

of the deceased girl. As the accused is sentenced to death, the reference has been made to this Court, for confirmation of the death sentence.

3. The prosecution case was instituted on the basis of *fardebayan* of the informant, Bikash Kumar Mandal, the brother of the deceased girl then aged about 14 years, recorded at the place of occurrence, at village Rangamati, Raja Basti, near Kali Temple, P.S Baliapur, District Dhanbad, on 03.11.2007, at about 10:45 hours, wherein the informant has stated that on the same day, at about 8:45 A.M., in the morning, his sister had gone for taking bath in a pond in his village, along with the wife and daughter of his neighbor, Raju Mukherjee. After some time, at about 9:30 A.M, the wife and daughter of Raju Mukherjee returned back, whereupon, the informant and his mother asked them about his sister, and they told them that she had left the pond before them after taking bath. Thereafter, the informant, his mother and Raju Mukherjee went out in search out of his sister, towards Kali Temple, when they saw the accused Kallu Singh assaulting his sister by a stone in the uncultivated field of Jag Bandhu Ram, and his sister was bleeding profusely. Upon seeing them, Kallu Singh fled away and when they went there, they found his sister dead with bleeding injuries on her face and head, due to the assaults made by stones. Her face was entirely defaced and there was no cloth on her body. Her skirt, top, panty, ear rings, bangles, *mala* and *payal* were found at a distance of about 20-30 feet. Claiming that the accused had committed rape upon his sister along with someone else, and had also committed her murder assaulting her by stones, the *fardebayan* was given by the informant, on the basis of which, Baliapur P.S Case No.63 of 2007, corresponding to G.R No. 3397 of 2007, was instituted for the offences under Sections 376 & 302 / 34 of the Indian Penal Code, against the accused, Kallu Singh and another, and investigation was taken up. After investigation, the police submitted the charge sheet in the case against the sole accused.

4. After commitment of the case to the Court of Session, charge was framed against the sole accused, Kashi Nath Singh @ Kallu Singh, for the offences under Sections 376 and 302 of the Indian Penal Code, and upon the accused's pleading not guilty and claiming to be tried, he was put to trial. In course of trial, 21 witnesses were examined by the prosecution.

5. P.W.-5 Bikash Mandal is the informant of the case and the brother of the deceased. This witness has stated that the occurrence had taken place on 03.11.2007. His sister aged about 14 years, had gone to take bath in the pond. The wife and daughter of Raju Mukherjee had also gone to take bath. His sister had left the pond before them. When his sister did not return back, he went out in search of his sister along with his mother. When they went towards the agricultural field, they saw that Kallu Singh was assaulting his sister by stone on her head. He chased him, but the accused fled away. His sister was lying in the pool of blood and there was no cloth on her body. There were injuries on her face. Her tooth was broken and the face had been defaced. She had been subjected to rape. There were other bleeding scratches all over her body. His sister had died. Her bangle, *payal* and cloths were also found nearby, scattered here and there. The police came and recorded his *fardbeyan*, and he has identified his signature on the *fardbeyan*, which was marked Exhibit-3. The police had also seized the bloodstained stone and *payal* etc., of his sister, as also the bloodstained soil. He has identified the accused in the Court, stating that his sister, who was aged about 14 years old, had been brutally killed by this accused. In his cross-examination, this witness has stated that he had seen the accused, assaulting his sister and at that time, there was no one else along with the accused. This witness has stated that he was knowing Kartik Rai and on the same day in the morning, the accused Kallu Singh had come along with Kartik Rai to his shop for taking tea. At that time, Kartik had not asked him anything about his sister and his sister was also not there at the shop. Kartik Rai had paid the money and they went away. He has stated that his tea shop was adjacent to his house, and the house of Kallu Singh is at a distance of less than half kilometer from his house. He has denied the suggestion that there was some quarrel for the price of tea with Kallu Singh, and he has also denied the suggestion of falsely implicating the accused. He has further denied the suggestion that the accused was not present in the village on that day.

6. P.W.-11 Jharna Mandal is the mother of the deceased, and she has also supported the prosecution case, more or less in the same manner, as stated by the informant P.W.-5 Bikash Mandal, stating that she had seen the

accused, assaulting her daughter with stones on her head. He was chased, but he fled away. There were injuries on the body of her daughter and she was lying naked. The accused had completely defaced her and had also broken her teeth. It was apparent that she was raped and thereafter, she was murdered. She has identified the accused in the Court. In spite of repeated calls and given the opportunity, this witness was not even cross-examined by the defence and hence, she was discharged.

