AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRREF No. 2 of 2018

Judgment Reserved On : 29/07/2019
Judgment Delivered On : 31/01/2020

- In Reference State Of Chhattisgarh Through Police Station Khursipar, Durg District Durg Chhattisgarh

---- Appellant

Versus

1. Ram Sona S/o Gulli Sona Aged About 24 Years R/o Chandrama Chowk, Shivaji Nagar, Ward No. 28, Khursipar, Police Station Khursipar, Bhilai, District Durg Chhattisgarh

2. Amrit Singh /singh @ Kile @ Keli S/o Kashmira Singh / Singh Aged About 23 Years R/o Govind S. T. D. Ke Piche, Khursipar, Police Station Khursipar, Bhilai, District Durg Chhattisgarh

3. Kunti Sona W/o Gulli Sona Aged About 38 Years R/o Chandrama Chowk, Shivaji Nagar, Ward No. 28, Khursipar, Police Station Khursipar, Bhilai, District Durg Chhattisgarh

---- Respondent

CRA No. 1517 of 2018

1. Ram Sona S/o Gulli Sona Aged About 24 Years R/o Chandrama Chowk Shivaji Nagar, Ward No.- 28, Khursipar, Police Station- Khursipar, Bhilai, District- Durg, Chhattisgarh.

2. Amrit Singh/sing @ Kile @ Keli S/o Kashmira Aged About 23 Years R/o Behind Govind Std, Khursipar, Police Station- Khursipar, Bhilai, District- Durg, Chhattisgarh.

3. Kunti Sona W/o Gulli Sona Aged About 38 Years R/o Chandrama Chowk, Shivaji Nagar, Ward No.- 28, Khursipar, Police Station- Khursipar, Bhilai, District- Durg, Chhattisgarh.

---- Appellant

Versus

- The State Of Chhattisgarh Through District- Magistrate, District- Durg, Chhattisgarh.

---- Respondent

For Accused/appellants : Mr. DK Gwalre, Mr. Akhil Mishra and Mr. Anand Shukla, Advocates.
For Respondent/State : Mrs. Fouzia Mirza, Additional Advocate General.

Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Shri Gautam Chourdiya, JJ

C A V JUDGMENT

The following judgment of the Court was delivered by **Prashant Kumar Mishra, J.**

1. CRREF No. 2 of 2018 is a reference under Section 366 of the CrPC for confirmation of death sentence awarded to accused Ram Sona for offence under Sections 376 (A) and 302 of the IPC whereas CRA No. 1517 of 2018 has been preferred by the appellants challenging their conviction and sentence imposed by the trial Court vide judgment dated 24.8.2.018 passed in Special Sessions Trial No.56/2015 in the following manner:-

Name of the accused : Amrit Singh

Conviction	Sentence
Under Section 201/34 of the IPC	RI for 5 years with fine of Rs.500/-, in default of payment of fine to further undergo RI for 2 months
Under Section 202 of the IPC	RI for 6 months with fine of Rs.100/-, in default of payment of fine to further undergo RI for 7 days

Name of the accused : Kunti Sona

Conviction	Sentence
Under Section 201/34 of the IPC	RI for 5 years with fine of Rs.500/-, in default of payment of fine to further undergo RI for 2 months
Under Section 202 of the IPC	RI for 6 months with fine of Rs.100/-, in default of payment of fine to further undergo RI for 7 days

Under Section 216 of the IPC	RI for 5 years with fine of Rs.500/-, in default of payment of fine to further undergo RI for 2 months
Under Section 212 of the IPC	RI for 5 years with fine of Rs.500/-, in default of payment of fine to further undergo RI for 2 months

Name of the accused : Ram Sona

Conviction	Sentence
Under Section 363 of the IPC	RI for 5 years with fine of Rs.500/-, in default of payment of fine to further undergo RI for 2 months
Under Section 365 of the IPC	RI for 5 years with fine of Rs.500/-, in default of payment of fine to further undergo RI for 2 months
Under Section 366 of the IPC	RI for 7 years with fine of Rs.500/-, in default of payment of fine to further undergo RI for 2 months
Under Section 376 (A) of the IPC	Death Sentence
Under Section 302 of the IPC	Death Sentence with fine of Rs.500/-, in default of payment of fine to further undergo RI for 2 months
Under Section 201/34 of the IPC	RI for 5 years with fine of Rs.500/-, in default of payment of fine to further undergo RI for 2 months

2. Accused No.1 Ram Sona is the son of accused No.3 Kunti Sona, whereas accused No.2 Amrit Singh @ Kile @ Keli is the friend of accused No.1 Ram Sona.

3. As per the prosecution case, the deceased/victim was a deaf and dumb girl aged about 5½ years. At about 11 am on 25.2.2015, she disappeared while playing near her house opposite to Chandrama Chowk, Shivaji Nagar, Khursipar, Bhilai. The informant (PW-1) Raju Lal Shrivastava is the father of the deceased. In his missing report (Ex.-P/42), he informed that despite search at various places and in

the residence of the relatives and friends the deceased is not traceable, therefore, he has suspicion that some unknown person has allured and abducted his daughter. The FIR (Ex.-P/1) was registered at 8.55 hours on 26.2.2015 against unknown person for offence under Section 363 of the IPC. During investigation, Kunti Sona and Amrit Singh were apprehended and their memorandum statements were recorded vide Ex.-P/9 & P/10 respectively. Kunti Sona informed to the police that her younger son juvenile Dipak informed her that brother Ram Sona has murdered a girl and has kept the dead body in the house. Later in the night, her son Ram Sona and his friend accused Keli reached the house and all three have concealed the dead body in a muddy Nala besides the railway track and she can point out the place. In his memorandum statement, Keli informed the IO that at about 12-12.30 in the noon of 25.2.2015 he was watching TV in the house of Ram Sona. At that time, Ram Sona brought a girl from outside and committed rape by gagging her mouth. Despite persuasion Ram Sona did not leave the girl. The girl was bleeding from her private part. Ram Sona committed her murder by pressing her mouth and has kept the dead body in a white coloured bag, and has kept it in the courtyard near the bricks. When Ram Sona's younger brother juvenile Dipak reached the house and saw the bag and the dead body, Ram Sona threatened him not to disclose the fact to anybody. Later in the night, he, Ram Sona and Kunti Sona concealed the dead body in a muddy Nala besides the railway track.

