

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Uday Kumar**

**D.R. No. 04 of 2024
With
CRA (DB) 56 of 2024**

**Md. Abbas
Vs.
The State of West Bengal**

For the appellant	:	Mr. Subham Ghosh, Mr. Mayank Roy, Mr. Subhranil Barman
For the State	:	Ms. Aditi Shankar Chakraborty, Ld. APP., Mr. Sourav Ganguly
For the de facto Complainant	:	Dr. Arjun Chowdhury, Ms. Pratusha Dutta Chowdhury, Ms. Sunayana Parveen, Ms. Riya Agarwal, Mr. Bappaditya Roy, Mr. Mantu Mondal
Heard on	:	28.07.2025, 29.07.2025, 30.07.2025
Reserved on	:	30.07.2025
Judgment on	:	19.08.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal and death reference arise out of the conviction of the appellant under Section 302 of the Indian Penal Code (IPC) and Section 6 of the Protection of Children From Sexual Offences Act

(POCSO Act), for both of which death sentence was awarded, under Section 363 of the IPC, for which rigorous imprisonment for seven years with fine of Rs. 5000/-, in default further rigorous imprisonment for a period of six months was awarded, and under Section 366 of the IPC, for which ten years of rigorous imprisonment and fine of Rs. 5000/-, in default, rigorous imprisonment for a further period of six months, was handed out. The sentences were directed to run concurrently.

2. The facts of the case are that the victim girl, who was about sixteen years of age and a school student at the time of her death, had gone to school on August 21, 2023. On her way back home, the appellant kidnapped the deceased, who was immature and a late learner, on his bicycle, took her to a lonely place at Motajote, on the land of one Samul Bagh's family, where he raped and murdered her brutally. According to the prosecution case, the appellant also tried to mutilate her face and head, apparently in a bid to foil the recognition of the victim.
3. PW 21 and ASI of police, who was posted at the Lexicon More on the said date from 9 a.m. to 9 p.m., saw the appellant carrying the victim girl on his bicycle, taking her towards the place of occurrence (PO) between 4.30 and 4.45 p.m, when the girl was sitting on the carrier of the bicycle in her school uniform.
4. Subsequently, PWs 12 and 13, a minor girl Neha Modak and her aunt Minati Modak respectively, upon hearing certain sounds, went behind their residence and found the appellant at the PO, with the victim girl dead. Upon seeing them, the appellant escaped from the spot on his bicycle, after trying to cover his face with a handkerchief.

5. The appellant was arrested the very same night, that is, on August 22, 2023, at about 1.30 a.m. from his home, and produced before the learned ACJM at Siliguri.
6. Learned Counsel appearing for the appellant argues that there was no inquest and preceding investigation under Section 174 of the Code of Criminal Procedure (Cr.P.C). Learned counsel argues that, the mode, method and ultimate report prepared under Section 174 of the Criminal Procedure Code was completely unlawful and manufactured. One ASI Prabir Roy (PW17) of the Matigara police station prepared an investigation report without intimation to the nearest Executive Magistrate empowered to hold inquest.
7. It is submitted that no inquest, as mandated under Section 176 of the Cr.P.C, forms part of the investigation, which vitiates the investigation.
8. Secondly, it is argued by the appellant that the purported chain of events leading to the offence was not established by the prosecution. It is argued that no Test Identification Parade (TIP) was done. The offence occurred on August 21, 2023, whereas the appellant was identified on dock by the alleged eyewitnesses only on August 21, 2023, the dates being sparsely situated. It is argued that the lack of TIP vitiates the entire prosecution case.
9. In support of such contention, learned counsel cites *Kannan vs. State of Kerala* reported at (1979) 3 SCC 319, *P. Sasikumar vs. The State* reported at (2024) SCC OnLine SC 52 and *Rampal Pithwa Rahidass and Ors vs. State of Maharashtra* reported at (1994) SCC Criminal 851.

- 10.** Learned counsel argues that there was discrepancy in the statement of PW12, Neha Modak, a minor eyewitness, who stated in her statement under Section 164 of the Cr.P.C on September 4, 2023 that after returning from school and reaching home at about 4.30 p.m, on the fateful day, she suddenly heard screams of a girl from a nearby place, came to her house and saw her aunt, Minati Modak and both of them went together to the PO, where they saw a boy coming out from the place, who escaped in a bicycle. Thereafter, they went and saw the victim girl lying in the PO, upon which her aunt called the police and informed them of the gruesome murder.
- 11.** In her deposition before the Trial Court, PW2 prejudicially improved upon her earlier statement and said that apart from the cries of a girl, she also heard a thud, and introduced the existence of an iron gate from where the appellant was coming out and that on seeing her and her aunt, he tied a handkerchief on his face. She also described the wearing apparel of the appellant and stated that a “Jethu” arrived at the spot thereafter.
- 12.** PW13, Minati Modak, the aunt of Neha, it is alleged, also improved upon her initial statement under Section 164, Cr.P.C. However, it is argued that there is incoherence between her statement and her deposition.
- 13.** PW14, one Pushpajit Barman, gave a different version from that of the deposition of Neha and Minati and said that Neha told him about a man coming out of the land of Samul Bagh and that he fled away from the PO in a cycle.

14. It is further submitted by learned counsel for the appellant that none of the eyewitnesses, being PW12 and 13, mentioned about the existence of any blood-smeared brick, Digital Ration Card (allegedly belonging to the appellant), or any school bag of the victim lying at the spot.
15. PW6, namely Arun Roy, was the first police personnel to visit the spot. Although he took 21 photographs of the victim, neither the school bag nor the Digital Ration card were seen in the said photographs, thereby belying the prosecution case. Those articles, it is submitted, were allegedly found from the spot subsequently.
16. Thirdly, learned counsel for the appellant submits that the recovery of the wearing apparel and the bicycle of the appellant by the Investigating Officer (PW 22, Paresh Barman) is also vitiated by suspicious circumstances. Although one Ruben Ekka, a seizure witness who was allegedly present at the time when the wearing apparels were seized, being a police personnel, adduced evidence, another purported independent seizure witness, namely Rajia Khatun, was never produced as witness. Thus, the only independent witness of the seizure of the wearing apparel did not depose.
17. Learned counsel next contends that the electronic evidence adduced to establish the “last-scene” theory was unreliable. PW20 (Hritik Ray), a CCTV technician, stated on August 23, 2023 that he had handed over the Digital Video Recorder (DVR) to the Investigating Officer. The CCTV footage was proved by PW20 who was merely a CCTV technician. Thus, the mode of proof was completely *de hors* the provisions of Section 65B of the Evidence Act, 1872. Learned counsel argues that there is no

concept of primary and secondary evidence in respect of electronic evidence, since in the present case, the primary evidence would be the binary data in the computer system, which would be completely unintelligible to humans. The expression “original” in Section 65B cannot be substituted by “primary” evidence.

