2026:PHHC:043950-DB

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

MRC-2-2025 &
CRA-D-658-2025

State of Punjab ...Appellant

Versus

Sonu Singh …Respondent

JUDGEMENT RESERVED ON	JUDGEMENT PRONOUNCED ON	OPERATIVE PART PRONOUNCED OR FULL	UPLOADED ON
05.03.2026	19.03.2026	FULL PRONOUNCED	19.03.2026

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Ms. Pooja Nayar Sharma, D.A.G., Punjab (through V.C.).

Mr. Arshdeep Singh Cheema, Advocate (Legal Aid Counsel)
for the appellant- convict.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
110	29.12.2023	Daba, Ludhiana	302 IPC (376-A, 376-AB IPC, and 6 of POCSO Act added later on)

Criminal Case number before the Sessions Court	CIS No. SC-277-2024
Date of Decision	20.03.2025
Date of order on the quantum of sentence	27.03.2025

Name of the accused/convict	**Sonu Singh**
Conviction under Sections	6 of POCSO Act and 302 IPC

Sentence imposed upon the convict – Sonu Singh			
Section	Sentence of imprisonment	Fine in INR	Sentence in default of payment of fine
6 of POCSO Act	Death sentence and he be hanged by neck till he is dead	5,00,000	RI for 01 year
302 IPC	Death sentence and he be hanged by neck till he is dead	50,000	RI for 01 year

1. On Dec 28, 2023, in Ludhiana, Punjab, the victim 'S', aged around 4 years and 7 months, to whom this Court would affectionately refer to as '*Laadli'*, was taken away allegedly by the appellant Sonu Singh, aged 28, from the tea-stall of her Nana (maternal grandfather's) [PW-1], to the house of his cousin Ashok Kumar, where he had been residing for 4-5 days, which was just opposite to *Laadli's* Nana's house, and on taking *Laadli* inside Ashok's house, Sonu Singh committed her rape, throttled her to death, and concealed her dead body in the bed box lying in Ashok's house, and discreetly fled away; however, after 20 days the police apprehended Sonu Singh from District Fatehpur, UP, he was arrested, charge-sheeted, prosecuted, and upon conviction by the Trial Court, was awarded death sentence as captioned above.

2. Seeking confirmation of the Death Sentence, the Trial Court had sent the above-mentioned reference to this Court under §366 of the CrPC, 1973 [§407 BNSS, 2023], and challenging the conviction and the consequent sentence as captioned above, the convict also came up before this Court by filing the present Criminal Appeal under §415 BNSS, 2023 [§374(2) CrPC, 1973].

3. On Dec 28, 2023, at 11:50 PM, the police registered an FIR on the statement of the complainant [PW1], maternal grandfather of the victim. PW1 informed the police that he had been residing in Ludhiana as a tenant for six years and had been running a tea stall on the same street. Ashok Kumar [Not Examined] had also been residing as a tenant nearby, for the last 4-5 years, opposite to his house on the same street, and was working at the Bharat Gas agency, which was also located nearby.

4. Sonu Singh, accused/convict, who is a resident of village Tasai Bajurg, District Fatehpur (UP), was related to Ashok Kumar and had been visiting Ashok Kumar's aforesaid house in Ludhiana, and for the last 4-5 days he had been residing at Ashok Kumar's house.

5. On Dec 28, 2023, the complainant, PW1, had gone to his stall as part of his daily routine. At that time, *Laadli*, his granddaughter, was also playing near the stall. At around 9 AM, the accused, Sonu, arrived at his stall, purchased a chocolate for ₹10, gave it to *Laadli*, and started playing with her. On the pretext of playing, he took *Laadli* in his lap, and at that time, Ashok Kumar was also present at PW1's stall.

6. Since complainant PW1 trusted Sonu, he thought that Sonu would be playing with *Laadli*, PW1, kept on doing the chores in his stall. When *Laadli* did not return for 4-5 hours, PW1 went to Ashok's house to look for his granddaughter, *Laadli*. PW1 also tried to find her by calling her name but received no response and did not see her anywhere. He

found neither Sonu nor *Laadli* present at Ashok's house, and Sonu's mobile was also switched off.

7. After that, PW1 went to his own house, but *Laadli* was not there either. He enquired about *Laadli* in the surrounding areas, but she could not be found.

8. After that, PW1, visited the police station, where he informed the police, and on this, the police team, headed by SHO, Sub-Inspector Kulbir Singh [PW15], Constable Randhir Singh [PW11], accompanied PW1 to search for his granddaughter *Laadli*. While searching, they discovered *Laadli*'s body concealed in the bed box of a room in Ashok's house and her lower garment was absent from her body, and she was profusely bleeding from her privates. Based on this information, the police had registered the FIR [Ext PW15/B] captioned above.

9. Prosecution examined PW13 HC Gurkirat Singh, who proved the photographs Ext P5 to P16, of the victim's dead body at the crime scene, and also tendered in evidence the certificate under §65-B of the Indian Evidence Act, Ext PW13/A. As per the Inquest Report [Ext PW15/E], the date and time of discovery of death is Dec 28, 2023, at 6.25 PM. After that, the experts were called, and the body was sent to the mortuary.

10. The next day, i.e., Dec 29, 2023, *Laadli*'s post-mortem examination was conducted by a team of doctors comprising Dr. Damanpreet Singh [PW3], Dr. Anupriya, and Dr. Charan Kamal. The doctors confirmed that *Laadli* had been sexually assaulted and, after that, was throttled to death. The Doctors obtained the vaginal swabs and preserved them, along with *Laadli*'s clothes, and handed over the sealed parcels to ASI Avinash Rai.

11. PW1, *Laadli's* grandfather handed over Sonu Singh's Aadhar card, which he obtained from a nearby shop, and a copy of the date of birth certificate of *Laadli* [Ext PW16/A], and handed over the same to the police, which was taken into possession vide Ext P2.

12. On Dec 28, 2023, *Laadli*'s age was approximately 4 years and 7 months, as established by the testimony of PW1 *Laadli*'s father, and her date of birth certificate, Ext PW16/A.

13. Accused Sonu Singh had absconded after committing the crime, and on Jan 17, 2024, the police nabbed him from his village in UP and brought him to Ludhiana.

14. On Jan 19, 2024, accused Sonu Singh was taken for his medical examination at Civil Hospital, Ludhiana, where he was examined by Dr. Saurav Singla [PW4]. His blood sample was collected for DNA examination.

15. The police sent the specimen and biological material collected from the victim's vagina and the blood smeared on the polythene sheet, which was lying in the bed box, along with *Laadli*'s clothes for forensic examination and DNA testing. The police also sent samples of the blood of the parents of *Laadli* to link them with her. As per the report of the forensic science laboratory [Ext P20], semen was found on the genetic material collected from the victim's vagina, and the DNA report [Ext P20] further confirmed that it was Sonu Singh's genetic material which was present in the sample recovered from *Laadli*.

16. On Feb 29, 2024, a police report under §173 CrPC was filed before the Additional Sessions Judge, Fast Track Special Court under POCSO Act, 2012, at Ludhiana, against the accused Sonu Singh.

17. On August 1, 2024, an Additional Sessions Judge/Fast Track Special Court for cases under the POCSO Act framed charges against the accused for the commission of offences punishable under §6 of the POCSO Act and, in the alternative, §376-A IPC and also §302 of IPC. The appellant did not plead guilty and claimed a trial.

18. After the prosecution's evidence was completed, the accused, in his statement under §313 CrPC, denied all the incriminating circumstances as incorrect, and stated that he would lead the defence; however, despite several opportunities, no defence evidence was presented, and eventually the accused closed his defence evidence. On completion of the trial, the Court was of the opinion that the evidence produced and proved before it was sufficient, and it established Sonu Singh's guilt. Consequently, the Trial Court convicted Sonu Singh on the charges of committing rape and murder of *Laadli* and sentenced him to death under §6 of POCSO and also under §302 of IPC.

19. After that, the Sessions Court had sent a death reference to this Court, and the appellant had also filed a criminal appeal challenging his conviction.

20. We were informed by the State that the convict has absconded. Ld. Counsel who had filed the appeal pleaded no instructions and sought withdrawal of his Power of Attorney. On this, we have appointed Mr. Arshdeep Singh Cheema, Advocate, who has more than 15 years of standing at the bar on the criminal side, and is a second-generation lawyer with a great legacy, to defend the convict, Sonu Singh. Mr. Arshdeep Singh Cheema's experience on the criminal side is impressive, and we were convinced that he would be able to defend the convict in a manner no less effective.

21. In Md. Sukur Ali v. State of Assam, Crl.A. No. 546-2011, *pg2,3*, Feb 24, 2011, the Hon'ble Supreme Court holds,

> We are of the opinion that even assuming that the counsel for the accused does not appear because of the counsel's negligence or deliberately, even then the Court should not decide a criminal case against the accused in the absence of his counsel since an accused in a criminal case should not suffer for the fault of his counsel and in such a situation the Court should appoint another counsel as *amicus curiae* to defend the accused. This is because liberty of a person is the most important feature of our Constitution. Article 21 which guarantees protection of life and personal liberty is the most important fundamental right of the fundamental rights guaranteed by the Constitution. Article 21 can be said to be the 'heart and soul' of the fundamental rights.
>
> In our opinion, a criminal case should not be decided against the accused in the absence of a counsel.

