IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
(Appellate Side)

DR 2 of 2025
State of West Bengal
v.
Ashok Singh
With
CRA (DB)/328/2025
Ashok Singh
v.
State of West Bengal & Anr.

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellant/convict	:	Mr. Amit Ranjan Pati, Adv. Ms. Swastika Chowdhury, Adv. Ms. Ilika Nag, Adv. Mr. Yavik Singhal, Adv. Mr. Avijit Chatterjee, Adv.
Advocates who are appointed by Calcutta High Court Legal Services Committee	:	Mr. Kaushik Gupta, Sr. Adv, Mr. Apalak Basu, Adv.
For the State	:	Mr. Jayanta Narayan Chatterjee, Spl. PP, Mr. Santanu Talukdar, Adv. Ms. Moumita Pandit, Adv. Mr. Supreme Naskar, Adv. Ms. Ritushree Banerjee, Adv. ……Advocates
CAV on	:	06.10.2026
For Judgment	:	17.11. 2026

Apurba Sinha Ray, J.:-

1. By a judgment and order dated January 15/17, 2025, the learned Judge, Exclusive POCSO Court, Chinsurah, Hooghly, convicted the appellant for committing offence under Sections 65(2)/64(2)(1)/66 and 163 (1) of the Bharatiya Nyaya Sanhita, 2023 (in Short 'BNS') and under Section 6(1) of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and sentenced the appellant to suffer imprisonment for the remainder of his natural life for commission of offence under Section 64(2)(1) of the BNS. The learned Judge imposed the death sentence on the appellant for commission of offences under Sections 103(1)/66/65(2) of the BNS and under Section 6(1) of the POCSO Act. This has resulted in the present death reference at the State's instance and the appeal at the instance of the convict.

2. The prosecution case, briefly stated, is that the victim girl's (in short 'V.G') family and the appellant reside in the same locality. In fact, they are almost neighbours. The appellant's house is a few houses away from the house of the V.G.

3. On November 24, 2024, when the V.G was about 5/5$^{1/2}$ years old, the mother of the V.G asked her husband to purchase meat for the V.G. The father of the V.G (P.W.1), accordingly went to the market in the afternoon to purchase meat for his daughter. When he returned home he found his daughter and son were present and his wife was cooking rice. He again

went to the market in the evening as was his regular routine. At about 7/7.30 P.M. he returned home from the market. He found only his wife and son in the house. He inquired about his daughter from his wife. He was told that their daughter had gone to the house of Mandira Jethima. The V.G used to visit Mandira Jethima's house frequently. P.W. 1 asked his wife to bring back their daughter from Mandira Jethima's house. His wife went to Mandira's house but came back alone and informed P.W. 1 that their daughter had left Mandira's house quite some time before. At the time when the wife of P.W. 1 was going to Mandira's house in the search of their daughter, she saw the appellant standing at the entrance of his house wearing a gamcha. The appellant told the wife of P.W. 1 that her daughter had not visited his house.

4. In the above circumstances, P.W. 1 and his wife started searching for their daughter here and there. They went to all the houses which the V.G frequently visited. However, the V.G could not be traced. Then they went to the house of the appellant accompanied by other people of the locality who were also searching for the V.G. The appellant refused them entry to his house. They forcefully entered the appellant's house. Inside the appellant's room they found the V.G lying on a 'balaposh' on the floor. She had no clothes on her body. She was covered with a mosquito net. She was bleeding from her vagina. She was in an unconscious state. The wearing apparels of the V.G were stacked next to the 'balaposh'. Chandana Mondal, a neighbour of the V.G's family, took the V.G on her lap and handed over the V.G to her mother. The V.G's mother in turn

handed over the V.G to her father (P.W.1) and hurried to fetch clothes for the V.G. The V.G's mother brought some clothes and dressed up the V.G. Another neighbour, Biplab Roy brought his motorbike and took P.W 1 and the V.G on the motorbike to Dhaniakhali Hospital. The doctor examined the V.G and declared her to be dead.

5. The police started an investigation. The appellant was taken into custody. A chargesheet was issued. The charge was framed by the Trial Court under 5 heads, i.e., under Sections 65(2), 64(2)(1), 66, 103 of the BNS and Section 6 of the POCSO Act.

6. The appellant pleaded not guilty and claimed to be tried.

7. The prosecution examined 27 witnesses. The defence examined none.

8. In his evidence, P.W. 1, being the father of the V.G. and the de-facto complainant, reiterated more or less what he stated in the written complaint which is substantially what I have discussed above as the prosecution case.

9. P.W. 2, Subrata Ruidas was a resident of the neighbourhood. He deposed that he was one of the persons who forcefully entered the house of the appellant and discovered the V.G. in a bleeding condition. His deposition corroborates that of P.W. 1.

10. P.W. 3 is the mother of the V.G. Her evidence was in tune with that of P.W.s 1 and 2. Additionally she said that when she was returning from the house of Mandira after being told that the V.G. had left Mandira's house long before, she saw the appellant standing on the 'Dhalai' Road.

On seeing her, the appellant, who used to address the V.G. as 'jethu', on his own volition told her that "jethu did not come to my house".

11. P.W. 4 is Mandira Singh, whose house the V.G. had visited on the fateful day. Mandira confirmed the factum of such a visit and that upon being told that Mandira's daughter was not at home, the V.G. left her house. Mandira was one of the members of the group which started looking for the V.G. and ultimately discovered the V.G. in the appellant's house. The evidence of P.W. 4 is in consonance with the evidence of P.W.s 1 to 3.

12. P.W. 5, Chaitali Pandit is a resident of the neighbourhood. She deposed that on the date of the occurrence, she had gone to fetch water from the local tubewell in the evening. There is a lamp post beside that tube well. She saw the victim girl was near the tubewell. She had come from the left side of the 'dhalai' road where the houses of the appellant, Bifol Samui and Mandira Singh are situate. The appellant came to the spot and told the V.G. to accompany him to his house saying that he will give her chocolates. The V.G. followed the appellant to his house. P.W. 5 did not stop the V.G. from going to the appellant's house as she did not apprehend anything untoward. The V.G. used to call the appellant 'jethu' and she did not find anything wrong in the appellant calling the V.G. to his house. After returning home when she was in the bathroom she heard the V.G.'s mother calling her by name. She could not respond from the bathroom and was not in a position to come out from the bathroom immediately. At about 7/7.30 p.m. she heard hue and cry in her locality.

She went outside and saw the V.G.'s mother coming out from the house of the appellant with her daughter being the V.G. She said that at that point of time she was so perplexed and frightened that she could not tell the fellow villagers that she had seen the appellant taking the V.G. to his house. In cross examination she said that she never told the police or the Magistrate that she saw the appellant on the day of the occurrence, in the evening, taking the V.G. with him. Nor did she tell the same to the fellow villagers.

13. P.W. 6 is Chandana Mondal, another member of the search party which discovered the V.G. in the appellant's house. Her evidence corroborates the evidence of P.W.s 1 to 4.

14. P.W. 7 Biplab Roy is the person who took V.G. and her father to the hospital on his motorbike.

15. P.W. 8 Bulu Mondal was another member of the search party which discovered the V.G. in the appellant's house. His evidence is in consonance with the evidence of other prosecution witnesses who were also members of the search party.

16. P.W. 9 and P.W. 10 are seizure witnesses who supported the prosecution case.

17. P.W. 11 was a Sub-Inspector of Police, Bapi Halder according to whose instruction a G.D. entry was made as regards the incident. P.W. 12 is another Sub-Inspector of Police, who deposed that he along with his

colleagues rescued the appellant who was being beaten up by fellow villagers and admitted the appellant to Polba Hospital.

18. P.W. 13 is a photographer who took photos of the scene of crime.

19. P.W. 14 and P.W. 15 are not very important witnesses.

20. P.W. 16, Dr. Sandip Ghosh, was the Assistant Director, (Biology Division), State Forensic Science Laboratory, Belgachia, Kolkata. He conducted the requisite forensic test on the wearing apparels and other seized items. The long and short of the evidence of P.W. 16 is that "DNA of the accused is found in swab collected from labia right and perineum of the victim."

21. P.W. 17 is the doctor who conducted the post mortem of the V.G.'s dead body. He deposed in detail the injuries found on the private parts of the V.G. as also on her scapula. He said that such genital injuries are only possible in case of a 5 years old girl if she is subjected to sexual assault. He also said that the kind of injury that was noticed on the V.G's scapula is possible if the victim is forced against any wall or floor. He said that "all the injuries were recent and some of them were life threatening. The crux of his evidence is that "death of deceased was due to effects of intracranial haemorrhage associated with signs of recent forceful penetration of vagina and anus. The manner of death is found homicidal."

22. P.W. 18 is a Clinical Psychologist who was at the relevant time, attached to Chandannagore Sub-divisional Hospital and Imambara Sadar

Hospital, Chinsurah. She examined the appellant on December 3, 2024. The gist of his deposition is as follows:-

> "On examination I found no thought or perceptual disturbance, he was found jittery in his general appearance, he was able to communicate needs.
>
> I found poor insight of said Ashok Singh which means he was able to communicate his requirements but his requirements in parlance with practical field or reality.
>
> I put NIMHANS mental health screening questionnaire to Ashok Singh and I did not find any disorientation, or any presence of his mental illness.
>
> I did not get any history of his physical or mental illness nor I found any such illness in him after examination.
>
> This is a report prepared and signed by me.
>
> The report is marked as **Exhibit-P-26**."

23. P.W. 19 is the Doctor, who at the relevant point of time was attached to Imambara Sadar Hospital, Chinsurah as Clinical Biochemist. Under her instruction blood sample of the appellant was drawn.

24. P.W. 20 was a staff nurse at Imambara Sadar Hospital on the night the appellant was admitted to the hospital after having been lynched by fellow villagers. Her evidence is not of much significance.

25. P.W. 21 is the inquest Doctor.

26. P.W. 22 is the Investigating Officer. He supported the prosecution case.

27. P.W. 23, Dr. Partha Bose, was posted as Medical Officer at District Hospital, Chinsurah, on November 27, 2024, when he examined the appellant. He deposed, inter alia, as follows:-

"I finally opined that the accused was capable of performing sexual intercourse mentioning that nothing is revealed against the normal sexual capability. I found him physically and mentally fit".

28. P.W. 24 is another Police Officer. P.W. 25 was the Superintendent of Chinsurah, Imambara Sadar Hospital, at the relevant point of time. The evidence of these two witnesses are not of much significance.

29. P.W. 26, Dr. Soumya Sarkar was the Medical Officer of the Dhaniakhali Rural Hospital on November 24, 2024, when the V.G. was taken to that hospital from the appellant's house. This witness examined the V.G. and declared her to be dead. P.W. 27 is the Staff Nurse of Dhaniakhali Rural Hospital in whose presence and with whose help P.W. 26 examined the V.G.

