IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

CRIMINAL REFERENCE CAPITAL No. 4 of 2021

IN REFERENCE

Versus

ANUTAB @ ANUTABH @ BETA PRAJAPATI

Appearance:

Shri Sanjay Agrawal - learned Senior counsel assisted by Ms. Ankita Singh Parihar, learned counsel as amicus curiae.

Shri Manas Mani Verma and Shri Nitin Gupta, learned Public Prosecutor for the State.

WITH

CRIMINAL APPEAL No. 5621 of 2021

ANUTAB @ ANUTABH @ BETA PRAJAPATI

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Vijay Nayak and Shri Anand Nayak, learned counsel for the appellant.

Shri Manas Mani Verma and Shri Nitin Gupta, learned Public Prosecutors for the respondent-State.

CRIMINAL APPEAL No. 4506 of 2022

VIDYA PRAJAPATI

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Jayant Prakash Patel, learned counsel for the appellant.

Shri Manas Mani Verma and Shri Nitin Gupta, learned Public Prosecutors for the

respondent-State.

Reserved on - 05.05.2025

Pronounced on - 22.05.2025

JUDGMENT

Per. Justice Vivek Agarwal

This criminal reference is made to the High Court on account of judgment dated 14/09/2021 passed by learned 3rd Additional Sessions Judge, Nagod, Distt. Satna in Sessions Trial No.161/2019 whereby learned trial Court has convicted appellant-Anutab @ Anutabh @ Beta Prajapati under Section 364A/120-B of IPC and sentenced to undergo life imprisonment along with fine of Rs.10,000/-, under Section 302 of IPC and sentenced to death along with fine of Rs.10,000/-, under Section 201 of IPC and sentenced to three years RI along with fine of Rs.2,000/- with default stipulations. Learned trial Court has also convicted appellant-Vidya Prajapati W/o Shyamcharan Prajapati under Section 364A/120-B of IPC and has sentenced to undergo life imprisonment along with fine of Rs.10,000/- with default stipulation of six months RI.

2. Learned Amicus Curiae appearing for the reference-appellant - Anutab @ Anutabh @ Beta Prajapati, submits that it is not a fit case for recording death penalty, it will not fall in the category of rarest of rare cases calling for death penalty. It is submitted that it is a case where life imprisonment for a fixed duration will meet the ends of justice inasmuch as mitigating circumstances like age of the appellant being only 21 years at the time of incident, there being no past criminal history and appellant not taking

any undue advantage, mitigating circumstances will far out weigh the aggravating circumstances to convert the sentence from death penalty to that of life imprisonment.

3. Shri Sanjay Agrawal, learned senior counsel assisted by Ms. Ankita Singh Parihar, learned counsel, submits that FIR clearly reveals that complainant-Indrajeet Prajapati informed the Police on 12/03/2019 at about 22.00 hours that his nephew Shivkant @ Lalli Prajapati, S/o Rajesh Prajapati aged about six years was playing outside his home when his sister-in-law Rajkumari, mother and other family members were busy in their household works, then at 5.12 p.m. he had received a call on his mobile number-6260021283 from mobile No.9584469886 asking him for ransom of Rs.Two lakh to release his nephew, Shivkant @ Lalli Prajapati, when he had informed his sister-in-law, mother and other persons of the family so also the local residents and had arranged for an announcement for recovery of his nephew. Thus, it is submitted that initially case was filed under Section 364A of IPC.

4. It is submitted that it is evident from Dehati Marg Intimation (Ex.P/63) that murder was not grewsome, therefore, placing reliance on the judgment of Hon'ble Supreme Court in the case of **Bachan Singh Vs. State of Punjab, (1980) 2 SCC 684** has affirmed the judgment of ***Jagmohan Singh Vs. State of Uttar Pradesh, (1973) 1 SCC 20*** wherein it is held that though Article 19 of the Constitution of India does not directly deal with the freedom to live. It is not included in the seven freedoms mentioned in that Article. As far as India is concerned, they observed that *in our Constitution,*

there is no provision like the English amendment nor is the Supreme Court at liberty to apply the test of reasonableness with the freedom with which, the Judges of the Supreme Court of America are accustomed to apply "the due process" clause. They observed that capital punishment cannot be described as unusual because that kind of punishment has been with us from ancient times right upto the present day though the number of offences was for which it can be imposed has continuously dwelled.

5. Thereafter it is held in the case of **Bachan Singh (supra)** that aggravating and mitigating circumstances are required to be weighed, a balance sheet is required to be prepared and on the touchstone of that balance sheet of mitigating circumstances, which are mentioned in paragraph-206 of the judgment of **Bachan Singh (supra)**, and the aggravating circumstances mentioned in paragraph-202 of the said judgment when balanced, then a holistic view is required to be taken.

6. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of **Mukesh and another Vs. State (NCT of Delhi) and others, (2017) 6 SCC 1** wherein Hon'ble Supreme Court again reiterated that principles of balancing of aggravating and mitigating circumstances, is required to be considered. It is held that Courts should consider cumulative effect of both factors i.e. aggravating and mitigating circumstances and has to strike a balance between two to see towards which side scale/balance of justice tilts.

7. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of **Swapan Kumar Jha alias Sapan Kumar Vs. State of Jharkhand**

and another, (2019) 13 SCC 579 wherein Hon'ble Supreme Court in a case under Sections 302, 364-A and 201/34 of IPC upon recording a finding of kidnapping of cousin for ransom, murder and disappearance of evidence after finding the unbroken chain of circumstances pointing unequivocally towards guilt of all appellants, confirmed conviction, but modified the sentence on the touchstone of balancing aggravating and mitigating circumstances. It recorded that death sentence awarded to one convict commuted to life imprisonment with minimum mandatory sentence of 25 years to be served without remission.

8. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of **Gagan Kanojia and another Vs. State of Punjab, (2006) 13 SCC 516**. In the case of **Gurnam Singh and another Vs. State of Punjab, (1998) 7 SCC 722** wherein Hon'ble Supreme Court has held that in absence of the manner and circumstances in which they caused death, death sentence could not be imposed and commuted death sentence to that of life imprisonment.

9. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of **Manoj and others Vs. State of M.P., (2023) 2 SCC 353** wherein it is held that discretion of Court in imposition of death sentence is to be exercised for which principles were refined and it is held that individualised principled sentencing based on both the crime and criminal, with consideration of whether reform or rehabilitation is achievable, and consequently whether the option of life imprisonment is, unquestionably foreclosed, held, should be the only factor of "commonality" that must be

discernible from decisions relating to capital offences. This is particularly true as there is the via media option of imposition of proportionate non-remittable sentence of imprisonment.

10. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of **Raojibhai Vs. The State of Madhya Pradesh, 1952 SCR 1091** so also in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116** to submit that in case of circumstantial evidence, Courts are required to be more cautious while handing down the sentence.

11. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of **Arvind Singh Vs. State of Maharashtra, (2021) 11 SCC 1** to submit that the extent of participation required of co-conspirator to be held liable for acts/offences committed in pursuance of the said conspiracy have been summarised as principles and it is held that it is not necessary that all conspirators should participate from the inception to the end of the conspiracy. Some may join conspiracy after the time when such intention was first entertained by any one of them and some other may quit from the conspiracy. All of them would be treated as conspirators. It is further held that if common intention is proved but no overt act is attributed to the individual accused, Section 34 of IPC will be attracted. Thus, presence of particular co-accused at crime scene is not a necessary requirement to attract Section 34 of IPC.

12. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of **Dnyaneshwar Suresh Borkar Vs. State of Maharashtra, (2019)**

15 SCC 546, pointing out death sentence was commuted to life imprisonment on account of mitigating circumstances.

13. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of **Mulla and another Vs. State of Uttar Pradesh, (2010) 3 SCC 508** wherein again principles for award of death sentence have been restated in regard to drawing a balance sheet of aggravating and mitigating circumstances while imposing death penalty.

14. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of **Machhi Singh and others Vs. State of Punjab, (1983) 3 SCC 470,** which also talks of a balance sheet of aggravating and mitigating circumstances to be drawn up and while doing so, the mitigating circumstances has to be accorded full weightage and the just balance has to be struck between the aggravating and mitigating circumstances before the option is exercised.

15. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of **Swamy Shraddanand (2) alias Murali Manohar Mishra Vs. State of Karnataka, (2008)13 SCC 767**, to point out that substitution of death sentence to sentence for life imprisonment is permissible.

16. Shri Vijay Nayak, learned counsel for the appellant-Anutab @ Anutabh @ Beta Prajapati, submits that there is no evidence of last seen. He places reliance on the evidence of Rajkumari Prajapati (PW-2) and Sangita Prajapati (PW-3). He further submits that no memo of recovery has been proved. He submits that Ajay Singh Pawar (PW-23) deposed that Anutabh had taken the SIM from Vidya saying that he will be paid Rs.10,000/- in lieu

of that. It is pointed out that the memorandum of Anutab as contained in Ex.P/53 is not admissible. Even the Panchnama which was prepared at the instance of Anutab to the effect that dead body was thrown at a particular place is not admissible, therefore, conviction of Anutab on half-baked facts, is not permissible. It is also submitted that plea of juvenility still exists and can be raised at any point of time. It is vehemently urged that appellant-Anutabh was a juvenile at the time of the incidence, thus, advantages flowing therefrom should be extended in his favour.

17. In support of his contention, reliance is placed on the judgment of Hon'ble Supreme Court in the case of **Abuzar Hossain alias Gulam Hossain Vs. State of West Bengal, (2012) 10 SCC 489**. It is submitted that since it is the convict's right to raise a plea of juvenility at any time, therefore, he would like to persist with his plea that appellant-Anutab @ Anutabh @ Beta Prajapati was juvenile at the time of the incident, therefore, his conviction on a trial where he has been tried as an adult is not maintainable in the eyes of law.

18. Shri Nayak, learned counsel, places reliance on the judgment of Hon'ble Supreme Court in the case of **Narayan Chetanram Chaudhary Vs. The State of Maharashtra (Criminal Appeal No.157334 of 2018 in Review Petition (Criminal) Nos.1139-1140 of 2000** and submits that in para-27 onwards of the said judgment Hon'ble Supreme Court has noted that inquiring judge conducted the enquiry typically as a fact-finding enquiry and has not followed the procedure of summons trial. It is submitted that Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act,

2015 provides for the procedure to be followed by a Magistrate who has not been empowered under this Act It is further submitted that in the case of **Ashwani Kumar Saxena Vs. State of Madhya Pradesh, (2012 9 SCC 750** , Hon'ble Supreme Court has dealt with the provisions of the Juvenile Justice Act, 2000 and the rules framed thereunder, as to the enquiry conducted under the provisions of Juvenile Justice Act and the Rules so framed and not an enquiry under 1973 Code. Thus, it is submitted that the whole enquiry as to the juvenility of the appellant-Anutab @ Anutabh @ Beta Prajapati being vitiated, he should have been treated as a juvenile and, accordingly, action should have followed.

19. Shri Jayant Prakash Patel, learned counsel for appellant-Vidya Prajapati, submits that appellant- Vidya Prajapati has been convicted with the aid of Section 34 of IPC in a most arbitrary and illegal manner. It is submitted that there is no evidence that the SIM which was procured by appellant-Anutab @ Anutabh @ Beta Prajapati from Vidya Prajapati was ever used by Vidya Prajapati. Prosecution has failed to prove the elements of Section 34 of the Indian Penal Code, therefore, conviction of appellant-Vidya Prajapati under Section 364-A/34 and 120-B of IPC cannot be maintained.

