appellant relied upon **(2023) 2 Supreme Court Cases 353 (Manoj and Others Vs. State of Madhya Pradesh)** and **(1980) 2 Supreme Court Cases 684 (Bachan Singh Vs. State of Punjab)**.

9. Per contra, learned advocate for the State submitted that the prosecution has been able to prove the charge beyond iota of any doubt with the help of overwhelming evidence. He submitted that the learned trial court was quite justified in passing the impugned judgment of conviction and sentencing the appellant to death penalty.

10. In order to bring home the charges, prosecution examined 16 witnesses. In addition, prosecution also relied upon several documentary as well as material evidences.

11. The de facto complainant deposed as PW 1. He identified the appellant in court. He stated that he lodged a written complaint with Frazergunj coastal police station on April 12, 2018. He proved the written complaint written by the owner of Moumita Hotel and his signature thereon. He also proved his signature on the formal First Information Report. PW 1 also stated that on April 11, 2018 the appellant and one Durgar Barui @ Majhi checked into Moumita hotel at about 3.00/3.30 p.m. and stayed in room No. 5. On the said date, at about 9.30/10.00 p.m. dinner was served in their room by the hotel

boy Jagannath Ghosh. On the following morning at about 9.00 a.m. the hotel staff knocked on the door of room No. 5 as a daily routine. However, the door of the room was not opened. Thereafter, PW 1 personally went to Frazergunj coastal police station and informed the matter to the police. On such information police accompanied PW 1 to the hotel and opened the door of room No. 5 by breaking it in his presence.

12. PW 1 also stated in his deposition that upon breaking open the door of room No. 5 of the hotel, the body of Durgarani Barui was found lying on the bed and the ventilation of the attached toilet of that room was found in broken condition. The appellant could not be found there in the room. He also stated that the victim was found dead having a black colour ligature mark on the neck of the dead body which, according to PW 1, was caused by means of an 'orna'. Thereafter, PW 1 accompanied by Jagannath Ghosh went to the police station. The dead body of the victim was also brought to the police station. The owner of the hotel was called upon who scribed the written complaint as per the instructions of PW 1. PW 1 also stated that his statement was recorded by learned Magistrate. He proved such statement. He also identified the appellant put on test identification parade. PW 1 was cross-examined on behalf of the defense, however, nothing favourable could be elicited in such cross-examination.

13. An employee of the hotel deposed as PW 2. In his deposition, he stated that on April 11, 2018 he was an employee of Moumita hotel. He identified the appellant in court. He further stated that the appellant committed murder of Durgarani Majhi for which the manager of the hotel lodged a written complaint. PW 2 also stated that on April 11, 2018, the appellant accompanied by Durgarani Majhi came to Moumita hotel and stayed in room No. 5. He also stated that at about 9.30 p.m. he served dinner to them and after finishing his daily work, he went to sleep in his room.

14. PW 2 further stated that on the following morning at about 10.00 a.m. he went to room No. 5 to serve morning tea. He knocked the door but it was not open from inside. For such reason, the manager of the hotel i.e. PW 1 informed the matter to Frazergunj coastal police station. Following such information, police arrived in the hotel and opened the door of room No. 5 by breaking the door in the presence of PW 2. He further stated that after opening of the door he noticed that one wine bottle, glass and one mobile charger were lying inside the room and the dead body of Durgarani Majhi was lying on the bed. The door of the attached bathroom was opened and PW 2 could notice that the window of the bathroom was in broken condition. The appellant was not found either inside the room or in the bathroom. He also stated that the window of the room was covered with glass and the

said glass was in broken condition. PW 2 proved his signature on the seizure list dated April 12, 2018.

15. PW 2 also stated that the police took away the dead body of Durgarani Majhi initially to the police station and thereafter it was sent to Dwarikanagar hospital. PW 2 accompanied the dead body to the hospital. He also stated that the police conducted inquest over the dead body. He proved his signature on such inquest. PW 2 also stated that his statement was recorded by learned Magistrate which he proved. He also identified the appellant put on test identification parade. This witness was also cross-examined on behalf of the appellant at length.