- 18.** It is argued that DW4, a purported expert, admitted in his certificate given under Section 65B of the Evidence Act that the CCTV cameras were a part of NVR (Network Video Recorder). The certificate was signed by PW20 and PW4. It is argued that in an NVR, all the CCTV cameras are connected via network to a single system. Each of the cameras process the data independently, which is then transferred to a storage system, unlike a DVR system, which receives mere video streams and the data processing is done in the storage recorder itself. Thus, unless the specific cameras were identified and produced, and the entire network system was produced in evidence, it cannot be said that the original “computer” was produced.
- 19.** In the present case, merely the DVR was produced, which is a storage device, without the particular cameras being identified or produced. Also, the hash values of the concerned video files were not alluded to, and, as such, the unique signature of the video footages was not established. Also, the chain of custody of such footage was never established, thereby vitiating the credibility of the entire electronic evidence. It is argued that since the original was not produced, Section 65B (2) of the Evidence Act ought to have been complied with, but was not in the present case.

20. Learned counsel for the appellant then moves on to other alleged material discrepancies in the evidence.
21. PW3, one Dr. Sandeep Ghosh, deposed in his evidence that upon examination, he opined that the blood stain found from the brick and T-shirt of the appellant collectively matched the post-mortem blood sample of the deceased victim. Surprisingly, the sample was admittedly received on August 31, 2023, about nine days after the alleged seizures, when they were still in a “wet” condition. A question is raised by learned counsel as to how the handkerchief, grey T-shirt, black-orange coloured trousers, which were the wearing apparel of the appellant, were received by the laboratory in wet condition even after the expiry of nine days. This, it is alleged, raises a serious question as to the veracity of such evidence.
22. The narrative of the existence of the Digital ration card, it is argued, was alien to the prosecution case.
23. Learned counsel appearing for the appellant cites *Baljinder Kumar @ Kala v. State of Punjab*, reported at 2025 INSC 856, to substantiate his argument that if there is any question as to the credibility of the eye witnesses and the seizure, the accused persons ought to be acquitted. On the question of electronic evidence, learned counsel cites *Anvar P.V. v. P.K. basher and others*, reported at 2015 (1) SCC Civil 27 and *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and others*, reported at (2020) 7 SCC 1 as well as *State of Maharashtra v. Rajesh*, reported at (2017) 1 AIR Bom R (Cri) 176.

- 24.** In respect of the DNA evidence, learned counsel cites *Kattavellai @ Devakar v. State of Tamilnadu*, reported at 2025 INSC 845.
- 25.** Learned counsel for the appellant also cites *Ramanand @ Nandlal Bharti v. State of Uttar Pradesh*, reported at (2013) 16 SCC 510 on the issue of non-compliance of Section 27 of the Evidence Act in respect of the recovery of the wearing apparel of the accused.
- 26.** Learned counsel for the State contends that there was no chink in the chain of events. The identification of the accused was on the basis of the Digital Ration Card of the appellant found at the PO on August 21, 2023 between 8:45 to 9:05 pm, which is corroborated by the seizure list. Moreover, the independent seizure witness, namely Pushpajit Barman, PW 14, corroborated the factum of such seizure.
- 27.** The description of the wearing apparel of the accused person was clearly mentioned by PW 12 in her deposition. The arrest of the accused, it is argued, was effected by connecting him to the offence through his Digital Ration Card, which is a part of the Memo of Arrest. The wearing apparels of the appellant, which were seized simultaneously with his arrest, duly match the description provided to the police earlier by PW 12.
- 28.** Moreover, the appellant was seen to carry the victim girl on his bicycle on the day of the offence towards the direction of the PO by PW 21, Subhash Chandra Roy, who confirmed the same when the video of the CCTV footage was shown to him. PW 21 was on duty at the Lexicon More, which falls on the route by which the victim was taken by the appellant to the PO, in both halves of the fateful day, that is, August

21, 2023, which was duly proved by his deposition, which remained unshaken in cross-examination.

- 29.** PW 20 (Hritik Ray), a CCTV technician in charge of all the CCTV cameras of the Matigara Police Station, had not only installed the said cameras but also maintained the same and, as such, was competent to produce and prove the DVR.
- 30.** PW 4, Dr. Chitrakshaya Sarkar, the Assistant Director of the State FSL at Belgachia, Kolkata issued the Section 65B certificate and also captured “Gait” videos of the appellant in a Micro-SD Card. He went to the Matigara Police Station to take photographs of the seized bicycle and compared the movement of the appellant on the bicycle with the Gait video prepared on the basis of the CCTV footages. The CCTV footages were seized from the DVR and extracted to newly purchased pen drives brought by PW 4, the expert, in presence of the I/O. The I/O seized the footage under proper seizure list and PW 4 handed over the relevant items mentioned in the seizure list to the I/O. Thus, the proper chain of custody of the DVR was maintained. The articles were sent to the FSL laboratory, were duly examined and the results were furnished as evidence.
- 31.** The medico-legal examination report of the appellant indicated that there was nothing to suggest that he is incapable of performing sexual intercourse.
- 32.** On a detailed analysis of the statement of the appellant under Section 313 of the Cr.P.C., the mother of the appellant (DW 1) and the prosecution evidence, learned counsel for the State argues that the

appellant clearly admitted that the bicycle-in-question was recovered from his house and he opened the door when the police came to his house. On the other hand, DW 1, the appellant's mother, stated that she had opened the door when the police came, which was corroborated by the evidence of the I/O.