30. The appellant was examined under Section 351 of BNSS (Section 313 of Cr.P.C.). His case was one of complete denial. He said that on the day of the incident he returned to his home from work at 6.45 p.m. and after keeping his cycle and changing his dress, he sat outside on the 'Dhalai' Road in front of the house. He does not know what happened in the locality. He denied having told the V.G.'s mother (P.W. 3) that the V.G. has not

visited his house. While admitting that the search party found the V.G. inside his house, he said that he does not know how the V.G. was found there. He further said that he never prevented anyone from entering his house. He also said that he does not know in what condition the victim was found in his house. He was beaten up by the villagers. He does not know what happened thereafter.

31. Learned Trial Judge on an assimilation of the evidence on record held that there is sufficient evidence to sustain the prosecution case. The depositions of P.W. 1 to P.W. 8 corroborate each other. The circumstances of the case indubitably indicate the appellant as the perpetrator of the crime. The V.G. was last seen with the appellant by P.W. 5. The forensic evidence conclusively establishes that the appellant committed penetrative sexual assault on the V.G. The omission on the part of P.W. 1 (complainant) to state certain facts in the written complaint is in-consequential. The written complaint or FIR is not meant to be an encyclopaedia of all relevant facts.

32. The learned Trial Judge referred to the following decisions:-

(i) ***Sharad Birdhichand Sarda v. State of Maharashtra, reported at (1984) 4 SCC 116***: the facts established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. There must be a chain of evidence so complete as not to leave any reasonable grounds for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

(ii) ***Bhim Singh v. State of Uttarakhand reported at (2015) 4 SCC 281***: Court can act on the basis of circumstantial evidence only when the circumstances proved are complete and of such conclusive nature that it is fully inconsistent with the innocence of the accused and are not explainable on any other hypothesis except the guilt of the accused. No link in circumstantial evidence should be missing. The chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime.

(iii)***SailendraRajdevPasvan v. State of Gujarat reported at AIR 2020 SC 180***: An important aspect to be considered in a case resting on circumstantial evidence is the lapse of time between the point when the accused and deceased were seen together and when the deceased is found dead. It ought to be so minimal as to exclude the possibility of any intervening event involving the death at the hands of some other person. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that the possibility of any person other than the accused being the author of crime becomes impossible.

33. Learned Trial Judge also relied on the presumption of commission of offence and presumption of culpable mental state as provided in Sections 29 and 30 of the POCSO Act. Learned Judge summed up her findings in the following words:-

> "21. *In the light of the above discussion it is proved that the accused Ashok Singh committed rape upon an innocent, helpless minor girl aged*

about 5 years 10 months taking advantage of her faith and trust on him. The accused did it with well planning. He was aware of movement of the victim girl who happened to be his neighbour. He also calculated it that his house is located in such position where movement of villagers is less specially in the evening, at a distance from 'dhalai' road of their para and his rooms are not visible from his nearby houses. He took the immature, innocent victim girl to his such house on the pretext of giving chocolate and raped her there. The victim trusted the accused whom she used to address as 'Jethu' by village courtesy. Prosecution further proved it by adducing medical evidence that when the victim was subjected to rape she was brutally tortured by the accused in such fashion that she had subdural haemorrhage on her scalp. He also forcefully penetrated into her vagina and anus. Such torture became unbearable to a little girl of 5 years and she died. The manner in which the victim was subjected to physical and sexual torture every sane and reasonable person would be sure of her death. The accused without showing any mercy to her continued that brutality and ultimately eradicated her from the world. 22. In view of the above discussion I am constrained to hold that the totality of the evidence leads to come to an irresistible conclusion that prosecution has proved the charges against the accused person beyond all reasonable doubts and the accused person is liable to be convicted in this case for the offences punishable U/s 65(2)/64(2)(1)/66/103(1) of the B.N.S and u/s-6(1) of the POCSO Act. 23. Accordingly, this court convicts the accused person namely

Ashok Singh for the offence punishable U/s 65(2)/64(2) (1)/66/103(1) of the BNS and U/s 6(1) of the POCSO Act."

Argument advanced on behalf of the appellant:

34. Learned Counsel Mr. Pati submits that the conviction of the appellant is based exclusively on circumstantial evidence. There was no eye-witness. In such cases the prosecution must satisfy a five-fold test:- (i) the circumstances from which the conclusion of guilt is to be drawn must be fully established; (ii) the facts so established must be consistent only with the hypothesis of the guilt of the accused; (iii) the circumstances must be of a conclusive nature and tendency; (iv) they must exclude every possible hypothesis except the one to be proved; and (v) there must be a chain of evidence so complete as to leave no reasonable ground for a conclusion consistent with the innocence of the accused.

35. The prosecution has failed to satisfy any of the aforesaid requirements. The chain of circumstances, as sought to be woven by the prosecution, is replete with material gaps, irreconcilable contradictions and suspicious improvements, each of which has the cumulative effect of snapping the chain at multiple junctures. The present case does not merely raise a reasonable doubt- it raises a profound and reducible uncertainty regarding the guilt of the appellant. The 'Last Seen Together' theory is unreliable and legally inadmissible as a conclusive link in the chain of circumstances. The prosecution seeks to rely on the testimony of P.W. 5 as the 'Last Seen Together' witness, which constitutes the foundational circumstance of the prosecution case. The said testimony is wholly

unreliable, legally suspect and unsafe to form the basis of conviction for the following reasons:

(a) The allegation that the appellant was seen taking the victim to his house on the pretext of offering chocolate finds no mention in the written complaint lodged by P.W.1, the de facto complainant and the victim's father. This is a fatal infirmity going to the root of the prosecution case.

(b) The allegation also does not find reflection in the statements of P.W.3, P.W.6, P.W.7 and P.W.8 who are equally material prosecution witnesses.

(c) P.W. 5 has admitted in the course of cross-examination that she did not disclose the said alleged fact either before the learned Magistrate recording her statement under Section 164 Cr.P.C. or before the Investigating Officer (P.W.22). This admission constitutes a material omission of the gravest character which amounts to a contradiction within the meaning of Section 162 Cr.P.C. and is sufficient to impeach the creditworthiness of the witness as has been held by the Hon'ble Supreme Court in ***State of Rajasthan v. Raja Ram reported at (2003) 8 SCC 180***. An improved version introduced for the first time at trial, calculated to fill a lacuna in the chain of circumstances, cannot be accepted as reliable evidence forming a link in a chain that must be forged beyond reasonable doubt.

36. The prosecution has failed to establish one of the most elementary facts in the chain of circumstances, *viz*, how P.W.1, the de facto complainant, came to know or had reason to believe that the victim was

present in the house of the appellant. This gap in the narrative is not a minor irregularity; it is a chasm that swallows the entire prosecution edifice.

37. P.W.1 has categorically deposed that it was P.W.3 who informed him that the victim had gone to the house of one Tapas Singh. The identity of Taposh Singh has been left in the dark. He has not been examined by the prosecution as a witness and no explanation has been offered for such omission. Deliberate non-examination of a witness who is a crucial link in the chain of circumstances entitles the Court to draw an adverse inference against the prosecution.

38. The depositions of the post-occurrence witnesses, i.e., P.W.1, P.W.3 to P.W. 8, who claim to have either participated in the discovery of the victim or to have been present at the scene, are fundamentally inconsistent with each other on material particulars, rendering their collective testimony wholly unreliable. In particular, P.W. 4 has admitted in cross-examination that she did not state before the Investigating Officer that she had seen the victim lying on a 'balaposh' covered with a mosquito net inside the appellant's house. A material omission of this nature, pertaining to a specific, vivid and significant detail, constitutes a contradiction within the meaning of Section 162 Cr.P.C. and must be treated as casting serious doubt on the prosecution case. Learned Trial Court committed a grave error in treating the mutually contradictory and omission – ridden testimonies of the said witnesses as corroborative evidence.

39. Assuming for the sake of argument that recovery of the victim from the appellant's house is accepted, even then, the prosecution has failed to

establish that the said house was in the exclusive possession or occupation of the appellant at the relevant time or that the appellant was present therein when the alleged incident occurred. In the absence of cogent proof of his exclusive presence at the place of the alleged offence, the mere factum of recovery cannot be treated as a circumstance conclusively pointing to the guilt of the appellant. The hypothesis of the appellant being falsely implicated -–which has been constantly pressed by the defence remains a perfectly plausible alternative and has not been ruled out by the prosecution.

40. In view of the aforesaid, the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt, much less to prove a complete and unbroken chain of circumstances leading inevitably to the guilt of the appellant and excluding every other hypothesis consistent with his innocence. In a capital case, where an irreversible penalty has been imposed, the standard of proof must be applied with utmost vigour. If two views are reasonably possible on the basis of the evidence on record- one pointing to the guilt of the accused and the other to his innocence- the Court is bound to adopt the view favourable to the accused. The existence of serious doubts and loopholes in the prosecution case as discussed above makes this a textbook case for acquittal. Hence, this Court should set aside the appellant's conviction under Sections 65(2)/64(2)(i)/66/103 of the BNS read with Section 6 of the POCSO Act.

41. Without prejudice to the primary prayer for acquittal and the submissions made in support thereof, and strictly in the alternative- in the event this Court declines to interfere with the conviction- it was submitted

that the death sentence imposed upon the appellant is unsustainable in law, vitiated by multiple legal infirmities and deserves to be commuted to imprisonment for life for the following reasons:

(a) Section 354 (3) of the Cr.P.C., as interpreted by the Constitution Bench in ***Bachan Singh v. State of Punjab (1980) 2 SCC 684***, mandates that the sentence of imprisonment for life is the rule and death is the exception. The sentencing Court must record 'special reasons' before imposing the death penalty. This requirement is not a mere procedural formality; it is a substantive constitutional safeguard against arbitrary or mechanical sentencing. The reasons assigned by learned Trial Court in the sentencing order impugned in this appeal, are wholly generic, exclusively crime-centric, bereft of individualised assessment of the appellant and therefore do not constitute 'special reasons' within the meaning of Section 354(3) of the Cr.P.C.

(b) In ***Bachan Singh, Supra***, the Supreme Court held that the sentencing Court must, as a mandatory constitutional requirement, balance the aggravating circumstances relating to the crime against the mitigating circumstances relating to the criminal. This dual balancing exercise- attending both to the crime and to the individual-is the irreducible minimum that the Constitution demands before the irrevocable step of taking a human life by judicial order. The impugned sentencing order reflects a complete failure to undertake this mandatory exercise. The learned Trial Court has focused exclusively on the nature and gravity of the alleged offence, without any attempt whatsoever to assess the mitigating circumstances peculiar to the

appellant as an individual. No inquiry was made into his socio-economic background, family circumstances, educational attainment, prior conduct, psychological condition or reformative potential. The Hon'ble Supreme Court deprecated the practice of balancing 'numbers' of aggravating and mitigating circumstances and emphasised that the exercise must be qualitative, not quantitative, and must be founded on a complete factual record. No such record was assembled or considered here.

42. In ***Swamy Shraddananda (2) vs State of Karnataka reported at (2008) 13 SCC 767***, the Hon'ble Supreme Court recognised and constituted a third sentencing category- a sentence of life imprisonment with the specific stipulation that the convict shall not be released or granted remission for the remainder of his natural life or for a specified term. This intermediate category exists as an alternative to death for cases that are grave but which may not meet the true threshold of the '*rarest of rare'* doctrine. Learned Trial Court has entirely failed to advert to this option, to consider whether it would adequately serve the ends of justice and to assign reasons for declining to accept that option. This omission constitutes an independent legal error vitiating the sentencing order.