20. Reliance is placed on the judgment of Hon'ble Supreme Court int he case of **Rajesh and another Vs. The State of Madhya Pradesh, decided in Criminal Appeal No(s).793-794 of 2022** and submits that Hon'ble Supreme Court has noted the factual background in para-7 of the judgment which reads as under :

"7. On 28.03.2013 at about 3:30 pm, basing on the ransom calls

received, PW-2 filed a report with the Gorakhpur Police Station. On that basis, FIR No. 273/13 (Ex. P35) was registered at 18:20 hours against unknown persons under Sections 364A and 365 IPC. Call details and IMEI data were obtained by the Investigating Officer (PW-16) from the Cyber Cell for mobile number 8305620342 from which the ransom calls had been made. PW-16 was informed by the Cyber Cell that the mobile phone handset with IMEI No. 358327028551270 was used to make the ransom calls and the handset with this IMEI number was also used with mobile number 9993135127, which was issued to Om Prakash Yadav. On receiving this information, PW-16 went to the house of Om Prakash Yadav in Narmada Nagar, Gwarighat, on 29.03.2013. PW-16 took Rajesh Yadav to the police station and questioned him at 13:45 hours, whereupon he confessed to having killed Ajit Pal, along with Raja Yadav. PW-16 recorded a Memorandum (Ex. P8) containing the confession of Rajesh Yadav, wherein he also stated that he would help recover Ajit Pal's body and the murder weapon. Rajesh Yadav and PW-16, along with witnesses, then went to Narmada Nagar. Rajesh Yadav led them to a well near Khandari Canal. Ajit Pal's body was found in the well. It was stuffed in a white plastic sack. The body was identified as that of Ajit Pal by the witnesses present. Ajit Pal's throat was cut and there was hair entangled in his right-hand fingers. The police prepared a Panchayatnama (Ex. P2). It bears the signature of PW-2. The Naksha Panchayatnama (Ex. P3) was also signed by PW-2. Rajesh Yadav pointed out an empty liquor bottle lying at some distance. The same was seized under a Property Seizure Memo (Ex. P10). An iron knife was also seized at the behest of Rajesh Yadav from the canal. There were blood-like stains on the knife. The seizure was effected in the presence of witnesses under a Property Seizure Memo (Ex. P11). Rajesh Yadav was then arrested on 29.03.2013 at 18:30 hours under an Arrest Memo (Ex. P36)."

Thereafter observed in para-39 as under :

"39. It is indeed perplexing that, despite the innumerable weak links and loopholes in the prosecution's case, the Trial Court as well as the High Court were not only inclined to accept the same at face value but went to the extent of imposing and sustaining capital punishment on Rajesh Yadav and Raja Yadav. No valid

> and acceptable reasons were put forth as to why this case qualified as the 'rarest of rare cases', warranting such drastic punishment. Per contra, we find that the yawning infirmities and gaps in the chain of circumstantial evidence in this case warrant acquittal of the appellants by giving them the benefit of doubt. The degree of proof required to hold them guilty beyond reasonable doubt, on the strength of circumstantial evidence, is clearly not established."

Thus, it is submitted that Three Judges Bench Judgment of Hon'ble Supreme Court is applicable in full force to the facts and circumstances of the case of appellant-Vidya Prajapati.

21. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of **Ram Sharan Chaturvedi Vs. The State of Madhya Pradesh in Criminal Appeal No.1066/2019 decided on August 25, 2022** wherein in paragraphs-22, 23, 24 and 25, it is observed as under :

> "22. The principal ingredient of the offence of criminal conspiracy under Section 120B of the IPC is an agreement to commit an offence. Such an agreement must be proved through direct or circumstantial evidence. Court has to necessarily ascertain whether there was an agreement between the Appellant and A-1 and A-2. In the decision of State of Kerala v. P. Sugathan and Anr., this Court noted that an agreement forms the core of the offence of conspiracy, and it must surface in evidence through some physical manifestation:
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> "12. ...As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. ...*A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the*

crime of criminal conspiracy...

13. ...*The most important ingredient of the offence being the agreement between two or more persons to do an illegal act*. In a case where criminal conspiracy is alleged, *the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object*. The former does not render them conspirators but the latter does. *For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient.*. . ”

(emphasis supplied).

23. The charge of conspiracy alleged by the prosecution against the Appellant must evidence explicit acts or conduct on his part, manifesting conscious and apparent concurrence of a common design with A-1 and A-2. In State (NCT of Delhi) v. Navjot Sandhu, this Court held:

“101. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of

course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution."

(emphasis supplied)

24. In accepting the story of the prosecution, the Trial Court, as well as the High Court, proceeded on the basis of mere suspicion against the Appellant, which is precisely what this Court in Tanviben Pankajkumar Divetia v. State of Gujarat4, had cautioned against:

> "'45. The principle for basing a conviction on the basis of circumstantial evidences has been indicated in a number of decisions of this Court and the law is well settled that *each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible.* This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, *there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused*. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances

cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. *It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions.* (Jaharlal Das v. State of Orissa (1991) 3 SCC 27)"

(emphasis supplied)

25. It is not necessary that there must be a clear, categorical and express agreement between the accused. However, an implied agreement must manifest upon relying on principles established in the cases of circumstantial evidence. Accordingly, in the majority opinion of Ram Narayan Popli v. CBI, this Court had held:

"354. ... For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient..."

Thus, it is submitted that elements of conspiracy is not proved.

22. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of **Pulukuri Kottaya Vs. King -Emperor, AIR 1947 PC 67** to point out that wrongful admission and use in evidence of confessions alleged to have been made whilst in Police custody have been dealt with and

in para-9 it is held as under :

> "9. 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 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."

Thus, it is submitted that since elements of conspiracy and murder are not proved, this will be a fit case for acquittal as far as appellant-Vidya Prajapati is concerned.

23. Learned counsel for the State, in his turn, submits that the chain of circumstances are complete. There is a phone call made by appellant-Anutabh @ Anutabh @ Beta Prajapati on the phone number of uncle of the deceased demanding ransom. All the ingredients of Sections 364A and 302 of IPC are proved, therefore, no indulgence is called for and the conviction and sentences as made by learned trial Court may be maintained.

24. After hearing learned counsel for the parties and going through the record, points to be dealt with are as under :

"1) Aspect of juvenility as raised by Shri Vijay Nayak, learned counsel.

2) Role of appellant-Vidya Prajapati in Criminal conspiracy and her role in abduction so to uphold or negate her conviction under Section 364A/34 read with Section 120B of IPC.

3) Whether ingredients of offences under Section 364A/34 read with Section 302 of IPC are proved against appellant-Anutab @ Anutabh @ Beta Prajapati.

4) A balance sheet of aggravating and mitigating circumstances to decide as to whether death penalty is to be maintained or appellant is entitled to covert his sentence from death penalty to life imprisonment.