4. Dehati Merg was registered at about 15.00 hours on 2.3.2015 vide

Ex.-P/17 against unknown assailants. The dead body was identified by (PW-1) Raju Lal Shrivastava. Dead body inquest (Ex.-P/5) was prepared on 2.3.2015 after the dead body was recovered vide dead body recovery memo (Ex.-P/6). White plastic bag in which dead body was thrown near the railway track was seized vide Ex.-P/7. Memorandum statement of Kunti Sona was recorded at 1.45 pm on 2.3.2015 vide Ex.-P/9 in which she disclosed to the police that her younger son Dipak informed her that Ram Sona has murdered a girl and concealed the dead body in the house near bricks. She opened the bag and sprinkled water but found the girl to be dead. In the late night, she and her both sons concealed the dead body near muddy Nala besides the railway track. Memorandum statement of Keli @ Amrit was recorded on similar lines vide Ex.-P/10. He claims to have seen his brother accused Ram Sona committing rape and thereafter committing murder of the deceased.

5. Accused Ram Sona was taken into custody on 4.3.2015 and his memorandum statement was recorded vide Ex.-P/13. He disclosed to the police that when the deceased was playing alone near Chandrama Chowk at about 12-12.30 noon, he brought her in his house by gifting her chocolate and promising to her more chocolates if she comes to his house. When he reached the house, his friend Amrit @ Keli was watching TV in his house. When he was committing rape with the deceased, Amrit Singh tried to restrain him but he continued the act and later on thrashed her head on the ground due to which she became unconscious. Out of fear he gagged her, killed her and concealed the dead body in the white

plastic bag and kept it near the bricks. When his younger brother Dipak reached the house, he saw the plastic bag and threatened to disclose in the locality on which he requested and threatened Dipak not to disclose. When his mother reached the house, his younger brother informed her about the incident. Later in the night, he, his friend Amrit Singh and mother Kunti Sona concealed the dead body near muddy Nala besides the railway track. He also disclosed that on the next day his brother Dipak informed that members of the locality (*Mohalla*) are searching him and he may be thrashed. Therefore, he ran away to Raipur and started working in the Court's canteen. His semen stained red coloured underwear was recovered vide Ex.-P/14.

6. Postmortem was conducted by (PW-9) Dr. Nitin Barmate, who submitted his report (Ex.-P/39). He found the following symptoms and injuries over the dead body of the deceased:-

> "Body wrapped in white polythene sheet. Brown shawl & white clothe clothes. Black with red & white colour design frock. Blue jeans pant, pant torn at inner midline crease. Clothes stained with decomposition fluid. Clothes sealed, labelled & handed over to PC-864 on duty. Averagely built. Body swollen. Rigor mortis passed off. Sign of decomposition present in the form of whole body swollen. Easily pluckable scalp hair, greenish discolourisation over abdomen. Postmortem blisters over abdomen. Marbling over shoulder. Peeling of skin at places. Maggots crawling over injured area and trunk and buttocks. Uterus prolapsed. Features : both eyes closed. Mouth open. Tongue inside mouth. Teeth 10/10. No oozing from mouth, nostrils and ears. No faccul purging. Nail cyanosed. Blackish stains over legs. **Injury** : (1) contusion present over left side upper lip, 1x0.7 cm bluish. (2) Abrasion present over left lower lip, 1 x 1cm, reddish. (3) Lacerated wound over left lower lip, 0.7x0.4cmxmuscle deep. (4) Contusion present over inner aspect of right upper lip, 1x0.6cm, bluish. (5)

> Contusion present over right cubital fogga, 3x3 cm, bluish. (6) Tear laceration present over right sided labia minora of 1x0.5 m x tissue deep. (7) Tear laceration present over right sided labia minora of 1.2 x 0.6 cm x tissue deep. (8) Tear laceration present over mons & pesincal region of 1.3 x 0.5 cm x muscle deep.

He opined that injury No.1 to 4 are sufficient to cause death and further that injury No.1 to 8 are antemortem in nature. Cause of death was opined to be due to head injury with smothering; homicidal in nature and duration within 4-6 days. FSL report of the vaginal swab and slide of the deceased as also frock and capri recovered from the place of occurrence and underwear of the accused was found negative vide FSL report Ex.-P/34.

7. Memorandum statement of juvenile Dipak Sona was recorded on 26.5.2015 vide Ex.-P/28. After completion of investigation, charge sheet was filed for regular Sessions Trial against the present appellants whereas juvenile Dipak was sent for trial to the juvenile Court.

8. The prosecution examined as many as 13 witnesses namely, (PW-1) Raju Lal Shrivastava, (PW-2) Ramaiya Prasad Shrivastava, (PW-3) K.L. Shrivastava, (PW-4) Sanjay Kumar Sharma, (PW-5) B. Seemadri Acharya, (PW-6) Hemant Kumar Behra, (PW-7) Pramod Jaiswal, (PW-8) M.B. Patel, (PW-9) Dr. Nitin Barmate, (PW-10) Shyamlal Majhi, (PW-11) Yashwant Shrivastava, (PW-12) Premlal Dhruv and (PW-13) Manoj Gaikwad to bring home the charges. The accused persons abjured the guilt, pleaded innocence and false implication. However, they did not examine any defence witness. Based on the evidence on record, the trial Judge has convicted all the accused and sentenced

accused Ram Sona to be hanged till death for offence under Section 376 (A) and 302 of the IPC, with other sentences for the remaining charges. The accused persons have also been sentenced to undergo different period of imprisonment for the charges proved against them, as mentioned in opening paragraph of this judgment.