43. The Constitution Bench of the Supreme Court in ***Manoj and Ors., v. State of Madhya Pradesh reported at (2023) 2 SCC 353*** laid down an elaborate, comprehensive and binding framework for capital sentencing. The Constitution Bench held that the sentencing Court is under an absolute duty to call for and consider reports concerning the social, educational economic and familial background of the accused; obtain a psychological

evaluation of the accused; meaningfully consider the probability or impossibility of rehabilitation and reformation of the accused; and ensure that the evidence regarding mitigating circumstances is placed before the Court and assessed with the same rigour as aggravating circumstances. The failure to undertake this exercise is not a procedural irregularity but a constitutional infirmity vitiating the sentence. In the present case, whilst relevant reports may have been placed before the learned Trial Court, there is a complete absence in the sentencing order of any meaningful engagement with or discussion of contents of those reports, the appellant's personal background, his mental and psychological condition or his reformative potential.

44. The present case is squarely covered by the ratio decidendi of ***Mohmmad Firoz v. State reported at (2022) 7 SCC 443***, wherein the Hon'ble Supreme Court commuted the sentence of death to life imprisonment in a case involving the rape and murder of a four-year old girl. The Court commuted the sentence upon finding that: i) The prosecution had failed to establish that the accused was wholly beyond the possibility of reform or rehabilitation; ii) the mitigating circumstances had not been adequately considered by the Trial Court; and iii) the case did not satisfy the stringent threshold of the '*rarest of rare'* doctrine. The factual matrix of that case is, in all material respects, identical to the present case- involving a child victim, similar charges and analogous evidentiary infirmities in the sentencing exercise. On the principle of parity and consistency, which the Hon'ble Supreme Court has emphasized as a constitutional imperative in capital sentencing, the appellant is entitled to the same relief of

commutation. The '*rarest of rare'* doctrine enunciated in ***Bachan Singh, Supra***, clarified in a long line of subsequent decisions, requires the Court to make a positive finding- based on evidence and not assumption- that the accused is beyond any redemption, that no lesser alternative sentence can adequately serve the twin purposes of deterrence and justice and that the case stands entirely apart from all other cases of its genre in terms of sheer depravity and irredeemable culpability. This high standard has not been satisfied in the present case. Learned Trial Court has not recorded any finding- supported by evidence or material- that the appellant is incapable of reform or rehabilitation. This lacuna is not merely a procedural deficiency; it is a pre-condition for the exercise of capital sentencing jurisdiction and its absence is fatal to the validity of the death sentence.

Argument of the State:-

45. Learned Special Public Prosecutor Mr. Jayanta Narayan Chatterjee (in short 'SPP') representing the State pointed out that the victim was last seen with the appellant by P.W. 5. Although P.W. 5 in her deposition before the learned Trial Court, in cross examination said that she never told the police or the Magistrate that she saw the appellant on the day of the occurrence, taking the V.G., in fact, while recording her statement under Section 164 Cr.P.C., she told the Magistrate about such fact.

46. Learned SPP submitted that a number of prosecution witnesses discovered the V.G. in the appellant's house. Their depositions corroborate each other. The appellant could not offer any explanation as to how the V.G. landed up in his house and was found in an almost dead condition. The

explanation offered by the appellant in his examination under Section 313 Cr.P.C. is utterly incredible.

47. Learned SPP then drew our attention to the evidence of the post mortem doctor which clearly indicates severe sexual assault of the V.G. He deposed that the manner of death of the V.G. was homicidal.

48. Learned SPP pointed out that the Assistant Director (Biology Division), State Forensic Science Laboratory, Belgachia, Kolkata had forensically tested the wearing apparels of the V.G. His report showed the presence of DNA of the accused in swabs collected from labia right and perineum of the V.G.. This conclusively establishes rape of the V.G. by the appellant.

49. Learned SPP submitted that in view of the overwhelming incriminating evidence against the appellant, there is absolutely no scope for interfering with the order of conviction. Mr. Chatterjee has relied upon the following judgments in support of his contention that the accused Ashok Singh had committed heinous offences against the minor victim and his position, status, mental set up show that he is beyond reformation.

i. ***Bachan Singh vs. State of Punjab reported in reported in (1980) 2 SCC 684***

ii. ***Machhi Singh and Anr Vs State of Punjab reported in (1983) 3 SCC 470***

iii. ***Santosh Kumar SatisbhushanBariyar vs State of Maharashtra, Criminal Appeal no. 1478 of 2005***

iv. ***Dhananjoy Chatterjee alias Dhana vs State of West Bengal reported in (1994)2 SCC 220***

v. ***Purushottam Dashrath Borate vs The State of Maharashtra reported in (2015)6 SCC 652***

vi. ***Bantu vs The State of Uttar Pradesh reported in (2008)11SCC113***

vii. ***Vasant Sampat Dupare vs State of Maharashtra reported in (2015) 1 SCC 253***

viii. ***Shankar Kisan RoaKhade Vs State of Maharashtra reported in (2013) 5 SCC 546***

ix. ***Manoj Pratap Singh vs. State of Rajasthan reported in (2022) 9 SCC 81***

x. ***ShatrughnaBabanMeshram Vs State of Maharashtra in Criminal Appeal No. 763-764 of 2016***

Submission of the learned Counsel appointed from High Court Legal Services Committee :

50. Mr. Koushik Gupta, learned Senior Advocate and Mr. ApalakBasu, learned Advocate have submitted that the decision of Dhananjoy (supra) has been diluted in the subsequent decisions of the Hon'ble Apex Court. The Hon'ble Supreme Court in several judgments have laid down that if the option of the alternative punishment is not foreclosed, then the sentencing Court should not give capital punishment to the convict. Mr. Basu has further submitted that the convict is an illiterate and poor person and had no scope for receiving value education from any school or society and as such he has not attained the knowledge of the benefit of values in life. Overall consideration of the crime and criminal is to be undertaken by the

sentencing Court, and so far as the present convict is concerned, there is a scope for his reformation. He has relied upon the following judgments in support of his contention.

i. ***Bachan Singh vs. State of Punjab reported in reported in (1980) 2 SCC 684***

ii. ***Machhi Singh and Anr Vs State of Punjab reported in (1983)3 SCC 470***

iii. ***Swamy Shraddananda @ Murali Manohar Mishra v. State of Karnataka reported in (2008) 13 SCC 767***

iv. ***Santosh Kumar SatishbhushanBariyar v. State of Maharashtra reported in (2009) 6 SCC 498***

v. ***Sangeet v. State of Haryana reported in (2013) 2 SCC 452***

vi. ***Mohinder Singh v. State of Punjab reported in (2013) 3 SCC 294***

vii. ***Shankar KisanraoKhade v. State of Maharashtra reported in (2013) 5 SCC 546***

viii. ***Rajendra PralhadraoWasnik v. State of Maharashtra reported in (2019) 12 SCC 460***

ix. ***Chhannu Lal Verma v. State of Chhattisgarh reported in (2019) 12 SCC 438***

x. ***Dattatraya @ Datta Ambo Rokade v. State of Maharashtra reported in (2020) 14 SCC 290***

xi. Sachin Kumar Singhraha v. State of Madhya Pradesh reported in (2019) 8 SCC 371

xii. ***Irappa Siddappa Murgannavar v. State of Karnataka reported in (2022) 2 SCC 801***

xiii. ***Mofil Khan v. State of Jharkhand reported in (2021) 20 SCC 162***

xiv. ***Lochan Shrivas v. State of Chhattisgarh reported in (2022) 15 SCC 401***

xv. ***Pappu v. State of Uttar Pradesh reported in (2022) 10 SCC 321***

xvi. ***Manoj v. State of Madhya Pradesh reported in (2023) 2 SCC 353***

xvii. ***In Re: Framing Guidelines regarding potential mitigating circumstances to be considered while imposing death sentences in Suo Moto WP (Crl.) No. 1 of 2022***

xviii. ***Vasanta Sampat Dupare v. Union of India reported in 2025 SCC OnLine SC 1823***

xix. ***Aman Singh v. State of Bihar reported in 2026 SCC OnLine SC 720 (2026 INSC 424)***

xx. ***Waris v. State of Madhya Pradesh reported in 2026 SCC OnLine SC 2001***

Court's View:-

51. The ruling of five judges' bench in Bachan Singh's case is still the foundation stone of the sentencing policy in India in so far as the death penalty of a convict is concerned. Although the abolitionists' claim for abolition of the death penalty from the statute book was turned down, the

retentionists' demand was granted subject to severe restrictions and conditions.

52. According to the said ruling, the death penalty can be awarded: Firstly, if the offence comes under the 'rarest of the rare cases' category, andSecondly, in selecting sentence between life and death, due regard must be paid to the circumstances of offence as well as those of the offender.

53. Para 197 of Bachhan Singh's is reproduced hereunder:

> *"In Jagmohan, this Court had held that this sentencing discretion is to be exercised judicially on well-recognised principles, after balancing all the aggravating and mitigating circumstances of the crime. By "well-recognised principles" the Court obviously meant the principles crystallised by judicial decisions illustrating as to what were regarded as aggravating or mitigating circumstances in those cases. The legislative changes since Jagmohan - as we have discussed already - do not have the effect of abrogating or nullifying those principles. The only effect is that the application of those principles is now to be guided by the paramount beacons of legislative policy discernible from Sections 354(3) and 235(2), namely: (1) The extreme penalty can be inflicted only in gravest cases of extreme culpability: (2) In making choice of the sentence, in addition to the circumstances of the offence, due regard must be paid to the circumstances of the offender also."*

54. Needless to mention under section 354(3) of Cr. P. C / Section 393(3) of BNSS, the court is under a statutory obligation to give 'special reason' for awarding death sentence to any convict. Aggravating circumstances shall, as per this ruling, form the basis of 'special reason' as envisaged under section 354(3) of the Code. Aggravating circumstances means that there must be evidence of aggravation of an abnormal or special degree. Relevant excerpts of para 205 is quoted below:

> *"205. In several countries which have retained death penalty, pre-planned murder for monetary gain, or by an assassin hired for monetary reward is, also, considered a capital offence of the first degree which, in the absence of any ameliorating*

circumstances, is punishable with death. Such rigid categorisation would dangerously overlap the domain of legislative policy. It may necessitate, as it were, a redefinition of 'murder' or its further classification. Then, in some decisions, murder by fire-arm, or an automatic projectile or bomb, or like weapon, the use of which creates a high simultaneous risk of death or injury to more than one person, has also been treated as an aggravated type of offence. No exhaustive enumeration of aggravating circumstances is possible. But this much can be said that in order to qualify for inclusion in the category of "aggravating circumstances" which may form the basis of 'special reasons' in Section 354(3), circumstance found on the facts of a particular case, must evidence aggravation of an abnormal or special degree."

55. The above judgment further lays down that an effort must be made to weigh the aggravating circumstances as well as mitigating circumstances for deciding the appropriateness of the sentence proposed to be passed against the convict. The mitigating circumstances were also hinted in para 206 of the judgement, and the same is hereunder:

"206. Dr. Chitaley 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 unpaired his capacity to appreciate the criminality of his conduct."