7. P.W.-9 Raju Mukherjee is the neighbour of the informant, who had also gone in search of the deceased girl. This witness has stated that the occurrence had taken place on 03.11.2007 at about 9:30 A.M. His wife had returned back after taking bath, when the deceased's mother came and asked her about her daughter, who had also gone to take bath on the pond, but she had not returned as yet. His wife informed her that she had left the pond earlier. Thereafter, the mother of the deceased asked her son Bikash Mandal for searching the girl. Both of them went out in her search and he was also requested to accompany them. He has stated that he accompanied them, but he returned back to take his slippers, and again he went out in search of the girl towards the pond. He saw the accused Kallu Singh going away, whom he asked about the mother etc., of the girl, whereupon he pointed him towards the direction and he went away. He was wearing a towel. When he went ahead, he saw Bikash Mandal crying and he saw that the girl was lying dead without any cloth on her body. Her face was completely defaced and there was a stone lying there. He has stated that she was subjected to rape before committing her murder. Bikash Mandal informed him that Kallu Singh had committed the offence. He has also stated that the cloths and other articles of the deceased were scattered nearby. The police was informed, who took the dead body for *post-mortem* examination. his statement was also taken by the police. He has identified the accused in the Court. In his cross-examination, this witness has stated that the deceased had gone to the pond about half an hour before his wife had gone there. He had no knowledge about the same, but he was informed by his wife about it. He has stated that he had returned back to his house because he was barefooted and a thorn was pricked in his foot. He returned back and thereafter, again he went out in search of the girl, when he saw Kallu, going away. He had

seen the accused at a distance of about 50 feet from his house. He has stated that the house of the accused is at a distance of about 500 feet from his house. Lot of persons had assembled near the dead body. He had not gone to the police station. He has denied the suggestion of giving the false evidence.

8. P.W.-10 Kuma Mukherjee is the wife of P.W.-9 Raju Mukherjee and P.W.-16 Dolan Mukherjee is his daughter. Both these witnesses have stated that the deceased had gone to the pond for taking bath. They had also gone to take bath, and the deceased had returned back earlier. When they returned back, her mother asked them about her child. They informed them that she had returned back earlier. P.W.-10 Kuma Mukherjee has stated that the mother and brother of the deceased girl and her husband had gone in search of the girl, and she was informed that Kallu had committed rape upon her and assaulted her by stones. Both these witnesses have identified the accused in the Court. There is nothing of much importance in the cross-examination of these witnesses.

9. P.W.-3 Navani Mandal, P.W.-6 Nepal Mandal, P.W.-7 Swapan Kumar Mandal, P.W.-8 Lakhikant Mandal, P.W.-17 Prabod Mandal and P.W.-18 Rakesh Mandal are all hearsay witnesses, who had seen the dead body of the deceased in the agriculture field with injuries, and were informed about the occurrence of rape and murder, and all of them have identified the accused in the Court. P.W.-6 Nepal Mandal is also a witness to the inquest report of the dead body, and he has identified his signature on the inquest report, which was marked Exhibit-4. He is also a witness to the seizure list of the cloths, *payal* etc., as also the bloodstained soil and stone, and he has proved his signature on the seizure list, which was marked Exhibit-5. P.W.-17 Prabod Mandal and P.W.-18 Rakesh Mandal are also the witnesses to the seizure of a big stone, weighing about 10 Kg., from a bush and they have identified their signatures on the seizure list, which were marked Exhibits-11/1 & 11/2 respectively. There is nothing of much importance in the cross-examination of these witnesses.

10. P.W.-20 Prakash Mandal is also a hearsay witness, and he is also the witness to the *fardbeyan* of the informant, on which he has proved his signature, which was marked Exhibit-3/1.

11. P.W.-1 Bhawani Kumar Mandal and P.W.-2 Radha Nath Mandal are the witnesses to the seizure list, and they have proved their signatures on the seizure list, which were marked Exhibits-1 & 1/1 respectively. These witnesses have not stated anything about the occurrence.