22. In Anokhilal v. State of MP, [2019] 18 SCR 1196, *pg1234*, Dec 18, 2019, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [22]. Before we part, we must lay down certain norms so that the infirmities that we have noticed in the present matter are not repeated:-
>
> i) In all cases where there is a possibility of life sentence or death sentence, learned Advocates who have put in minimum of 10 years practice at the Bar alone be considered to be appointed as *Amicus Curiae* or through legal services to represent an accused.
>
> ii) In all matters dealt with by the High Court concerning confirmation of death sentence, Senior Advocates of the Court must first be considered to be appointed as *Amicus Curiae*.
>
> iii) Whenever any learned counsel is appointed as *Amicus Curiae*, some reasonable time may be provided to enable the counsel to prepare the matter. There cannot be any hard and fast rule in that behalf. However, a minimum of seven days' time may normally be considered to be appropriate and adequate.
>
> iv) Any learned counsel, who is appointed as *Amicus Curiae* on behalf of the accused must normally be granted to have meetings and discussion with the concerned accused. Such interactions may prove to be helpful as was noticed in ***Imtiyaz Ramzan Khan*** [(2018) 9 SCC 160].

23. We have heard Mr. Arshdeep Singh Cheema, Ld. Legal Aid Counsel for the convict, Ms. Pooja Nayar Sharma, DAG for the State of Punjab, and have also gone through the record in minute details, and our analysis would lead to the following outcome.

24. PW1 tendered in evidence his earlier statement [Ext P1], on the basis of which the FIR was registered, i.e., Ext P15/B, and he admitted the same to be correct and also identified his thumb impression thereon at point 'A'. He also stated that his son-in-law, [PW2]. i.e., the father of *Laadli*, had also attested the same.

25. PW1 also handed over a photocopy of *Laadli's* birth certificate [Ext PW16/A] to the police, which was taken into possession vide memo Ext P2. The witness explicitly identified the accused Sonu Singh, who was present in the Court, and testified that he was the same person who had taken away his granddaughter *Laadli* from his stall, and after that, her body was found from the bed-box in the house of Ashok Kumar in which Sonu Singh had been residing with Ashok Kumar. He also identified the dead body of *Laadli* on seeing the photographs from the judicial file.

26. The prosecution has been able to establish the fact of *Laadli* and her father, PW2, arriving at Ludhiana, a couple of days before the alleged incident, which had taken place on the morning of Dec 28, 2023. Although there are contradictions in the statements of PW1 and PW2 regarding the date of PW2's and *Laadli's* arrival in Ludhiana, these contradictions are explainable.

27. PW2 *Laadli's* father, in his cross-examination, stated that he had reached Ludhiana on Dec 28, 2023, in the evening. However, PW2's father-in-law, PW1, stated in his testimony that PW2 and *Laadli* had come 2-3 days earlier, or around the 15th of January. Neither of the witnesses could understand the implication of the suggestion put by the Defence Counsel. PW1's testimony of PW2 arriving by Jan 15 is contradicted by the recovery of *Laadli's* dead body much prior in time, i.e., on Dec 28. Regarding PW2, he testified in his cross-examination that he had come to Ludhiana on Dec 28, whereas, on the contrary, if they had reached Ludhiana in the evening, there was no occasion for *Laadli* to be playing with them in the tea stall in the morning.

28. PW2 stated in his cross-examination that he was new to Ludhiana and had started working with his father-in-law at the tea stall, accompanying him at 9:00 AM and returning by 11:00 PM. On the face of it, in the same breath, PW2 had stated that after reaching Ludhiana, he started working with his father-in-law, which would certainly make it clear that he had reached a few days prior to Dec 28, 2023. This fact itself shows that he had not come on Dec 28, when the incident occurred, but had come earlier. The contradiction arose from a lack of understanding of the question, a misunderstanding of the implications of accepting the date, an eight-month delay in recording his testimony at the Trial, and human memory fading over time.

29. Therefore, there can be contradictions in the testimonies, but the facts don't lie. The fact of *Laadli* being in Ludhiana is already established by the recovery of her dead body from the crime scene.

30. Given the above, no adverse inference can be drawn about the statements of PW1 and PW2, regarding PW2's and *Laadli's* arrival in Ludhiana.

31. The Indian Evidence Act, through its §165[1] empowers the concerned Court to intervene in such a situation. The foundational duty of a Judge is to do justice to the parties, ensuring that no innocent person is convicted but no guilty person escapes unpunished. Every trial is a ship, which must mark to the shores, and when she is in troubled waters, the Trial Judge must be the last man off.

32. The principle *falsus in uno, falsus in omnibus* is not applicable in India, and under the Indian Evidence Act, the statement of a witness which is found to be untrustworthy can be separated, and that portion of the statement which is credible and proved can be relied upon.

33. In Nisar Ali v. The State of UP, [1957] 1 SCR 657, *pg661*; 1957-INSC-17, Feb 14, 1957, a three-Judge Bench of the Hon'ble Supreme Court holds,

> It was next contended that the witnesses had falsely implicated Qudrat Ullah and because of that the Court should have rejected the testimony of these witnesses as against the appellant also. The well-known maxim *falsus in uno falsus in omnibus* was relied upon by the appellant. The argument raised was that because the witnesses who had also deposed against Qudrat Ullah by saying that he had handed over the knife to the appellant had not been believed by the Courts below as against him, the High Court should not have accepted the evidence of these witnesses to convict the appellant. This maxim has not received general acceptance in different jurisdictions in India; nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded.

34. In Ugar Ahir and others v. State of Bihar, AIR 1965 SC 277, *pg4*, Mar 06,1964, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [7]. The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a

[1]. §165 Indian Evidence Act, 1872. — Judge's power to put questions or order production. — The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:
Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document,
except in the cases hereinbefore excepted.

> grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelive the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest.

35. In Sohrab S/o Beli Nayata and Anr. v. The State of Madhya Pradesh, 1972-INSC-134; [1973] 1 S.C.R. 472, *pg478*, May 02, 1972, the Hon'ble Supreme Court holds,

> [A – D]. It appears to us that merely because there have been discrepancies and contradictions in the evidence of some or all of the witnesses does not mean that the entire evidence of the prosecution has to be discarded. It is only after exercising caution and care and sifting the evidence to separate the truth from untruth, exaggeration, embellishments and improvement, the Court comes to the conclusion that what can be accepted implicates the appellants it will convict them. This Court has held that *falsus in uno falsus in omnibus* is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered though where the substratum of the prosecution case or material part of the evidence is disbelievable it will not be permissible for the Court to reconstruct a story of its own out of the rest.

36. Thus, the prosecution by the testimony of PW1 has established that *Laadli* was playing near her grandfather's tea stall on the morning of the day of the occurrence before her dead body was recovered.

37. On page no. 20 of the Trial Court record, a copy of the Aadhar card of Sonu Singh has been attached. As per this Aadhar card, it was issued on Jan 01, 2015. Further date of birth of Sonu Singh is mentioned as Oct 01, 1995, and as of Dec 01, 2023, his address is mentioned as Ludhiana. Although the prosecution did not prove as to how they obtained a copy of the Aadhaar card; however, since it was not even tendered in evidence, no adverse inference can be drawn against either of the parties. The present appellant is not disputing that he is not Sonu Singh, son of Satwan Singh. Given this, no adverse inference can be drawn because the prosecution could not prove the authenticity of the Aadhar card.

38. **The first circumstance against the accused Sonu Singh is of Last Seen, i.e., deceased *Laadli* was last seen by *Laadli*'s Maternal Grandfather [PW1] and her father (PW2), with accused Sonu Singh, who had taken *Laadli* with him from the stall of PW1 in the morning between 9:00 to 9:30 AM, under the pretext of playing with her,**

after which she was never seen alive, and her dead body was recovered concealed inside the bed box in Ashok's house, where the accused Sonu Singh had been residing for the last 4-5 days.

39. PW1, *Laadli*'s Nana who owned a tea stall in the vicinity of the house of Ashok Kumar, testified that his rental house was just opposite to the house of Ashok Kumar. He further testified that Ashok Kumar had been residing in that area for the last 5 years and was employed by a gas agency near his house. In cross-examination, PW1 explained that he knew Ashok Kumar as he would go to his home to get his gas cylinders refilled.

40. PW2, *Laadli*'s father testified in his examination-in-chief that on Dec 28, 2023, at about 9/9:30 AM, he, along with his father-in-law, PW1, were present in their stall conducting their business. At that time, *Laadli* was also present in the stall with them, playing. At that time, Sonu Singh came to the stall and purchased a chocolate for ₹10, gave it to *Laadli*, and started playing with her. After that, he took *Laadli* in his lap.

41. But the contradiction has crept in because PW1, in his cross-examination, stated that his son-in-law [PW2] was sleeping in the room at the time when the accused took away his granddaughter. Ld. Public Prosecutor did not request that PW1 be declared as a hostile witness, nor did he seek re-examination on this material aspect.

42. Given this contradiction, it shall be unsafe to believe that PW2 was present at the stall when Sonu Singh had taken *Laadli* away. As a result, this portion of PW2's statement that he was present at the stall when *Laadli* was taken away, is not being relied upon; however, PW1's statement is of sterling quality, credible, and free of any fatal infirmities.

43. Given the above, we are left with only PW1's statement to establish that Sonu Singh took away *Laadli* from his stall. An overall analysis of PW1's statement proves beyond any shadow of doubt that Sonu Singh was familiar with PW1, and, under the pretext of playing, took *Laadli* away.

44. PW1, *Laadli*'s Nanu had testified that Sonu Singh purchased a chocolate for ₹10, gave it to *Laadli*, and started playing with her. In cross-examination, PW1 admitted that no chocolate wrapper or chocolate was recovered near the dead body of *Laadli*; however, he had denied the suggestion that he did not keep chocolates. The Investigator, who had testified as PW15, admitted that no chocolate or chocolate wrappers were recovered.