56. The concluding para of **Bachan Singh's case (Supra)** issues a note of caution by observing that taking a life through law's instrumentally ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed. Thereafter, many cases dealt with the issues relating to death penalty of several offenders and the Apex court in each and every occasion has expressed its view that the capital punishment in India can be imposed only if the offence is within the category of rarest of rare cases and in no other cases. However, so far as regards the second condition that the sentencing court is to ascertain not only circumstances of the offence but as well those of the offender, the record shows that there are at least seven cases where the Apex court didn't consider the circumstances of the offender, in the light of the observations of **Bachhan Singh's case (Supra)** and they are, according to the Apex court's decision reported in **(2009)6 SCC498 (Santosh Kumar Satish Bhushan Bariyar v. State of Maharashtra)** are not binding precedents. These seven decisions are : **Ravji v. State of Maharashtra** reported in **(1996)2 SCC 175 , Shivaji v. State of Maharashtra** reported in **(2008) 15 SCC 269, Mohan Anna Chavan v. State of Maharashtra** reported in **(2008)7 SCC 561, Bantu v. State of U. P** reported in **(2008) 11SCC 113, Surja Ram v. State of Rajasthan** reported in **(1996) 6 SCC 271, Dayanidhi Bisoi v. State of Orissa** reported in **(2003) 9 SCC 310 and State of U. P v. Sattan**reported in **(2009)4 SCC 736.** It is a trite law that in awarding capital punishment, the sentencing court is under a strict obligation to ascertain not only the heinousness and

other circumstances of the crime but also the circumstances of the criminal under which he committed such offence. Keeping in mind the broad principle laid down in Bachan Singh's case, some of the subsequent case laws of 2 or 3 Judges Bench have pointed how such circumstances relating to the convict can be obtained or how such circumstances would be evaluated by the sentencing Court. The said case laws have reinforced the dictum of Bachan Singh's case to ascertain further whether there are materials suggestive of awarding an alternative sentence of life imprisonment instead of capital punishment.

57. The present law of land suggests that even if the case is of rarest of the rare case category the Court should not award death penalty unless the Court finds that there is no scope of reformation of the convict. In other words, if the reformation of the convict is possible, the death penalty cannot be awarded even if the case is of rarest of the rare cases. In view of the above let us examine the crime as well as the criminal.

The Crime Test:

58. The case is based on purely circumstantial evidence. No eye-witness was there who saw the convict to commit the heinous crime of rape of a child aged about 5 years 10 months and to murder her inside his room. Needless to mention a conviction on circumstantial evidence can be awarded if the chain of events is complete in such a manner that there is no possibility of holding any person other than the accused as guilty. However, if the chain of events is broken or there is a missing link, the conviction cannot be pronounced.

59. In this case, the allegation is that the child victim was allured by the convict to give her chocolate if she came with him. The child victim remained untraceable for quite sometime and as a result her parents and neighbours started searching for the victim and ultimately the victim's body was found inside the room of convict covered with a mosquito net and a balaposh (little weight blanket). She was found naked inside the balaposh with bleeding injuries from her private parts along with other injuries on her body. She was taken to hospital in a motorbike and on examination the hospital authority declared her as brought dead. The FIR was lodged immediately. The accused was rescued by the Police at the time when he was being beaten up by the villagers and was hospitalized. The medical evidence disclosed that the victim was brutally raped by the convict. There is evidence that the convict also committed anal sex with the said child and it is further alleged that subsequently the convict thrashed the head of the victim child either against the wall or the floor of the room to ensure the evidence of the best witness is removed forever. Investigation of the case was started immediately and a Special Investigation Team was formed by the Superintendent of Police (Rural, Hooghly). Chargesheet was submitted on 09/12/2024 against the accused and the charge was framed on 11.12.2024. Out of 35 witnesses the prosecution has examined 27 witnesses and the prosecution evidence was closed on 13.01.2025. The statements of the accused under Section 313 Cr.P.C. were recorded on 03.01.2025 and 04.01.2025. Arguments from both sides were heard and learned Trial Judge, Exclusive POCSO Court by her judgment dated 15.01.2025 convicted the appellant under Section 64 (2) (1)/65(2)/66/103 (1) of BNS and also under

Section 6(1) of the POCSO Act and sentenced the accused with capital punishment by the order of sentence dated 17.01.2025. Within a period of less than 2 months of the occurrence, the appellant was convicted and sentenced by the learned Trial Judge.

60. To understand the gravity and seriousness of the offence we have to look into the medical evidence, that is, the Post Mortem Report of the victim. In this regard, the deposition of the doctor who conducted the post mortem upon the victim girl is also to be looked into. As per his deposition being PW 17 Dr. Saswata Biswas deposed before the Court that on 25.11.2024 he received the dead-body of the female child on 2.15 pm. in Kolkata Police Morgue, Calcutta Medical College. A Medical Board was formed by the Head of the Department of Forensic Medicine, Medical College, Kolkata consisting of three doctors including himself, Dr. Sanjay Bandopadhyay and Dr.NabanitaAdhikary. Autopsy was started at 5.10 pm., on 25.11.2024 and it was completed at 8.20 pm. on the same day. The whole post mortem process was video-graphed by Constable C-2118 Soumen Dey, Hooghly (Rural) Police District. The excerpts of PW 17's deposition is reproduced hereinbelow:

> "*I found red coloured printed cotton frock of the deceased which was stained with dried reddish stain likely that of blood on the lower back part of the frock of the deceased. The stain mark was measuring about 20 cm x 11 cm.*
> *The area of the said blood stain mark was marked and signed by one of the autopsy surgeons of the Board.*
> *In 2nd Column of the 2nd row injuries which we found on the deadbody are clearly mentioned by us.*
> *During examination we found lacerated wound measuring about 0.8 cm x 0.8 cm. muscle (which means depth) involving the hymen, navicular fossa, fourchette and posterior commisure of the external genitalia and partial thickness tear of anal sphincter. On further*

dissection we also found extravasation of blood measuring about 5 cm x 5 cm noted involving the posterior vaginal wall.
I also found abrasion measuring about 1 cm x 1 cm in the rim of anal opening and another abrasion measuring about 0.5 cm x 0.5 cm at 7 O'clock and 10 O'clock respectively.
We found said 7 O'clock injury and 10 O'clock injury at the opening of the anus.
That kind of injury may be possible when any hard substance is inserted or attempted to be inserted.
In case of a 5 years old girl if force applied or not during insertion or attempt, there will be such injury.
We found extravasation of blood 1.5 cm x 1.2 cm involving the mucosa of the posterior anal canal of the deceased. These were the injuries found in genitalia of the deceased.
These kind of genital injuries are only possible in case of a 5 years old girl if she is subjected to sexual assault.
Other than said injuries we also found other external injuries on body of the deceased such as abrasion measuring about .3 cm x .3 cm over the back of the deceased near the right scapula, extravasation of blood 1.2 cm x .8 cm in the right temporal region of scalp, extravasation of blood .8 cm x .6 cm in the left temporal region of scalp, diffuse subdural haemorrhage was noted over the supero-lateral surface of entire left cerebral hemisphere including its base, subarachnoid haemorrhage 9 cm x 7 cm noted over the left parietal lobe of brain.
Scapula is a bone located at the back.
Such kind of injury on scapula is possible if the victim is forced against any wall or floor.
The scalp injuries as mentioned in point Nos. 6, 7 and 8 is possible in body of 5 years old girl only if the victim is banged on a wall or she is shaken violently.
Subdural haemorrhage and subarachnoid haemorrhage are generally caused due to trauma to the head. It may be caused due to application of blunt force on head (To court).
This kind of haemorrhage happens in between brain and dura mater.
The injury mentioned in point No. 9 is life threatening.
All the injuries were recent injury.
Finally, opinion is mentioned in last row, 1st column as death of deceased was due to effects of intracranial hemorrhage associated with signs of recent forceful penetration of vagina and anus. The manner of death is found homicidal.

Such intracranial hemorrhage might be due to banging of head on the wall or floor. Further opinion is kept reserved for report from FSL of viscera.

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We also collected swabs and smears from different parts of the deceased including her genitalia and anus as mentioned in point No. 8 in paper envelope."

61. The above Post Mortem Report shows that there was penetration of the child's vagina and anus and further her head was thrashed or banged against the wall or the floor.

62. The evidence is clear that the victim's body was recovered from the room of the convict where he used to reside. There are several witnesses to that effect. Even the convict states during his 313 Cr.P.C. examination that the body of the victim was recovered from his room, but he did not know who committed the said crime or who kept her inside his room. It is also evident that the room of the convict had no door plank. One parda (curtain) was hanging in place of a door. The convict has taken the plea as there was no door, he did not know who brought the victim there and committed the offence because at the relevant point of time he was sitting outside of his room by the side of the metal road. Taking the opportunity of not having the door plank, the convict pleaded his utmost innocence and apathy. Now, the question is whether such plea is acceptable or not. The chemical examination, medical examination and DNA test reports divulge that the semen of the convict was found in the vagina of the victim and also in her

anus, therefore, the convict's plea that he did not know anything about the commission of offence upon the victim does not impress me.

63. Defence has also tried to ventilate that there was improvement of prosecution case by PW 5 who deposed before the Court during trial that she saw the convict to allure the victim on the pretext that he would give chocolate to the victim girl if she followed him. In other words, the prosecution has relied upon the deposition of PW 5 who deposed before the Court that the convict and the victim were last seen together but this deposition in fact, according to the defence, has no merit since neither at the time of recording her statement under Section 161 Cr.P.C nor before the Magistrate under Section 164 Cr.P.C., this witness stated that she saw the convict to allure the victim by chocolate. I have considered the materials on record and I have found that the defence's submission is correct so far as regards that she did not narrate such incident to the IO at the relevant point of time but the statement of PW 5 under Section 183 BNSS show that she certainly disclosed that fact before the Judicial Magistrate recording the statement. However, the said PW has tried to convince the Court that as she was perturbed after seeing the condition of the victim at the hand of her mother, she could not divulge the actual fact to anybody, but this explanation cannot be thrown out particularly when the record shows that she indeed made much statement before the Magistrate, and, therefore, she might have missed to make such statement before the I.O.

64. Even if I brush aside the said deposition, the prosecution case would not suffer since the victim was found in the room of the convict in an injured condition. Blood stains were found in the floor as well as in the wall of the

room and most importantly the semen of the convict was found in the private parts of the victim. In my considered opinion there is no missing link in this case. The chain of events are entangled with each other and the chain is not at all broken.