- 33.** The wearing apparel and the wrist guard were admitted by the appellant to belong to him in his statement under Section 313, Cr.P.C. He stated that those were under his head, being used as a pillow, at the time of recovery, whereas DW 1, in her cross-examination, stated that the appellant was not sleeping with his wearing apparel under his head, which corroborates the prosecution case that the articles were seized from underneath the bed of the appellant.
- 34.** Section 27 of the Evidence Act is not attracted, it is argued by the prosecution, since the recovery of the wearing apparel was simultaneous with the arrest of the appellant.
- 35.** Learned counsel for the State submits that the non-production of the other seizure witness Razia Khatun is clearly explained by the deposition of DW 1, who stated that she had close acquaintance with the said Razia Khatun, who used to come regularly to her house. DW 1, in her cross-examination, admitted that the seizure list was prepared at her house in the presence of Razia Khatun.
- 36.** The story of handing over of the original Digital Ration Card by the mother of the accused (DW 1) to the police at the time of arrest is falsified by the admission of DW 1 that her son, the appellant, worked as a labour and used to carry his Ration Card regularly to his work.

She further admitted that the Ration Card was not with her son at the time arrest and seizure, but that she had furnished a newly prepared Ration Card to the police. This, coupled with the seizure of the Digital Ration Card of the appellant from the PO, clinches the issue in favour of the prosecution case.

- 37.** Learned counsel for the State relies on *A.N. Venkatesh and another v. State of Karnataka*, reported at (2005) 7 SCC 714, for the proposition that by virtue of Section 8 of the Evidence act, the conduct of the accused person is relevant, if it influences or is influenced by any fact in issue or relevant fact.
- 38.** The State next cites *Basavaraj alias Basavannappa Parmeshwar v. State of Maharashtra*, reported at 2008 SCC OnLine Bom 1373, where it was held that the evidence of the circumstances that the accused pointed out to the I/O in the said case, the place where the blood-stained cloths were concealed, would be admissible as a conduct under Section 8 of the Evidence Act, quite apart from admissibility of the disclosure statement under Section 27 of the said Act. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant if it influences or is influenced by any act in issue or relevant act.
- 39.** The State further relies on *Md. Raja alias Raju etc v. State of West Bengal*, reported at 2008 SCC OnLine Cal 812, where it was held that a disclosure made by the accused, as recorded in the case diary, was not disputed by him. The omission to exhibit the record by the I/O, it was held, did not in the least militate against the case of the prosecution,

since it is not the requirement of the law that such a statement must always be reduced to writing and that writing should also be exhibited.

- 40.** Since the appellant in the present case pointed out and produced his wearing apparel to the police at the time of the arrest, the disclosure and discovery of the articles does not come within the ambit of Section 27 of the Evidence Act in its strict sense but is relevant in terms of Section 8 of the Evidence Act and is thus admissible as evidence.
- 41.** In respect of the admissibility of inquest report, CCTV Footages, Gait Video, forensic documents, DVR and other material objects, learned counsel for the State cites Section 294 of the Cr.P.C. which provides that where any document is filed by the prosecution or the accused in court, the particulars of each such document shall be included in a list and the prosecution or the accused or their pleader, as the case may be, shall be called upon to admit or deny the genuineness of each such document. Where the genuineness of any document is not disputed, the same may be led in evidence in inquiry, trial or other proceeding. Learned counsel for the State relies on *Shayam Narayan Ram v. State of Uttar Pradesh and another*, reported at 2024 SCC OnLine SC 2988, and argues that since the defence did not raise any objection while the relevant documents were produced by the prosecution and exhibited, nor was any specific denial taken in cross-examination, no question can be raised as to genuineness of the documents now.
- 42.** Learned counsel for the State also relies on Section 106 of the Evidence Act, which casts the burden of proving facts especially within the knowledge of a person on such person, and submits that the Digital

Ration Card of the accused person, found at the PO, as well as blood-stained clothes found from the house of the appellant imposed the burden on the appellant to furnish proper explanation, which he failed to do.

- 43.** Under Section 29 of the POCSO Act, the presumption as to offences under the relevant provisions has been provided for and a reverse burden of proof is cast on the accused.
- 44.** Presumption of culpable mental state is raised under Section 30 of the POCSO Act as well.
- 45.** Learned counsel appearing for the *de facto* complainant substantially adopts the arguments of the prosecution and adds that since the gap between the identification of the accused in the Trial Court and the date of occurrence is only about 4½ months, absence of TIP is not fatal. Learned counsel relies on *Jayant v. State of Kerala*, reported at (2021) 20 SCC 38, on such count.
- 46.** It is submitted that the statements of the eye witnesses under Section 164 Cr.P.C. were sufficiently corroborated by their depositions.
- 47.** The forensic evidence on the DNA was unshakable and the I/O did not have the occasion to follow the guidelines laid down in *Kattavellai @ Devakar (supra)*¹, since the judgment was delivered after the investigation in the present case was over.
- 48.** It is submitted that Section 65B of the Evidence Act was sufficiently complied with and no objection as to the same was taken at the time of marking the electronic evidence as exhibits.

1. Kattavellai @ Devakar v. State of Tamilnadu, reported at 2025 INSC 845.

- 49.** The non-examination of the independent seizure witness, Razia Khatun, it is submitted, is not fatal, since the seizure was sufficiently corroborated by the other seizure witness and also borne out by the statement of the appellant under Section 313, Cr.P.C.
- 50.** It is argued on behalf of the *de facto* complainant that the maturity and the brutal manner in which the crime was committed on the defenceless, immature and hapless victim girl deserves nothing less than the death sentence. The deliberate and calculated effort to evade justice and the manner in which the consecutive offences of kidnapping, taking the victim girl to the PO, the commission of aggravated sexual assault on her and murdering her and thereafter deliberately attempting to mutilate her face in a bid to avoid recognition were committed, unerringly indicates the cold and remorseless behaviour of the appellant, which comes within the category of “rarest of rare case”, thus, justifying the death sentence. It is submitted that the cry of society for justice has to be honoured in view of the brutal, shocking and heinous nature of the offence, where the collective conscience of the community was shaken and the confidence of the public in the administration of criminal justice system requires to be restored by meting out the death sentence. In the present case, there was a huge uproar and public protest, it is submitted.
- 51.** Citing *Dhananjay Chatterjee v. State of West Bengal*, reported at (1994) 2 SCC 220 and *Mukesh v. State (NCT of Delhi)*, reported at (2017) 6 SCC 1, it is argued that the death penalty was affirmed in those case due to

the extreme brutality and the heinousness and cold-blooded execution of the offence, as in the present case.