16. The owner of Moumita Hotel deposed as PW3. He stated that on April 12, 2018, at about 10.00/10.30 a.m. the manager of his hotel i.e. PW1, informed him over telephone that the door of room No. 5 of the hotel was not opening. PW 3 advised him to inform the matter to police. He further stated that after about half an hour, PW 1 again informed him that the door was opened by breaking it and that one lady Durgarani Majhi was murdered whose dead body was lying inside room no. 5. Hearing this, PW 3 went to Frazerganj coastal police station and found the manager as well as one staff of the hotel Jagannath Ghosh i.e. PW 1 and PW 2 in the police station. He scribed the written complaint there at the instructions of his manager Supriya Halder. He proved his signature on such written complaint.

17. PW 3 also stated that one wine bottle, a pair of ear rings, towel and other articles were seized by the police under a seizure list. PW 3 identified the seized articles in court. He proved his signatures on such seizure list as well as labels attached to seized articles. In his cross examination, PW 3 stated that the glasses used in the ventilator were intact. The height of the room of room No. 5 was 10 feet and the ventilator was placed two feet from the roof. The frame of ventilator was made of woods.

18. An owner of adjoining hotel was examined by the prosecution as PW 4. He stated that CCTV footage installed in his hotel was seized by police on June 26, 2018 under a seizure list to which he signed. He proved his signature on the seizure list. He also stated to have heard that one lady was found dead in the adjoining Moumita hotel. He claimed to identify the lady through CCTV footage. PW4 was declared hostile by the prosecution and in his cross examination on behalf of prosecution; he denied having made any statement before the police in connection with the case.

19. The autopsy surgeon deposed as PW 5. He stated that he conducted post mortem examination on the dead body of the victim on April 14, 2018. He described the injuries found on the dead body during such examination. According to PW 5, upon post mortem examination he found:

1. One transversely placed continuous ligature mark measuring 12 ½ x 1 inch placed low down around the neck being placed 2 inch about supra sternal knotch in the front and 5 inch below external occipital protuberance on the back 3 inch below angles of mandible and 3 ½ inch below tip of mastoid process on either side with one abrasion 1 inch x ½ inch on the middle part of neck.

The skin under the ligature mark was brownish, parchmented, abraded and contused on dissection the subcutaneous tissues under the ligature mark is contused and torn at places with extensive extravasation of blood.

Extravasation of blood 2 inch x 3 inch defuse in soft tissues on low middle part of anterior aspect of neck.

Fracture of thyroid ala on left side.

Bruise 2 inch x ½ inch over left eyebrow.

Scalp hematoma 3 inch x 4 inch of left side and 2 inch x 3 inch on right side of parietal bone.

Extradural hemorrhage, 2 inch x 2 inch over left side of parietal bone.”

20. PW 5 observed that all the injuries showed signs of vital reactions and that the abrasions were non-scabbed. He opined that the death of the victim was caused due to the effects of strangulation by ligature which were ante mortem and homicidal in nature. PW 5 proved the post mortem report prepared in his pen and signature which was admitted in evidence as Exhibit 10. Based on his examination, PW 5 also opined that the strangulation was caused by using soft materials like any cloth, sari, orna, gamcha etc. in his cross

examination, PW 5 denied a suggestion advanced to him that the death was caused due to hanging.

21. The manager of an adjoining hotel was examined as PW 6. He stated that he was the manager of Hotel Rainbow at Bakkhali where he has been working for the last 10 years. He also stated that the incident took place at Moumita hotel which is at a distance of 2 minutes' walk from his hotel. He heard that a woman was murdered in Moumita hotel. After $\frac{3}{4}$ days of the incident, police came to Rainbow hotel and seized CCTV footage of his hotel. PW 6 also stated that the police again visited Moumita hotel along with the accused. The appellant/accused brought out a mobile set and Vodafone SIM from a place outside a local window of the bathroom of the said hotel and handed over the same to the police. Such articles were seized by police under a seizure list. PW 6 proved his signature on such seizure list.

22. PW 7 collected the viscera of a dead body on May 29, 2018 and handed it over to the investigating officer of the case. It was seized by the investigating officer. PW 7 proved his signature on such seizure list.

23. PW 8 is another witness to the seizure list through which viscera of the dead body of the victim was seized by police on May 29, 2018. He proved his signature on the seizure list.