25. Before adverting to the submissions made by learned counsel for the parties, it is necessary to have a brief overview in regard to the facts of the case. Prosecution's case, in short, is that on 12/03/2019 complainant-Indrajeet Prajapati made a report that his nephew Shivkant @ Lalli Prajapati, at about 4.00 p.m., was playing outside the home and others were busy in the household works, then at about 5.12 p.m. he received a call on his mobile No.6260021283 from mobile No.9584469886 asking him to arrange for a sum of Rs.two lakhs as ransom in lieu of release of his nephew Shivkant @ Lalli Prajapati.

26. On receiving such intimation, he had immediately contacted his sister-in-law, mother and other members of the family so also residents of the colony. When no whereabouts of Shivkant @ Lalli Prajapati could be found, then report was lodged at Police Station, Nagod, registering case

Crime No.139/2019. It has come on record that SIM bearing No.9584469886 was that of Vidya Devi and she stated that Anutab @ Anutabh @ Beta Prajapati had taken that SIM on an assurance that he shall pay her Rs.10,000/-. It has also come on record that as amount of ransom could not be paid, Shivkant @ Lalli Prajapati was strangulated, put in a plastic gunny bag and was put in a water tank.

27. Prosecution has examined as many as 26 witnesses and thereafter Court examined Sunil Kumar Verma, Headmaster, Gurukul Shishu Vidya Mandir, Rahikwara (Satna) as C.W.-1 to prove the date of birth of appellant-Anutab @ Anutabh @ Beta Prajapati. He has stated that his date of birth is mentioned as 7th August, 2002 but it contains overwriting. Except for the date of birth, whole form is filled in his handwriting. Since his school was newly established, he had gone to the house of the student and filled the form. Date of birth was filled by his subordinate Deepa Narayan Pandey as per the narration of the guardians of the students. He exhibited the original admission form as Ex.C/1 and scholar register as Ex.C/2. He admitted that the TC which was issued to him is Ex.C/3. It is further mentioned that in 2012 Anutab alias Anutabh alias Beta Prajapati had again taken admission in his school in Class-5th and the TC which was received made a mention of date of birth as 20/06/2000. This TC was issued by Government Primary School, Sujawalkala, Satna. Details of this are mentioned in the scholar register at serial No.235. Copy of original scholar register is Ex.C/4 which contains his signatures from 'A' to 'A' part and thereafter on 30/06/2016 Anutab Kumhar had taken transfer to another school after passing 8th class.

Transfer certificate is Ex.C/6 and on Ex.C/6 his signatures are available.

28. In TC issued by Government Primary School, Sujawalkala, Satna, date of birth is mentioned as 20/06/2000. In the transfer certificate (Ex.C/6) issued by Gurukul Shishu Vidya Mandir, Rahikwar, Distt. Satna issued on 30/06/2016, date of birth of appellant-Anutab alias Anutabh alias Beta Prajapati is mentioned as 20/06/2000. In the application form (Ex.C/1), there is overwriting in the last digit of the year where date of birth has been corrected from 07/08/2000 to 07/08/2002. This correction is not countersigned by any authority of the said Gurukul Shishu Vidya Mandir, Rahikwara, Satna. However, as per the orders of this Court, Dr. S.K. Jain who was posted as Medical Officer at District Hospital, Satna since 1984 examined as C.W.-4, who stated that he was promoted as Orthopedic Specialist in the year 2012 and was working as Orthopedic Specialist at District Hospital, Satna till February, 2020.

29. By the orders of learned 3rd Additional Sessions Judge, Nagod vide letter No.Q/2019/Ni./Li./19 Satna dated 27/11/2019 in Sessions Case No.161/2019, appellant-Anutab alias Anutabh alias Beta Prajapati, S/o Bulai was sent for ossification test in pursuance of which request, a joint team was constituted at District Medical Board, Satna. Dr. S.B.Singh was the chairman of the said team. Besides Dr.S.B. Singh, Dr. Rekha Tripathi, Dr.A.A. Siddiquee, Dr. S.K.Jain, himself and two other doctors were part of the team. The joint team conducted x-rays for ossification test of appellant-Anutab @ Anutabh @ Beta Prajapati and had taken x-rays of right wrist, right elbow, right knee and pelvic region. The team found that epiphysis of

the right wrist was fused, therefore, his age was above 19 years. Similarly, epiphysis of right elbow was fused, it means that his age was above 17 years. Epiphysis of right knee was fused, which meant that his age was above 18 years. Epiphysis of pelvic was fused, therefore, his age was found to be above 21 years, as a result of which, opinion was given by the medical board as contained in Ex.C/14 that age of appellant-Anutab @ Anutabh @ Beta Prajapati is above 21 years. Dr. Jain proved his signatures on Ex.C/14 from 'A' to 'A' part and that of the Chairman Dr. S.B. Singh from 'B' to 'B' part. He also proved signatures of Dr. Rekha Tripathi from 'C' to 'C' part and of Dr. A.A. Siddiquee from 'D' to 'D' part.

30. Shri Vijay Nayak, learned counsel, had exhaustively cross-examined Dr. S.K. Jain but could not bring out any substantial contradictions. Dr. Jain admitted that slipover the x-ray report Ex.P/15 contains his signatures and there is slight difference in signatures between Ex.C/14 and C/15 is not significant as both are his signatures made in two different styles. Thereafter in para-11 of his cross-examination, Shri Vijay Nayak, learned counsel, asked Dr. S.K. Jain as to whether he had brought book or Medical Jurisprudence to which he said that he had brought Modi's Medical Jurisprudence. But, unfortunately, Shri Nayak, learned counsel, instead of confronting the doctor with the Modi's Medical Jurisprudence, asked a very irrelevant question that the doctor had not produced the book of Modi's Medical Jurisprudence.