52. The attempt to tamper with evidence by smothering the victim's body indicates a deliberate act to evade justice, which strengthens the case for capital punishment. Societal expectations and the need for sufficiently deterrent punishment to restore faith of the society in the justice system requires the death sentence, and nothing else, to be given to the appellant.
53. In support of his contentions, learned counsel for the *de facto* complainant cites *Khushwinder Singh v. State of Punjab*, reported at (2019) 4 SCC 415 and *Manoharan v. State by Inspector of Police, Variety Hall Police Station, Coimbatore*, reported at (2019) 7 SCC 716.
54. Upon applying our mind to the materials on record and carefully balancing the arguments of the parties, we arrive at the following conclusions:

CONVICTION

55. Several questions have been raised in the appeal, which overlap the assessment of the evidence required under Section 366 of the Cr.P.C.
56. Those questions are dealt with as follows:

(i) Absence of proper inquest

57. The appellant argues that there was no magisterial inquiry under Section 176 of the Cr.P.C. However, only custodial death or a death in custody of certain authorities attracted the requirement of a magisterial enquiry under the said Section previously. Post-2005 amendment to

the Cr.P.C., with effect from June 23, 2006, only offences relating to Section 174(3)(i) and (ii), respectively suicide by a woman within seven years of marriage and death of a woman within seven years of her marriage in any circumstance raising a reasonable suspicion that some other person committed an offence in relation to such woman, attract the necessity of an inquiry by a Magistrate into the cause of death.

- 58.** The present crime does not fall within any of the said categories.
- 59.** The 21 photos taken by PW 6, Arun Roy, the first Police Officer to visit the spot, was not an inquest but a first-blush visit. In the present matter, there is nothing to indicate that the absence of inquest under Section 176, read with Section 174, vitiates the otherwise solid evidence connecting the dots of the prosecution case.

(ii) No TI Parade

- 60.** In the present case, the time-lapse between the incident (August 21, 2023) and the deposition of the eye witnesses (January 8, 2024) was only about 4½ months. Thus, the events of the fateful day were still fresh in the memory of the eye witnesses, obviating the necessity of a TI Parade formality.
- 61.** In *Kanan's case (supra)*², the evidence of PW 25, a sterling prosecution witness, was found to be full of infirmities. The said witness named the accused on the dock whereas he admittedly knew the accused person only by face. Also, a huge crowd was present at the spot at the time of the incident. All these factors were considered by the Supreme Court to have vitiated the prosecution case.

2. *Kanan and others v. State of Kerala, reported at (1979) 3 SCC 319.*

- 62.** Such circumstances are, however, completely absent in the present case. Rather, the evidence of the eye witnesses, being PWs 12, 13 and 14, were unshaken in cross-examination and corroborative of each other.
- 63.** In *P. Sasikuamar's* case³, the witnesses saw the accused in a 'monkey cap'. The Supreme Court, in the said case, also relied on *Kunjumon v. State of Kerala*, reported at (2012) 13 SCC 750, where it was observed that when the accused is a stranger to the witness and there is no TI Parade, the Trial Court should be "very cautious while accepting dock identification" and the same is not admissible outright. Thus, even in the said judgment, it was not held that absence of TI Parade would be a complete bar to admissibility of the eye witnesses' deposition.
- 64.** It was further held in the report that TI Parade is only a part of the police investigation and not a substantive piece of evidence, whereas only dock identification is substantive evidence.
- 65.** In *Rampal's* case (*supra*)⁴, although it was held in the facts of the case that in the absence of TI Parade, dock identification was hardly of any significance, the major distinguishing feature of the said case from the present is that the accused persons there were wearing masks all along and there were variations between the eye witnesses' versions. Also, the court found that the approver was a planted witness otherwise.
- 66.** However, in the present case, PWs 12 and 13 clearly saw the appellant's face, only after which he tried to hide his face by a

3. *P. Sasikumar v. The State*, reported at 2024 SCC OnLine SC 1652.

4. *Rampal Pithwa Rahidass and others v. State of Maharashtra*, reported at 1994 SCC Criminal 851.

handkerchief and escaped on his bicycle. The bicycle was recovered from his home along with his wearing apparel, which were vividly described by the eye witnesses, in particular PW 12.

- 67.** Thus, the cited judgments are factually distinguishable from the present case and the ratio laid down therein are, accordingly, not attracted here.

(iii) Alleged discrepancies in evidence

- 68.** The first limb of alleged discrepancies is variation between the eye witness accounts, as borne out by their statements under Section 164, Cr.P.C. and their depositions respectively.
- 69.** However, the eye witness accounts in the present case substantially corroborate each other. The chain of events which happened on the date of the crime was substantially described by PW 12 – Neha, PW 13 – Minati, her aunt, and PW 14, Pushpajit. PWs 12 and 13 clearly saw the face of the appellant. In her statement under Section 164 Cr.P.C., Neha spoke about the screams of the victim girl and in her deposition she corroborated the same but also added that there was a thud which she heard. Such minor difference is not a discrepancy at all but is quite natural. The statements under Section 164 do not militate against the deposition of the eye witnesses, rather, supports and elucidates such evidence. PW 12 clearly described the wearing apparel of the appellant, which tallies with the wearing apparel of the appellant, which was seized from his home. The bicycle on which the accused fled was recovered from his house. The appellant admitted in his statement

under Section 313, Cr.P.C. that the bicycle was recovered from his house and that the wearing apparels were his.