45. The accused, Sonu Singh, had purchased chocolate around 9:00 to 9:30 AM. The chocolate was used as a bait and it cannot be ruled out that it had already been given to the child and eaten on the way to the place of the crime, and the chocolate was never carried

inside the house, and the wrapper was thrown on the roadside. *Laadli* could never anticipate that the chocolate would be so bitter.

46. Additionally, PW15, in his cross-examination, stated that at the time of recovery of the dead body of the victim, the whole room was not thoroughly checked because of the law-and-order situation. Given the above set analysis, the non-recovery of the chocolate wrapper is insignificant.

47. PW2, *Laadli*'s father had stated in his examination-in-chief that Sonu Singh had purchased a chocolate for ₹10, given it to his daughter, and started playing with her. During cross-examination, PW2 further stated that the cost of chocolate was ₹1. Thus, there arises another contradiction about the price of chocolate.

48. Although the Latin maxim *Falsus in Uno, Falsus in Omnibus* does not operate in India. But where the testimony of a witness is rendered doubtful pertaining to some portion of a transaction or occurrence, such a testimony can be judiciously discarded and may not be considered for proving the other portions of the same transaction that are closer in time.

49. Initially, PW1, in his cross-examination, stated that when Sonu Singh came to his stall, purchased chocolate, at that time *Laadli*'s father was sleeping. For this reason, we are not relying on the version of the PW2 that he had seen Sonu Singh taking *Laadli* away. Given the contradiction, once the presence of PW2 at the stall at the time when accused Sonu Singh took away *Laadli* itself is rendered doubtful, there is no question of believing that part of the statement in which he stated the price of the chocolate, because the purchase of the chocolate was a closer event in the same transaction of taking *Laadli* away.

50. PW15, Inspector Kulbir Singh, the Investigator, testified that on Dec 28, 2023, PW1 had visited the police station and told that his granddaughter had been taken away by accused Sonu to the house of Ashok Kumar on the pretext of playing, and after that, she went missing, and the mobile phone of accused Sonu was switched off. On this, PW1, along with the police party, went to the place, and on checking the rental house of Ashok Kumar, they discovered the dead body of *Laadli* lying in the bed box, and at that time, her lower garment was absent from her body. PW15 conducted further investigation by sending the dead body to the hospital.

51. Prosecution examined PW11, Constable Randhir Singh, who was one of the witnesses who had gone to the rental house of Ashok when the dead body of the victim was recovered, and his testimony is proved and is even unrebutted.

52. There is another contradiction regarding when PW1 stated that he had made efforts to rescue *Laadli*. PW1, in his cross-examination, stated that he had stopped Sonu Singh from

taking away his granddaughter, and he stated that he had disclosed this fact to the police, but when his attention was drawn to Ext P1, it was not found to have been recorded. In fact, it was the Defence which had tried to raise this contradiction, and it was not even initially the prosecution's case. PW1, *Laadli's* grandfather had stated in FIR that he had trusted Sonu Singh. Usually, people who come from close knit village background tend to place unsaid and implicit trust in one another, never imagining even a hint of deceit or foul play. Although this contradiction was explained by drawing the witness's attention to the initial statement, Ext P1. The primary reason for this contradiction appears to be that, given the heinous nature of the offense, a remorseful and guilt-ridden grandfather would show that he had made attempts to stop the culprit and was not at fault for letting the accused take away the girl-child. Be that as it may, the contradiction arose primarily because of PW1's efforts to justify that he was neither complicit nor negligent in sending his granddaughter with Sonu Singh.

53. Given that the sexually assaulted dead body of *Laadli* was recovered from the rental house of Ashok Kumar, it was for the prosecution to explain that Ashok Kumar was not the culprit and that Sonu Singh was the actual culprit. This part is well explained by the prosecution because, in the FIR itself, as well as in PW1's testimony, PW1 explicitly stated in his cross-examination that when Sonu Singh came to his stall, Ashok Kumar was also present. He not only clarified that *Laadli* was taken away by Sonu Singh but in his complaint made to the police, based on which the FIR Ext PW15/B had been registered, also absolved Ashok Kumar, by stating that he was present at the stall with him. Given this, the prosecution has established that at the time in question, when *Laadli* was taken by Sonu Singh from the stall of PW1, to Ashok Kumar's house, where Sonu Singh had been residing for the last 4-5 days, Ashok Kumar himself was not present in his house, which is the alleged place of rape and murder because Ashok Kumar was present at the stall of PW1. Thus, it is for Sonu Singh to explain what had ensued after he had taken *Laadli* to the house where he had been residing, that very house from where her dead body was recovered. The onus shifted on Sonu Singh to prove that he was innocent and that he had not raped and murdered the child, which he never discharged.

54. PW1, in his cross-examination, admitted that nobody in the neighborhood had heard shrieks of his granddaughter. In the site plan Ext P21, the room where *Laadli* was raped, and her dead body was found, is marked at point A&B. A perusal of the site plan clearly points out that the entry to the house is from the street side, which is opposite to the room where *Laadli's* dead body was found concealed inside the bed box. There is no window in that room, and the room was situated further inside the house premises, thus it was not possible for any voice or commotion to be heard outside. Additionally, it was an area where the gas agency operated, with trucks coming and going. It was not a case of extreme silence

in the area, but one with hustle-bustle and commotion in the streets. Furthermore, as per the postmortem report Ext P19, there is an abrasion on *Laadli's* cheek, which would indicate that when the child cried, the accused had covered her face and gagged her mouth. The absence of shrieks would not show that *Laadli* was raped at some other place, and then her dead body was brought, and concealed in the bed box. The factum of recovery of the dead body from the bed box and the tell-tale signs of nonclotted blood on the polythene sheet clearly establish that the place of occurrence was that very house, where the accused Sonu Singh had been residing in the rented house of Ashok Kumar. In this backdrop, if the neighbors did not hear the shrieks of the child, it is not a factor to draw any inference that the crime had not taken place at that point of time in the house of Ashok, where Sonu Singh had been residing.

55. Thus, the prosecution has proved the evidence of the accused being last seen with the victim and the recovery of the dead body of *Laadli* from the house where the accused Sonu Singh was residing, without any significant time gap in between.

56. In Arjun Marik and Ors. v. State of Bihar, [1994] 2 S.C.R. 265, *pg285*; 1994-INSC-100, Mar 2, 1994, the Hon'ble Supreme Court holds,

> [G – H]. Thus the evidence that the appellant had gone to Sitaram in the evening of 19.7.85 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.

57. In Bodhraj @ Bodha and Ors. v. State of Jammu and Kashmir, 2002 Supp. (2) S.C.R. 67, *pg85;* 2002-INSC-360, Sep 03, 2002, the Hon'ble Supreme Court holds,

> [B - C]. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. …

58. In State of U.P. v. Satish, [2005] 1 S.C.R. 1132, *pg1142*, 2005-INSC-68, Feb 08, 2005, the Hon'ble Supreme Court holds,

> [C – D]. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

59. In Ramreddy Rajeshkhanna Reddy and Anr. v. State of Andhra Pradesh, [2006] 3 S.C.R. 348, *pg359*, 2006-INSC-173, Mar 24, 2006, the Hon'ble Supreme Court holds,

> [C]. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case courts should look for some corroboration.

60. In Kanhaiya Lal v. State of Rajasthan, [2014] 3 S.C.R. 744, *pg751*, 2014-INSC-190, Mar 13, 2014, the Hon'ble Supreme Court holds,

> [12]. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

61. In Digamber Vaishnav and Anr. v. State of Chhattisgarh, [2019] 2 S.C.R. 844, *pg861, 862*, 2019-INSC-308, Mar 5, 2019, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [40]. …To constitute the last seen together factor as an incriminating circumstance, there must be close proximity between the time of seeing and recovery of dead body.

62. In Surajdeo Mahto v. State of Bihar, [2021] 8 S.C.R. 911; 2021-INSC-379, Aug 04, 2021, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [30]. We may hasten to clarify that the fact of last seen should not be weighed in isolation or be segregated from the other evidence led by the prosecution. The last seen theory should rather be applied taking into account the case of the prosecution in its entirety. Hence, the Courts have to not only consider the factum of last seen, but also have to keep in mind the circumstances that preceded and followed from the point of the deceased being so last seen in the presence of the accused.

63. In Ram Gopal S/O Mansharam v. State of M.P., SLP (Crl). No. 9221 of 2018, Feb 17, 2023, the Hon'ble Supreme Court holds,

> [6]. It may be noted that once the theory of "last seen together" was established by the prosecution, the accused was expected to offer some explanation as to when and under what circumstances he had parted the company of the deceased. It is true that the burden to prove the guilt of the accused is always on the prosecution, however in view of Section 106 of the Evidence Act, when any fact is within the knowledge of any person, the burden of proving that fact is upon him. Of course, Section 106 is certainly not intended to relieve the prosecution of its duty to prove the guilt of the accused, nonetheless it is also equally settled legal position that if the accused does not throw any light upon the facts which are proved to be within his special knowledge, in view of Section 106 of the Evidence Act, such failure on the part of the accused may be used against the accused as it may provide an additional link in the chain of circumstances required to be proved against him. In the case based on circumstantial evidence, furnishing or non-furnishing of the explanation by the accused would be a very crucial fact, when the theory of "last seen together" as propounded by the prosecution was proved against him.

64. In Anees v. The State Govt. of NCT, [2024] 6 S.C.R. 164, *pg198*; 2024-INSC-368, May 3, 2024, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [55]. If an offence takes place inside the four walls of a house and in such circumstances where the accused has all the opportunity to plan and commit the offence at a time and in the circumstances of his choice, it will be extremely difficult for the prosecution to lead direct evidence to establish the guilt of the accused. It is to resolve such a situation that Section 106 of the Evidence Act exists in the statute book.