31. In our opinion, Shri Vijay Nayak, learned counsel, was required to confront the doctor from the standard textbook of Modi's Medical

Jurisprudence on various aspects of fusion of epiphysis of elbow, writ, knee and pelvic to suggest that on the basis of each of the fusion, age mentioned against them is not proper. This doctor admitted that on the basis of the experience and facts mentioned in the Modi's Medical Jurisprudence, reports Ex.C/14 and C/15 were prepared. Dr. Jain categorically denied the suggestions given by Shri Nayak, learned counsel, that age of appellant-Anutab @ Anutabh @ Beta Prajapati could have been 17 years. He also denied a suggestion that eating habits effects external genital, pubic hair, auxiliary hair and mustache. Dr. Jain again reiterated in para-11 of his cross-examination that all the epiphysis were fused as is mentioned in Ex.C/14.

32. Thus, the first issue in regard to Juvenility of appellant-Anutab alias Anutabh alias Beta Prajapati stands rejected inasmuch as there is medical evidence which could not be contradicted by learned counsel for appellant-Anutab alias Anutabh alias Beta Prajapati and secondly, there is admission of Sunil Kumar Verma (CW-1), Headmaster, Gurukul Shishu Vidya Mandir, Rahikwara, Tahsil Nagod, Distt. Satna, admitting that there was interpolation in the admission form of the appellant-Anutab alias Anutabh alias Beta Prajapati and that interpolation in the date of birth of the appellant has not been countersigned by any competent authority. It has come on record that Dwrika Prasad Verma (CW-2), Headmaster at Government Primary School, Sujawalkala, Tahsil Birsinghpur, Distt. Satna deposed that date of birth of the student was mentioned as 7th August, 2002. He was given admission on 30/07/2010 in Class-3rd and after passing Class-

3rd, he was given TC. He admitted that original copy of TC is Ex.C/8. He further deposed that no admission form was obtained as at that time, there was directions of the Education Department to give admission as per the age without any application. Dwarika Prasad Verma (CW-2) also deposed that age of appellant-Anutab alias Anutabh alias Beta Prajapati was recorded at the instance of his brother-Jhagdu who is working as a teacher at Government Primary School, Sujawalkala.

33. Manoj Kumar Singh (CW-3), Assistant Teacher, Government Primary School, Sujawalkala, Tahsil Birsinghpur, Distt. Satna, admitted that he was working as Assistant Teacher at Govt. Primary School, Sujawalkala from 11/08/2003 to 2011. From July, 2011 till 4th July, 2013, Jhagdu Kumhar was Incharge Headmaster in the school. He deposed that he had produced all the details in regard to the concerned student i.e. original scholar register, result register and the proof that he was not working as a Headmaster from 2011 to 2013 vide seizure memo (Ex.C/10). He produced original copy of the result of appellant-Anutab alias Anutabh alias Beta Prajapati as Ex.C/12 containing signatures of the Headmaster-Jhagdu Kumar in Ex.C/12, column of date of birth is blank.

34. Jhagdu Kumhar, S/o Bulai Kumhar (CW-4) though deposed in his examination-in-chief that date of birth of his brother Anutab is 7th August, 2002. This witness admitted overwriting in the date of birth, both, in words and numerals in Ex.C/1. This witness deposed that overwriting is on account of disruption in flow of pen but admitted that his date of birth was recorded on an estimation. This witness admitted that on Ex.P/13 Scholar

Register, entry of date of birth is made by him. This witness further admitted that since TC was not available from Nai Basti, Sujawalkala, therefore, he had recorded date of birth of Anutab by estimation to be 07/12/2002. This witness admitted that on Ex.C/1 he had recorded date of birth of his brother as 20/06/2000. He further admitted that there was a dispute with the Headmaster in regard to the charge and since Manoj Singh had not given him the record and TC of his brother, therefore, he had recorded his date of birth by estimation.

35. Jhagdu (CW-4) in para-3 of his examination-in-chief, deposed that his date of birth is 10th June, 1982. He has a younger sister namely Rani who is 3-4 years younger to him, it means Rani's date of birth will be somewhere in 1985-86. Thereafter he deposed that younger to Rani is Sushila who is 3-4 years younger to Rani, that means that Sushila was born somewhere in 1988 to 1990. Then he deposed that after Sushila is his younger brother-Rajkumar who is two- two and half year younger to Sushila, that means year of date of birth of Rajkumar will be 1991-92. Thereafter this witness deposed that after Rajkumar there is a younger sister- Neha who is 3-4 years younger to Rajkumar, that means year of birth of Neha would somewhere 1994-96. Thereafter there was a brother younger to Neha who died. This deceased brother was one and half- two years younger to Neha and thereafter Anutab is the sibling who is four years younger to Neha. This means year of birth of Anutab is somewhere between 1998 to 2000. Thus, when medical evidence and evidence of Jhagdu (CW-4), brother of appellant-Anutab alias Anutabh alias Beta Prajapati is taken into

consideration as he had admitted that he got recorded date of birth of appellant-Anutab alias Anutabh alias Beta Prajapati in school, it is evident that appellant-Anutab alias Anutabh alias Beta Prajapati was born in 2000, a fact which is corroborated by Dr. S.K. Jain. Thus, first issue raised by learned counsel for appellant that appellant-Anutab alias Anutabh alias Beta Prajapati is juvenile, is answered in negative that appellant-Anutab alias Anutabh alias Beta Prajapati was not a juvenile at the time of the incident which took place on 12/03/2019.

36. Thus, the judgment of Hon'ble Supreme Court in the case of **Abuzar Hossain alias Gulam Hossain (supra)** in which it is held that claim of juvenility may be raised at any stage irrespective of delay in raising the same. It can be raised in appeal even if not pressed before the trial Court and it can also be raised for the first time before Supreme Court even if not pressed before trial Court and in appellate Court, is concerned, when evidence which has come on record is examined, then it is true that appellant has a right to raise plea of juvenility, but, it is also well settled as held in the case of **Arvind Singh (supra)** that cross-examination of witness is important in terms of the provisions contained in Sections 146 and 138 of the Evidence Act, 1872 as a proof of fact. It is held that the liability is on the prosecution to discharge its burden to establish its case. It is held that in terms of Section 106 of the Evidence Act, 1872, Section 106 cannot be applied to undermine the well established rule of law that, save in very exceptional cases, burden is on prosecution to establish its case, facts "especially" within knowledge of accused means that it would be impossible or extremely

difficult for prosecution to establish such facts, but which accused could prove without difficulty or inconvenience. It is held that prosecution having established its case, then burden is on accused under Section 106 to provide reasonable explanation.