24. PW 9 and PW 10 did not add any value to the case of the prosecution. They had no knowledge about the incident.

25. A neighbour of the victim was examined as PW 11. She stated that one Ram Barui was his neighbour who was the father of the victim. PW 11 was called upon by the said Ram Barui 4/5 years ago (from November 30, 2022) in the morning at Dwarikanagar BPHC. Accordingly he accompanied the father of the victim to Dwarikanagar BPHC. He also stated that the father of the victim identified the dead body of the victim in the morgue in his presence and he signed on such document. PW 11 proved his signature on such document.

26. The nephew of the father of the victim deposed as PW 12. He has stated that Ram Barui, the father of the victim, was his uncle and the victim was his daughter. One morning about 4/5 years ago, the said Ram Barui called PW 12 to Dwarikanagar BPHC and accordingly he accompanied him. He also stated that the dead body of the victim was identified by Ram Barui and he signed on such document which he proved. He however, could not say as to how the victim died.

27. The police personnel deposed as PW 13. He stated, in his deposition, that on April 12, 2018 he conducted inquest over the dead body of one Durgarani Majhi in connection with Namkhana PS UD case No. 12/18 dated April 12, 2018. PW 13 prepared a report in this regard which he proved. After conducting the inquest, he forwarded the dead body to Kakdwip SD hospital through the constable Gopal Das. He proved the dead body Chalan. He also proved the certified copy of information with regard to recovery of a dead body from

Dwarikanagar rural hospital. He also collected the post-mortem report and handed over the same to CVF Shibnath Pradhan in connection with Frazergunj Coastal PS case No. 30/18 dated April 12, 2018. He proved the Chalan of such handing over.

28. The officer in charge of Fingerprint bureau deposed as PW 14. He stated that on April 13, 2018 Frazergunj PS sent a requisition for rendering the services of fingerprint expert in connection with Frazergunj PS case No. 30/18 dated April 12, 2018 addressed to the Director, Fingerprint Bureau, CID, West Bengal. In compliance to the directions of the Director of CID, PW 14 visited the place of occurrence at Moumita hotel, room No. 5 being accompanied by a departmental photographer Sujit Chakraborty and examined the place of occurrence. During examination, PW 14 was able to develop two chance fingerprints on a drinking glass which were marked and encircled by him in presence of witness Subhash Chandra Majhi. PW 14 identified the said glass bearing encircled Mark with his signature as also that of the witness in court. He also proved the photographs and negatives of the developed finger prints taken by the CID photographer. The aforesaid articles were marked as material exhibits.

29. PW 14, thereafter, received 10 numbers of specimen finger prints of the appellant/accused from the investigating officer of the case which were obtained by such investigating officer in presence of learned Judicial Magistrate. He proved the requisition to such effect.

Thereafter, PW 14 proceeded to examine and compare the chance finger prints and specimen finger prints. On such examination, he found one of the chance finger prints matching with the specimen finger print. The other chance finger print was found by him to be unfit for comparison. On the basis of his examination, a report was prepared under the pen and signature of the Director, Fingerprint Bureau which was sent under a memo. PW 14 proved such report (Exhibit 17) as well as the memo of transmitting the report (Exhibit 18).

30. The learned Judicial Magistrate deposed as PW 15. On April 23, 2018, he recorded the statements of witnesses under Section 164 of the Code of Criminal Procedure in connection with Frazerganj Coastal PS Case No. 30 of 2018 dated April 12, 2018. He proved the statements of witnesses Supriya Halder and Jagannath Ghosh (Exhibit 3 and Exhibit 6) recorded by him.

31. PW 15 also stated that he conducted Test Identification Parade in connection with the aforesaid case on May 5, 2018. At such TIP, the appellant was identified by the witness Supriya Halder and Jagannath Ghosh. He proved the report of such test identification parade prepared in his pen and signature (Exhibit 19). He further stated that the investigating officer of the case took specimen finger prints of the appellant in his presence and the same were sealed and labelled in his presence. He proved the specimen finger prints (Exhibit 20).

32. The investigating officer of the case was examined as PW 16. He proved the endorsement of receipt of the written complaint and the formal First Information Report filled up by ASI Debasis Ganguli (Exhibits 1/B and Exhibit 2/2). He was endorsed with the investigation of Frazerganj Coastal PS Case No. 30 of 2018 dated April 12, 2018. Being so endorsed, PW 16 visited the place of occurrence and prepared rough sketch map thereof with index. He also collected and seized certain article from room No. 5 of Moumita hotel which included glass, a bottle of country wine. He identified such seized articles in court and proved the seizure list.