65. In Shambu Nath Mehra v. The State of Ajmer, [1956] 1 SCR 199, *pg203-204*, 1956-INSC-15, Mar 12, 1956, the Hon'ble Supreme Court, explaining the scope of § 106 of the Evidence Act in criminal trial, holds,

> This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are *pre-eminently* or *exceptionally* within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are *Attygalle v.*

Emperor [AIR 1936 PC 169] and *Seneviratne v. R. [(1936) 3 All ER 36*, 49].

66. In Sawal Das v. State of Bihar, [1974] 3 SCR 74, *pg79*, 1974-INSC-4, Jan 9, 1974, the Hon'ble Supreme Court holds,

> [D]. Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or, which makes out a *prima facie* case, that the question arises of considering facts of which the burden of proof may lie upon the accused.

67. In Trimukh Maroti Kirkan v. State of Maharashtra, [2006] Supp. 7 SCR 156, *pg166-167*; 2006-INSC-691, Oct 11, 2006, the Hon'ble Supreme Court holds,

> [12]. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions,* (1944) AC 315 — quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh* [2003] 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:
>
> > (b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."
>
> Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to

> establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

68. In Deonandan Mishra v. The State of Bihar, [1955] 2 S.C.R. 570, *pg582*; 1955-INSC-47, Sep 28, 1955, a three-Judge Bench of the Hon'ble Supreme Court holds,

> It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We are, therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence.

69. In Dilip Mallick v. State of West Bengal, Crl.A. No. 130 of 2012, *pg6*, Feb 14, 2017, the Hon'ble Supreme Court holds,

> [8]. PW-3, PW-4 and PW-5 who are the family members of the deceased were consistent in their testimonies that the deceased and accused were last seen together at around 02:00 pm on 02.02.2004. There is a burden on the accused to give an explanation about what happened after they left the house of the deceased. No explanation was given about the events of 02.02.2004 after they left from the house of the deceased. In the examination under Section 313 Cr.P.C. the accused denied any knowledge of the crime and alleged false implication. Section 106 of the Indian Evidence Act, 1872 imposes an obligation on the accused to explain as to what happened after they were last seen together….

70. In Deen Dayal Tiwari v. State of Uttar Pradesh, Crl.A. Nos. 2220-2221 of 2022, *pg22*, Jan 16, 2025, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [13]. …Once it is established that the Appellant was found at the scene and his family members were discovered murdered in the very room to which he had access and control, the burden to explain how the murders occurred within his locked premises shifts to him under Section 106 of the Evidence Act. His failure to offer a plausible explanation—particularly when there is no material on record supporting his alibi—fortifies the prosecution's case.

71. In Haresh Mohandas Rajput v. State of Maharashtra, [2011] 14 (Addl.) S.C.R. 921, *pg938, 942*; 2011-INSC-700, September 20, 2011, while commuting the death sentence awarded for the rape and murder of a girl-child aged 10 years, the Hon'ble Supreme Court holds,

> [19]. …The fact that blood was found on the bed sheet, on the cot as well as on the floor below the cot clearly indicates that the incident occurred there only. It is very unlikely that the culprit committed the heinous act elsewhere and then placed Pooja's dead body in appellant's house.
>
> [29]. …The dead body was found below the cot that indicates that the accused attempted to conceal the body. Had any outsider done it, after committing the crime he would have run away leaving the dead body on the cot itself as he would have no reason to be afraid of search and trace of the dead body. In fact, such a fear exists in the mind of a person to whom the house belongs. The outsider would not make any attempt to conceal the dead body, as his prime concern remains to run away after commission of the crime. The evidence led by the prosecution clearly establishes the aforesaid circumstances.

72. In Kali Ram v. State of Himachal Pradesh, [1974] 1 SCR 722, *pg734-735*, 1973-INSC-173, Sep 24, 1973, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [G – B]. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable: it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations.

73. An analysis of the proved and established facts points towards only one view, and that view is the involvement of the accused Sonu Singh and no one else.

74. Thus, the above evidence establishes the circumstance that the accused Sonu Singh, was last seen with *Laadli* by *Laadli*'s Maternal Grandfather (PW1). It is further proved that the accused Sonu Singh, had taken *Laadli* with him from the stall of PW1 in the morning between 9:00 to 9:30 AM, under the pretext of playing with her, and after that, she was never seen alive, and her dead body was recovered concealed inside the bed box of Ashok's house, where Sonu Singh had been residing for the last 4-5 days.

75. **The second circumstance against the accused Sonu Singh is that he was seen in the CCTV footage taking a girl by the hand, and after that, in another CCTV footage,**

he was seen taking the girl inside a house, and as per the prosecution, in the same CCTV footage, he was seen coming out alone from the same house.

76. PW8, Aditya @ Abhay Kashyap testified that he had installed a CCTV camera outside his house, and on Dec 28, 2023, when he checked the CCTV footage, he noticed the accused taking the victim from PW1's stall and then taking her into Ashok Kumar's rental house. At around 12:00 noon, Sonu was seen coming alone from the house. PW8 stated that he had copied the CCTV footage onto the pen drive and handed it over to the police vide memo Ext PW8/A and had also given a certificate under §65-B of the Indian Evidence Act and tendered it in evidence as Ex. PW8/B and identified his signature on the same point A.

77. PW8, Aditya tendered the pen drive in evidence as Ext MO-1. During the examination-in-chief of PW8, the pen drive was played in the Court, and the video was shown to the witness, after which PW8 identified Sonu as the person taking the victim to the house. He also identified Sonu in the CCTV footage as the same person who was present in the Court. In cross-examination, PW8 admitted that in both videos the face of the accused was not visible, and that a number of people were seen in the video, but he was unable to identify them from the CCTV footage; however, he denied that the videos were fabricated.

78. PW1, was cross-examined about whether the police showed him any CCTV footage, to which he denied. Inspector Kulbir Singh, [PW15], on being re-called for cross-examination, stated that when the video, which was stored in the pen drive, was played in the Court, he admitted that the face of the accused was not clearly visible. He also correctly stated that no other persons were identifiable sitting outside the tea vendor's stall.

79. The pen drive containing CCTV footage was played by us and it shows that these are the clippings, which were probably recorded from a mobile phone from the screen on which CCTV footage was being played. It is not a complete video from the time the accused entered the house with the child until he came out alone. It is impossible to believe which portion was captured and which was trimmed. The investigator should have ensured that the entire video with the time frame was preserved and tendered that in evidence without it being trimmed, showing the time when the person entered the house with the child, and the time when the accused left the house without the child. Furthermore, the perusal of the video clip does point out that somebody is taking a child into the house, but the trimmed clip has no footage of the same person coming out alone from the same house. One person wearing a hoodie who entered the house and returned, perplexed, exuding a fearful strange demeanor, is also unexplained. Additionally, there are two videos; only one has been tendered in evidence, and we do not even know which one was given by PW-8. The investigation of the taking of digital evidence is perfunctory, and it appears that the

persons who took it were highly unskilled and unaware of the provisions of §65-B of the Indian Evidence Act. Even the supervisory officers failed in their duty to collect the entire CCTV footage as a video clip. This is certainly not the manner in which digital evidence is tendered. As such, we cannot place any reliance upon CCTV footage.

80. **The third circumstance against the accused Sonu Singh is his alleged Extra Judicial Confession made by him to PW6, Sandeep Kumar Shukla**.

81. The Prosecution examined PW6, Sandeep Kumar Shukla, who stated that he is a social servant and accused Sonu was known to him. At around 12:00 PM on Dec 28, 2023, Sonu came to him and he confessed that a girl-child was present at the stall of PW1, he gave her chocolate, and started playing with her and then took her to his house where he committed rape upon her and she started crying, on which he gagged her and after that, he raped her, and then he strangulated her to death. As per PW6, Sandeep, the accused Sonu Singh requested Sandeep to produce Sonu Singh to the police, but PW6 told him that he would come after changing his clothes, but by the time he came back, Sonu Singh had already left.

82. Statement of PW6 clearly points out that he was introduced by the police to make up a story of an extrajudicial confession. PW6 stated that he had an office and that the accused had visited him there. If Sonu had made an extrajudicial confession before him of such a grave and heinous crime, there was no occasion for Sandeep Kumar Shukla to ask him to wait. Another reason that makes the statement of PW6 not of sterling quality and appears to be cooked up is that there was no occasion or purpose for the accused Sonu Singh to have visited PW6 and ask him to take him to the police station. It is not that PW6 Sandeep Kumar was some high-profile politician, or that there was an assurance in the mind of the accused Sonu Singh that, in case he went to the police station with him, he would save him from police torture. PW6 is not even a lawyer or practicing advocate who would have extended such a benefit to the accused. Another reason to disbelieve PW6's story is the call detail record tendered in evidence by the prosecution. As per the call details, the accused was found present and making calls around 9:30 AM. After that, there is a gap in the call details till noon. Subsequently, his location is closer to the railway station, and from there to Haryana, as he had fled away from crime scene and there was no time for him to have gone to PW6. Even otherwise, an extrajudicial confession would be made only before a person to whom one can trust and to whom one feels remorseful. There is nothing on record to explain any acquaintance, much less the relation of trust or closeness between the accused Sonu and PW6. Thus, the credibility in the statement of PW6 Sandeep Kumar Shukla is questionable and it must be discarded as a whole.