- 70.** The second limb of the appellant's argument is that the blood-stained brick and Digital Ration Card did not sufficiently prove the prosecution case.
- 71.** However, the blood samples on both, which were recovered from the PO with a proper seizure list, which was corroborated in evidence by the seizure witness Pushpajit (PW 14), clearly matched in the forensic examination with that of the victim. Expert evidence from the forensic department further clinched the issue. The fact that the photographs taken by Arun Roy (PW 6) or the initial eye witness accounts did not mention or indicate that the school bag of the victim or the brick or Digital Ration Card were found in the PO is immaterial. In view of the sheer horror of the first discovery of the victim's body, which was mutilated and profusely bleeding, it would only be natural that the eye witness would not go around looking for further evidence. Obviously, a Digital Ration Card is not so conspicuous that it will be detected at the first blush unless one is specifically looking for the same, nor is a blood-stained brick in a vacant land so conspicuous as to catch the attention of the eye witnesses, who were laymen and not investigating officers. Moreover, the said articles would obviously be scattered all over the place and might not have been detected by the eye witnesses. However, there was due recovery of the brick and the Digital Ration Card from the PO the same night by dint of a seizure list and the independent seizure witness PW 14 corroborated the same. Since the

chemical analysis of the blood samples found thereon matched those of the victim and the Digital Ration Card belongs to the appellant, there cannot be any manner of doubt regarding the involvement of the appellant in the crime.

72. Another limb of the appellant's argument is directed towards the recovery of the Digital Ration Card, wearing apparel and bicycle of the appellant.

73. However, it is clear from the statement of the appellant under Section 313, Cr.P.C. and the evidence of the DW 1, the mother of the appellant, that there was no flaw in the recovery process. In her cross-examination, DW 1, the mother of the appellant, admitted the presence of Rajia Khatun in Question No. 30. She admits in answer to Question Nos. 28, 29, 36 and 37 that the said Rajia was their immediate neighbour, that DW 1 had a very good relation with Rajia and they were on visiting terms. Thus, the non-production of Rajia as a prosecution witness in any event is immaterial, since it is doubtful as to whether she would corroborate the fact of seizure, being in close terms with the family of the accused. On the other hand, DW 1 admitted that Rajia was present at the time of seizure.

74. In answer to Question No. 8 in her examination-in-chief, DW 1 stated that the police had asked for Aadhar/Voter Card of the accused. In answer to Question No. 9, she stated that she had said to the police that she did not have those documents and only had the Ration Card of the appellant. In answer to Question No. 10, DW 1 said that she handed over the Ration Card to the police.

- 75.** Crucially, in answer to Question No. 23 of her cross-examination, DW 1 admitted that she had handed over a “newly prepared Ration Card” of the appellant to the Police, thus, clearly indicating that the original Digital Ration Card of the appellant was not found from the custody of the DW 1 or the appellant.
- 76.** On the other hand, in answer to Question No. 20 in her cross-examination, DW 1 admitted that when the police went to her house, the Aadhar Card and Ration Card of her son were not with him, although in Question No. 21, she admitted that the appellant works as a labour and in answer to Question No. 22, that in order to work as a labour, the appellant had to carry an identity card with him every day while going out for work.
- 77.** The net result of such cross-examination is that it is elucidated from DW 1 that whereas her son, who worked as a labour, used to carry his identity documents (obviously including his ration card) every day to work, he did not have his Digital Ration Card on the night of the incident, when he was arrested. His mother, DW 1, produced a “newly prepared” Ration Card which was obviously not the original one. Coupled with this, the original Digital Ration Card being found from the PO and the blood sample on it matching that of the victim clinches the issue beyond reasonable doubt against the appellant.
- 78.** In *Baljinder Kumar @ Kala (supra)* ⁵, the Supreme Court held that recovery may not wholly be discarded due to lack of supporting witness. In the said case, however, because of the highly questionable nature of

5. *Baljinder Kumar @ Kala v. State of Punjab*, reported at 2025 INSC 856.

the recovery, particularly due to the long delay of two months in such discovery and key deficiencies in investigations otherwise, the evidence was discarded. On the contrary, in the present case, the prosecution case is near-fool proof.

(iv) Electronic evidence

- 79.** In Anwar's case, reported *at (2015) 1 SCC Civil [= (2014) 10 SCC 473]*, the electronic record produced by way of secondary evidence was not admitted in evidence, since the requirements of Section 65B were not satisfied. It was held that if CDs were used for objectionable songs or announcements, those would be primary evidence, but not CDs made therefrom, which would be secondary.
- 80.** In the present case, irrespective of the fact that there was a network of cameras, it is the DVR which was the storage device where the electronic records were stored. Under the contemplation of Section 65B of the Evidence Act, it is the device where the electronic record is stored which is required to be proved and is the original. Thus, in any event, the original DVR having been produced, no certificate under Section 65B was required as such. The argument of the appellant that the cameras in an NVR process the data at the first instance is specious, since the processing which is done at the end of the individual cameras is merely the alteration of the format of the concerned files from their raw format version to more commonly used file extensions. Hence, there is no "alternation" as such or "processing" of the files inside the camera. There is a continuum of flow of the video footage in a network system from the visuals captured by the camera to its immediate

transmission to the storage device, being the DVR, which is the “computer” where the information is stored digitally within the contemplation of Section 65B of the Evidence Act.

- 81.** Thus, since the DVR itself was produced, no other formality of proof was necessary at all. However, for abundant caution, a Section 65B certificate was produced by PW4, who is the Assistant Director at the State FSL at Belgachia, Kolkata, whose credentials as an expert has never been challenged by the appellant at any point of time. PW4 himself signed the certificate under Section 65B along with PW20 Hritik Ray, the CCTV technician who had installed and maintains the CCTV cameras.
- 82.** It is PW20 who was in charge of the cameras and the entire network system, including the DVR, who produced it in presence of the IO to PW4, from which the PW4 (the expert) transmitted the relevant video footages to his pen drives, which were examined by him before issuance of the certificate.
- 83.** Section 65B merely requires a certificate by an expert. The court cannot probe further into the mechanism or technical process by which the deductions of the expert were arrived at, by looking behind the certificate. Section 65B neither mandates nor requires such further probity. In the present case, the credentials or credibility of the expert, PW4, has never been questioned. The chain of custody of the footage is impeccable, since seizure list were duly prepared at every stage. Thus, the artificial introduction of a distinction between NVR and DVR system by the appellant is quite beside the point.