37. In the present case, prosecution has discharged its burden by examining Dr. S.K. Jain and school teachers including elder brother of appellant-Anutab @ Anutabh @ Beta Prajapati namely Jhagdu, therefore, there is no *iota* of doubt that prosecution having discharged its burden and have proved overwriting on admission form (Ex.C/1), mention of date of birth of 2000 in the TC issued by the Government school where appellant-Anutab @ Anutabh @ Beta Prajapati's own brother was Incharge Headmaster and then admission of Jhagdu (CW-4) in regard to the fact that appellant-Anutab @ Anutabh @ Beta Prajapati is four years younger to Neha, admittedly, there is corroboration of oral and documentary testimony with the expert medical opinion contained in Ex.C/14 and C/15, therefore, there is no iota of doubt left that appellant-Anutab @ Anutabh @ Beta Prajapati has failed to prove the plea of juvenility and having failed to do so, it is to be held as has been held by the learned trial Court that appellant-Anutab @ Anutabh @ Beta Prajapati was not a juvenile.

38. Now second issue which emerges is in regard to role of appellant-Vidya Prajapati in criminal conspiracy. Prosecution has though examined as many as 26 witnesses and then five Court Witnesses have been examined, but, Omprakash Gupta (PW-1) only deposed that he has a shop at Village Rahikwara in the name of Om General Store. On 18/12/2018 Vidya

Prajapati had purchased a SIM of Vodafone company from his shop. This witness deposed that he does not remember the sim number and further deposed that it may be in the file kept in his home. Thereafter this witness deposed that ten days prior to the incident, Anutab had visited his shop and had said that his SIM is not showing tower when this witness i.e. Omprakash Gupta (PW-1) had put that sim in Nokia 1600 mobile and had made network setting on which SIM was activated. Thereafter SIM was returned to Anutab. In cross-examination this witness admitted that after selling the SIM, he had not prepared any bill nor any register is maintained in regard to sale of SIM. In para-11, this witness deposed that he cannot give the number of the SIM which was used in the incident. Thus, the star witness examined by the prosecution namely Omprakash Gupta (PW-1) has not stated anything in regard to SIM number which was given to Vidya Prajapati.

39. Jitendra Tiwari (PW-4), Field Executive Delhivery Private Limited, Satna, deposed that on 02/02/2019 Jhagdu Prajapati had made a booking for mobile of I-Kall company which was delivered to Jhagdu Prajapati on 08/02/2019. He had received a sale consideration of Rs.3950/-. He is giving said statement on the basis of the computer details contained in Ex.P/3. This witness has also not deposed anything about Vidya Prajapati. Similar statement has been given by Krishna Kumar Pandey (PW-5). Atul Singh (PW-7) denied knowing Vidya Bai. Gendrao Salame, Constable No.446 (PW-12) deposed that on 17/03/2019 Investigating Officer had seized a black colour Vivo 606 model mobile from Indrajeet Prajapati used

by Anutab for seeking ransom of Rs.two lakh vide seizure memo Ex.P/8. I.O. had prepared a seizure memo (Ex.P/4) of delivery package from Krishna Gopal Pandey. This officer has also not said anything about vidya Bai.

40. Sudama Prajapati (PW-17) deposed that Anutab Prajapati was interrogated by Police in front of him and in interrogation, Anutab said that he had taken the SIM from mobile and had kept it in a match box. Thereafter he had hidden it inside his *Bada* and his memorandum statement is Ex.P/16. Sandeep Singh Baghel (PW-21) deposed that he was posted as Examiner at Cyber Forensic Lab, Cyber Headquarter, Bhopal on 23/5/2019. He had received five articles for forensic examination which constituted one tablet of I-Kall company i.e. Article 'A', SIM of Vodafone company i.e. Article 'B', another SIM of Vodafone company i.e. Article 'C', a SIM of Airtel company as Article 'D) and a mobile of Vivo company as Article 'E'. He had examined these articles with the help of forensic tools and found outgoing and income calls. Amandeep Gupta (PW-22) deposed that mobile No.6260021283 is in the name of Indrajeet Prajapati. He also proved that on the said mobile on 12/03/2019 at 17 hours 12 minutes and 30 second a call was received from from mobile No.9584469886 for 58 seconds.

41. Manish Kukreti (PW-24), Additional Nodal Officer, Vodafone Idea Limited, Electronic Complex, Indore, in para-4 of his testimony, deposed that as per the documents of the company, mobile No.9584469886 is registered in the name of Smt. Vidya Devi, W/o Shyamacharan, R/o near Veternery hospital, Devendra Nagar, Panna. This witness deposed that

customer form is Ex.P/104 and it contains the signature of the then Nodal Officer-Vibhor Rastogi. This SIM was issued by their retainer Lavkesh Kumar, shop name Lavkesh Mobile, R/o Satna (M.P.) which was activated on 18/12/2018.

42. Ex.P/104 does not contain signatures of appellant-Vidya Prajapati. Even Aadhar Card bearing No.497543980610 does not contain endorsement of it being true copy self-attested by Vidya Bai. In the Aadhar Card name is mentioned as Vidya Devi. Ex.P/105 is digital prepaid customer application form of Anutab Prajapati. There is no application form signed by Vidya Devi so to connect her directly that she had taken a SIM and handed over to Anutab Prajapati as alleged by him in his memorandum under Section 27 of the Evidence Act, therefore, there being no material to connect Vidya Devi inasmuch as there is no recovery of SIM from Vidya Devi and SIM was obtained by Vidya Devi is also doubtful inasmuch as Omprakash Gupta (PW-1) deposed that he had issued SIM from Om General Stores whereas Manish Kukreti (PW-24) deposed that it was issued from retailor Lavkesh Kumar, shop name-Lavkesh Mobile, Satna, contradicts evidence of Omprakash Gupta (PW-1) who deposed that he had sold said SIM on 18/12/2018 at Rahikwara, therefore, there being no material on record that Vidya Prajapati had herself exchanged the SIM and was properly identified as a purchaser.