9. Learned counsel for the appellants would argue that the names of the accused persons were not mentioned in the missing report/FIR, therefore, they were framed subsequently by the prosecution, as they were not finding the culprits. It is argued that the evidence of (PW-7) Pramod Jaiswal, who has been examined as witness of last seen together is of no consequence and further that evidence of witnesses to the memorandum statements are full of contradictions and they do not support the prosecution. It is pointed out that in the spot map prepared by (PW-10) Shyam Lal, the house of the accused is not mentioned. It is also pointed out from the evidence of (PW-11) Yashwant Shrivastava that merg was registered at 4.10 pm on 2.3.2015 against unknown persons although the memorandum was already recorded and the police was aware of the names of the accused. Therefore, it is proved that memorandum statement was subsequently prepared. It is also argued that there is evidence that two strangers had come to the house of the deceased for curing her of her deaf and dumb illness, but the prosecution has not investigated those two strangers, even though the I.O. has stated that they were traced at Bilaspur. It is further argued that the last seen evidence is very weak in nature and similarly, abscondance of accused Ram Sona is neither a circumstance nor there is any

evidence of such abscondance. It is also argued that memorandum of Kunti Sona was recorded at 1.45 pm and thus, the facts were already discovered. Therefore, it cannot be discovered again in the memorandum statement of accused Amrit Singh vide Ex.-P/10 and accused Dipak Sona vide Ex.-P/28, which were recorded later. There is no evidence against accused Amrit Singh except his memorandum statement (Ex.-P/10). It is also argued that the prosecution cannot start investigation only on the basis of memorandum. It is also argued that confession by Kunti Sona and Amrit Singh in their memorandum statements is not admissible against accused Ram Sona. It is further put forth that nothing has been recovered pursuant to the memorandum statement of accused Ram Sona, therefore, the whole memorandum statement is inadmissible in evidence.

10. Per contra, Smt. Fouzia Mirza, learned Additional AG would argue that the dead body has been recovered at the instance of accused Kunti Sona and Amrit Singh and they have clearly implicated accused Ram Sona in their memorandum statement and the said accused Ram Sona was last seen together in the company of the deceased and thereafter his conduct of absconding from the locality are such circumstances which prove his complicity in committing rape and murder. She would argue that the contents of confessional statements of accused Ram Sona tallies with the injuries found on the person of the deceased in the postmortem report. She would further argue that under Section 30 of the Evidence Act memorandum statement of co-accused is admissible in evidence if it

is self implicating. It is also argued that simultaneous disclosure is permissible. Learned Additional Advocate General would next argue that there is absolutely no reason for the father and uncle of the deceased to falsely implicate the present accused persons and save the real culprits. While reading the evidence of the IO, it is argued that investigation was carried in respect of two unknown doctors who visited the house of the deceased just before she went missing. It is also put forth that merely because there are gaps in the investigation, the same should not come in punishing the accused, as has been held by the Hon'ble Supreme Court in the matter of **Dhanaj Singh alias Shera and others Vs. State of Punjab**[1].

11. We shall first appreciate the oral evidence adduced by the prosecution witnesses.

12. (PW-1) Raju Lal Shrivastava, father of the deceased, states that his daughter went missing on 25.2.2015 for which he lodged missing report on the next day vide Ex.-P/1. According to him, when he was attending duties at his work place, his brother telephoned him that one doctor accompanied with his friend has come to his house on the date of the incident assuring to treat his deaf and dumb daughter. Due to this, he reached back his house at about 12-1 pm and called the doctor, but this time his daughter was not available in the house, whereas during the first visit of the doctor his daughter was in the house. He admits that when his daughter was not traceable, he had called the doctor on phone on which the doctor replied evasively stating that he is at Rajnandgaon or at Nagpur. In his diary statement and in the FIR, he had not informed the police

1 (2004) 3 SCC 654

that when they were tracing his daughter, accused Ram Sona was trying to abscond on seeing them. However, in the next paragraph, he says that they developed suspicion on Ram Sona when he started absconding on seeing them, as also for the reason that they had heard in the Mohalla that the accused persons are involved in the wrongful activity by offering biscuits, Kurkure etc to the children. However, this fact is not stated in his diary statement. He also admits that in his diary statement (Ex.-P/3), he named the appellants only on the basis of suspicion.

13. (PW-2) Ramaiya Prasad Shrivatava is the uncle of the deceased. It is this witness who attended the doctor who had visited the house of the deceased at about 12 noon on the date of the incident. He states that the doctor informed them that he has come from Narayan Seva Sansthan, Udaipur, Rajasthan and the said Institution treats deaf and dumb people. He also admits that when the deceased went missing, the first doubt was on the doctor, therefore, they called the doctor over phone, on which the doctor informed that he is in Rajnandgaon and later said that he is at Bilaspur. He says that after 3-4 days, Ram Sona started running away on seeing the members of the locality, therefore, suspicion arose that he might be involved in the offence and Kunti Sona was enquired but she denied to have any knowledge about the deceased. On 2.3.2015, the police informed them that Kunti Sona and Amrit have disclosed to the police about commission of offence, therefore, they should identify the body, on which they went there and identified the body. He proves the dead body inquest notice (Ex.-P/4), dead body (Ex.-P/5),

recovery of dead body vide Ex.-P/6 and seizure of white coloured plastic bag vide Ex.-P/7. He admits that in his diary statement (Ex.-D/1) given to the police on 26.2.2015, he had raised suspicion on the doctor. He also admits that neither their family nor members of the locality liked the family of the appellants and further that the family is not in talking terms with the appellants' family.

14. (PW-3) K.L. Shrivastava is another uncle of the deceased. He was informed by the mother of the deceased at about 3.30 pm that the deceased is not traceable. It is also stated by this witness that when they were making announcement in the locality about missing of the deceased, they met Ram Sona, but he started running away on seeing them, but they kept on making announcement. He also admits that at about 9 pm, one Tandon Saheb from Crime Branch had come to their house on which Kunti Sona was called and interrogated but she did not disclose anything.

15. (PW-4) Sanjay Kumar Sharma is the resident of the deceased's locality. He also says that when they were making announcement at about 7-8 pm, they had seen Ram Sona near Anda Chowk but seeing them Ram Sona ran away from the spot. He has proved and supported the prosecution by stating that Kunti Sona had given memorandum statement (Ex.-P/9) in their presence. He has also proved memorandum statement of Amrit vide Ex.-P/10. He also admits the presence of witness B. Seemadri (PW-5) at the time of recording of memorandum statement. He is also witness to the dead body recovery Panchnama (Ex.-P/6). Thus this independent witenss has proved memorandum statements Ex.-P/9 and Ex.-P/10.