65. After giving an anxious consideration to the facts and evidence I find that the convict had committed several serious illegalities. First of all, there is a breach of trust on the part of the convict. Secondly, he has committed rape upon the child victim and thereafter, he had also made anal sex with the minor victim or vice-versa and thereafter, he banged her head against wall or floor or hit her head by any hard substance otherwise such type of life threatening injuries on her head would not have occurred. The child sustained so many injuries on her vagina and anus due to the brutal sexual desire of the convict. In spite of knowing that such type of brutal sex with a child might take her life, he did not resist himself although he was a mature and sensible person. It appears the convict was craving for the child and at one point of time she was most desirable and lucrative to him. To gain control over the child's body he allured her and took her to his room. Thereafter, he pounced on the body of the little baby and had frontal sex with her after rupturing her vagina. After releasing his semen in the vagina, he again penetrated the anus of the child showing his barbaric mentality and inhuman attitude. The ordeal which the child experienced or passed through at the relevant point of time cannot be explained in any language. The private parts which, at one point of time, were most lucrative to the convict suddenly became the most disturbing element to him after his purpose was over. The most desirable body became a nuisance to him and

for that reason he did not care to end the life of the child and for that purpose he thrashed the head of the victim against the wall of or the floor of the room ensuring that the victim was not able to say before anybody against the ghastly act of the convict who was her 'Jethu' (uncle) by village courtesy. The manner of raping a 5 years 10 months old child through her vagina and also her anus were sufficient to take the life of the child but to ensure her total collapse he banged her head against hard substance. In my view, the death of the victim was done with extreme depravity and this brutal nature of rape and murder of the 5 years 10 months old child, is in my view, qualifies as one of the rarest of the rare cases. Not only the incident shocked the judicial conscience but also shocked the public conscience as well.

66. In **Vasanta Sampat Dupare vs. State of Maharashtra** reported in **(2015) 1 SCC 253** the charge against the petitioner was that the victim a minor girl of 4 years, was raped and battered to death by the petitioner. The petitioner allegedly lured the victim by giving her chocolates, kidnapped her and after satisfying his lust, caused crushing injuries to her with the help of stones weighing about 8.5 kg and 7.5 kg.

67. The Hon'ble Apex Court in confirming the sentence of death was pleased to observe in the review of the above said case reported in ***Vasanta Sampat Dupare v. State of Maharashtra*, (2015) 1 SCC 253.** Paragraph 57 and 58 are quoted hereunder:

> ***"57.*** *Keeping in view the aforesaid authorities, we shall proceed to adumbrate what is the duty of the Court when the collective conscience is shocked because of the crime committed. When the crime is diabolical in nature and*

invites abhorrence of the collective, it shocks the judicial conscience and impels it to react keeping in view the collective conscience, cry of the community for justice and the intense indignation at the manner in which the brutal crime is committed. We are absolutely conscious that Judges while imposing sentence, should never be swayed away by any kind of individual philosophy and predilections. It should never have the flavour of Judge-centric attitude or perception. It has to satisfy the test laid down in various precedents relating to the rarest of the rare case. We are also required to pose two questions that have been stated in Machhi Singh case [Machhi Singh v. State of Punjab, (1983) 3 SCC 470 : 1983 SCC (Cri) 681] .

58. *Presently, we shall proceed to dwell upon the manner in which the crime was committed. Materials on record clearly reveal that the appellant was well acquainted with the inhabitants of the locality and as is demonstrable he had access to the house of the father of the deceased and the children used to call him "uncle". He had lured the deceased to go with him to have chocolates. It is an act of taking advantage of absolute innocence. He had taken the deceased from place to place by his bicycle and eventually raped her in a brutal manner, as if he had an insatiable and ravenous appetite. The injuries caused on the minor girl are likely to send a chill in the spine of the society and shiver in the marrows of human conscience. He had battered her to death by assaulting her with two heavy stones. The injured minor girl could not have shown any kind of resistance. It is not a case where the accused had a momentary lapse. It is also not a case where the minor child had died because of profuse bleeding due to rape but because of the deliberate cruel assault by the appellant. After the savage act was over, the coolness of the appellant is evident, for he washed the clothes on the tap and took proper care to hide things. As is manifest, he even did not think for a moment the trauma and torture that was caused to the deceased. The gullibility and vulnerability of the four year girl, who could not have nurtured any idea about the maladroitly designed biological desires of this nature, went with the uncle who extinguished her life-spark. The barbaric act of the appellant does not remotely show any concern for the precious life of a young minor child who had really not seen life. The criminality of the conduct of the appellant is not only depraved and debased, but can have a menacing effect on the society. It is calamitous."*

68. In the case at hand it appears that the factual matrix are akin to the facts of **Vasanta Sampat Dupare (supra).**

69. In **Panchhi and Ors. Vs. State of UP reported in (1998) 7 SCC 177** the Hon'ble Apex Court by a Bench of 3 Judges was pleased to observe that brutality or the manner in which a murder was perpetrated may be a ground but not the sole criterion for judging whether the case is one of the "rarest of rare cases" as indicated in Bachan Singh (supra). However, I have already mentioned that the 5 Judges Bench of Bachan Singh (supra) in para 202 was pleased to mention that a Court may impose penalty of death in its discretion if the murder involves extreme brutality or exceptional depravity.

70. It is now settled law that there must be a balance sheet of aggravating and mitigating circumstances. In laying down the mitigating factors the Hon'ble Apex Court in Bachan Singh (supra) case was pleased to quote the suggestion of Dr.Chitale as hereunder:

> "***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."

71. I have already considered the circumstances of the crimes in the foregoing paragraphs. Now, I shall consider the circumstances of the appellant.

The Criminal Test:

72. The appellant was aged about 45 years and it appears that he was a drummer (Dhaki) by profession. He is an illiterate person. The allegation against him was that on the relevant date and time he allured the victim and took her to his room where he committed brutal sex with the victim aged about 5 years 10 months and thereafter, killed her by banging her head against the wall or floor. The appellant had taken the plea that somebody raped and murdered the victim and thereafter kept her body inside his room. According to him he did not know who did this.

73. Although I have already discussed that such a defence has no leg to stand upon since the report of Assistant Director of State Forensic Assistance Laboratory (Biology), PW 16 Dr. Sandip Ghosh is very much clear that such a plea has been made to misguide the investigation as well as the Judicial process. The excerpt of deposition of PW 16 is reproduced hereinbelow:

"I concluded that profile generated from Exhibit X which is blood sample of accused is found similar to be profiles generated from Exhibit- 9, R, L and A.

Following all the formalities analysis was made and finally I opined that sour of Exhibit-B which is blood sample of victim was included as contributor of the blood stain which is found present in Exhibit H which is frock of the victim, Exhibit K, Exhibit L which is balaposh, Exhibit S which is mosquito net and Exhibit N which is gamcha. The source of Exhibit B was also included as the contributor of the hair sample found from balaposh marked as Exhibit-T.

That means blood sample of the victim is found in Exhibit H, K, S, N and L and the hair which was found in balaposh is found to be of victim.

Source of Exhibit X which is blood sample of accused was included as the contributor of the semen stains found from Exhibit L which is balaposh and Exhibit g and R which are frock and panty.

The source of Exhibit X which is blood sample of accused was included as the male contributor in the swab sample, said to be taken from the labia right and perineum of the victim marked as Exhibit A as referred in Table 2 which means DNA of accused is found in swab collected from labia right and perineum of the victim."

74. The above report shows that the plea taken by the accused was out and out false, since the scientific experiment shows that the convict is responsible for the ghastly act as indicated above.

75. During investigation, PW 18 Dr. Shreya Chakraborty a Clinical Psychologist at Chinsurah Sub-Divisional Hospital along with additional charge of Clinical Psychologist at Imambara Sadar Hospital, Chinsurah examined the accused on 03.12.2024 in the Out Patient Department of Imambara Sadar Hospital and on examination she found no thought or perceptual disturbance of the accused. She put NIMHANS Mental Health Screening questionnaire to the accused and she did not find any disorientation or any presence of his mental illness. She did not get any history of his physical or mental illness nor did she find any such illness in him after examination. From the above, it transpires that the convict was

not suffering from any physical or mental illness at the relevant point of time.

76. By order dated 08.07.2025 under DR No. 02 of 2025, this Court directed the State respondents to file a report in light of observation made by the Hon'ble Supreme Court of India in **Manoj vs. State of MP reported in (2023) 2 SCC 353** with reference to paragraph no. 250 of the said judgment. Accordingly, the State Authority filed a report on 31st July, 2025 enclosing several documents, such as, the copy of mental status report of the convict, the report of the Probation cum after Care Officer, Hooghly District and also the statement/declaration of de-facto complainant regarding the knowledge of the pendency of the death reference /appeal. From the said report of the medical Board, it appears that medical board consisting Head Of The Department And Professor, Department of Psychiatry, BMCH Board, Senior Resident Department of Psychiatry, BMCH (East Burdwan), and Clinical Psychologist, Department of Psychiatry and De-addiction, Burdwan Medical College and Hospital, PurbaBardhaman, Government of West Bengal examined the convict on 24.07.2025 and after examination the Medical Board records the following opinions:-

> *"A medical board was formed on 24/07/25 at the psychiatry OPD BMC at 11 AM in compliance to the order bearing memo no 7272/MO dated 18/07/2025, and the board opinions as follows*
>
> 1. *History, mental status examination and psychological assessment were done, no obvious psychopathology was detected at present. Psychological assessments were done by the clinical Psychologist that also found no significant psychopathology at present (GHQ-12 score was 0).*
> 2. *Based on above evaluation, the board opines that there is no diagnosable mental illness at present which affects his functioning.*

3. *The subject has competency to understand the nature of crime and punishment with comprehension of the nature and reason of the sentence and impending execution.*
4. *Enclosed herewith the OPD ticket containing the assessment (BWNM/RG2500513386)"*

77. The report submitted by the Probation Cum After Care Officer, Hooghly, Government of West Bengal dated 28.07.2025 shows that the convict is aged about 45 years. He is an illiterate person. He is convicted under Section 64(2)(1)/103 of BNSS and 6 of POCSO Act. He is now in custody in Burdwan Central Correctional Home. He has no family at all at present. In the column of early family background, the probation officer reported that :

> "*The convict was a Dhaki (Drammer). He was a drunkard. His morning used to start with Haria (one kind of village made wine. He was married with a woman but due to the convict's inhuman behaviour she fled away. Then the convict married another woman who had two children and they also fled away. The convict has his sibling brother and his family but they would not like to provide neither any information nor any documents.*"

78. It is further reported that the convict was a Dhaki and the same was an irregular profession. He was very lethargic. According to the Probation Officer, the convict was very libertine and lethargic. No report is received regarding his criminal antecedents.

79. From the above reports it has transpired that the convict was not suffering from any psychological or mental illness. Therefore, he did not commit the said offence under any mental or emotional set back. Apart from these clinical psychologists as well as Medical Boards of Doctors from Department of Psychiatry, Burdwan (East) reporting that the convict has not

been suffering from any mental disease or mental defect, this court also finds that he is in sound state of mind and has the ability to understand to resist the allegation levelled against him. If his answers to questions put by the learned Trial Court during his 313 Cr.P.C. examinations are taken into consideration, it shall be found that in each and every question, he has given a very thoughtful, rational and balanced answer in support of his defence. He may be illiterate and poor, but he knows how to defend his cause. If we peruse the said 313 Cr.P.C. examination we shall find that he knows where to say "I do not know," or where to say "it is false" or "it is falsely done." As he committed the ghastly offence, he knew where his minus point was and how to guard his cause. In my 30 years' experience in the Judicial Office, I do not find these types of rational and balanced answers from an accused charged with serious offences. It might be argued that he had the benefit of competent counsel, but had he been tutored, he likely would have fumbled when giving answers.