12. P.W.-19 Budeshwar Manjhi has stated that on the date of occurrence, he was cutting bushes by a *tangi*, when the accused came and asked for his *tangi*, which he did not give him. Later, he learnt that this accused had committed the murder of the deceased, assaulting her by stones. He has stated that when the accused had come to take his *tangi*, he was wearing a towel and a baniyan. He has identified the accused in the Court. In his cross-examination, he has stated that the accused is his co-villager and he was knowing him from his childhood.

13. P.W.-4 Dr. Shailendra Kumar had conducted the *post-mortem* examination on the dead body of the deceased on 03.11.2007 and had found the following *ante-mortem* injuries on the dead body:-

On External Examination

(i) *Hymen was found lacerated in its posterior portion with blood clots all over. Multiple small abrasions & bruises were found along the margins of entroitus of vagina.*

(ii) *On posterior wall of vagina near entroitus an abrasion of 1/4' dia was found. Blood clots found over abrasion and around the area of entroitus.*

(iii) *Vaginal swab was taken from posterior fornix of vagina and on its microscopic examination spermatozoa was found.*

Bruises

Red Colour- *4' x 2' on the upper most portion of front of right thigh extending outwards. At the side there was closed fracture of thigh bone near the groin.*

Abrasions :- *12' x 8' on the both sides front of neck and also on the right side of face extending towards both the shoulders and upto collar bones.*

Laceration :-

(a) *1' x 1/2' x skin deep on the right eyebrow.*

(b) *1 1/2 x 1/2' x bone deep on the right cheek with fractures of both the upper & lower jaw.*

(c) *2' x 1/2' x bone deep on the right side of the lower jaw.*

(d) *3' x 3' x bone deep on the right temple over the right ear extending behind the ear.*

Bruises (Red colour) :-

- (a) 1 1/2' x 1/2' on the front of left shoulder.
- (b) 1 1/4 x 1/4' on the back of left hand & wrist.
- (c) 1/2' x 1/2' on the back of lower portion of left forearm.
- (d) 1/2' x 1/2' on the right palm.

On dissection :-

Blood clots were found underneath the scalp on the frontal & parietal portions on the right side of head.

Frontal bone of the skull was found fractured into pieces along with multiple fractures of parietal temporal & petreus bones of the right side. Brain & meninges were lacerated on right side.

Subdural haematoma was found defused all over the surface of brain on both sides.

Left side of heart was empty. Right side full of dark fluid blood.

Stomach contained 100 cc of watery fluid.

Bladder was empty. Other internal organs were normal.

This witness had stated that time elapsed since death was between 6 to 12 hours and the cause of death was due to aforementioned injuries on head and brain. All the injuries were caused by hard and blunt object, and forceful sexual intercourse was performed with the deceased before her death. He has identified the *post-mortem* report to be in his pen and signature, which was marked Exhibit-2. The cross-examination of this witness was declined by the defence.

14. P.W.-15 is Dr. Pradeep Kumar Modi, who had examined the injuries of the accused on 05.11.2007, and has found the following injuries on his body :-

I. Lacerated wound over upper portion of right shoulder size about 1/2" x 1/4" x 1/4".

II. Scratch mark over left temple size 1".

III. Scratch mark over right temple size about 3/4".

IV. Scratch mark over mid portion of back left side size 1" x 1/4" right side 3/4".

V. Scratch mark over left elbow size 1/2".

VI. Scratch mark over left upper portion of chest just below neck 1/2".

He has stated that all the injuries were simple in nature, caused by hard and blunt substance. He has proved the injury report which was earlier marked Exhibit-13. In his cross-examination, he was given the suggestion, whether such injuries could be caused if a person is pushed on rocky surface

and dragged on such surface, to which, he has stated that such injuries could be caused by that.