16. B. Seemadri Acharya (PW-5) has also supported the prosecution by stating that memorandum statements (Ex.-P/9 & P/10) were recorded in their presence wherein accused Kunti Sona and Amrit Singh had informed the police as to the contents of the memorandum. This witness has also proved Ex.-P/4, P/5 (dead body inquest) and P/7 (seizure of white coloured plastic bag).

17. Hemant Kumar Behra (PW-6) is a witness to the memorandum statement of appellant Ram Sona vide Ex.-P/13. He has supported the prosecution by stating that Ram Sona has made such statement to the police.

18. Pramod Jaiswal (PW-7) is the resident of the locality. He is a witness to the last seen together. He states that at about 11-12 am on 25.2.2015 he was proceeding to go to Raigarh for his work and had seen that accused Ram Sona was taking the deceased with him. When he returned after 3-4 days, he came to know that the deceased is not traceable. He admits that when he returned to Bhilai on 27th or 28th February, 2015, he informed the deceased's family that he had seen the deceased with Ram Sona on the date of the incident but had not informed this fact to the police immediately, however, later informed the police in a day or two.

19. MB Patel (PW-8) is the SHO of the concerned Police Station. He had registered the missing report and has recorded case diary statements of witnesses, as also memorandum statements (Ex.-P/9 & P/10), and thereafter recovered the dead body. This witness has stated that during investigation, residents of locality informed that appellant Ram Sona is a drug addict and sadist person.

20. Dr. Nitin Barmate (PW-9) has conducted the postmortem and submitted his report vide Ex.-P/39. He has found 8 injuries, as mentioned supra The injuries were ante mortem and the death had occurred within 4-6 days from the time of postmortem.

21. Shyam Lal Majhi (PW-10) is the R.I. who has prepared the spot map, whereas (PW-11) Yashwant Shrivastava has registered Dehati Merg vide Ex.-P/41. (PW-12) Prem Lal Dhruv is the Constable involved in investigation. (PW-13) Manoj Gaikwad is a witness to the spot map (Ex.-P/40).

22. We shall first concentrate on the legality and evidentiary value of the memorandum statements of the accused persons and to what extent they can be relied upon to establish one of the important circumstance against the appellant.

23. (PW-4) Sanjay Kumar Sharma and (PW-5) B. Seemadri Acharya have proved memorandum statements of Kunti Sona and Amrit vide Ex.-P/9 & P/10 respectively. Similarly, (PW-6) Hemant Kumar Behra has proved memorandum statement of Ram Sona vide Ex.-P/13. Thus all the 3 memorandum statements have been proved by the prosecution. While accused Kunti Sona and Amrit have not committed the main offence under Sections 376 and 302 of the IPC but have only assisted the main accused Ram Sona in concealing the evidence of crime by disposing of the dead body, their disclosure statements are self inculpatory. Referring to the judgment of the Hon'ble Supreme Court in the matter of **Sukhvinder Singh and Others Vs. State of Punjab**[2], it has been argued that the facts already discovered cannot again be discovered. Then again referring

2 (1994) 5 SCC 152

to the judgment of the Hon'ble Supreme Court in the matter of **State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru**[3], it is argued that the facts disclosed to the prosecution by the accused Kunti Sona and Amrit have already been discovered, memorandum of accused Ram Sona has in fact not discovered any new fact, therefore, it is not a piece of legal evidence against accused Ram Sona.

24. To deal with the submission, it would be necessary to refer to Section 30 of the Evidence Act which provides thus :-

> "**30. Consideration of proved confession affecting person making it and others jointly under trial for same offence**.—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession."

25. In the matter of **Balbir Singh Vs. State of Punjab**[4], it has been held (vide para-14) that so far as confessional statement of co-accused is concerned, it may be taken into consideration against the appellant if it fulfills the conditions laid down in Section 30 of the Evidence Act. Similarly in the matter of **Haricharan Kurmi Vs. State of Bihar**[5] it has been held thus in para-12:-

> "(12). As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the

3 (2005) 11 SCC 600
4 AIR 1957 SC 216
5 AIR 1964 SC 1184

other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbuttv, ILR 38 CAL 559, at P.588, a confession can only be used to "lend assurance to other evidence against a co-accused". In Peryaswami Noopan Vs. Emperor, ILR 54 MAD 75 at P.77; AIR 1931 MAD 177 at P.178; Reilly J. observed that the provision of s. 30 goes not further than this : "where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in s. 30 may be thrown into the scale as an additional reason for believing that evidence." In Bhuboni Sahu v. The King, Ind App 147 at P.155; AIR 1949 PC 257 at P.260, the Privy Council has expressed the same view. Sir. John Beaumont who spoke for the Board, observed that “a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in s. 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence."

It would be noticed that as a result of the provisions contained in s. 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of s. 30, the fact remains that it is not evidence as defined by s. 3 of the Act. The result, therefore, is that in dealing

> with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in s. 30. The same view has been expressed by this Court in Kashmira Singh v. State of Madhya Pradesh, 1952 SCR 526; AIR 1952 SC 159 where the decision of the Privy Council in Bhuboni Sahu's case, 76 Ind App. 147 (AIR 1949 PC 257) has been cited with approval."

26. In a recent judgment in the matter of **Surinder Kumar Khanna Vs. Intelligence Officer, Directorate of Revenue Intelligence**[6], the Hon'ble Supreme Court has reiterated the law in the following words:-

> "**11**.....
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> .....
> It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which

6 (2018) 8 SCC 271

> the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in Kashmira Singh v. State of Madhya Pradesh where the decision of the Privy Council in Bhuboni Sahu case has been cited with approval."

27. It is thus settled that confession of co-accused can be used when there are other corroborative evidence against the co-accused. The Court may begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to quality and effect of the said evidence, then it is permissible to turn to confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. Stage to consider the confessional statement arrives only after the other evidence is considered and found to be satisfactory. Thus self inculpatory confession of accused can be used against the co-accused and there is no general proposition that it can never be used for any purpose.