83. In Baldev Raj v. State of Haryana, [1990] Supp. 1 SCR 492, *pg497*; 1990-INSC-284, Sep 17, 1990, the Hon'ble Supreme Court holds,

> [D-F]. An extra-judicial confession, if voluntary, can be relied upon by the court along with other evidence in convicting the accused. The value of the evidence as to the confession depends upon the veracity of the witnesses to whom it is made. It is true that the court requires the witness to give the actual words used by the accused as nearly as possible but it is not an invariable rule that the court should not accept the evidence, if not the actual words but the substance were given. It is for the court having regard to the credibility of the witness to accept the evidence or not. When the court believes the witness before whom the confession is made and it is satisfied that the confession was voluntary, conviction can be founded on such evidence. …

84. In State of Rajasthan v. Rajaram, [2003] Supp. 2 SCR 445, *pg458*; 2003-INSC-388, Aug 13, 2003, the Hon'ble Supreme Court holds,

> [C-F]. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.
>
> [459E - F] …In view of the findings recorded by the High Court about the non-acceptability by evidence relating to alleged extra judicial confession, the conclusions of the High Court cannot be said to be one which are unsupportable. We decline to interfere in the appeals, and the same are dismissed.

85. Thus, this Court has no option but to discard the testimony of PW6 in its entirety, as we are convinced that the investigator and the police introduced PW6 as a witness to fabricate evidence of an extrajudicial confession.

86. **The fourth circumstance against the accused Sonu Singh is tower location of his mobile number, which shows his presence in the area of the crime scene from 09:00 AM to 12:30 PM, on Dec 28, 2023, and after that, his movement near the Railway Station and from the place of crime to Haryana**.

87. The prosecution proved the CDR record by examining PW7, who was the Nodal Officer at Reliance Jio Info Com Limited. He tendered in evidence CDR along with the certificate under §65-B of the Indian Evidence Act as Ex. PW7/D and call details as Ex. PW7/A to Ex. PW7/C.

88. The Call Detail Records have been tendered in evidence by the prosecution as Exhibit PW 7/C. The certificate under §65-B of the Indian Evidence Act, 1872, has also been proved by the Nodal Officer of Reliance Jio Infotech Limited. The perusal of the call detail report indicates that the SIM is in the name of the accused, Sonu Singh, and was activated on Dec 19, 2023, that is, around 9 days prior to the date of the incident. As per the call detail records, he was in Ludhiana from that day onwards, a scrutiny of the call details of Dec 28, 2023, indicate the location of SIM, which was issued in the name of the accused Sonu Singh, was in the same area, where the crime had occurred, right from 09:00 hours to 12:15 hours. After that, at 13:44 Hours, i.e., 1:44 PM, the location of the SIM was in the vicinity of the Railway Station, Ludhiana, and after that, at 19:08 hours, i.e., 7:08 PM, the location of the SIM, issued in the accused Sonu Singh's name, was in Haryana.

89. In State (N.C.T. of Delhi) v. Navjot Sandhu @ Afsan Guru, [2005] Supp. 2 SCR 79, pg203; 2005-INSC-333; Aug 04, 2005, the Hon'ble Supreme Court holds,

> [B-E]. According to Section 63, secondary evidence means and includes, among other things, "copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies". Section 65 enables secondary evidence of the contents of a document to be adduced if the original is of such a nature as not to be easily movable. It is not in dispute that the information contained in the call records is stored in huge servers which cannot be easily moved and produced in the Court. That is what the High Court has also observed at para 276. Hence, printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service providing Company can be led into evidence through a witness who can identify the signatures of the certifying officer or otherwise speak to the facts based on his personal knowledge. Irrespective of the compliance of the requirements of Section 65B which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely Sections 63 & 65. It may be that the certificate containing the details in sub· Section (4) of Section 65B is not filed in the instant case, but that does not mean that secondary evidence cannot be

> given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely Sections 63 & 65.

90. In Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors., [2020] 7 S.C.R. 180, *pg250*; 2020-INSC-453, July 14, 2020, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [72(b)]. The clarification referred to above is that the required certificate under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4).

91. An analysis of the CDR records coupled with the certificates issued under §65-B of the Indian Evidence Act fully establishes that the SIM card in question was issued in the name of the accused Sonu Singh, and the mobile phone containing the said SIM card was in the vicinity of the crime scene at the time of the crime. After that, the person holding the phone had moved towards the railway station, from where he had gone to Haryana. Thus, the prosecution has established the circumstances of the accused's presence at the crime scene and his absconding through tower location data.

92. **The fifth circumstance against the accused Sonu Singh is the recovery of his trousers, on his disclosure statement and DNA report establishing that it was his blood on the pants**.

93. After the arrest on Jan 17, 2024, the accused made a disclosure statement on Jan 19, 2024, in which he voluntarily stated that he would recover the trousers he was wearing at the time of occurrence of the crime. The said disclosure statement was recorded vide memo Ext PW15/I, based on which, on Jan 19, 2024, the accused recovered a black coloured pants with blood on it. The pants (one in number) were taken into possession, placed in the parcel, and subsequently deposited in the Police Malkhana. PW15, in his cross-examination, stated that no independent witnesses were examined at the time of recording of the disclosure statement of the accused under §27 of the Indian Evidence Act.

94. Even if we believe this disclosure and recovery to be perfect, still, there is no occasion for this Court to believe that the accused's trousers got stained with the blood which had oozed out at the time of raping the victim. It might have been stained due to

some other prior factors, like dryness, itching, etc. But there is no evidence even to arrive at such a conclusion.

95. In Dinesh Kumar v. The State of Haryana, [2023] 4 SCR 220, *pg229*; 2023-INSC-493, May 04, 2023, the Hon'ble Supreme Court holds,

> [8]. …If the disclosure has been made by the accused to the police while he was in their custody and such a disclosure leads to discovery of a fact then that discovery is liable to be read as evidence against the accused in terms of Section 27 of the Act. All the same, the distinguishing feature of such a discovery must be that such a disclosure must lead to the discovery of a "distinct fact". The recovery of the stolen tractor, the place where the murder was committed and the place where body was thrown in the canal were facts which were already in the knowledge of the police, since it is the case of the prosecution that the co-accused Mange Ram, who was arrested by the police 2 days preceding the arrest of the present appellant, had earlier led to the same discoveries on 12th, 13th & 14th of May, 2000. So, this disclosure and discovery made thereafter cannot be read against the present appellant. There cannot be a "discovery" of an already discovered fact!

96. As such, this Court has no option but to discard such recovery and it cannot be stated with certainty that the pants were stained with Sonu Singh's blood that had oozed out at the time of rape.

97. **The sixth circumstance against the accused Sonu Singh is the FSL report Ext P20, which establishes the presence of his DNA on the victim's vaginal swabs and clothes**.

98. Since the prosecution has collected scientific evidence, it is incumbent upon the Court to analyze that evidence first, to test its relevance.

99. To establish this circumstance, we have to analyse the taking of Sonu Singh's blood sample, the swabs from the victim's body, the victim's clothes, their safe custody, and these being sent to the laboratory for testing, and the report of FSL testing the presence of Sonu Singh's semen in the vaginal swabs and clothes of the victim.

100. **BLOOD SAMPLE OF ACCUSED SONU SINGH**:

Date & No. of Exhibit	Exhibit Name	Description and Findings	TCR Page
17.01.2024 12:50 PM Ext PW15/G	Arrest Memo and Intimation of arrest	Arrested by SI Kulbir Singh Witnesses: ASI Surjit Singh	97

		HC Gurcharan Singh	
PW-15 Inspector Kulbir Singh	Examination-in-chief	On 17.01.2024 I alongwith police party went to village Pahrabpur District Fatehpur (U.P.) and there local police also joined us and when we were present at the chowk of village, one person wearing black mask tried to run away on seeing the police party but he was apprehended. On asking he disclosed his name as Sonu Singh.	139, 11th line
PW-15 Inspector Kulbir Singh	Cross examination	Stated- At the time of arrest of accused local police officials were joined but their statement was not recorded. In the arrest cum intimation and personal search memo Ex.PW15/G and Ex.PW15/H there is no reference of the place of arrest of the accused.	141, Last 3rd line
18.01.2024 Ext P3	Identification Memo of accused	Prepared by: SI Kulbir Singh Complainant grandfather of the deceased alongwith father of the deceased came present and after seeing accused Sonu Singh, he touched accused Sonu Singh and disclosed that this boy is Sonu, who gave chocolate to his granddaughter on 28.12.2023 and took her away on the pretext of playing with her. He committed rape with his grand -daughter aged about 04 years 06 months and after killing her, fled away from the spot. I Identify him. Witnesses: ASI Surjit Singh HC Gurcharan Singh	18
19.01.2024 13.00 Hrs Ext P21	Medical Examination at Civil Hospital Ludhiana	Accused Sonu Singh aged 28 years arrived for Medical Examination Brought by ASI Jarnail Singh	42
24.01.2024 Ext P21	Medical Legal Report	Prepared by Dr Saurav Singla 2 ML OF BLOOD IN EDTA VIAL TO FSL CHANDIGARH FOR DETECTION OF SPERMATOZOA AND DNA EXAMINATION	42
PW-4 Dr Saurav Singla	Examination-in-chief	Stated- Blood sample of accused was taken in EDTA vial and seal with impression LMCH and handed over to the police alongwith documents.	121
PW-10	Examination-in-chief	Stated- On 19.01.2024, IO deposited with me one yellow colour parcel having five seals of	131, 2nd