15. P.W.-13 Vinay Kumar Ram is the I.O of the case. This witness had stated that on 3.11.2007, he was posted as Officer-Incharge of Baliapur Police Station. The *fardbeyan* of the informant was recorded by the S.I, Sudarshan Prasad, which was proved by this witness, and was marked as Exhibit-6. He has also proved the endorsement on the *fardbeyan*, to be in his own handwriting and signature, which was marked Exhibit-6/1, and has also proved the formal FIR, which was marked Exhibit-7. He has stated that he took over the charge of investigation of the case. He has proved the seizure list and the inquest report prepared by the S.I, Sudarshan Prasad, which were marked Exhibits-8 and 9. He had also recorded the statement of the S.I. Sudarshan Prasad. He has given the details of the place of occurrence, which is the agriculture field of Jag Bandhu Rai, situated in village Raja Basti, at a distance of about 100 meter from the house of the informant, which was an uncultivated land at that time. He found the dead body near the ridge of the field, where there were bushes all around. The sketch map of the place was also prepared. He recorded the statements of the witnesses. He got the *post-mortem* report on 04.11.2007. He arrested the accused from the house of one Shiv Kumar Singh, at East Katras, and recorded his confessional statement, which he has proved and the same was marked Exhibit-10. He has stated that on the basis of his confessional statement, one big stone was recovered from the place of occurrence, and he has proved the seizure list of the same, which was marked Exhibit-11. He has also stated that on the basis of confessional statement, he had recovered two sacks and one old towel, and had prepared the seizure list, which he has proved and the same was marked Exhibit-12. He has also stated that the memo for examining the injuries of the accused was prepared and has proved his injury report, which was marked as Exhibit-13. The injury report showed that there were nail scratches on the body of the accused. After completing the investigation, he submitted the charge sheet against the accused for the offences under Sections 376 and 302 of the Indian Penal Code. In his cross-examination, this witness had stated that he had recorded the statements of the witnesses, apart from the family members of the deceased. The accused was also

medically examined and he was not apprehended from the place of occurrence. He has denied the suggestion of making faulty investigation.

16. P.W.-21 Sudarshan Prasad is the S.I of Police, who had accompanied the I.O., to the place of occurrence. This witness had stated that he had gone to the place of occurrence where he had seen the dead body of the deceased and they were informed that after committing rape, she was murdered by crushing her head by stone. He had recorded the *fardbeyan* of the brother of the deceased, which he has identified and the same was earlier marked Exhibit-6. He had also prepared the inquest report which was earlier marked Exhibit-9. He had seized the cloths, *payal*, bangle and stone-ornament of the deceased, as also the bloodstained stone and soil and he has proved the seizure list, which was earlier marked Exhibit-8. He has stated that he was accompanying the I.O of the case. This witness had also stated that he had sent the dead body for *post-mortem* examination and when the accused was arrested, he was sent for medical examination, as there were nail scratches on his body. He has proved the memo for getting the injury report of the accused, which was marked Exhibit-16. In his cross-examination, this witness has stated that he is neither the I.O., of the case, nor he had arrested the accused.

17. P.W.-12 Puran Oraon and P.W.-14 Avinash Kumar are the Police Officers, who had produced the material exhibits in the Court. The cloths, ornaments and the bloodstained soil and stone were produced in the Court by P.W.-12 Puran Oraon, which were marked as material Exhibit-I, whereas P.W.-14 Avinash Kumar had produced the bloodstained big stone, which was marked as material Exhibit-II.

18. The statement of the accused was recorded on 17.7.2013, under Section 313 of the Cr.P.C., wherein he has disclosed his age to be 26 years, and has denied the evidence against him. He was also asked about the injuries, found on his body, wherein, he has stated that after arrest, he was assaulted by the police by a stick containing thorns.

19. Two witnesses were examined on behalf of the defence, who are D.W.-1 Shatru Rai and D.W.-2 Sonwa Hembrum, who have come to depose that the accused was not residing in his village, rather he was living at his *buas*'s (father's sister) place at Katras, from where, he was arrested.

20. On the basis of the evidence on record, the accused-appellant has been convicted and sentenced by the Trial Court below as aforesaid, and upon hearing on the point of sentence, he has been awarded the capital punishment of death for the offence under Section 302 of the Indian Penal Code. The Trial Court below, while awarding the death sentence, has discussed the guiding principles for awarding the death penalty, as laid down by the Apex Court in various decisions, including in **Bachan Singh Vs. State of Punjab**, reported in *AIR 1980 SC 898*, and **Machhi Singh & Ors., Vs. State of Punjab**, reported in *AIR 1983 SC 957*, and has also considered the mitigating, aggravating, and other factors for awarding the sentence.