80. The answers given by the accused depict his mental strength to evade the incriminating circumstances brought against him.

81. Therefore, the offences against the victim were not committed by the convict under the influence of any extreme mental or emotional disturbances. It is also found that the convict is neither young nor an old one. He is in mid 40's. The convict did not commit the offence under any duress and domination of another person. The condition of the convict showed that he was not mentally defective or he had any defect which impaired his capability to appreciate the criminality of his conduct. Therefore, the above factors or points do not favour the convict in any way.

However, in para 206 in serial no. 3 and 4 of the said judgment of Bachan Singh it is mentioned that if there is probability that the accused would not commit criminal acts of violence which would constitute a continuing threat to the society or the probability that the accused can be reformed and rehabilitated, then such grounds can mitigate the circumstances in favour of the convict. It is also laid down that the State should prove by producing evidence that the accused does not satisfy the above conditions. Hence, we have reached a stage of discussion where the most important circumstances will be taken up for consideration and, that is, whether the convict can be reformed/rehabilitated or there is probability that the accused would not commit criminal acts of violence which would constitute a continuing threat to the society.

Is the convict reformable or is the option of alternative punishment foreclosed?

82. It is settled law now, even if an accused commits an offence under the category of rarest of rare cases, the court should consider whether the alternative punishment can be substituted for capital punishment if there is a scope for his reformation.

83. In this case, we have already discussed that clinical psychologists, the medical board of Psychiatry have clearly noted down that the convict has not been suffering from any mental disease or mental defect. He has no emotional set back also nor is he suffering from any psychological or mental illness. The mental soundness and alertness of the convict are so much so

that he could give rational answers to defend his cause of innocence. If a person has a criminal instinct it is very difficult for the person to get rid of that. Moreover, it is further true that unless the convict wants that his instinct should be reformed, readjusted to the wellbeing for himself as well as for others, in that case, the attempt of reforms cannot be fruitful. If we see the conduct and the social character of the convict as reflected in the report of the Probation Officer, we shall find that his relation with his two consecutive wives was not at all good. They had left him. Two children had also left him. Therefore, his wives were not happy to live with him. He has no family at all.

84. During his examination under Section 313 CrPC it is found that he had no sign of remorse or repentance that he violated a child brutally and thereafter killed her. The conduct of the convict can be ascertained from his answers under Section 313 Cr.P.C. He had given the false impression that he did not commit the offence although his semen was found in the private parts of the victim. This attitude shows that for the purpose of his defence he could pretend that he is innocent. Although, the DNA test report, chemical examination report, medical report etc. show that his presence was all over the body of the victim, he has vehemently pleaded for his innocence. The question and answer no. 140 is very much relevant to understand the nature of the convict. Question and answer no. 140 is quoted hereinbelow:

> *"140. Q. The PW 7 Biplab Roy further stated to the Magistrate that the witness then advised the de facto complainant/father of victim to go to hospital and he took the victim girl and her father to hospital where doctor declared the victim girl dead and on his way to hospital father of the victim girl informed him that the victim girl*

was found in your room and you did bad act with her. What do you say?

Ans. It is false. I did nothing wrong with the victim. I could not follow where she was taken."

85. From the said answer it is found that although he committed the brutal sex upon the victim of a 5 years 10 months old child by rupturing her vagina and penetrating anus he still believed that he had not done anything wrong to the victim. From this attitude of the convict coupled with other evidence on record it is clear that he has no repentance or remorse and he is a very hard nut to crack. The attitude of the convict shows that criminal instinct is embedded in his mind set and he always considered that he did nothing wrong with the child although the said child was raped, murdered and her private parts contained his semen. Further, evidence was brought by the State showing another aspect of the social character of the convict. PW 6, Chandana Mondal, deposed before the court that she had made a statement before the learned Judicial Magistrate, which was recorded and marked as Exhibit No. P-9. Consequently, her statement before the learned Magistrate qualified as substantive evidence. Although this statement was challenged by the defence, it cannot be brushed aside, particularly when we are trying to ascertain the social character of the convict. PW 6 stated before the learned Magistrate that at the relevant time she became suspicious of the convict Ashok Singh **since he inappropriately touched other village girls and tried to commit bad things with them.**

86. PW 8 Bulu Mondal has also deposed that he made statements before the Judicial Magistrate and his statement was marked as Exhibit P-11.

Similarly, his statement before the learned Magistrate also qualified as a substantive piece of evidence. If we peruse Exhibit P-11 we shall find that he has also stated that Ashok Singh was under suspicion **since he tried to outrage the modesty of another village girl after touching inappropriately**. He also stated before the Magistrate that **the age of the said village girl was also 5 years at the relevant time.**

87. Therefore, there is sufficient evidence on record that the convict Ashok Singh has the mentality to outrage the modesty of the village girls, and in the present case, after getting full opportunity he had committed the ghastly acts which have been already discussed above.

88. In view of such conduct, social character of the convict, I find that there is no possibility that the convict having such a mindset can be reformed.

89. Reformation entails a fundamental shift in attitude, action, and mindset. Whether a convict has been genuinely reformed can only be tested by allowing him to mingle with the general public and observing whether he refrains from committing further crimes despite having opportunity to do so. In the present case, even if the death penalty of the convict is commuted to life imprisonment for the remainder of his natural life, this question remains unascertainable; confined within the four corners of a correctional home, it is impossible to determine whether the appellant has truly gained control over his criminal instincts and nature.

90. In **Mohan Anna Chavan v. State of Maharashtra, reported in (2008) 7 SCC 561**, the factual matrix reveals that the accused had been previously convicted twice for raping minor girls. He received a lenient

sentence of two years on the first occasion and ten years of rigorous imprisonment on the second. Upon release, the accused proceeded to commit the rape and murder of two more minor girls. While it is acknowledged that mitigating circumstances were not evaluated in that specific precedent and it is thus not strictly binding, the case is cited by me to highlight that a habitual offender, if inadequately punished at the appropriate stage, is given renewed opportunity to perpetrate heinous crimes.

91. This underscores the practical impossibility of reforming criminals whose anti-social instincts are deeply embedded. It cannot be stated with any degree of certainty that the convict will refrain from similar acts if presented with an opportunity. While courts do not possess a prophetic vision, the conduct and ingrained criminal propensity of the convict fail to inspire any confidence that he would not repeat such offences if given the chance.

92. Consequently, this Court finds no mitigating circumstances operating in favour of the petitioner. Viewed comprehensively, the aggravating circumstances of this case heavily outweigh the mitigating factors.

The victim test ??

93. In criminal jurisprudence, courts are entrusted with the solemn duty of imposing an appropriate sentence. The concept of an "appropriate sentence" cannot be restricted solely to the mitigating or aggravating circumstances surrounding the accused; it must intrinsically account for

the plight, trauma, and circumstances of the victim and his/her grieving relatives. While procedural law mandates hearing both the prosecution and the convict on the quantum of sentence, true sentencing justice remains incomplete if the impact on the victim's family is overlooked. The gravity of a crime, particularly the tragic loss of a child, inflicts an irreparable void upon the surviving members, whose lives are permanently shattered, leaving them to bear lifelong grief while looking toward courts of law for solace.

94. Over the past few decades, Indian jurisprudence has witnessed a paradigm shift with the advent of victimology, recognizing that victims were historically marginalized spectators in criminal trials. A major turning point arrived with the Code of Criminal Procedure (Amendment) Act, 2009 (w.e.f. 31.12.2009), which statutorily defined the term "victim," granted them the right to engage counsel of their choice to assist the prosecution, and introduced a crucial proviso to Section 372 of the Cr.P.C conferring a substantive right to appeal against acquittals, inadequate sentences, or convictions for lesser offences.

95. Reinforcing this legislative intent, the Hon'ble Supreme Court in Jagjeet Singh v. Ashish Mishra @ Monu, (2022) 9 SCC 321, unequivocally held that a victim has an unbridled, participatory right to be heard at every stage of the proceedings. Although landmark rulings like Bachan Singh v. State of Punjab, (1980) 2 SCC 684 were delivered at a time when victim rights were not as prominently integrated into sentencing calculus, the legal landscape has since evolved considerably. Furthermore, statutory reforms following the Nirbhaya tragedy, such as amendments to the Juvenile Justice

Act permitting juveniles aged 16 to 18 to be tried as adults for heinous offences, reflect a heightened societal and legislative concern for victim justice. Therefore, the circumstances and rights of the victim are no longer peripheral and now they form an indispensable consideration that cannot be ignored when determining the proportionality and appropriateness of a sentence.

96. A close scrutiny of the deposition of the victim's mother reveals a harrowing picture of profound grief and trauma. During her examination before the Court, she was overwhelmed by unbearable agony, crying inconsolably to the extent that the judicial proceedings had to be temporarily halted. On another occasion, the intensity of her anguish caused her to faint right in the middle of recording her testimony. Such harrowing scenes raise a fundamental and disturbing question within our criminal justice system: when the immediate family of a victim is subjected to such catastrophic suffering, who bears the responsibility of accounting for their circumstances? While the criminal process meticulously weighs the rights and background of the accused, true institutional empathy and legal consideration must extend equally to those who are left behind to endure a lifelong sentence of mourning.

97. It is a well-settled principle in probate and testamentary jurisdiction that a Judge, while construing a will, must place himself in the "armchair of the testator" to discern his true intent. By parity of reasoning, a Judge presiding over a criminal court, particularly in cases involving heinous atrocities, must be equally attuned to placing himself, in judicial contemplation, beside the deathbed of the victim or within the harrowing

environment of the victim's grieving family, so as to truly comprehend the profound trauma and devastation inflicted. When this judicial empathy and objective assessment are applied, the unspeakable ordeal suffered by the minor victim and her family vastly outweighs any abstract scope for the reformation of a hardened convict who displays complete absence of remorse or repentance, and who brazenly denies any wrongdoing or knowledge of the tragedy. Having carefully weighed the daily agony, enduring anguish, and unyielding grief of the victim's parents alongwith the gravity of the crime, this Court finds no legal or factual infirmity to warrant any interference with the judgment and sentence of punishment inflicted by the learned Trial Court. Consequently, the judgment and order of the Trial Court are hereby confirmed.

98. There is a profound and perverse irony in commuting a death sentence to imprisonment for the remainder of a natural life. If such a commutation is granted, the unavoidable question arises: who bears the financial burden of his sustenance? It is funded entirely from the public exchequer, that means, compelling a society that has utterly condemned the convict to finance his survival day after day. Most tragically, this means the parents, relatives, and co-villagers of the innocent victim are forced to contribute, however miniscule their share, toward the upkeep of a predator who savagely and barbarically extinguished the life of a helpless child. The public at large can hardly be expected to sanction the subsidization of a heinous criminal’s existence when the Statepossesses far more pressing social welfare and developmental mandates. Society has no stake in transforming a brutal child-killer into a state-maintained ward, nor does it

harbour any collective desire to enshrine a convicted predator as a perverse monument to misplaced mercy.