HC Gurdip Singh		LMCH containing **blood samples of accused Sonu Singh** alongwith sample seal chit, one yellow colour parcel without seal containing documents, one parcel having seal impression KS containing black colour pant stains with blood alongwith sample seal chit. On 31.01.2024, I handed over the above said parcels to L/SC Ranbir Kaur vide road no. 06/21 to deposit the same at CFSL, Chandigarh after getting issuing the docket from ADCP-II, Ludhiana. As per my instructions she after getting issuing the docket, deposit the above said parcels with CFSL, Chandigarh and on return to police station, he handed over receipt to me. As long as the above said parcels and envelopes remained with me neither I nor anyone else tampered it.	and 3rd para
PW-9 L/SC Ranbir Kaur	Examination-in-chief	Stated that on 31.1.2024 I was posted as general duty at PS Daba. On that day, MHC Gurdip Singh produced a parcel …A yellow coloured envelop containing documents of the postmortem of the victim, another yellow coloured parcel containing blood samples of accused sealed with impression LMCH alongwith sample seal another yellow coloured envelope containing doucments of the accused and another parcel containing trousers of the accused sealed with impression KS vide road no. 06/21. The above said parcels were handed over to me and I was insturcted by MHC gurdip Singh to get the docket forwarded fromADCP-II, Ludhiana and deposit the parcels with CFSL, Chandigarh. As per instructions of the MHC I got docket forwarded from ADCP,II, Ludhiana and deposited the above said parcels and envelopes from CFSL Chandigarh on same day and on my return I handed over receipt to MHC which he annexed with record. Alongwith receipt the official of CFSL Chandigarh also handed over me a letter which I also deposited with MHC. My statement was recorded by the IO in this regard. As long as the above said parcels and envelopes remained with me neither I nor anyone else tampered it.	129
31.01.2024	CFSL	Ref No: 43/ADCP-2/CP	37

Ext P20	(CHD)/346/DNA/61/24 Case property received by CFSL, Chandigarh	L/SC Ranbir Kaur C. Randhir Singh Exhibits-P6 bearing 05 seal impression of LMCH One sealed yellow color envelope containing reference blood sample in an EDTA vial stated to be of Sonu Singh	

101. **VICTIM'S VAGINAL SWABS**:

Date & No. of Exhibit	Exhibit Name	Description and Findings	TCR Page
29.12.2023 Ext P18/17	Application to conduct Post-mortem	Application made by SI Kulbir Singh to Senior Medical Officer, Civil Hospital Ludhiana for conducting post-mortem examination of Laadli.	32
29.12.2023 Ext P19	Post-Mortem Examination Report	Body brought by ASI Avinash Rai Board of Doctors: Dr Damanpreet Dr Charan Kamal Dr Anupriya	33
PW-3 Dr Damanpreet Singh, Medical Officer	Examination-in-chief	Stated that they had taken three vaginal swabs of the victim and sealed the same in a parcel with seal of LMCH.	118
PW-10 HC Gurdip Singh	Examination-in-chief	Stated that on 29.12.2023 I was posted as MHC PS Daba. On that day, IO of the present case handed over…IO also handed over to me one plastic box containing three swabs having seal LMCH of deceased alongwith sample seal chit, … and the same were deposited with me. On 31.01.2024, I handed over the above said parcels to L/SC Ranbir Kaur vide road no. 06/21 to deposit the same at CFSL, Chandigarh after getting issuing the docket from ADCP-II, Ludhiana. As per my instructions she after getting issuing the docket, deposit the above said parcels with CFSL, Chandigarh and on return to police station, he handed over receipt to me. As long as the above said parcels and	131, 1st and 3rd para

		envelopes remained with me neither I nor anyone else tampered it..	
PW-9 L/SC Ranbir Kaur	Examination-in-chief	Stated that on 31.1.2024 I was posted as general duty at PS Daba. On that day, MHC Gurdip Singh produced a parcel..... Alongwith above said parcels one plastic container having **swabs of the victim** which was sealed with impression LMCH alongwith sample seal, another parcel containing the clothes of the victim having seal impression LMCH alongwith sample seal. …The above said parcels were handed over to me and I was insturcted by MHC gurdip Singh to get the docket forwarded fromADCP-II, Ludhiana and deposit the parcels with CFSL, Chandigarh. As per instructions of the MHC I got docket forwarded from ADCP,II, Ludhiana and deposited the above said parcels and envelopes from CFSL Chandigarh on same day and on my return I handed over receipt to MHC which he annexed with record. Alongwith receipt the official of CFSL Chandigarh also handed over me a letter which I also deposited with MHC. My statement was recorded by the IO in this regard. As long as the above said parcels and envelopes remained with me neither I nor anyone else tampered it.	129
31.01.2024 Ext P20	CFSL (CHD)/346/DNA/61/24 Case property received by CFSL, Chandigarh	Ref No: 43/ADCP-2/CP L/SC Ranbir Kaur C. Randhir Singh Exhibits-P1 bearing 01 seal impression of LMCH One sealed plastic box containing Three (03) vaginal swabs in a sealed glass vial stated to be of deceased.	37
29.05.2024 Ext P20	Forensic DNA Examination Report of CFSL, Chandigarh	<u>INTERPRETATION OF RESULTS</u> 1. Presence of semen was confirmed on vaginal swabs (Source: Exhibit- P1) and pajama (Source: Exhibit-P5) of deceased *Laadli*. 3. A mixed Autosomal STR DNA profiles was recovered from vaginal swabs (Source: Exhibit-PI) of deceased, which is matching with the DNA profile generated from reference blood sample of deceased (Source: Exhibit-P4)	40-41

		and reference blood sample of Sonu Singh (Source: Exhibit-P6). 5. Y-STR DNA profile of a male individual was recovered from vaginal swabs (Source: Exhibit-P1) of deceased and pant (Source: Exhibit- P7) of Sonu Singh, which is found consistent with the Y-STR DNA profile generated from reference blood sample of Sonu Singh (Source: Exhibit-P6). **<u>CONCLUSION:</u>** **From above results and interpretation thereof, it is concluded that:** **1. Human semen is confirmed on vaginal swabs and pajama of deceased** **2. Human blood was confirmed on clothes, sandal and locket of deceased and stained polythene.** **3. DNA contribution of Sonu Singh is confirmed on the vaginal swabs, Hoodie, T-shirt, sandal and pajama of deceased**	

102. **VICTIM'S CLOTHES & SANDLE**:

Date & No. of Exhibit	Exhibit Name	Description and Findings	TCR Page
29.12.2023 Ext PW15/D	Memo of Production	By SI Kulbir Singh- ASI Sawinder Singh, In-charge of Mobile Forensic Team took mehroon colour **Pajami** lying near the dead body of deceased child on the bed and put the same in a polythene. He also took blood from the polythene lying underneath the dead body of deceased child *Laadli* and put the same into FTA card and further put that FTA card containing **blood sample** into a polythene. He also put the **blood stained polythene** into another polythene and prepared three polythene parcels and produced the same before me SI/SHO. SI Kulbir Singh sealed the said three parcels with his seal bearing impression KS. WITNESSES: ASI Sawinder Singh ASI Avinash Rai	93
29.12.2023 Ext P17	Application to conduct Post-mortem	Application made by SI Kulbir Singh to Senior Medical Officer, Civil Hospital Ludhiana for conducting post-mortem examination of	32

		Laadli.	
29.12.2023 Ext P19	Post-Mortem Examination Report	Board of Doctors: Dr Damanpreet Dr Charan Kamal Dr Anupriya A TREAD AROUND NECK, **T SHIRT, ZIPPER UPPER, AND ONE SANDAL**. SEALED IN A PACKET WITH ONE SEAL INTACT IMPRESSION LMCH. CLOTHES IN A SEALED PACKET WITH IN ONE SEAL INTACT Received by ASI Avinash Rai	33
PW-3 Dr Damanpreet Singh, Medical Officer	Examination-in-chief	Stated that they had also prepared parcel of hoodie, patient, saddle of left foot and a locket in second parcel and sealed the same with seal having impression LMCH… and handed over the same to the police.	118
	Memo of Possession	By ASI Avinash Rai	
PW-10 HC Gurdip Singh	Examination-in-chief	Stated that on 29.12.2023 I was posted as MHC PS Daba. On that day, IO of the present case handed over to me one cloth parcel having seal KS containing **pajami** of deceased alongwith sample seal chit, one **cloth parcel** having seal KS containing plastic polythene having blood sample alongwith sample seal chit, one cloth parcel having seal KS having FTA cart blood sample alongwith sample seal chit. IO also handed over to me…. one cloth parcel having seal LMCH containing deceased **T-shirt, one Hoddi**, one sandle of left foot, one red colour Taveet alongwith sample seal, one yellow parcel without seal containing document relating to postmortem and the same were deposited with me. On 31.01.2024, I handed over the above said parcels to L/SC Ranbir Kaur vide road no. 06/21 to deposit the same at CFSL, Chandigarh after getting issuing the docket from ADCP-II, Ludhiana. As per my instructions she after getting issuing the docket, deposit the above said parcels with CFSL, Chandigarh and on return to police station, he handed over receipt to me. As long as the above said parcels and envelopes remained with me neither I nor	131, 1st and 3rd para

		anyone else tampered it..	
PW-9 L/SC Ranbir Kaur	Examination-in-chief	Stated that on 31.1.2024 I was posted as general duty at PS Daba. On that day, MHC Gurdip Singh produced a **parcel of the clothes of the victim** which was sealed with seal impression KS alongwith sample seal, another two parcels of clothes containing blood which was sealed with impression KS and alongwith a parcel having FTA cart, blood sample which was sealed with impression KS. Alongwith above said parcels one plastic container having swabs of the victim which was sealed with impression LMCH alongwith sample seal, another parcel containing the **clothes of the victim** having seal impression LMCH alongwith sample seal…. The above said parcels were handed over to me and I was instructed by MHC Gurdip Singh to get the docket forwarded from ADCP-II, Ludhiana and deposit the parcels with CFSL, Chandigarh. As per instructions of the MHC I got docket forwarded from ADCP,II, Ludhiana and deposited the above said parcels and envelopes from CFSL Chandigarh on same day and on my return I handed over receipt to MHC which he annexed with record. Alongwith receipt the official of CFSL Chandigarh also handed over me a letter which I also deposited with MHC.	129