33. He also narrated various steps taken by him in course of investigation. He seized several articles like charger, orna, sandals, towel etc. and identified such articles produced at the trial. He recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, took steps for recording statements of some witnesses under Section 164 of the Code of Criminal Procedure, sent requisition for deputing fingerprint expert and placing the appellant on Test Identification Parade. He sent the dead body for post mortem examination. He collected the reports of TI parade and post mortem examination. PW 16 also arrested the appellant and recorded his statement. On the basis of such statement, the appellant led him to recovery of the phone and other articles belonging to the victim. He also arranged for collection of specimen fingerprint of the appellant

and sent the same for examination by an expert. He also collected and seized CCTV footage from an adjoining hotel Rainbow. However, his requisition for supply of CCTV footage of hotel Moumita was responded that no such footage was available. He has proved various requisitions and prayers issued by him. Upon completion of investigation, PW 16 submitted charge sheet in the case under Section 302 of the Indian Penal Code against the appellant.

34. Upon conclusion of evidence on behalf of the prosecution, the appellant was examined under Section 313 of the Code of Criminal Procedure. The evidence and circumstances appearing against the appellant were placed before him to which, he replied that he had nothing to say. However, in such examination, in answer to a question that he along with the victim booked the room No. 5 in hotel Moumita and stayed there, the appellant admitted that he was there on the date of incident. He also admitted that he was identified by the witnesses in the Test Identification Parade.

35. Not only that, in an answer to a question as to if he knew how the victim died, the appellant answered that in the night of incident, he along with the victim consumed liquor in the said room. Thereafter, the victim started crying and the appellant fell asleep. At about 3.00 a.m. he found the victim hanging from the ceiling fan. The appellant brought the body down and found her dead. Seeing this, he fled away from the room by breaking the window of the bathroom attached to his

room. In answer to another question, the appellant admitted that no third person entered into the room before death of victim on the relevant date.

36. The case of the prosecution is that the appellant accompanied by the victim checked in Hotel Moumita in the evening of April 11, 2018. On the following morning i.e. on April 12, 2018, the dead body of the victim was found in the room they checked in. The appellant was found absconding. Police was informed and on arrival of police, the door of the room was broke open leading to the discovery of dead body. The dead body was sent to hospital. Post mortem examination was conducted over the dead body. The post mortem report of the victim disclosed that the death of the victim was caused by strangulation by ligature which was ante mortem and homicidal in nature. The autopsy surgeon was examined as PW5. She testified the death of the victim and cause thereof on the basis of her examination of the dead body. She proved such report which was marked as exhibit 10. On the basis of post mortem examination conducted by her, PW 5 also testified that the throttling was done with the help of some soft material like cloth, sari, gamcha, orna etc.

37. In his examination under Section 313 of the Code of Criminal Procedure, the appellant has tried to make out a case that when he woke up in the night of incident, he found the victim hanging with the fan and he brought down the dead body. However, such case made

out by the appellant is belied by the testimony of PW 5 and that of exhibit 10. Therefore, in consideration of the case made out by the prosecution and also taking into consideration the testimony of PW 5 coupled with that of exhibit 10, it is sufficiently proved that the victim died an unnatural death which was homicidal in nature.

38. As regards the person responsible for causing the death of the victim, according to the case set out by the prosecution, both the victim and the appellant checked into Room No. 5 of the Hotel Moumita in the evening of April 11, 2018 and stayed there for the night. PW 2 also deposed to the effect that the victim and the appellant stayed in the said room in the night and that he served dinner to them in such night. On the following morning on April 12, 2018, PW 2 reported the de facto complainant, PW1, that the said room was locked from inside and nobody was responding to the knocking by the hotel staff. In turn, the PW 1 informed the owner of the hotel i.e. PW 3 and on his instructions, PW 1 reported the matter to local Frazerganj Coastal police station. The door of the room was broke open in presence of the police personnel. Upon opening of the room, the dead body of the victim was found lying on the bed of the said room whereas, the appellant was found absconding. The glasses of the window of the bathroom attached to such room were found detached.