28. In the case at hand, confessional statements of accused Kunti Sona and Amrit Singh clearly states that they along with Ram Sona took the dead body in a white plastic bag and threw it near muddy Nala besides the railway track. In addition, memorandum statement of Ram Sona discloses about commission of sexual intercourse, hitting head of the deceased on the ground and putting the dead body in a plastic bag and keeping the same near bricks in the courtyard. He also speaks that Amrit Singh had seen him committing rape which fact is also mentioned in the memorandum statement of Amrit Singh. Thus the facts disclosed in the memorandum statement of

Ram Sona find corroboration from the medical report, which has found injuries over private parts of the deceased and over her head as well. It also corroborates the memorandum statement of Amrit Singh, who has stated that he has seen accused Ram Sona committing rape. It is further corroborated from the memorandum statements of accused Kunti Sona and Amrit Singh, who have stated that all the 3 concealed the dead body near muddy Nala besides the railway track. Memorandum statements of Kunti Sona and Amrit Singh are therefore admissible in evidence against accused Ram Sona. Moreover, it is not a case where facts have not been discovered pursuant to the statement of Ram Sona.

29. In the celebrated case of **Pulukuri Kottaya and Others Vs. Emperor**[7], the Hon'ble Supreme Court considered the construction and legal embrace of Section 27 of the Evidence Act to cull out difference between the terms "fact discovered" and "object produced". It was held thus in paras 8 & 10:-

> "**8**. The second question, which involves the construction of Section 27, Evidence Act, will now be considered. That section and the two preceding sections, with which it must be read, are in these terms:-
>
> 25. No confession made to a Police officer, shall be proved as against a person accused of any offence.
>
> 26. No confession made by any person whilst he is in the custody of a Police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.
>
> **10**. Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section

7 AIR 1947 Privy Council 67

into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its

> discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge; and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A", these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

30. In the matter of **Pandurang Kalu Patil and Another Vs. State of Mahrasthra**[8], the Hon'ble Supreme Court following **Pulukuri Kottaya** (Supra) held that a fact can be discovered by the police pursuant to an information elicited from the accused if such disclosure was followed by one or more of a variety of causes. Recovery of an object is only one such cause. Recovery or even production of object by itself need not necessarily result in discovery of a fact.

31. In yet another judgment in the matter of **Sandeep Vs. State of Uttar Pradesh**[9], the Hon'ble Supreme Court held that admissible portion of the statement of the accused which is mere statement of fact can be relied upon for ascertaining other facts which are intrinsically connected with the occurrence , while at the same time, the same would not in any way result in implicating the accused in the offence directly. The Hon'ble Supreme Court held at paras-52 & 53 thus:-

> "**52.** We find force in the submission of the learned Senior Counsel for the State. It is quite common that based on admissible portion of the statement of the accused whenever and wherever recoveries are

8 (2002) 2 SCC 490
9 (2012) 6 SCC 107

made, the same are admissible in evidence and it is for the accused in those situations to explain to the satisfaction of the court as to the nature of recoveries and as to how they came into possession or for planting the same at the places from where they were recovered. Similarly, this part of the statement which does not in any way implicate the accused but is mere statement of facts would only amount to mere admissions which can be relied upon for ascertaining the other facts which are intrinsically connected with the occurrence, while at the same time, the same would not in any way result in implicating the accused in the offence directly.

53. In that view, when we examine the statements referred to by the learned Senior Counsel for the State which were stated to have been uttered by the accused to PW 1, we find that the first statement only reveals the fact of accused Sandeep's friendship developing with the deceased Jyoti six months prior to the occurrence and the physical relationship developed by him with her. Accepting the said statement cannot be held to straightway implicate the accused in the crime and consequently it cannot be construed as a confessional statement in order to reject the same by applying Section 25 of the Evidence Act."

32. The argument advanced by learned counsel for the appellants that the fact that the deceased was raped, murdered at a particular place, and the manner and thereafter the dead body was thrown near muddy Nala besides railway track has already been discovered in the memorandum statements of Kunti Sona and Amrit Singh, therefore, the fact already discovered cannot again be discovered through memorandum statement of accused Ram Sona, is not acceptable for the view taken by the Hon'ble Supreme Court in the matter of **Charandas Swami Vs. State of Gujarat and Others**[10] at paras-57 and 74 which read thus:-

"**57.** The dead body of deceased Gadadharanandji was found on 4-5-1998 in a burnt condition in a ditch behind the house of PW 50 in Barothi Village

10 (2017) 7 SCC 177

> in Rajasthan. How the dead body of Gadadharanandji reached that spot was revealed by none other than Accused 3. In what circumstances burnt injuries were caused on the dead body of Gadadharanandji, no prosecution witness has spoken about that. Be that as it may, the fact that the dead body recovered from Barothi Village on 4-5-1998 was that of Gadadharanandji could be known only after Accused 3, during the course of investigation, made a disclosure about the location where he had disposed off the dead body of Gadadharanandji. Till the aforesaid disclosure was made, in the records of Rajasthan Police, the dead body was noted as that of an unknown person. If, Accused 3 had not disclosed to the investigating officer about the location where the dead body was dumped by him — which information was personally known to him and at best Accused 5 and none else, then the investigation would not have made any headway.
>
> **74.** As noted earlier, it was only on the basis of the disclosure made by Accused 5 as to the place where the murder was committed that the investigating agency was able to take the investigation forward and then interrogate the aforesaid witnesses i.e. PW 25, PW 42, PW 43 and PW 49. Only a person who was present at the time of commission of the offence could have known about the location of the offence and Accused 5 undoubtedly had exclusive knowledge about the place where the crime was committed, a fact which has been affirmed by both the courts. The panchnama drawn on the basis of this disclosure has been corroborated by independent pancha witness PW 31. The courts below, on analysing the relevant evidence, have held that the inescapable conclusion is that the deceased was taken to Navli. We are in agreement with this finding, as the evidence on record supports that conclusion."