		My statement was recorded by the IO in this regard. As long as the above said parcels and envelopes remained with me neither I nor anyone else tampered it.	
31.01.2024 26.02.2024 Ext P20	Case property received by CFSL, Chandigarh	Ref No: 43/ADCP-2/CP L/SC Ranbir Kaur C. Randhir Singh Exhibits-P2A, P2B, P2C, P2D bearing 01 seal impression of LMCH One sealed white cloth parcel containing following exhibits stated to be of deceased A) **A Hoodie** B) **A T-shirt** C) **A sandal of 'left foot'** D) A locket Exhibits-P5 beaing 01 seal impression of KS One sealed white cloth parcel containing a **pajama** stated to be of deceased	37
29.05.2024 Ext P20	Forensic DNA Examination Report of	<u>INTERPRETATION OF RESULTS</u> 2. The human blood was confirmed on clothes (Source: Exhibit- P2A & P2B), sandal (Source:	40-41

	CFSL, Chandigarh	Exhibit- P2C) and locket (Source: Exhibit-P2D) of deceased, stained polythene (Source: Exhibit- P3) and pant (Source: Exhibit- P7) of Sonu Singh. 3. A mixed Autosomal STR DNA profiles was recovered from clothes (Source: Exhibits- P2A & P2B), sandal (Source: Exhibit- P2C) and pajama (Source: Exhibit-P5) of deceased, which is matching with the DNA profile generated from reference blood sample of deceased (Source: Exhibit-P4) and reference blood sample of Sonu Singh (Source: Exhibit-P6). 5. Y-STR DNA profile of a male individual was recovered from clothes (Source: Exhibits- P2A & P2B), sandal (Source: Exhibit- P2C), pajama (Source: Exhibit-P5) of deceased and pant (Source: Exhibit- P7) of Sonu Singh, which is found consistent with the Y-STR DNA profile generated from reference blood sample of Sonu Singh (Source: Exhibit-P6). **<u>CONCLUSION:</u>** **From above results and interpretation thereof, it is concluded that:** **1. Human semen is confirmed on vaginal swabs and pajama of deceased** **2. Human blood was confirmed on clothes, sandal and locket of deceased and stained polythene.** **3. DNA contribution of Sonu Singh is confirmed on the vaginal swabs, Hoodie, T-shirt, sandal and pajama of deceased**	

103. A perusal of the above indicates that the laboratories found the seals intact. Thus, all the links in the chain of custody is complete. Additionally, the DNA results are admissible in evidence, and the following judicial precedents shall be relevant.

104. In Mukesh and Anr. v. State for NCT of Delhi & Ors., [2017] 6 S.C.R. l, *pg23*; 2017 INSC 448, May 05, 2017, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [11.1] DNA technology as a part of Forensic Science and scientific discipline not only provides guidance to investigation but also supplies the Court accrued information about the tending features of identification of criminals. The recent advancement in modern biological research has

> regularized Forensic Science resulting in radical help in the administration of justice. In our country also like several other developed and developing countries, DNA evidence is being increasingly relied upon by courts. After the amendment in the Criminal Procedure Code by the insertion of Section 53A by Act 25 of 2005, DNA profiling has now become a part of the statutory scheme. Section 53A relates to the examination of a person accused of rape by a medical practitioner. Similarly, under Section 164A inserted by Act 25 of 2005, for medical examination of the victim of rape, the description of material taken from the person of the woman for DNA profiling is must. ….

105. The FSL report, Ext P20, was tendered by the public prosecutor, and the scientific officer was not examined by the prosecution. However, the non-examination of the Scientific Officer is not fatal to the prosecution because the FSL report is per se admissible under §293 of the CrPC, 1973 [§329 BNSS, 2023].

106. The DNA and blood samples of the victim and the accused were examined by a Junior Scientific Officer of CFSL, Chandigarh. The FSL report was tendered in evidence by the Public Prosecutor under §293 CrPC. Even if the Junior Scientific Officer had not appeared as a witness, her report would still be admissible in evidence under §293 CrPC, which corresponds to §329 BNSS, by virtue of notification No. 25020/61/13/FW/MHA[2], July 26, 2013, issued by the Ministry of Home Affairs. As per this, a Junior Scientific Officer of the FSL, Chandigarh, was duly authorised under clause 2(f) and her reports were covered under as expert evidence under §45 of the Indian Evidence Act, and *perse* admissible under §293 CrPC, 1973, by clause 3 of the said notification. Further, the Ministry of Home Affairs, Government of India, by Notification S.O. 2762(E)[3], in exercise of the powers conferred by clause (g) of sub-section (4) of section 329 of the BNSS, specified the Junior Scientific Officer of the Central Forensic Science Laboratories, as a Government scientific expert under §329 BNSS, 2023.

[2] MINISTRY OF HOME AFFAIRS, New Delhi, the 26th July 2013, No. 25020/61/13/FW/MHA—
f. Central Forensic Science Laboratory, Chandigarh:
[3]. That the Report of the Experts of Laboratories shall be admissible in the Court of Law within the purview of Section
45 of Indian Evidence Act 1872, Section 292 [Subs. By Criminal Law Amendment Act, 2005 (Act No. 2 of 2006)], Sec. 5 (w.e.f. 16.04.2006; [293 of Code of Criminal Procedure, 1973 [Subs. By Code of Criminal Procedure (Amendment) Act, 2005 (Act No. 25 of 2005)], Sec. 26(a) (w.e.f. 23.06.2006) and of any other law wherever so prescribed. [https://egazette.gov.in/(S(rogc0gidwgnujvw4gtghjp5a))/ViewPDF.aspx]

[3] MINISTRY OF HOME AFFAIRS, NOTIFICATION, New Delhi, the 18th June, 2025; S.O. 2762(E).— In exercise of the powers conferred by clause (g) of sub-section (4) of section 329 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023), the Central Government hereby specifies the following scientific experts of the Central Forensic Science Laboratories as Government scientific experts for the purpose of section 329 of the said Act, namely:-
(i) Scientist 'B';
(ii) Junior Scientific Officer; and
(iii) Assistant Central Intelligence Officer Grade-I.
[https://egazette.gov.in/(S(skupu4huc2qnr0by5sjv1up5))/ViewPDF.aspx]

107. An analysis of the chain of custody and the scientific evidence and the FSL report, Ext P20, fully establishes the presence of Sonu Singh's semen on vaginal swabs, clothes, and on one sandal of the victim, which establishes that it was Sonu Singh who had committed the heinous crime of rape upon *Laadli*.

108. The statement of the accused under §313 CrPC was recorded. The DNA report was put to him in a specific question on page no. 153 of the paper book. The DNA report was presented to the accused, and the accused denied the entire report as incorrect. We have gone through the statement recorded under §313 CrPC. Although the manner in which it was put is not appreciable, it still conveys the substance of accusations; as such, we do not find any fault with the same. In the last question, the accused said he wanted to lead defence evidence, but he did not lead any.

109. In Ajay Singh v. State of Maharashtra, [2007] 7 SCR 983, *pg990-991*; 2007-INSC-690, June 06, 2007, the Hon'ble Supreme Court holds,

> [11]. The object of examination under this Section is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus.
>
> [12]. The word 'generally' in sub-section (l)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.
>
> [13]. The importance of observing faithfully and fairly the provisions of Section 313 of the Code cannot be too strongly stressed. It is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him. The questionings must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when

> an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.

110. In Aejaz Ahmad Sheikh v. State of Uttar Pradesh & Anr. [2025] 4 SCR 1507, *pg1520*; 2025-INSC-529, Apr 22, 2025, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [28]. Before we part with this judgment, we have a suggestion to make. There are several criminal appeals which come to this Court where we find that vital prosecution evidence is not put to the accused in statement under Section 313 of the CrPC. The Court becomes helpless, as due to the long lapse of time, the defect cannot be cured by passing an order of remand.

After that the Hon'ble Supreme Court extracted the ratio from the verdicts of Raj Kumar v. State (NCT of Delhi) [2023] 5 SCR 754, and to Tara Singh v. State, 1951 SCC 903, and observed,

> We want to supplement what is reproduced above. When an appeal against conviction is preferred before the High Court, at the earliest stage, the High Court must examine whether there is a proper statement of the accused recorded under Section 313 of CrPC (Section 351 of the Bharatiya Nagarik Suraksha Sanhita, 2023). If any defect is found, at that stage, the same can be cured either by High Court recording further statement or by directing the Trial Court to record. If this approach is adopted, the argument of delay and prejudice will not be available to the accused.

111. When the accused prefers an appeal against their conviction and sentence, the appellate court is duty bound to consider the evidence on record and independently arrive at a conclusion.[4]

112. In Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra [1974] 1 SCR 489, pg493; 1973-INSC-151, Aug 27, 1973, a three-Judge Bench the Hon'ble Supreme Court holds,

> [A-E]. The cherished principles or golden thread of proof beyond reasonable doubt which runs thro' the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light-heartedly as a learned *author*[5] has sapiently observed, goes much beyond the simple fact that just one

[4] Supreme Court of India, in Ajay Kumar Ghoshal Etc. v. State of Bihar & Anr. [2017] 1 SCR 469, Para 18, [Two Judge Bench], Jan 31, 2017.

[5] Glanville Williams in 'Proof of Guilt'. (2) [1934] L. R. 61 I.A., 398.6—L382 Sup.CD74

> guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "*a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent. ..* " In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing enhance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents. We have adopted these cautions in analysing the evidence and appraising the soundness of the contrary conclusions reached by the courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant. In India the law has been laid down on these lines long ago.