99. Last but not the least, the learned counsel Mr. Pati submitted that PW 1 was told by PW 3 that the victim went to the house of one Tapas Singh but the said Tapas Singh was not cited as a witness. After going through the record, I do not find any such deposition either of PW 1 or PW 3. They never deposed that the victim went to the house of Tapas Singh. All the time they have deposed that the victim visited the house of Mandira Singh. Therefore, the argument of the learned Counsel of the appellant has no leg to stand upon. However, for the purpose of clearing the confusion, I would like to say that Mandira Singh is the wife of Tapas Singh. If anybody says that the victim visited Tapas Singh's house that also means that the victim visited the house of Mandira Singh. There is no obscurity or confusion as highlighted wrongly by the learned Counsel for the appellant.

100. Hence, I am constrained to affirm the judgment of conviction and order of sentence dated January 15/17, 2025, passed by the learned Judge, Exclusive POCSO Court, Chinsurah, Hooghly, convicting the appellant for committing offence under Sections 65(2)/64(2)(1)/66 and 163 (1) of the Bharatiya Nyaya Sanhita, 2023 (in Short 'BNS') and under Section 6(1) of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and sentencing the appellant to suffer imprisonment for the remainder of his natural life for commission of offence under Section 64(2)(1) of the BNS and the learned Judge imposed death sentence on the appellant for commission of offences under Sections 103(1)/66/65(R) of the BNS and

under Section 6(1) of the POCSO Act. **The death reference being no. DR 2 of 2025 imposing the sentence of death by the learned Trial Judge as aforesaid is hereby confirmed.** Consequently, CRA (DB) 328 of 2025 filed by the death row convict Ashok Singh is dismissed.

101. The learned Registrar General, High Court, Calcutta is directed to send a copy of this judgment to the convict through the Superintendent of the concerned Correctional Home at once,whoshall inform the convict that the convict can prefer Appeal before the Hon'ble Supreme Court against the present judgement, and he can avail the facility of legal aid free of costs. The Superintendent is to file a compliance report by 7 days without fail to the learned Registrar General, High Court, Calcutta.

102. From the record as well as from the submission of the learned Special Public Prosecutor we came to know that the victim compensation of Rs. 10 lakh was not received by the parents of the victim. It is very much unfortunate that although the State is clamouring for capital punishment of the convict but has failed to comply with the direction of paying the victim compensation to the parents of the deceased. As there is a long delay in payment of the compensation, **I direct the State to enhance the victim compensation from Rs. 10 lakhs to Rs.15 lakhs and the same should be paid to the parents of the victim within 2 months from this day without fail. A compliance report in this regard be submitted to the learned Registrar General, High Court at Calcutta by 30th January 2027.**

Learned Registrar General, High Court at Calcutta is also directed to communicate this order to the concerned offices of the Government,the Secretary, SLSA, West Bengal for necessary compliance of the order in letter and spiritwithout fail. Learned Registrar General, High Court at Calcutta is further requested to send a copy of this judgment to the parents of the victim free of cost at once for their information and necessary action.

103. The Trial Court records alongwith a copy of this judgment be sent to the learned Trial Court at once for information and necessary action.

104. All parties shall act in terms of the server copy of the order downloaded from the official website of this Court.

105. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

I agree.

(Arijit Banerjee, J.) (**Apurba Sinha Ray, J.**)

Arijit Banerjee J.

106. While agreeing with the conclusion arrived at by my learned Brother and the reasons recorded in support thereof, I would like to add a few words.

107. In so far as conviction of the appellant is concerned, I have absolutely no doubt in my mind that learned Trial Court has returned the correct

verdict. The victim girl and the appellant were "last seen together" by PW-5. Soon thereafter the body of the victim was discovered by the villagers in the appellant's house. The appellant could offer no explanation as to how the victim girl's body was in his house. Under Section 106 of the Evidence Act, 1872, the burden was on the appellant to explain the presence of the victim's body in his house. He failed to discharge such burden. Forensic examination showed the presence of appellant's semen in the private parts of the victim girl. Nothing more was required for convicting the appellant under Section 6 of the POCSO Act and Section 103 of the BNS.

108. In all fairness to learned Counsel for the appellant, while formally advancing argument in support of innocence of the appellant, the real crux of his argument was on the sentencing part. He, along with Mr. ApalakBasu, learned Advocate appointed by the State Legal Services Authority in terms of the direction in the case of ***Aman Singh & Anr. v. State of Bihar reported at 2026 INSC 424***, argued that the present case does not come within the category of "rarest of rare cases". Therefore, the death sentence should be commuted to life imprisonment. It may also be ordered that the appellant would serve out imprisonment for the remainder of the natural term of his life without any remission as was contemplated by the Hon'ble Supreme Court in **Swamy Shraddananda @ Murali Monahar Mishra vs State of Karnataka, reported at (2008) 13 SCC 767.** It was submitted that the present case is not one which can be said to have shocked the collective conscience of the society.

109. I am unable to agree with learned Advocate for the appellant and Mr. Basu.

110. Firstly, the appellant was in a position of trust vis-à-vis the victim girl who was less than 6 year old. He was a neighbour of the victim girl's family. Little girl trusted him and addressed him as "Jethu". Taking advantage of such innocent trust, faith and belief, the appellant in a calculated manner, lured the little girl by offering chocolate and took her to his house. There the appellant raped the little girl mercilessly both in the vagina and in the anus and inflicted after grievous injuries on her body, as appears from the evidence on record. The girl died as a result. This amounted to the most heinous kind of breach of trust. The protector turned into a predator to satisfy his extremely deprave lust.

111. Secondly, the manner in which the little girl was ravished and assaulted is scary. The injuries found not only in the private parts of the girl but also on her head are testimony to the brutal sexual assault that the girl was subjected to by the appellant. The crime was committed in an extremely diabolical manner.

112. Thirdly, in my opinion, if the facts of the present case do not shock the collective conscience of the society, I do not know what kind of facts will. A vulnerable child girl, less than 6 years of age, unable to protect herself, is mercilessly raped and brutally murdered by a person who was in a position of trust vis a vis the girl and in whose benevolence the girl had full faith. My conscience is shocked. The conscience of my learned Brother is also shocked as would be evident from his judgment. Before writing this judgment, I narrated the facts of the case, without disclosing the identities of the parties, to my friends from all walks of life. The uniform response that the facts of the case elicited from them was: "Oh my God! absolutely

shocking". I have no doubt in my mind that the ghastly facts of this case are bound to shock the collective conscience of the society.

113. Fourthly, I have considered the report filed by the State in terms of the direction in the case of **Manoj v. State of M.P., (2023) 2 SCC 353.** The report and the totality of the evidence on record do not indicate that the appellant has any modicum of remorse for having blown out life from the little girl in beastly manner. This would demonstrate the inhuman nature of the appellant.

114. Fifthly, a psychologist was one of the prosecution witnesses before the Trial Court. She had examined the accused person. She deposed that the appellant was not suffering from any psychological disorder. Therefore, the appellant committed the crime consciously, in a planned manner, realising fully the probable consequences thereof. It was not that he was under any disability which can provide some exculpatory reason behind commission of the crime. It was a cold blooded rape and murder. One can imagine the excruciating pain that the little girl felt when she was being assaulted and violated by the appellant to satisfy his diabolical carnal desire.

115. In **Vasanta Sampat Dupare v. State of Maharashtra, (2017) 6 SCC 631,** a four year old girl was raped and battered to death by a 47 year old man. The death sentence was upheld by the Supreme Court and confirmed in the review petition filed before it. The Hon'ble Court noted the extreme depravity and barbaric manner in which the crime was committed and the fact that the victim was a helpless girl of four years. The Hon'ble Supreme Court held that such aggravating circumstances clearly outweighed the mitigating circumstances including the appellant's post-conviction conduct

in jail which was brought on record. A three Judge Bench of the Hon'ble Supreme Court observed *inter alia* as follows:-

> **"2.** The facts leading to the filing of criminal appeals in this Court including the nature and quality of evidence on record have been dealt with and considered in the judgment of this Court dated 26-11-2014 [*Vasanta Sampat Dupare* v. *State of Maharashtra*, (2015) 1 SCC 253 : (2015) 1 SCC (Cri) 624] . The charge against the petitioner was that the victim, a minor girl of four years, was raped and battered to death by the petitioner. The petitioner allegedly lured the victim by giving her chocolates, kidnapped her and after satisfying his lust, caused crushing injuries to her with the help of stones weighing about 8.5 kg and 7.5 kg. The prosecution relied upon the evidence of PW 2 Manisha, PW 3 Minal, PW 5 Vandana and PW 6 Baby Sharma who had seen the petitioner taking away the victim on a bicycle on the fateful day. In his disclosure statement under Section 27 of the Evidence Act, the petitioner had shown the place where dead body of the victim was lying and the tap where he had washed his bloodstained clothes.
>
> .....
>
> **6.** In the light of the principles as stated above, the facts of the present matter were considered by this Court in the judgment [*Vasanta Sampat Dupare* v. *State of Maharashtra*, (2015) 1 SCC 253 : (2015) 1 SCC (Cri) 624] under review as under: (*Vasanta Sampat case* [*Vasanta Sampat Dupare* v. *State of Maharashtra*,

(2015) 1 SCC 253 : (2015) 1 SCC (Cri) 624] , SCC pp. 283-85, paras 57-58 & 60-61)

"*57.* Keeping in view the aforesaid authorities, we shall proceed to adumbrate what is the duty of the Court when the collective conscience is shocked because of the crime committed. When the crime is diabolical in nature and invites abhorrence of the collective, it shocks the judicial conscience and impels it to react keeping in view the collective conscience, cry of the community for justice and the intense indignation at the manner in which the brutal crime is committed. We are absolutely conscious that Judges while imposing sentence, should never be swayed away by any kind of individual philosophy and predilections. It should never have the flavour of Judge-centric attitude or perception. It has to satisfy the test laid down in various precedents relating to the rarest of the rare case. We are also required to pose two questions that have been stated in *Machhi Singh case* [*Machhi Singh* v. *State of Punjab*, (1983) 3 SCC 470 : 1983 SCC (Cri) 681].

58. Presently, we shall proceed to dwell upon the manner in which the crime was committed. Materials on record clearly reveal that the appellant was well acquainted with the inhabitants of the locality and as is demonstrable he had access to the house of the father of the deceased and the children used to call him "uncle". He had lured the deceased to go with him to have chocolates. It is an act of taking advantage of absolute innocence. He had taken the deceased from place to place by his bicycle and eventually

raped her in a brutal manner, as if he had an insatiable and ravenous appetite. The injuries caused on the minor girl are likely to send a chill in the spine of the society and shiver in the marrows of human conscience. He had battered her to death by assaulting her with two heavy stones. The injured minor girl could not have shown any kind of resistance. It is not a case where the accused had a momentary lapse. It is also not a case where the minor child had died because of profuse bleeding due to rape but because of the deliberate cruel assault by the appellant. After the savage act was over, the coolness of the appellant is evident, for he washed the clothes on the tap and took proper care to hide things. As is manifest, he even did not think for a moment the trauma and torture that was caused to the deceased. The gullibility and vulnerability of the four year girl, who could not have nurtured any idea about the maladroitly designed biological desires of this nature, went with the uncle who extinguished her life-spark. The barbaric act of the appellant does not remotely show any concern for the precious life of a young minor child who had really not seen life. The criminality of the conduct of the appellant is not only depraved and debased, but can have a menacing effect on the society. It is calamitous.