21. Learned counsel for the appellant has submitted that the impugned Judgment of conviction and Order of sentence passed by the Trial Court below, cannot be sustained in the eyes of law, inasmuch as, the FIR was instituted against one unknown also, but the charge sheet has been submitted against the accused only, which shows that there was some doubt, whether the offence was committed by only one accused or more than one accused. Learned counsel submitted that there is no DNA test in the case and as such, the requirements of Section 53-A of the Cr.P.C., have not been fulfilled. Learned counsel also submitted that P.W.-9 Raju Mukherjee and P.W.-19 Budeshwar Manjhi had seen the accused soon after the occurrence but they had not seen any injuries on his body, which also makes the case doubtful, and the injuries found by P.W.-15 Dr. Pradeep Kumar Modi on the accused, is not corroborated by the evidence of these witnesses. He has also submitted that the accused had claimed to be assaulted by the Police, due to which, the injuries were caused. Learned counsel has also submitted that the time of occurrence is actually not proved in the case.

22. In the present case there are clinching evidences, against the accused to have committed the offence. It was this accused who was seen by P.W.-5 Bikash Mandal and P.W.-11 Jharna Mandal, the brother and mother of the deceased, assaulting the deceased by stones, soon after committing rape on her. Bloodstained soil and stone were recovered and seized along with the cloths and other articles of the deceased, and one big bloodstained stone was also recovered on the basis of the confessional statement of the accused. Scratch marks, which could be caused by the nails of the deceased

at the time of resisting the rape, were found on the body of the accused after his arrest on the very next day of the occurrence, as proved by P.W.-15 Dr. Pradeep Kumar Modi, and the injury report proved by him as Exhibit-13, in which the scratch marks were found on such parts of his body, where they were expected to be found in case of resistance of rape by the victim, such as, shoulder, face, back and chest, which clearly established the fact that it was this accused who had committed rape upon the deceased and had murdered her soon thereafter, by assaulting her with stones, crushing her head. The ocular evidence in this regard is fully corroborated by the medical evidence of P.W.-4 Dr. Shailendra Kumar and the *post-mortem* report proved by him as Exhibit-2, which shows the brutal, gruesome and diabolical manner in which, the deceased was done to death by crushing her head and face by stones, due to which, the frontal bone of the skull was found fractured into pieces along with multiple fractures of parietal, temporal & other bones, and brain & meninges were found to be lacerated with subdural haematoma all over the surface of brain. Prior to such assault, she was subjected to forceful sexual intercourse, as is apparent from the injuries in her private parts, as proved by P.W.-4 Dr. Shailendra Kumar. On the basis of the evidence on record, there could be no doubt about the fact that it was this accused, who had committed the murder of the deceased girl, aged about 14 years, after committing forceful rape upon her.

23. The explanation, given by the accused that he had sustained injuries, as he was assaulted by the police after his arrest, with a stick containing thorns, is absolutely false, as is apparent from the suggestion given by the defence to the P.W.-15 Dr. Pradeep kumar Modi. The suggestion given to him was not that whether such injuries could be caused by the assaults made by stick containing thorns, rather the suggestion given was that whether such injuries could be caused if a person is pushed and dragged on the rocky surface. The evidence of the defence witnesses that the accused was not living in his village, cannot be believed, in view of the suggestion given by the defence to P.W.-5 Bikash Mandal, the informant of the case, that in the same morning this accused had visited his tea shop along with one Kartik Rai, which fact is admitted by the informant. We also do not find any merit in the submission of learned counsel that the

requirements of Section 53-A of the Cr.P.C., have not been fulfilled. The accused has been medically examined by P.W.-15 Dr. Pradeep Kumar Modi, on whom the injuries which could be caused by nail were found, and this satisfies the requirements of Section 53-A of the Cr.P.C. It was only appropriate that steps for the D.N.A. profile test of the accused should also have been taken, in view of the fact that in the vaginal swab of the deceased, spermatozoa was found, and the D.N.A. test of the accused could have proved the case more accurately. However, in the present case, the guilt of the accused is established beyond all reasonable doubts even in absence of the D.N.A. test.

24. In the facts of this case we do not find any illegality in the impugned Judgment of conviction passed by the Trial Court below, finding the accused guilty and convicting him for the offences under Sections 376 and 302 of the Indian Penal Code, which we hereby, affirm.