43. We are of the opinion that Hon'ble Supreme Court in the case o f **Ram Sharan Chaturvedi (supra)** in para-22, it is held that *principal ingredients of the offence of criminal conspiracy under Section 120B of the*

IPC is an agreement to commit an offence. Such an agreement must be proved through direct or circumstantial evidence. Court has to necessarily ascertain whether there was an agreement between the appellant and A-1 and A-2. Hon'ble Supreme Court in **State of Kerala Vs. P. Sugathan and another, (2000) 8 SCC 203,** has held that *the most important ingredient of the offence being the agreement between two of more persons to do an illegal act. In a case where criminal conspiracy is alleged, the Court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient.*

44. Similarly, the principle laid down in **Pulukuri Kottaya (supra)**, in our view, *information as to past user, or the past history of object produced is not related to its discovery in the setting in which it is discovered, then such discovery is inadmissible.* Similarly in the case of **Rajesh and another (supra)**, Hon'ble Supreme Court has noted in para-27 that *confession made prior to be taken in police custody will be directly hit by Section 26 of the Evidence Act and there is no possibility of applying the exception under Section 27 to any information given by him in the course of such confession, even if it may have led to the discovery of any fact*, is when examined and in light of the judgment of the Hon'ble Supreme Court in the case of **Arvind Singh (supra)**, no constructive liability for having shared common intention

to commit illegal act or offence is made out, then we are of the opinion that prosecution has failed to prove the aspect of criminal conspiracy involving Vidya Prajapati, therefore, her conviction with the aid of Section 120B of the IPC cannot be upheld and is required to be set aside and is, accordingly, set aside.

45. Another thing which is required to be examined and seen is that, whether conviction of the appellant is based on cogent material and evidence or not. The material through which the appellant has been connected with the crime is in the following shape, namely; there was a phone call made by the appellant through mobile No. 9584489686 to the prosecution witnesses Indrajeet Prajapati (PW-15) on his mobile No. 6260021283 demanding a ransom of Rs.2,00,000/- for release of his nephew Shivkant @ Lalli. Evidence of mother of the victim namely Rajkumari Prajapati (PW-2) that victim was playing in front of the house of the appellant, then memorandum (Ex.P-53) of the appellant that he lured the deceased with pop-corn and had taken him inside his house. Since the victim was making noises, therefore, he had tightened the nose around his neck with a rope as a result of which victim died. He had put the victim in a yellow colour bag tied it with a rope, kept it in a ‘tokra’ and left his home from his rear door and had put the body in the water pond (dabra) behind the house of Ramanuj Sharma. This memorandum (Ex.P-53) is proved by PW-15 IndrajeetPrajapati by claiming that his signatures are available on the memorandum from “B” to “B” part.

46. It has also come on record that appellant had taken the police to the said water body where he had taken out yellow colour bag from the water body

and upon opening of that bag, the dead body of Shivkant @ Lalli was discovered. There was nylon rope tied to his throat.

47. This witness PW-15 Indrajeet Prajapati also proved Panchnama (Ex.P-49) which was prepared at the instance of the appellant Anutab @ Anutabh @ Beta Prajapati, in which his signatures are available from “B” to “B” part, then extraction of dead body panchnama (Ex.P-50) which again contain his signatures from “B” to “B” part, then identification panchanama (Ex.P-51) as this witness had identified the dead body of his nephew. Identification Panchnama (Ex.P-51) also contains his signature from “B” to “B” part. This witness also admitted that lash panchnama Ex.P-6 was prepared in his presence, DehatiMarg Intimation (Ex.P-63) was recorded in his presence and summons (Ex.P-5) was issued to witness of Last Panchnama. Thereafter, police had seized water in a bottle from the place where dead body was found, sample clay and clay from the place of the incident and had also seized the bag from which dead body was recovered alongwitht he rope vide Ex.P-57. Police had also seized ‘tokra’, rope and shoes of the appellant vide Ex.P-50(A). It has come on record that police had also seized a mobile phone and SIM Card videEx.P-46. Police had also sized a mobile phone of VIVO Company of this witness PW-15 vide Ex.P-8. Seizure Colour of Blue Colour Shoes is Ex.P-56. In the FSL report, it has come on record that the clay of the place which was the scene of discarding the body of the deceased matched with the clay which was found on the shoes of the appellant Anuta.

48. Thus, it is evident that the phone call made by the appellant to the PW-15. Call details have been proved by PW-24 who has proved that, on

12.03.2019 a call was made from Mobile No. 9584469886 to Mobile No. 6260021283 at 17:12:30 hrs. and the duration of call was 58 seconds.

49. PW-23, Investigating Officer of this case has proved the memorandum, seizure, Lash Panchayatnama, seizure of dead body at the instance of the appellant from the water body and in the same bag as was narrated by him to be of yellow colour alongwith a rope tied to the neck of the deceased causing strangulation decides clay on the shoes of the appellant to be of the same origine as was found on the spot at the time of making of seizure of the dead body and therefore, these circumstances have been used to connect the appellant with the murder of Shivkant @ Lalli.

50. Another aspect to connect the appellant with the commission of crime is the report of Sandeep Singh Baghel, Forensic Examiner, Cyber Forensic Lab, Cyber Headquarters, Bhopal who had found that from Article "A" mobile No. 9584469886 an outgoing call was made on Whatsapp Mobile Number 6260021283 i.e. from I-Call Tablet to Vivo Mobile Phone. Thus, the circumstances as detailed above prove beyond doubt that ingredients of offences under Section 364A/34 read with Section 302 of IPC are proved against appellant-Anutab alias Anutabh alias Beta Prajapati.

51. Now coming to the next issue of drawing a balance sheet between aggravating and mitigating circumstances.

52. In the case of **Arvind Singh (supra)**, facts are that two accused killed a young school going boy aged about only 8 years to become rich by ransom amount and to take vengeance against his father. Hon'ble Supreme Court noted that considering the motive behind the crime, the case held not falling

in the category of the "rarest of rare cases" and held that the death sentence is not justified and converted to life imprisonment. It observed that "life" means till the end of the life and there shall not be any remission till the accused completes 25 years of imprisonment. In the same case of **Arvind Singh (supra)**, Hon'ble Supreme Court also held that surrender at the first available opportunity, young age and absence of criminal antecedents are not to be treated as mitigating circumstances, but what is required to be examined is whether there is a possibility of rehabilitation. Thus, it is evident that law has evolved over a period of time.