- 84.** Not stopping at assessing the CCTV footage, the PW4 painstakingly took Gait videos. Although “gait” literally means the walking movements of a person, “Gait videos”, as used by the expert in the present case, record the co-ordinates of the movement of persons frame by frame. The movement of the appellant on his bicycle, as captured by the CCTV cameras, were compared with his movement on the bicycle under custody, as captured in the Gait video taken by PW4, who is an expert in the field. The appellant admitted in his statement under Section 313 of the Cr. P.C that his movement on the bicycle was recorded in custody. Thus, there was additional corroboration by the process of comparing the CCTV footages with Gait Videos, which was adopted by the expert in coming to his conclusions. Hence, the chain of custody of footage as well as the admission of such video footage as evidence, with the Section 65B certificate, are unshakable.
- 85.** More importantly, as held in *Sonu Alias Amar vs. State of Haryana* reported at (2017) 8 SCC 570, the admissibility of a piece of evidence cannot be questioned later, after it has been marked as an exhibit. It is well-settled that there are two types of objection which can be taken to evidence – objections with regard to the mode of proof, which pertains to admissibility at the juncture when a document or evidence is marked as exhibit, and secondly, objections as to evidentiary value of a document or piece of evidence, which can be argued at the Trial.
- 86.** The objection raised by the appellant to the video footage on the ground of insufficient compliance of Section 65B relates squarely to admissibility. Such evidence was exhibited without any objection on the

part of the accused and, thus, could not be raised later in any event, more so for the first time before the appellate court.

(v) “Wet” Samples

- 87.** PW3, the Assistant Director of the Biology Division of the State FSL at Kolkata, another expert whose credentials have never been questioned by the appellant, deposed and corroborated in support of his report that the blood-stains of the victim on the brick and T-shirt of the appellant matched the post-mortem blood sample.
- 88.** The appellant admitted in his statement under Section 313, Cr.P.C that the wearing apparels which were sent for examination belonged to him.
- 89.** Moreover, although the appellant tried to make out that he was sleeping with the wearing apparel under his head as a pillow, the prosecution case, that those were found under his cot, was indirectly corroborated by DW1, who said that those were not under the head of the appellant at the time of his arrest.
- 90.** Since the samples were collected and sealed in a plastic package and, at the time of packaging, were soaked in blood and sweat and smeared by earth, it is not impossible that those were still found to be moist, being sealed in air tight plastic bags, at the time of forensic examination. Thus, in the absence of any aspersion against the credentials or integrity of the expert, that is, PW3, the forensic evidence in that regard cannot be shut out.

(vi) Section 27 of the Evidence Act.

- 91.** Section 27 of the Evidence Act has no applicability, since the wearing apparel and bicycle were recovered simultaneously with the arrest and

there was no time lapse between the corroborative statements being given by the accused and the discovery of the said articles. In fact, the appellant himself handed over those articles and there was no scope of applicability of Section 27.

- 92.** Rather, Section 8 of the Evidence Act is attracted and the recovery of the articles is a vital piece of relevant evidence due to the conduct of the appellant as a whole. The appellant, despite getting an opportunity under Section 313 of the Cr.P.C., failed to give any explanation whatsoever as to the recovery of the offending cycle from his house as well as the wearing apparel, which were correctly described by the PW12, which also contained blood stains of the victim. Hence, the arguments sought to be raised by the appellant are not germane in the context at all.
- 93.** Read in the context of the judgments cited by the State and the *de facto* complainant, the prosecution case was sufficiently proved beyond reasonable doubt. It is trite law that the standard of proof even in criminal proceedings is not proof beyond “all doubt” but proof beyond “reasonable doubt”. In the present case, the corroborative evidence and the materials produced clearly corroborate the chain of events leading to the commission of the crime by the appellant beyond reasonable doubt.
- 94.** Thus, we do not find any discrepancy in the prosecution case and/or any error, either of fact or of law, in the conviction handed out by the learned Trial Judge to the appellant.

SENTENCING

- 95.** The nature of the crime is heinous. It is also true that the same evoked huge public uproar in the area at the relevant period. According to learned counsel for the State, there were several protests and media coverage of the incident. We are also not unmindful that no amount of reparations or consolation can bring back the victim to her parents. The question is, what would be the optimum point which can be arrived at by balancing the aggravating circumstances with the mitigating factors to decide whether the death penalty should be confirmed or not.
- 96.** While sentencing the appellant to death, the learned Trial Judge took into consideration the fact that the convict has taken away the life of a promising minor victim girl who was the only child of her unfortunate parents, for which the parents are languishing in pain and suffering which cannot be compensated in any manner whatsoever. It was held in the impugned judgment that in today's social scenario, on account of the rise in crime against women and children, the society at large is protesting vividly and there are loud cries for the justice of the victims of sexual offence.
- 97.** It was also taken into consideration that the convict brutally battered the face of the victim and inflicted the death in a barbaric manner upon the immature and simple victim which is described as brutal, grotesque, diabolical and revolting, arousing extreme indignation of the community. The crime has been defined by the learned Trial Judge as socially abhorrent and the social wrath was taken into consideration. The learned Trial Judge considered the mitigating and aggravating

circumstances. It was observed that the crime was committed in a cold-blooded manner without any provocation from the side of the victim. The helplessness and immaturity of the victim girl was also taken into consideration. The learned Trial Judge further recorded that the tragic death of the deceased minor has shocked and shaken the conscience of the society and the society at large is on the roads on a regular basis protesting against such types of heinous and gruesome offence.

- 98.** The learned Trial Judge found that the appellant carried on a string of crimes in a cool and composed manner and did not cease and desist himself from committing the next crime and had no remorse or repentance but went back to his house, had his dinner and was sleeping peacefully when apprehended.
- 99.** However, there is a flaw in the above perspective. There is nothing on record to indicate that the crime was committed in a “cool and composed manner” and that the appellant had no remorse or repentance or went back to his house, “had dinner” and was sleeping “peacefully”. Such observations vitiate the objective perspective of a judicial pronouncement where the life and death of the convict hangs on the thin thread of the Judge’s pen.
- 100.** There are certain circumstances which cannot be overlooked. Among the aggravating circumstances, the heinous nature of the crime, the successive commission of different offences of kidnapping, aggravated sexual penetration and murder are evident. Also, the victim was less intelligent than normal and a slow learner, as it transpires from the

evidence. Numerous social protests and a general fear psychosis of the society has also been projected as aggravating circumstances.