25. Faced with this situation, learned counsel for the accused appellant has confined his arguments mainly challenging the death sentence, awarded to the accused, for the offence under Section 302 of the Indian Penal Code. We have heard learned counsels for both the sides in detail on the point of sentence.

26. Learned counsel for the State, supporting the death reference, has placed reliance upon the decisions of the Hon'ble Apex Court in **Bachan Singh's** case (*supra*), and **Machi Singh's** case (*supra*), giving the necessary guidelines for awarding the death sentence, and submitted that in **Machi Singh's** case (*supra*), it has been held that when the victim of murder is *an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder*, the case comes within the rarest of the rare category, and it is a fit case for imposing the death sentence. Learned counsel has further placed reliance upon the decision of the Hon'ble Apex Court in **Bantu Vs. State of U.P.**, reported in (2008) 11 SCC 113, which related to the rape and murder of a child, aged about five years, wherein the Supreme Court held that the case fell within the category of rarest of rare cases, and the death sentence was affirmed in the said case. Similarly, in **Shivaji Vs. State of Maharashtra**, reported in (2008) 15 SCC 269, which related to rape and murder of a child aged about nine years, it was held that

the plea that in cases of circumstantial evidence, the death sentence should not be awarded, is without any logic. This case was also found to be falling within the category of rarest of rare cases, and the death sentence to the accused was affirmed by the Apex Court. In **Mohd. Mannan Vs. State of Bihar**, reported in (2011) 5 SCC 317, which related to rape and murder of a child aged about eight years, again it was held to be falling within the rarest of rare category, and death sentence was affirmed by the Supreme Court, re-iterating the guidelines for imposing death sentence, as follows :-

"24. Further, crime being brutal and heinous itself does not turn the scale towards the death sentence. When the crime is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community and when collective conscience of the community is petrified, one has to lean towards the death sentence. But this is not the end. If these factors are present the court has to see as to whether the accused is a menace to the society and would continue to be so, threatening its peaceful and harmonious coexistence. The court has to further enquire and believe that the accused condemned cannot be reformed or rehabilitated and shall continue with the criminal acts. In this way a balance sheet is to be prepared while considering the imposition of penalty of death of aggravating and mitigating circumstances and a just balance is to be struck. So long the death sentence is provided in the statute and when collective conscience of the community is petrified, it is expected that the holders of judicial power do not stammer de hors their personal opinion and inflict death penalty. These are the broad guidelines which this Court has laid down for imposition of the death penalty."

(Emphasis supplied).

27. Again in **Purushottam Dashrath Borate Vs. State of Maharashtra**, reported in AIR 2015 SC 2170, the Supreme Court, in a case related to gang rape and murder of a married woman, re-iterated the need of imposing just punishment upon the accused, holding that the undue sympathy shown to the accused shall do more harm. It was also held that the age of the accused or his family background or lack of criminal antecedents, cannot alone be considered as mitigating circumstances. The death sentence was affirmed by the Hon'ble Apex Court, upon the accused in spite of his young age.

28. Again, in **Vasanta Sampat Dupare Vs. State of Maharashtra**, reported in (2015) 1 SCC 253, which related to rape and murder of a child aged about four years, who, after the rape was committed upon her, was crushed to death by stone, the Hon'ble Supreme Court affirmed the death sentence, finding the case to be one under the category of rarest of rare cases. In this case, the accused-appellant had also filed the Review Petition in the Supreme Court, which was again dismissed by the Judgment, reported in (2017) 6 SCC 631.

29. Placing reliance on these decisions, learned counsel for the State submitted that the case in hand relates to brutal murder of the victim girl after commission of rape upon her by the accused in extremely brutal, gruesome and diabolical manner, and the case comes within the category of rarest of rare cases, and as such it is a fit case in which the death sentence awarded to the accused by the Trial Court below be confirmed, irrespective of his age, family background or lack of criminal antecedents, which cannot be considered as mitigating circumstances.