***

60. In the case at hand, as we find, not only was the rape committed in a brutal manner but murder was also committed in a barbaric manner. The rape of a minor girl child is nothing but a

monstrous burial of her dignity in the darkness. It is a crime against the holy body of a girl child and the soul of society and such a crime is aggravated by the manner in which it has been committed. The nature of the crime and the manner in which it has been committed speaks about its uncommonness. The crime speaks of depravity, degradation and uncommonality. It is diabolical and barbaric. The crime was committed in an inhuman manner. Indubitably, these go a long way to establish the aggravating circumstances.

61. We are absolutely conscious that mitigating circumstances are to be taken into consideration. The learned counsel for the appellant pointing out the mitigating circumstances would submit that the appellant is in his mid-fifties and there is possibility of his reformation. Be it noted, the appellant was aged about forty-seven years at the time of commission of the crime. As is noticeable, there has been no remorse on the part of the appellant. There are cases when this Court has commuted the death sentence to life finding that the accused has expressed remorse or the crime was not premeditated. But the obtaining factual matrix when unfolded stage by stage would show the premeditation, the proclivity and the rapacious desire. The learned counsel would submit that the appellant had no criminal antecedents but we find that he was a history-sheeter and had a number of cases pending against him. That alone may not be sufficient. The appalling cruelty shown by him to the minor girl child is extremely shocking and it gets

accentuated, when his age is taken into consideration. It was not committed under any mental stress or emotional disturbance and it is difficult to comprehend that he would not commit such acts and would be reformed or rehabilitated. As the circumstances would graphically depict, he would remain a menace to society, for a defenceless child has become his prey. In our considered opinion, there are no mitigating circumstances."

The abovequoted observations of this Court in the judgment under review show that the aggravating facts were considered in paras 58 and 60 and the entirety of the matter including the mitigating circumstances were dealt with more particularly in para 61. The aggravating facts not only showed the extreme depravity but in the opinion of this Court they brought to the fore the diabolical and barbaric manner in which the crime was committed. The Court did not find any mitigating circumstances in favour of the accused to tilt the balance in his favour for awarding lesser punishment.

.....

9. The assessment and the consideration bestowed by this Court in *Machhi Singh* [*Machhi Singh* v. *State of Punjab*, (1983) 3 SCC 470: 1983 SCC (Cri) 681] shows that the aggravating circumstances, namely, the manner in which the crime was committed, the brutality and barbaric manner of execution, the status and helplessness of victims and the fact that the crime was gruesome and cold blooded were given due weightage. These facts themselves were found to be tilting the balance against the

accused concerned. In the present case, a minor girl of four years was raped and battered to death by the petitioner. The brutality and diabolical nature of the crime and the fact that the victim had reposed trust and confidence in the petitioner was taken into account and this Court found the aggravating circumstances completely outweighing the other factors. The evidence and circumstances were dealt with in the judgment under review in great detail and this Court had no hesitation in affirming the death sentence.

....

19. In *Ramnaresh* v. *State of Chhattisgarh* [*Ramnaresh* v. *State of Chhattisgarh*, (2012) 4 SCC 257: (2012) 2 SCC (Cri) 382] this Court considered the import of governing principles regarding death sentence and summed up that it is the cumulative effect of both the aggravating and mitigating circumstances that need to be taken into account. Paras 76 to 81 of the decision are as under: (SCC pp. 284-87)

"*76.* The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in *Bachan Singh* [*Bachan Singh* v. *State of Punjab*, (1980) 2 SCC 684: 1980 SCC (Cri) 580] and thereafter, in *Machhi Singh* [*Machhi Singh* v. *State of Punjab*, (1983) 3 SCC 470: 1983 SCC (Cri) 681] . The aforesaid judgments, primarily dissect these principles into two different compartments—one being the "aggravating circumstances" while the other being the "mitigating

circumstances". The court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the court. It will be appropriate for the court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the court as contemplated under Section 354(3) Cr.P.C.

Aggravating circumstances:

(*1*) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

(*2*) The offence was committed while the offender was engaged in the commission of another serious offence.

(*3*) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(*4*) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(*5*) Hired killings.

(*6*) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(*7*) The offence was committed by a person while in lawful custody.

(*8*) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 CrPC.

(*9*) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

(*10*) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(*11*) When murder is committed for a motive which evidences total depravity and meanness.

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

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

Mitigating circumstances

(*1*) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional

disturbance or extreme provocation in contradistinction to all these situations in normal course.

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

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

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

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

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

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

77. While determining the questions relatable to sentencing policy, the court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence. (Emphasis added)

Principles

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

(*2*) In the opinion of the court, imposition of any other punishment i.e. life imprisonment would be completely inadequate and would not meet the ends of justice.

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

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

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

78. Stated broadly, these are the accepted indicators for the exercise of judicial discretion but it is always preferred not to fetter the judicial discretion by attempting to make the excessive enumeration, in one way or another. In other words, these are the considerations which may collectively or otherwise weigh in the mind of the court, while exercising its jurisdiction. It is difficult to

state it as an absolute rule. Every case has to be decided on its own merits. The judicial pronouncements, can only state the precepts that may govern the exercise of judicial discretion to a limited extent. Justice may be done on the facts of each case. These are the factors which the court may consider in its endeavour to do complete justice between the parties.

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

80. Every punishment imposed is bound to have its effect not only on the accused alone, but also on the society as a whole. Thus, the courts should consider retributive and deterrent aspect of punishment while imposing the extreme punishment of death.

81. Wherever, the offence which is committed, manner in which it is committed, its attendant circumstances and the motive and status of the victim, undoubtedly bring the case within the ambit

of "rarest of rare" cases and the court finds that the imposition of life imprisonment would be inflicting of inadequate punishment, the court may award death penalty. Wherever, the case falls in any of the exceptions to the "rarest of rare" cases, the court may exercise its judicial discretion while imposing life imprisonment in place of death sentence." (Emphasis added)

20. It is thus well settled, "the court would consider the cumulative effect of both the aspects (namely, aggravating factors as well as mitigating circumstances) and it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes completely ignoring other classes under other heads and it is the primary duty of the Court to balance the two". Further, "it is always preferred not to fetter the judicial discretion by attempting to make excessive enumeration, in one way or another; and that both aspects, namely, aggravating and mitigating circumstances have to be given their respective weightage and that the Court has to strike the balance between the two and see towards which side the scale/balance of justice tilts". With these principles in mind, we now consider the present review petition.

21. The material placed on record shows that after the judgment [*Vasanta Sampat Dupare* v. *State of Maharashtra*, (2015) 1 SCC 253 : (2015) 1 SCC (Cri) 624] under review, the petitioner has completed Bachelors Preparatory Programme offered by Indira Gandhi National Open University enabling him to prepare for

Bachelor level study and that he has also completed the Gandhi VicharPariksha and had participated in drawing competition organised sometime in January 2016. It is asserted that the jail record of the petitioner is without any blemish. The matter is not contested as regards Conditions (1), (2), (5), (6) and (7) as stated in para 206 of the decision in *Bachan Singh* [*Bachan Singh* v. *State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] , but what is now being projected is that there is a possibility of the accused being reformed and rehabilitated. Though these attempts on part of the petitioner are after the judgment [*Vasanta Sampat Dupare* v. *State of Maharashtra*, (2015) 1 SCC 253 : (2015) 1 SCC (Cri) 624] under review, we have considered the material in that behalf to see if those circumstances warrant a different view. We have given anxious consideration to the material on record but find that the aggravating circumstances, namely, the extreme depravity and the barbaric manner in which the crime was committed and the fact that the victim was a helpless girl of four years clearly outweigh the mitigating circumstances now brought on record. Having taken an overall view of the matter, in our considered view, no case is made out to take a different view in the matter. We, therefore, affirm the view taken in the judgment [*Vasanta Sampat Dupare* v. *State of Maharashtra*, (2015) 1 SCC 253 : (2015) 1 SCC (Cri) 624] under review and dismiss the present review petitions.**"**

[Emphasis added]

116. The facts of the present case are very similar to the facts of ***Vasanta Sampat Dupare v. State of Maharashtra, Supra***.

117. I am conscious that in a case of this kind, the Court is required to weigh mitigating circumstances against the aggravating circumstances. Honestly speaking, I do not find any mitigating circumstance in the present factual matrix. The aggravating circumstances are overwhelming as has also been discussed by my learned Brother in the judgment that he has authored. Any kindness shown to the appellant will be **misplaced mercy**. **The appellant cannot expect any leniency, indulgence or claim any human right having committed an inhuman wrong. While ensuring that an accused gets 'just' treatment, the courts must also not be oblivious to victim justice and the agony suffered by the victim's family members.**

118. I am also conscious that there are decisions of the Hon'ble Supreme Court on how the shift is taking place from retributive justice to reformative justice. However, in the present case, I am of the view that reformation of the appellant would be a far cry. Any attempt at that, would be an exercise in futility. This I say because the extreme depravity and meanness of mind that the appellant has demonstrated by committing the crime in the barbaric manner, are his ingrained instincts and characteristics. In my opinion, it is highly improbable that a person like the appellant can be reformed.

119. In ***Vasanta Sampat Dupare, (Supra)***, the Supreme Court while considering the petition for review of its judgment and order affirming the death sentence, noted that after confirmation of the death sentence, the convict had completed Bachelors Preparatory Programme offered by Indira Gandhi National Open University. It also completed the Gandhi VicharPariksha and had participated in drawing competition organised sometime in January 2016. It was asserted that the jail record of the convict was without any blemish. What was projected before the Supreme Court is that there was a possibility of the convict being reformed and rehabilitated. In spite of the same, the Supreme Court dismissed the review petition in view of the extreme depravity and the barbaric manner in which the crime was committed and the fact that the victim was a helpless girl of four years. The Supreme Court noted that the aggravating circumstance of the case clearly outweighed the mitigating circumstances which were brought on record along with the review petition.

120. In conclusion, I can unhesitatingly say that in the gory facts of this case, the appellant deserves capital punishment. Any other kind of punishment including incarceration for the remainder of the appellant's natural life without remission, will be inadequate and not commensurate with the depraved, heinous and inhuman crime that the appellant has committed. My conscience does not permit me to commute the death penalty to any other punishment. I accordingly confirm the judgment of conviction and order of sentence that learned Trial Court has passed.

121. All parties shall act in terms of the server copy of the order downloaded from the official website of this Court.

122. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

I agree.

(Apurba Sinha Ray, J.) (**Arijit Banerjee, J.**)

Later:-

After the judgments are pronounced, learned Advocates appointed by the Calcutta High Court Legal Services Committee, pray for stay operation of the judgment and order. We have no doubt in our mind that the appellant deserves death penalty. However, since the matter involves the question of life and death, we stay the operation of the judgment and order for three months to enable the appellant to approach the Hon'ble Apex Court, if he is so advised.

(Apurba Sinha Ray, J.) (**Arijit Banerjee, J.**)