101. Yet, it has to be noted that the primary offence was the sexual gratification of the appellant and the prior acts of kidnapping and taking the victim to the PO were a mere build-up to the said offence. Those were not discrete and separate successive offences but a continuum of acts ultimately leading to the sexual assault and murder of the victim. Thus, it cannot exactly be said that a string of separate offences were committed by the appellant.

102. No doubt, the society was shocked, more so due to the public uproar and the media coverage of the incident. However, mere social perception or media trial ought not to be the only considerations to justify the hanging of a person. The fear psychosis and collective paranoia, although relevant, by themselves are not justification enough to kill the convict, in the sense that no criminal antecedent of the appellant was ever established throughout the trial. For a 'fear psychosis' to be created, there has to be a repeat offence or a string of incidents or a breakdown of safety norms in general. An isolated event, however gruesome and heinous, cannot, by itself, be sufficient to instil a continuing fear psychosis and cause the society to live in fear constantly.

103. The victim girl was a slow learner; however, there is no evidence that the same bordered on her being specially abled or otherwise hapless to the extent that she could not resist being taken on a bicycle or raise a hue and cry during the commission of the offence. The victim was

taken from near her school on a bicycle on the open road to the spot but never put up any resistance. While being carried on the carrier of a bicycle, it was not impossible for the victim to raise a hue and cry, since it was not a closed vehicle but she was taken in broad daylight. We do not find anything on record to indicate that, though a slow learner in school, as evident from her teacher's evidence, she was mentally unable to put up any resistance at all. The victim girl was sixteen years old and, as such, being taken out of her parents' custody without their permission technically constituted kidnapping. However, whether it was forcible or not is doubtful.

104.Also, there is no evidence to show that the appellant had prior knowledge of the slow learning capabilities or mental faculties of the victim girl and took deliberate advantage of the same. The circumstances surrounding the chain of events, from the girl being taken on the bicycle of the appellant in broad daylight to the PO, does not indicate that she was forcibly taken to the spot.

105.We make it clear that we are not unaware of the gruesome nature of the crime for a moment. However, we cannot totally overlook the mitigating circumstances in the present case. Not only was the appellant free of any criminal antecedent, the present crime being his first offence, he was a young boy, barely in his early 20s, coming from the marginal sections of society. The poverty of the appellant is evident from the fact that he was a day labour. The only other person in his family is his mother, who is dependent on alms and, as stated in her evidence, is a "beggar".

- 106.** Thus, instead of being myopic, the court is also to consider the social context and background of the offender, since crimes of the nature as the present one are not merely restricted to the immediate impulse of the culprit but are also social statements in a negative sense by the oppressed.
- 107.** Insofar as the mutilation of the face of the victim is concerned, the same might very well have been a knee-jerk reaction to hide the offence as an immediate impulsive act, since no prior motive of revenge has been made out by the prosecution.
- 108.** There is nothing before the court to know whether the regular route of the appellant to work overlapped with that of the victim or that the appellant kept a watch and pre-planned the execution of the crime. Thus, the element of pre-meditation, which has coloured the death sentence, might have altogether been absent, for all that we know.
- 109.** The learned Trial Judge accepted as sacrosanct the argument of the Public Prosecutor that the appellant lacked remorse. Nothing has been discussed about his demeanour during trial to indicate the same.
- 110.** The learned Trial Judge observed that he committed the crime in a cool and composed manner and that he had his dinner and slept peacefully, which are not borne out by any evidence but delve into the realm of conjecture. The appellant having dinner or having no remorse are entirely extraneous, being not borne out by the records. The very fact that he was in his home and had kept his clothes under his cot show the lack of pre-meditation and/or post-crime planning; rather, the immature conduct of the convict in remaining in his home and keeping

the clothes which he was wearing during the crime without even cleaning the same of the blood of the victim, as well as keeping his bicycle at home, without any effort to flee, shows naivety on the part of the appellant and not the activities of a hardened criminal.

111.The *de facto* complainant cites *Dhananjay (supra)*⁶. However, the major distinction between the said case and the present is that in *Dhananjay (supra)*⁶, the atrocity and conduct of the offender was taken into consideration, since the victim was not only defenceless but the offender was himself the security guard of the housing complex where the victim resided. The position of trust and confidence and fiduciary element in the said case was coupled with the angle of retaliation by the offender since he was transferred on the complaint of the victim, which cumulatively prompted the Supreme Court to confirm the death sentence.

112.In *Mukhesh's* case⁷, the devastation of social trust and destruction of collective balance creating fear psychosis, as recorded by the Supreme Court, was preeminent from the brutish nature of the offence itself, which was a prolonged episode of gruesome violence, including sexual gratification of a perverted nature, including anal sex, oral sex, bites and culminating in a rod being inserted in the private parts of the victim, so much so that it perforated the intestine and created sepsis. The sadism and beastly instinctual pleasures of the offenders did not stop there but the offender thought it routine to throw out the victim

⁶ *Dhananjay Chatterjee Aias Dhana v. State of W.B.*, reported at (1994) 2 SC 220.

⁷ *Mukhesh and another v. State (NCT of Delhi) and others*, reported at (2017) 6 SCC 1.

and her friend out of the bus and crush them in a casual and devilish manner, as recorded by the Supreme Court itself in its judgment. Such ghastly elements, of the magnitude as in *Mukesh's* case, are not found in the present case.

113.In *Manoharan (supra)*⁸, also cited by the *de facto* complainant, the victim's hands were tied and aggravated sexual penetration as well as sodomy perpetrated on her. The victim was only ten years old and the offence took place in front of her seven year-old brother. In such circumstances, the majority view of the Supreme Court was to affirm the death sentence.