30. On the other hand, learned counsel for the appellants has submitted that simply because the case relates to rape and murder of a child, it does not come under the category of rarest of rare cases. Learned counsel has placed reliance upon the decisions of the Supreme Court in **Sebastian Vs. State of Kerela**, reported in (2010) 1 SCC 58, **Ram Deo Prasad Vs. State of Bihar**, reported in (2013) 7 SCC 725, **Tattu Lodhi Vs. State of M.P.**, reported in (2016) 9 SCC 675, and in all these cases, the child aged between 2 to 7 years were murdered after committing rape upon them. The Supreme Court, in the facts of these cases, held that they do not come within the category of rarest of rare cases, and the death sentence awarded by the Trial Court below, and confirmed by the High Court, were commuted to life imprisonment. Learned counsel also placed reliance upon the decision of the Apex Court in **Ramnaresh and Ors. Vs. State of Chattisgarh**, reported in (2012) 4 SCC 257, which related to the gang rape and murder of a married lady, and in that case also, the Supreme Court held that it did not come within the category of rarest of rare cases, and the death sentence was converted into the life sentence. Learned counsel has also placed reliance upon the decision of **Rameshbhai Chandubhai Rathod (2) Vs. State of**

Gujarat, reported in (2011) 2 SCC 764, which also related to rape and murder of a child by the guard of the building. The Hon'ble Supreme Court laid down the law that it was obligatory upon the Trial Court to have given the finding as to a possible rehabilitation and reformation and the possibility that the accused could still be a useful member of the society, in case, he was given a chance to do so, and in absence of such finding, the death sentence awarded by the Trial Court and confirmed by the High Court, was commuted to the sentence for whole life, but subject to any remission or commutation of sentence by the State Government for good and social reasons. Similar view was taken by the Apex Court in **Amit Vs. State of U.P**, reported in (2012) 4 SCC 107, which also related to rape and murder of a three years old child. In the said case also, the *ratio* of **Rameshbhai Chandhubhai Rathod's** case (*supra*), was applied by the Supreme Court and the death sentence was commuted to the sentence of life in the same terms.

31. Placing reliance on these decisions, learned counsel submitted that the present case also, does not come within the purview of rarest of rare cases, and it is a fit case in which the death sentence passed by the Trial Court below be set aside for the offence under Section 302 of the Indian Penal Code. It is also submitted that the Trial Court has not given any finding as to a possible rehabilitation and reformation and the possibility that the accused could still be a useful member of the society, in case, he is given a chance to do so, and in absence of such finding, the death sentence awarded by the Trial Court cannot be sustained in the eyes of law.

32. We cannot loose sight of some landmark Judgements on the issue of awarding death sentence, rendered by the Hon'ble Apex Court, after the Judgment was reserved by us in this case. In the case of **Rajendra Pralhadrao Wasnik Vs. State of Maharashtra**, reported in *AIR 2019 SC 1*, which related to rape and murder of a child aged about three years, and the appellant was found guilty and convicted for the offences under Sections 376(2)(f), 377 and 302 of the Indian Penal Code, in which, the death sentence was awarded by the Trial Court for the offence under Section 302 of the Indian Penal Code, which was confirmed by the High Court. Criminal Appeal filed by the appellant also stood dismissed by the

Supreme Court, as reported in (2012) 4 SCC 37. The review petitions were then filed by the appellant, which also stood dismissed by the Supreme Court by order dated 07th March 2013. Thereafter, in a completely different case, the Constitution Bench of the Supreme Court in **Mohd. Arif Vs. Registrar, Supreme Court of India**, reported in (2014) 9 SCC 737, considered two basic issues in the cases where death sentence was pronounced by the High Court: (1) whether the hearing of such cases should be by a Bench of at least three if not five Judges of the Supreme Court and (2) whether the hearing of review petitions in death sentence cases should not be by circulation, but should only be in open Court. Though the Supreme Court was not persuaded to accept the submission that the appeal should be heard by five Judges of the Court, but it decided that in every appeal pending in the Court in which the death sentence had been awarded by the High Court, only a Bench of three Judges shall hear the appeal. As regards the oral hearing of the review petitions in the open Court, it was held that a limited oral hearing ought to be given, and it was held that this direction would also apply where the review petition is already dismissed, but the death sentence was not executed. This gave an opportunity of consideration of the matter of the accused Rajendra Pralhadrao Wasnik again by the Supreme Court. As regards the said accused, it was found by the Supreme Court that the High Court as well as the Supreme Court had not taken into consideration the probability of reformation, rehabilitation and social integrity of the appellant into the society. The Court, however, found that the appellant was accused in other three similar nature of cases. The Hon'ble Supreme Court in the backdrop of these facts laid down the law as follows :-

"75. ----- . It must be appreciated that a sentence of death should be awarded only in the rarest of rare cases, only if an alternative option is unquestionably foreclosed and only after full consideration of all factors keeping in mind that a sentence of death is irrevocable and irretrievable upon execution. It should always be remembered that while the crime is important, the criminal is equally important in so far as the sentencing process is concerned. In other words, courts must "make assurance double sure". (Emphasis supplied).