33. In the matter of **Navjot Sandhu** (Supra), the Hon'ble Supreme Court, while dealing with the extent of disclosure statement which is admissible in evidence, held at paras-120 & 121 thus:-

> "**120.** The history of case-law on the subject of confessions under Section 27 unfolds divergent views and approaches. The divergence was mainly on twin aspects: (*i*) Whether the facts contemplated by Section 27 are physical, material objects or the

mental facts of which the accused giving the information could be said to be aware of. Some Judges have gone to the extent of holding that the discovery of concrete facts, that is to say material objects, which can be exhibited in the Court are alone covered by Section 27. (*ii*) The other controversy was on the point regarding the extent of admissibility of a disclosure statement. In some cases a view was taken that any information, which served to connect the object with the offence charged, was admissible under Section 27. The decision of the Privy Council in *Kottaya case* which has been described as a *locus classicus*, had set at rest much of the controversy that centred round the interpretation of Section 27. To a great extent the legal position has got crystallised with the rendering of this decision. The authority of the Privy Council's decision has not been questioned in any of the decisions of the highest court either in the pre-or post-independence era. Right from the 1950s, till the advent of the new century and till date, the passages in this famous decision are being approvingly quoted and reiterated by the Judges of this Apex Court. Yet, there remain certain grey areas as demonstrated by the arguments advanced on behalf of the State.

121. The first requisite condition for utilising Section 27 in support of the prosecution case is that the investigating police officer should depose that he discovered a fact in consequence of the information received from an accused person in police custody. Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received. Of course, it is axiomatic that the information or disclosure should be free from any element of compulsion. The next component of Section 27 relates to the nature and extent of information that can be proved. It is only so much of the information as relates *distinctly to the fact thereby discovered* that can be proved and nothing more. It is explicitly clarified in the section that there is no taboo against receiving such information in evidence merely because it amounts to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished. Thus, the information conveyed in the statement to the police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the section. The rationale behind this provision is that, if a fact

is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused. As pointed out by the Privy Council in *Kottaya case* (AIR p. 70, para 10)

"clearly the extent of the information admissible must depend on the exact nature of the fact discovered"

and the information must distinctly relate to that fact.

Elucidating the scope of this section, the Privy Council speaking through Sir John Beaumont said: (AIR p. 70, para 10)

"*Normally* the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused."

(emphasis supplied)

We have emphasised the word "normally" because the illustrations given by the learned Judge are not exhaustive. The next point to be noted is that the Privy Council rejected the argument of the counsel appearing for the Crown that the fact discovered is the physical object produced and that any and every information which relates distinctly to that object can be proved. Upon this view, the information given by a person that the weapon produced is the one used by him in the commission of the murder will be admissible in its entirety. Such contention of the Crown's counsel was emphatically rejected with the following words: (AIR p. 70, para 10)

"If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive

> powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect."
>
> Then, Their Lordships proceeded to give a lucid exposition of the expression "fact discovered" in the following passage, which is quoted time and again by this Court: (AIR p. 70, para 10)
>
> "In Their Lordships' view it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. *It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge*, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed *A*' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."
>
> (emphasis supplied)

34. Applying the above settled legal position, to find out the admissible part of the memorandum statement of accused Ram Sona, it appears, it discloses certain facts which find corroboration from the memorandum statements of other co-accused persons namely, Kunti Sona and Amrit Singh. Be it noted that when memorandum statement of accused Ram Sona was recorded, it was not known to him as to what disclosure statement has been made by co-accused persons to the police. Therefore, if the memorandum statement of accused Ram Sona discloses facts of gagging her mouth, hitting her head on the ground, bleeding from and injuries on the private parts, putting dead body in a white plastic bag and placing the same near

bricks in the courtyard, request by co-accused Amrit Singh not to commit offence, threat by younger brother Dipak that he would disclose the incident and the steps taken by all the 3 accused in disposing of the dead body near the muddy Nala besides railway track to conceal the evidence of crime is admissible in evidence and the same is vital piece of evidence implicating the accused in the crime. It is moreso because the facts discovered by other accused persons in their memorandum statements are otherwise admissible against accused Ram Sona in view of Section 30 of the Evidence Act, as discussed in the preceding paragraphs of this judgment.

35. The argument that the evidence of last seen together is very weak evidence, therefore, merely on the basis that (PW-7) Pramod Jaiswal has last seen the accused Ram Sona with the deceased would not be sufficient to bring home the charge against the accused Ram Sona, would not appeal to this Court for the reason that if in addition to the evidence of last seen, there are other corroborative evidence completing the chain of circumstantial evidence, the said evidence of last seen is not only admissible but can be used against the accused. For this, we may profitably refer to the judgment of the Hon'ble Supreme Court in the matter of **Satpal Vs. State of Haryana**[11] wherein the following has been held at para-6:-

> **6**. We have considered the respective submissions and the evidence on record. There is no eyewitness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant. Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind

11 (2018) 6 SCC 610

of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

(Emphasis supplied)

36. In yet another recent judgment in the matter of **Pattu Rajan Vs. State of Tamil Nadu**[12], the Hon'ble Supreme Court held at paras-63 and 66 thus:-

63. It is needless to observe that it has been established through a catena of judgments of this Court that the doctrine of last seen, if proved, shifts the burden of proof onto the accused, placing on him the onus to explain how the incident occurred and what happened to the victim who was last seen with him. Failure on the part of the accused to furnish any explanation in this regard, as in the case in hand, or furnishing false explanation would give rise to a strong presumption against him, and in favour of his guilt, and would provide an additional link in the chain of circumstances. (See ***Rohtash Kumar v. State of Haryana*** {(2013) 14 SCC 434} and ***Trimukh Maroti Kirkan* v. *State of Maharashtra***. {(2006) 10 SCC 681})

66. In our considered opinion, the prosecution has proved the complicity of all the appellants in murdering Santhakumar by strangulating him and thereafter throwing the dead body at Tiger-Chola. It is worth recalling that while it is necessary that proof beyond reasonable doubt should be adduced

12 (2019) 4 SCC 771

> in all criminal cases, it is not necessary that such proof should be perfect, and someone who is guilty cannot get away with impunity only because the truth may develop some infirmity when projected through human processes. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Justice cannot be made sterile by exaggerated adherence to the rule of proof, inasmuch as the benefit of doubt must always be reasonable and not fanciful. [See *Inder Singh* v. *State (UT of Delhi)* {(1978) 4 SCC 161}; *State of H.P.* v. *Lekh Raj* {(2000) 1 SCC 247}; *Takhaji Hiraji* v. *Thakore Kubersing Chamansing* {(2001) 6 SCC 145} and *Chaman* v. *State of Uttarakhand* {(2016) 12 SCC 76}.]