114.However, in his dissenting view, Sajiv Khanna, J., (later, CJI) in his dissenting judgment, refused to grant death sentence by taking into consideration the confession of the offender as a mitigating circumstance and observing that the retraction from his original stand might not have been absence of remorse or repentance but an afterthought on legal advice to avoid the death sentence. He was not a mastermind and was merely 23 years old, coming from a poor family with aged parents, and was a first-time offender, all of which grounds match the present appellant and were mitigating circumstances taken into consideration in the dissenting judgment.

115. In *Kushwinder Singh (supra)*⁹ , no mitigating circumstance whatsoever was pointed out. The crime was the killing of six innocent persons in a pre-planned and inhuman manner.

⁸ *Manoharan v. State by Inspector of Police, Variety Hall Police Station, Coimbatore.*

⁹ *Khushwinder Singh v. State of Punjab, reported at (2019) 4 SCC 415.*

116.As opposed to the said cases, although the offence of the present appellant was barbaric, it could not be labelled as a “rarest of the rare case”. In *Mukhesh’s case*¹⁰, *Dhananjay (supra)*¹¹ and *Manoharan (supra)*¹², the landmark judgment of *Bachan Singh v. State of Punjab*, reported at (1980) 2 SCC 684, was considered.

117.The Supreme Court, in *Bachan Singh (supra)*¹³ laid down certain cardinal guidelines in awarding death sentence. In Paragraph No. 202 of the judgment, aggravating circumstances were enumerated, whereas in Paragraph No. 206, mitigating circumstances were listed. The Supreme Court, in *Bachan Singh (supra)*, categorically laid down that it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3) of the Code of Criminal Procedure. Paragraph Nos. 202, 206 and 209 of the judgment are quoted herein below:

“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

10 *Mukhesh and another v. State (NCT of Delhi) and others*, reported at (2017) 6 SCC 1.

11 *Dhananjay Chatterjee Aias Dhana v. State of W.B.*, reported at (1994) 2 SC 220.

12 *Manoharan v. State by Inspector of Police, Variety Hall Police Station, Coimbatore*.

13 *Bachan Singh v. State of Punjab*, reported at (1980) 2 SCC 684.

- (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.”

...

206. Dr Chitale has suggested these mitigating factors:

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

- (1) *That the offence was committed under the influence of extreme mental or emotional disturbance.*
- (2) *The age of the accused. If the accused is young or old, he shall not be sentenced to death.*
- (3) *The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.*
- (4) *The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.*
- (5) *That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.*
- (6) *That the accused acted under the duress or domination of another person.*
- (7) *That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.”*

...

209. *There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. “We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society.” Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and Figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency — a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted of murder, life imprisonment is*

the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

118.The Supreme Court also considered the interplay between Articles 19 and 21 of the Constitution of India and recorded the transition of penology from retributive to reformative. In the present case, the young age of the accused, which is a legitimate mitigating circumstance, cannot be overlooked, just as the probability that the offender would not commit criminal acts of violence as would constitute a continued threat to society and the probability that the offender can be reformed and rehabilitated cannot be brushed aside. In *Bachan Singh (supra)* ¹⁴, the Supreme Court categorically observed that the State shall, by evidence, prove that the accused does not satisfy the conditions of the aforesaid two probabilities. Such evidence is completely absent in the present case, nor was even considered by the learned Trial Judge while handing out the death sentence.

119.Social uproar or the opinion of the media cannot be a germane consideration as such. The apprehension of the society of continuance of such crime by the offender can definitely be a legitimate circumstance. However, in the present case, there is nothing on record, particularly in the absence of any antecedent of the appellant, to show that he would remain a continuing threat to society for a one-off incident of crime, howsoever brutal.

¹⁴ *Bachan Singh v. State of Punjab*, reported at (1980) 2 SCC 684.

120.The courts cannot be swayed by sensational opinions of the media or protests by the society *per se*, unless the offender is found, for reasons to be recorded, to be beyond reform and rehabilitation and to constitute a continuing threat to society, regarding which there is nothing on record or in the impugned judgment in the instant case.

121.In offences of such grave nature committed by people coming from the marginal society (the appellant is a day labour and his mother is a beggar), an ingredient of vicarious liability on the part of the society at large cannot be denied, since, in the first place, if society cannot provide a safety net for such people and cannot provide them basic living conditions, such a society should think twice before incarcerating a person, denuding him of all freedom and, in cold blood, sending him to the gallows to hang till death.

122.The reformatory aspect of modern penology has been the result of a long evolution from the need of society to find retribution by taking an eye for an eye. We cannot, thus, be regressive by setting the clock back and going for the jugular of the criminal merely because public opinion so dictates, without taking into consideration the possibility of reformation and rehabilitation of the offender, more so in view of the still tender years of the appellant.

123.Tested on such anvil, and taking an expansive view of the mitigating circumstances, this Court does not find that the offence committed by the appellant is of such a rarest of rare nature that he should be meted out the death penalty.

124. Thus, in our opinion, on the basis of the above observations, the death penalty ought to be commuted.

125. In view of the above, D.R. No. 04 of 2024 is disposed of and CRA(DB) 56 of 2024 is allowed in part, thereby affirming the conviction of the appellant on all counts of offence.

126. However, the death sentence of the appellant is commuted to life imprisonment, without early remission at least for a period of 20 years and without parole for 20 years, unless extreme exigency is established by the appellant.

127. The sentences of rigorous imprisonment of seven years and rigorous imprisonment for ten years, for the offences under Sections 363 and 366 respectively of the Indian Penal Code, shall run concurrently, meaning thereby that out of the life sentence, ten years will be spent by the appellant in rigorous imprisonment. In view of the poor financial condition of the appellant and his family, the fine of Rs. 5,000/- each for the offences under Sections 363 and 366 of the IPC are set aside, along with the consequential additional periods of imprisonment in default of payment of such amount.

128. The actual period already spent by the appellant in custody shall be set off from the period of 20 years during which no early remission or parole of the appellant shall be considered.

129. The Department shall immediately communicate this judgment to the Superintendent of the Correctional Home, where the appellant is now housed, who shall ensure that a copy of the same is provided to the appellant and the gist of the same is read over and explained to the

appellant at the earliest in his mother-tongue. A copy of the judgment shall immediately be sent by the Department to the Trial Court as well.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)