Even in the backdrop of the fact that the accused was found to be accused in three similar nature of cases, and the case related to the gruesome

rape and murder of a girl child aged about three years, the Hon'ble Apex Court, laying down the law that in absence of any consideration about the probability of reformation, rehabilitation and social re-integration of the appellant into the society, the death sentence awarded upon the appellant, could not be maintained, commuted the death sentence of the accused, which was earlier affirmed up to the Supreme Court, to the life imprisonment with direction that the accused should not be released from the custody for the rest of his normal life.

33. Again in **Sachin Kumar Singhraha Vs. State of M.P.**, reported in *2019 SCC On Line SC 363*, in which case a school going girl was subjected to rape, and her school bag and dead body were recovered at the instance of the accused, pursuant to his disclosure statement, it was not found to be a case of such category, where the death sentence was necessarily to be imposed, and the death sentence imposed upon the accused was commuted to the sentence of life imprisonment, with no remission for 25 years. In the facts of the case, the Hon'ble Apex Court was not convinced that the probability of reform of the accused was low, in absence of any criminal antecedent and keeping in mind his overall conduct.

34. Taking cues from the decisions of the Hon'ble Apex Court in **Rajendra Pralhadrao Wasnik's** case and **Sachin Kumar Singhraha's** case (*supra*), we are of the view that the principles laid down therein, would squarely cover the case of the appellant in the present case also. The probability of reformation, rehabilitation and social re-integration of the appellant into the society, of the present appellant, also cannot be ruled out, in absence of any criminal antecedent of the accused, and also looking at his young age.

35. But at the same time we just cannot loose sight of the manner in which the deceased was murdered, crushing her face by stone, after committing rape upon her. In the facts of this case, we are of the considered view, that though the extreme penalty of death was not warranted in the facts of this case, but the accused did not deserve any leniency in the matter of remission of the sentence. As such, the impugned order of sentence, awarding the capital punishment of death to the appellant, Kashi Nath Singh @ Kallu Singh, for the offence under Section 302 of the Indian Penal Code,

is hereby, commuted to the life sentence, and taking into consideration the manner of offence, we direct that the life sentence awarded to the appellant shall be for the whole of his biological life, without any benefit of remission. In our considered view, this alternative option shall serve the interest of justice. The sentence passed against the appellant for the other offence shall also run concurrently. Accordingly, the impugned Judgment of conviction dated 30th September, 2013 and Order of sentence dated 08.10.2013, passed by the learned Additional Sessions Judge-VI-cum-Special F.T.C., Dhanbad, in S.T. Case No.237 of 2008, stand affirmed, with the modification in the sentence as aforesaid.

36. Before parting with this Judgment, we find P.W.-11 Jharna Mandal, who is the mother of the deceased, is the victim of crime in this case and she is required to be duly compensated under the 'Victim Compensation Scheme' under Section 357-A of the Cr.P.C. We accordingly, direct the Member Secretary, Jharkhand State Legal Services Authority, Ranchi, to take up the matter with the concerned District Legal Services Authority, so that P.W.-11 Jharna Mandal, may be duly compensated at an early date. Let a copy of this Judgment be sent to the Member Secretary, Jharkhand State Legal Services Authority, Ranchi for the needful.

37. The aforesaid Criminal Appeal is accordingly, dismissed with the modification of the sentence for the offence under Section 302 of the Indian Penal Code. The Death Reference is also answered, accordingly. Let the Lower Court Records be sent back to the Court concerned forthwith, along with a copy of this Judgment.

(H.C. Mishra, J.)

Ratnaker Bhengra, J.-

(Ratnaker Bhengra, J.)

Jharkhand High Court, Ranchi.
Dated the 29th of March, 2019.
N.A.F.R/ BS/-