37. Learned counsel for the appellants have referred to the other discrepancies in the investigation alleging that memorandum statements were prepared subsequently, spot map is defective and absence of conduct of proper investigation in respect of the two doctors who visited the house of the deceased just prior to the incident. However, having examined the evidence, we have found that memorandum statements have been recorded in a proper and legal manner and there is no doubt or suspicion about its genuineness. The Investigating Officer has clearly stated in para-51 of his deposition that this aspect of the crime was also investigated. In any case, in view of the memorandum statements of the accused persons and the recovery of dead body at their instance, it is not a case where the accused persons have been falsely implicated to shield some other accused who might have committed the crime. Accused Ram Sona was last seen in the company of the deceased and the whole investigation appears to have centered around accused Ram Sona, once the police was informed that he was last seen together with the deceased. It is not a case where investigation

started from memorandum statement.

38. True it is that merely because the accused was absconding soon after the incident may not by itself be conclusive of his involvement in the crime, but conduct of absconcion when read along with other corroborative admissible circumstantial evidence, is one such circumstance which has its own importance for completing the chain of circumstantial evidence. Absconcion of the accused Ram Sona gains importance, as he was the person who was last seen together with the deceased.

39. For the foregoing, we are convinced that the chain of circumstantial evidence has been duly proved against all the accused including Ram Sona and it is he who brought the deceased to his house, committed rape and thereafter murdered deaf and dumb prosecutrix, aged about 5½ years.

40. We are now required to consider whether the death sentence awarded to accused Ram Sona is to be confirmed or the same deserves to be commuted to life imprisonment.

41. Before proceeding to analyze the mitigating and aggravating factors, it is necessary to notice the law laid down by the Hon'ble Supreme Court on this particular issue.

42. In **Bachan Singh Vs. State of Punjab**[13] the Hon'ble Supreme Court held that normal rule is that offence of murder shall be punished with the sentence of life imprisonment. The Court can depart from that rule and impose sentence of death only when there are special reasons for doing so. The said reasons must be recorded in writing before imposing death sentence and while doing so, the Court must

13 (1980) 2 SCC 684

have regard to every relevant circumstance relating to crime as well as criminal. If the Court finds that the offence is of exceptionally deprave and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the Society at large, the Court must impose death sentence. The Supreme Court thereafter delineated the aggravating and mitigating circumstances in the following manner in paras-202, 203 & 206:-

> **202.** Drawing upon the penal statutes of the States in U.S.A. framed after *Furman* v. *Georgia* {408 US 238 (1972)}, in general, and clauses 2 (*a*), (*b*), (*c*) and (*d*) of the Indian Penal Code (Amendment) Bill passed in 1978 by the Rajya Sabha, in particular, Dr Chitale has suggested these "aggravating circumstances":
>
> "***Aggravating circumstances***: A court may, however, in the following cases impose the penalty of death in its discretion:
> (*a*) if the murder has been committed after previous planning and involves extreme brutality; or
> (*b*) if the murder involves exceptional depravity; or
> (*c*) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed—
> (*i*) while such member or public servant was on duty; or
> (*ii*) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or
>
> (*d*) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code."
>
> **203.** Stated broadly, there can be no objection to the acceptance of these indicators but as we have indicated already, we would prefer not to fetter

judicial discretion by attempting to make an exhaustive enumeration one way or the other.

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."

43. Then came the Supreme Court's judgment in the matter of **Machhi Singh Vs. State of Punjab**[14] explaining the concept of "rarest of rare cases" in the following manner in para-32:-

32. The reasons why the community as a whole does not endorse the humanistic approach reflected in "death sentence-in-no-case" doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of "reverence for life" principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being

14 (1983) 3 SCC 470

brought to book operates as a deterrent for those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by "killing" a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so "in rarest of rare cases" when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as for instance:

I. *Manner of commission of murder*

33. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,

(i) when the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II. *Motive for commission of murder*

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course for betrayal of the motherland.

III. *Anti-social or socially abhorrent nature of the crime*

35. (a) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. *Magnitude of crime*

36. When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V. *Personality of victim of murder*

37. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons."

44. Referring to **Machchi Singh** (Supra), the Hon'ble Supreme Court in the matter of **Haresh Mohandas Rajput Vs. State of Maharashtra**[15] held thus at paras-19, 20 & 21:-

19. In *Machhi Singh* v. *State of Punjab* this Court expanded the "rarest of rare" formulation beyond the aggravating factors listed in *Bachan Singh* to cases

15 (2011) 12 SCC 56

where the "collective conscience" of the community is so shocked that it will expect the holders of the judicial power centre to inflict the death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining the death penalty, such a penalty can be inflicted. But the Bench in this case underlined that full weightage must be accorded to the mitigating circumstances in a case and a just balance had to be struck between the aggravating and the mitigating circumstances.

20. "The rarest of the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of "the rarest of the rare case". There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. The accused may be a menace to the society and would continue to be so, threatening its peaceful and harmonious coexistence. The manner in which the crime is committed must be such that it may result in intense and extreme indignation of the community and shock the collective conscience of the society. Where an accused does not act on any spur-of-the-moment provocation and indulges himself in a deliberately planned crime and meticulously executes it, the death sentence may be the most appropriate punishment for such a ghastly crime. The death sentence may be warranted where the victims are innocent children and helpless women. Thus, in case the crime is committed in a most cruel and inhuman manner which is an extremely brutal, grotesque, diabolical, revolting and dastardly manner, where his act affects the entire moral fibre of the society e.g. crime committed for power or political ambition or indulging in organised criminal activities, death sentence should be awarded. (See *C. Muniappan* v. *State of T.N.* {(2010) 9 SCC 567}, *Dara Singh* v. *Republic of India* {(2011) 2 SCC 490}, *Surendra Koli* v. *State of U.P.* {(2011) 4 SCC 80}, *Mohd. Mannan* and *Sudam* v. *State of Maharashtra* {(2011) 7 SCC 125}.

21. Thus, it is evident that for awarding the death sentence, there must be existence of aggravating circumstances and the consequential absence of mitigating circumstances. As to whether the death sentence should be awarded, would depend upon the factual scenario of the case in hand."

45. In **Dhananjoy Chatterjee alias Dhana Vs. State of W.B.**[16], the Hon'ble Supreme Court was considering the measure of sentence to be awarded when the victim was helpless and defenceless school going girl of 18 years of age. After considering **Bachan Singh** (Supra) and other judgments of the Apex Court, death penalty was affirmed in this case.