53. In the case of **Jagmohan Singh Vs. The State of U.P., (1973) 1 SCC 20** started with that Article 19 of the Constitution does not directly deal with the freedom to live. It is not included in the seven freedoms mentioned in that article and then discussing the evaluation that after the amendment of the Act 26 of 1955 to the Criminal Procedure Code, it was left to the judicial discretion of the Court whether the death sentence of the lesser sentence should be imposed. Then it negated the concept of discretion in the Judges to impose capital punishment or imprisonment for life to be hit by Article 14. It is held that the Criminal Procedure Code lays down a detailed procedure for determining whether the sentence of death or something less is appropriate in the case. Then it referred to several studies which were made by Western Scholars to show the in effectiveness of capital punishment either as a deterrent or as appropriate retribution. It noted that there is large volume of evidence complied in the West by kindly social reformers and research workers and then noted the defects in the said studies. It is noted

that large number of murders are undoubtedly of the common type, but some are diabolical in conception and cruel in execution. Such murder cannot be simply wished away by finding alibis in the social maladjustment of the murderer. Prevalence of such crime speaks, in the opinion of many, for the inevitability of death penalty not only by way of deterrence but as a token of emphatic disapproval by the society. Thereafter it discussed the policy of law in giving a very wide discretion in the matter of punishment, to the Judge, having its origin in the impossibility of laying down standards.

54. In 1980, Constitution Bench of Hon'ble Supreme Court delivered judgment in the case of **Bachan Singh (supra)** and held that any of the right mentioned in Article 19(1) of the Constitution of India does not confer the freedom to commit murder or, for the matter of that, the freedom to commit any offence whatsoever. Then in the case of **Bachan Singh (supra)** dealt with the question whether or not death penalty serves any penological purpose treating it to be a difficult, complex and intractable issue. It noted that the provisions of Section 302 of Penal Code does not violate the letter nor the ethos of Article 19 of the Constitution. Then dealing with the issue of laying down standards and norms restricting the area of imposition of death penalty, it noted that such standardisation is well-nigh impossible. Firstly, degree of culpability cannot be measured in each case; secondly, criminal cases cannot be categorised, there being infinite, unpredictable and unforseeable variations; thirdly, on such categorization, the sentencing process will cease to be judicial; and fourthly, such standardisation or sentencing discretion is a policy-matter belonging to the legislature beyond

the Court's function.

55. In the majority judgment, however, it is noted that aggravating and mitigating circumstances mentioned in para-202 and 206 can be taken as a standard to draw a balance sheet between aggravating and mitigating circumstances.

56. When this aspect is taken into consideration, then though it is true that taking away of life of a child going to bloom into a citizen and being an asset both to the family and the society, raises concern to the judicial conscious, but, at the same time, emotions alone cannot be a guiding factor. Thus when four of the aggravating circumstances as mentioned in para-202 are taken into consideration and balanced with the mitigating circumstances, then keeping main focus on fourth mitigating circumstances that is probability that the accused can be reformed and rehabilitated, is to be taken into consideration.

57. To satisfy ourselves, we asked learned Government counsel as to whether there are any reports of proven misbehaviour or heretic behaviour in the prison, then response is in negative. Thus, when these facts are taken into consideration, then instead of tracing the history of the legal issue, reliance can be directly placed on the recent judgment of Supreme Court in the case of **Ramesh A. Naika Vs. Registrar General, High Court of Karanataka etc., 2025 SCC Online SC 575**. In **Arvind Singh (supra)**, it is noted that accused was young aged about 19 years having no criminal antecedents. But it rejected this argument of being young or having no criminal antecedents to treat them as mitigating circumstances and held that

what is required to be examined is whether there is possibility of rehabilitation and whether it is the rarest of rare case where the collective conscience of the community is so shocked that it will expect the holders of judicial power to inflict a death penalty irrespective of their personal opinion as regard desirability or otherwise of retaining death penalty. It is held that the manner of commission of murder when committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner are aggravating factors. The motive of accused to take life was to become rich by not doing hard work but by demanding ransom after kidnapping a young innocent boy. Thus, the Hon'ble Supreme Court noted that the present case falls short of the "rarest of rare" cases where a death sentence alone deserves to be awarded to the appellants. Facts of the present case are similar.

58. Similar ratio is laid down by Hon'ble the Supreme Court in the case of **Ramesh A. Naika (supra)** where Hon'ble Supreme Court has summarized the list of judgment where sentence without remission for the remainder of the convict's life was granted starting from **Swsamy Shraddananda Vs. State of Karnataka, (2008) 13 SCC 767, Sebastian Vs. State of Kerala, (2010) 1 SCC 58** to **Deen Dayal Tiwari Vs. State of U.P., 2025 SCC Online SC 237** and noted cases wherein life sentence has been imposed till the end of the convict's natural life subject to remission starting from **Mulla Vs. State of U.P., (2010) 3 SCC 508** to **Arvind Singh Vs. State of Maharashtra, (2021) 11 SCC 1.** Hon'ble Supreme Court directed to take off the hangman's noose from the appellant's neck and instead directed that he remains in prison till the end of his days given by God Almighty.

59. However, looking to the fact that facts of the case of **Arvind Singh (supra)** are similar to that of the present case, we allow the present appeal in part and while maintaining the conviction, substitute the death sentence imposed by learned trial Court to appellant-Anutab @s Anutabh @ Beta Prajapati into the life imprisonment. It is directed that the life means till the end of life with further observations and directions that there shall not be any remission till the appellant completes 25 years of imprisonment.

60. In above terms, Criminal Appeal No.4506/2022 filed by appellant-Vidya Prajapati is allowed and her conviction is set aside. Appellant -Vidya Prajapati be released forthwith, if not required in any other case.

61. Criminal Appeal No.5621/2021 filed by appellant-Anutab @ Anutabh @ Beta Prajapati is allowed in part to the extent indicated herein above and the criminal reference is answered accordingly.

(VIVEK AGARWAL)
JUDGE

(DEVNARAYAN MISHRA)
JUDGE

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