39. In order to establish that the appellant accompanied and stayed with the victim in room No. 5 of hotel Moumita, prosecution relied upon the testimony of PW 2 who was the hotel boy and he claimed to have served dinner to the couple in the said room in the evening of April 11, 2018. Besides, prosecution also relied upon the testimonies of the owner and manager of adjoining hotel i.e. hotel Rainbow i.e. PW 4 and PW 6. The investigating officer also collected CCTV footage from such adjoining hotel to prove that the appellant was with the victim in the night between April 11, 2018 and April 12, 2018. The prosecution also utilized the services of fingerprint expert PW 14 who successfully developed a fingerprint from a drinking glass found in room no. 5, which later matched with the specimen fingerprint of the appellant as evident from exhibit 17.

40. The appellant was also put on test identification parade and identified by the witnesses being PW 1 and PW 2 in such parade, as the person who stayed in room No. 5 of the hotel Moumita with the victim on the date of incident and later was found absconding from such room upon discovery of dead body.

41. Although, prosecution produced ample evidence to establish that the appellant was the person who checked in and stayed with the victim in room No. 5 of the hotel Moumita on the date of incident and that he was found absconding on the following morning but the appellant himself absolved the prosecution of the responsibility of

proving such facts. In his examination under Section 313 of the Code of Criminal Procedure, the appellant admitted that he stayed in the hotel with the victim in the night between April 11, 2018 and April 12, 2018. Not only that, he also admitted that he slept in the room with the victim after taking dinner. He woke up in late night to find the victim hanging from the ceiling fan. He brought down the body of the victim and found that she was dead. He also testified that being scared; he fled away detecting death of the victim. Besides that he further admitted that he absconded from the room upon removing the glasses of the window of the bathroom attached to the room they stayed.

42. Such admission on the part of the appellant leaves no suspicion that the appellant alone was with the victim on the fateful night inside the room of the hotel they checked in. It is also proved that the death of the victim occurred when he was with the victim. If that be so, the appellant cannot be allowed to shrug off his onus to explain the circumstances under which death of the victim happened in terms of the provisions of Section 106 of the Indian Evidence Act, 1872.

43. The appellant has set up a case that the when he woke up in the night, he found the victim was hanging from the ceiling fan. He brought the hanging body of the victim down. However, being terrified, he fled away from the room by removing the glasses of the window. As a man of ordinary prudence, it was expected that the appellant should

have called upon the officials of the hotel and reported the matter to police. Instead, the appellant fled away and that too, not by the door but by removing the window glasses, leaving the door of the room locked from inside. The subsequent conduct of the victim tells upon the authenticity of the case made out by the appellant and the same cannot be believed at all. Such circumstances, convincingly establishes the sole hypothesis of the guilt of the appellant to the exclusion of all others.

44. In such view of facts, we find no reason to interfere with the impugned judgment of conviction. We affirm the conviction of the appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860.

45. So far as imposition of death penalty for such offence is concerned, it was submitted on behalf of the appellant that the case does not fall within the category of 'rarest of rare cases'. According to learned advocate for the appellant, the learned Trial Court did not return a conclusive finding that in the facts and circumstances of the case, the option of awarding any punishment other than death penalty was foreclosed and would be insufficient.

46. We have considered the medical report of the appellant obtained in course of hearing of the instant appeal and death reference. Such report disclosed that the appellant is 33 years of age. He was diagnosed with chronic cannabis and alcohol addiction before

coming to the correctional home. He was however, not found suffering from any gross psychopathological disorder, though mild fatty change in liver and nephrolithiasis was detected in the appellant. The doctors diagnosed the health condition of the appellant as stable and good.

47. In the case of **Manoj** (supra), referring to **Macchi Singh Vs. State of Punjab, (1983) 3 SCC 470**, the Hon'ble Supreme Court observed that,

“220. In Machhi Singh [Machhi Singh v. State of Punjab, (1983) 3 SCC 470 : 1983 SCC (Cri) 681] , this Court extrapolated the principles from Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] , and merit repetition : (Machhi Singh case [Machhi Singh v. State of Punjab, (1983) 3 SCC 470 : 1983 SCC (Cri) 681] , SCC p. 489, paras 38-40)

“38. In this background the guidelines indicated in Bachan Singh case [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] 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 case [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] :

(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 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.

39. In order to apply these guidelines inter alia the following questions may be asked and answered:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

40. If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."

48. In the said case, the Hon'ble Supreme Court also noted to the following taking note of **Bachan Singh** (supra);

"237. Mitigating factors in general, rather than excuse or validate the crime committed, seek to explain the surrounding circumstances of the criminal to enable the Judge to decide

between the death penalty or life imprisonment. An illustrative list of indicators first recognised in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684, para 206 : 1980 SCC (Cri) 580] itself : (SCC p. 750, para 206)

“206. ... 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 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.”