46. Similarly, when the victim was a girl of the tender age of 7 years fell prey to the accused's lust, the Hon'ble Supreme Court in the matter of **Laxman Naik Vs. State of Orissa**[17] held thus at para-28:-

> "28. The evidence of Dr Pushp Lata, PW 12, who conducted the postmortem over the dead body of the victim goes to show that she had several external and internal injuries on her person including a serious injury in her private parts showing the brutality which she was subjected to while committing rape on her. The victim of the age of Nitma could not have even ever resisted the act with which she was subjected to. The appellant seems to have acted in a beastly manner as after satisfying his lust he thought that the victim might expose him for the commission of the offence of forcible rape on her to the family members and others, the appellant with a view to screen the evidence of his crime also put an end to the life of innocent girl who had seen only seven summers. The evidence on record is indicative of the fact as to how diabolically the appellant had conceived of his plan and brutally executed it and such a calculated, cold-blooded and brutal murder of a girl of a very tender age after committing rape on her would undoubtedly fall in the category of rarest of the rare cases attracting no punishment other than the capital punishment and consequently we confirm the sentence of death imposed upon the appellant for the offence under Section 302 of the Penal Code. As regards the punishment under Section 376, neither the learned trial Judge nor the High Court have awarded any separate and additional substantive sentence and in view of the fact that the sentence of death awarded to the appellant has been confirmed we also do not

16 (1994) 2 SCC 220
17 (1994) 3 SCC 381

> deem it necessary to impose any sentence on the appellant under Section 376."

47. In yet another case where the victim was again a seven years old hapless girl, the Hon'ble Supreme Court in **Kamta Tiwari Vs. State of M.P.**[18] held thus at para-8:-

> **8**. Taking an overall view of all the facts and circumstances of the instant case in the light of the above propositions we are of the firm opinion that the sentence of death should be maintained. In vain we have searched for mitigating circumstances - but found aggravating circumstances aplenty. The evidence on record clearly establishes that the appellant was close to the family of Parmeshwar and the deceased and her siblings used to call him 'Tiwari uncle'. Obviously her closeness with the appellant encouraged her to go to his shop, which was near the saloon where she had gone for a haircut with her father and brother, and ask for some biscuits. The appellant readily responded to the request by taking her to the nearby grocery shop of Budhsen and handing over a packet of biscuits apparently as a prelude to his sinister design which unfolded in her kidnapping, brutal rape and gruesome murder.- as the numerous injuries on her person testify; and the finale was the dumping of her dead body in a well. When an innocent hapless girl of 7 years was subjected to such barbaric treatment by a person who was in a position of her trust his culpability assumes the proportion of extreme depravity and arouses a sense of revulsion in the mind of the common man. In fine, the motivation of the perpetrator, the vulnerability of the victim, the enormity of the crime, the execution thereof persuade us to hold that this is a 'rarest of rare cases' where the sentence of death is eminently desirable not only to deter others from committing such atrocious crimes but also to give emphatic expression to society's abhorrence of such crime."

48. Once again the Hon'ble Supreme Court in the matter of **Bantu Vs. State of UP**[19] confirmed the death sentence when the accused raped and murdered a five years old minor girl.

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18 (1996) 6 SCC 250
19 (2008) 11 SCC 113

49. In **Rajendra Pralhadrao Wasnik Vs. State of Maharashtra**[20], death sentence awarded to the accused for rape and murder of 3 years old minor girl was affirmed finding the case to be the "rarest of rare". In the said case, the Hon'ble Supreme Court ruled thus in paras-37 & 38 :-

> **37**. When the Court draws a balance-sheet of the aggravating and mitigating circumstances, for the purposes of determining whether the extreme sentence of death should be imposed upon the accused or not, the scale of justice only tilts against the accused as there is nothing but aggravating circumstances evident from the record of the Court. In fact, one has to really struggle to find out if there were any mitigating circumstances favouring the accused.
>
> **38**.Another aspect of the matter is that the minor child was helpless in the cruel hands of the accused. The accused was holding the child in a relationship of `trust-belief' and `confidence', in which capacity he took the child from the house of PW2. In other words, the accused, by his conduct, has belied the human relationship of trust and worthiness. The accused left the deceased in a badly injured condition in the open fields without even clothes. This reflects the most unfortunate and abusive facet of human conduct, for which the accused has to blame no one else than his own self."

50. In the case at hand, the deceased was hapless, deaf and dumb girl aged about 5½ years. She was lured by the accused to his house on the pretext of providing chocolates/toffee. She was gaged, raped and thereafter murdered by the accused in his own house and thereafter the dead body was kept in white plastic bag and thrown into muddy Nala besides the railway track. Accused Ram Sona thereafter absconded and did not make himself available for investigation/interrogation. The victim was resident of the same locality where the accused Ram Sona resides and had thus prior

20 (2012) 4 SCC 37

acquaintance with the family of the deceased. It is not a case of rape and murder of any stranger. The accused has betrayed the trust and confidence of family of the deceased and the members of the locality as well, because he being the resident of same locality, people around might not have suspected the accused Ram Sona that he is likely to commit any mischief or offence with the girl. As against these aggravating factors, there are no special mitigating factors except the age of the accused. However, considering the depraved and shameful manner in which the offence has been committed, the said mitigating factor would not outweigh the aggravating factors and as such, we are satisfied that present case falls within the ambit of "rarest of rare case".

51. We accordingly affirm the conviction and death sentence imposed upon appellant Ram Sona under Sections 376-A, 302, 363, 365, 366 & 201/34 of the IPC; under Sections 201/34 and 202 of the IPC imposed upon appellant Amrit Singh and Under Section 201/34, 202, 216 & 212 of the IPC imposed upon appellant Kunti Sona and we dismiss the Appeal preferred by them.

52. The Criminal Reference is answered accordingly.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge

Barve

H E A D L I N E S

Death sentence awarded to accused for committing rape and murder of 5½ years old girl is confirmed.

In view of Section 30 of the Evidence Act, self inculpatory memorandum statement of co-accused can be read in evidence if there are other corroborative evidence against the accused.