These are hardly exhaustive; subsequently, this Court in several judgments has recognised, and considered commutation to life imprisonment, on grounds such as young age [Mahesh Dhanaji Shinde v. State of Maharashtra, (2014) 4 SCC 292 : (2014) 2 SCC (Cri) 321; Gurvail Singh v. State of Punjab, (2013) 2 SCC 713 : (2013) 2 SCC (Cri) 864] , socio-

economic conditions [Mulla v. State of U.P., (2010) 3 SCC 508 : (2010) 2 SCC (Cri) 1150; Kamleshwar Paswan v. State (UT of Chandigarh), (2011) 11 SCC 564 : (2011) 3 SCC (Cri) 409; Sunil Damodar Gaikwad v. State of Maharashtra, (2014) 1 SCC 129 : (2013) 4 SCC (Cri) 83] , mental illness [Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1 : (2014) 2 SCC (Cri) 1] , criminal antecedents [Dilip Premnarayan Tiwari v. State of Maharashtra, (2010) 1 SCC 775 : (2010) 1 SCC (Cri) 925] , as relevant indicators on the questions of sentence. Many of these factors reflect demonstrable ability or merely the possibility even, of the accused to reform [i.e. (3) and (4) of the Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] list], which make them important indicators when it comes to sentencing.”

49. Similarly in the case of **Bachan Singh** (supra), the Hon’ble Supreme Court laid down that besides the consideration of mitigating circumstances, aggravating circumstances should also be weighed to arrive at a conclusion that death penalty should or should not be imposed. The Hon’ble Court observed that,

“202. Drawing upon the penal statutes of the States in U.S.A. framed after Furman v. Georgia [33 L Ed 2d 346 : 408 US 238 (1972)] , in general, and clauses 2 (a), (b), (c) and (d) of the Penal Code, 1860 (Amendment) Bill passed in 1978 by the Rajya Sabha, in particular, Dr Chitale has suggested these “aggravating circumstances”:

“Aggravating circumstances: A court may, however, in the following cases impose the penalty of death in its discretion:

(a) if the murder has been committed after previous planning and involves extreme brutality; or

- (b) if the murder involves exceptional depravity; or*
- (c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed—*
- (i) while such member or public servant was on duty; or*
- (ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or*
- (d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.”*

50. In the case at hand, as noted above, the appellant is aged about 33 years. Nothing of unfavourable behavior has been reported as against the appellant, which does not rule out the possibility of reform. The evidence on record does not suggest that murder of the victim was preplanned or committed with premeditation and extreme brutality. Rather the evidence on record shows that the appellant and the victim had visited and stayed together in the hotel on previous occasions as well. Such circumstances belie the existence of any previous enmity between them. We are not in position to return a finding that the appellant would be a menace to the society, if not awarded with death penalty. It has been laid down by the Hon'ble

Supreme Court time and again that life imprisonment is a rule and death penalty is exception in awarding sentence in cases where death and life imprisonment are the prescribed punishments.

51. In the light of discussions hereinbefore, we are of the opinion that in the facts and circumstances of the present case, imprisonment for life would be sufficient punishment instead of death penalty. We are not minded to confirm the death sentence awarded by the learned Trial Court. We accordingly commute the death sentence, imposed upon the appellant, into one of life imprisonment.

52. Consequently, Death Reference No. 1 of 2023 along with the appeal being C.R.A. (DB) 86 of 2023, are disposed of accordingly.

53. A copy of this judgment along with the Trial Court records be remitted to the appropriate Trial Court forthwith. In view of the commutation of the death penalty of Samar Patra, any warrant issued by the appropriate Court with regard thereto in respect of Samar Patra stands modified in terms of this judgment and order. Department will inform the Correctional Home, where the appellant is lodged, as to this judgment and order. The Correctional Home will record the fact of commutation of death penalty to the sentence awarded by this judgment and order in respect of Samar Patra, in their records.

54. Period of detention already undergone by the appellant shall be set off against the substantive punishment in terms of the

provisions contained in Section 428 of the Code of Criminal Procedure.

55. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

56. I agree.

[DEBANGSU BASAK, J.]