113. It shall be relevant to refer to §106 of Indian Evidence Act, which reads as follows:

> 106. Burden of proving fact especially within knowledge. — When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

114. In Dinesh Kumar v. The State of Haryana, [2023] 4 SCR 220, *pg236*; 2023-INSC-493, May 04, 2023, the Hon'ble Supreme Court holds,

> [13]. What has to be kept in mind is that Section 106 of the Act, only comes into play when the other facts have been established by the prosecution. …..

115. The evidence discussed above is clinching, and even without considering any other evidence, it makes out an open-and-shut case against Sonu Singh.

116. Given the above, the prosecution has been able to establish that the accused Sonu Singh was last seen with *Laadli*, whom he had taken away, and the recovery of the raped and murdered body of *Laadli*, a girl-child aged around four years and seven months, from the bed-box in the house where Sonu Singh was residing for the past couple of days.

117. The evidence of last seen theory has been duly proved with the evidence of recovery of *Laadli's* dead body who had been raped and then murdered from the house where Sonu Singh had been residing, and he was alone at the said house. When Sonu Singh had taken away *Laadli*, Ashok Kumar (who was the tenant of the said house where Sonu Singh had been residing as his guest), was present at *Laadli*'s Nanu's stall, which is further supplemented by DNA report and its proof, confirming and linking Sonu Singh's semen in the victim's vagina and clothes. Additionally, the call details record [CDR] had confirmed

his presence at the crime scene. This puts a reverse burden of proof on the accused Sonu Singh to explain that at what time did he leave the house from where *Laadli*'s sexually assaulted dead body was found, and where did he drop *Laadli* afterwards. The chain of circumstances is complete and unbroken.

118. An offshoot of the above discussion is that the prosecution has been able to establish through the postmortem report, Ext P19, that clotted blood is present at the victim's genital region. Further, there is a fracture in her trachea, and her hyoid is also injured. As per the medical opinion of the board of doctors, the death is due to throttling, which shows that the victim was raped and eventually strangulated to death. The prosecution has also proved the evidence that Sonu Singh was last seen with Laadli, the presence of Sonu Singh's semen in the vaginal swabs of *Laadli*, and call detail records establishing the presence of Sonu Singh in the vicinity and his subsequent absconding from the place after committing the crime.

119. In Hanumant v. The State of Madhya Pradesh, [1952] 1 SCR 1091, *pg1097*: 1952-INSC-41, Sep 23, 1952, the Hon'ble Supreme Court holds,

> It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused...

120. In Sharad Birdhi Chand Sarda v. State of Maharashtra, [1985] 1 SCR 88, *pg162-164*; 1984-INSC-121, Jul 17, 1984, where a bride was found dead in her bed after 4 months of her marriage, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [E-G]. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. The State of Madhya Pradesh [(1952) SCR 1091]*. This case has been uniformly followed and applied by this Court in a large number of later decisions uptodate, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198]* and *Ramgopal v.State of Maharashtra [AIR 1972 SC 656]*. It may be useful to extract what Mahajan, J. has laid down in *Hanumant's case (supra)*: "It is …..accused."

[C-B]. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in *Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra [(1973) 2 SCC 793]* where the following observations were made:

> "Certainly, it is a primary principle, that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be-consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

121. An analysis of the evidence fully establishes that the chain of circumstances is complete, concrete, and leads to the sole inference of Sonu Singh’s guilt beyond any reasonable doubt. Resultantly, the conviction of Sonu Singh for the commission of the rape and murder of *Laadli*, punishable under §6 of the POCSO Act and §302 IPC, is upheld on all counts.

122. Now coming to the part of the death sentences which were imposed by the Trial Court, considering the gravity of the offence and also by drawing a balance where aggravation had outweighed the mitigation.

123. In Rajendra Pralhadrao Wasnik v. State of Maharashtra, [2018] 14 S.C.R. 585, *pg617*, 2018-INSC-1194, Dec 12, 2018, while commuting the death sentence awarded on

the conviction for rape and murder of a girl-child aged 3 years, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [58]. The history of the convict, including recidivism cannot, by itself, be a ground for awarding the death sentence. This needs some clarity. There could be a situation where a convict has previously committed an offence and has been convicted and sentenced for that offence. Thereafter, the convict commits a second offence for which he is convicted and sentence is required to be awarded. This does not pose any legal challenge or difficulty. But, there could also be a situation where a convict has committed an offence and is under trial for that offence. During the pendency of the trial he commits a second offence for which he is convicted and in which sentence is required to be awarded.

124. In Ediga Anamma v. State of Andhra Pradesh, [1974] 3 S.C.R. 329, *pg336, 338*; 1974-INSC-27, Feb 11, 1974, the Hon'ble Supreme Court holds,

> [336G–A]. "354(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence."
>
> The unmistakable shift in legislative emphasis is that life imprisonment for murder is the rule and capital sentence the exception to be resorted to for reasons to be stated.
>
> [338C]. While deterrence through threat of death may still be a promising strategy in some frightful areas of murderous crime, to espouse a monolithic theory of its deterrent efficacy is unscientific and so we think it right to shift the emphasis, to accept composite factors of penal strategy and not to put all the punitive eggs in the 'hanging' basket but hopefully to try the humane mix.
>
> [338D–E]. We assume that a better world is one without legal knifing of life, given propitious social changes. Even so, to sublimate savagery in individual or society is a long experiment in spiritual chemistry where moral values, socio-economic conditions and legislative judgment have a role. Judicial activism can only be a signpost, a weather vane, no more. We think the penal direction in this jurisprudential journey points to life prison normally, as against guillotine, gas chamber, electric chair, firing squad or hangmen's rope. 'Thou shalt not kill' is a slow commandment in law as in life, addressed to citizens as well as to States, in peace as in war. We make this survey to justify our general preference where s.302 keeps two options open and the question is of great moment.
>
> [338E–A]. Let us crystallise the positive indicators against death sentence under Indian Law currently. Where the murderer is too young or too old, the clemency of penal justice helps him. Where the offender suffers from socio-economic, psychic or penal compulsions insufficient to attract a

> legal exception or to downgrade the crime into a lesser one, judicial commutation is permissible. Other general social pressures, warranting judicial notice, with an extenuating impact may, in special cases, induce the lesser penalty. Extraordinary features in the judicial process, such as that the death sentence has hung over the head of the culprit excruciatingly long, may persuade the court to be compassionate. Likewise, if others involved in the crime and similarly situated have received the benefit of life imprisonment or if the offence is only constructive, being under s. 302 read with s. 149, or again the accused has acted suddenly under another's instigation, without premeditation, perhaps the court may humanely opt for life, even like where a just cause or real suspicion of wifely infidelity pushed the criminal into the crime. On the other hand, the weapons used and the manner of their use, the borrandous features of the crime and hapless, helpless state of the victim, and the like, steal the heart of the law for a sterner sentence. We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society. A legal policy on life or death cannot be left for ad hoc mood or individual predilection and so we have sought to objectify to the extent possible, abandoning Retributive ruthlessness, amending the deterrent creed and accenting the trend against the extreme and irrevocable penalty of putting out life.

125. In Bachan Singh etc. etc. v. State of Punjab, etc. etc. [l983] 1SCR 145, *pg229, 237*; 1980-INSC-120, May 09, 1980/Aug 16, 1982, the Constitutional Bench of the Hon'ble Supreme Court while upholding the Constitutional validity of the Capital Sentence, in a reference to the Constitution Bench regarding the constitutional validity of death penalty for murder provided in § 302, Penal Code, and the sentencing procedure embodied in sub-§ (3) of § 354 of the Code of Criminal Procedure, 1973, holds,

> [A-C]. Section 354(3) of the Code of Criminal Procedure, 1973, marks a significant shift in the legislative policy underlying the Code of 1898, as in force immediately before Apr. 1, 1974, according to which both the alternative sentences of death or imprisonment for life provided for murder and for certain other capital offences under the Penal Code, were normal sentences. Now, according to this changed legislative policy which is patent on the face of Section 354(3), the normal punishment for murder and six other capital offences under the Penal Code, is imprisonment for life (or imprisonment for a term of years) and death penalty is an exception.
>
> [F]. In the context, we may also notice Section 235(2) of the Code of 1973, because it makes not only explicit, what according to the decision in *Jagmohan's* case was implicit in the scheme of the Code, but also bifurcates the trial by providing for two hearings, one at the pre-conviction stage and another at the pre-sentence stage.
>
> Pg237. [C-E]. Now, Section 235(2) provides for a bifurcated trial and specifically gives the accused person a right of pre-sentence hearing, at which stage,

> he can bring on record material or evidence, which may not be strictly relevant to or connected with the particular crime under inquiry, but nevertheless, have, consistently with the policy underlined in Section 354(3), a bearing on the choice of sentence. The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302, Penal Code, the Court should not confine its consideration "principally" or *merely* to the circumstances connected with the particular *crime, but also* give due consideration to the circumstances of the *criminal*.

126. In Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, CrA No. 1478-2005, *pg35-36*, May 13, 2009, the Hon'ble Supreme Court holds,

> *Rarest of rare* dictum, as discussed above, hints at this difference between death punishment and the alternative punishment of life imprisonment. The relevant question here would be to determine whether life imprisonment as a punishment will be pointless and completely devoid of reason in the facts and circumstances of the case? As discussed above, life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second exception to the *rarest of rare* doctrine, the court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigor when the court focuses on the circumstances relating to the criminal, along with other circumstances. This is not an easy conclusion to be deciphered, but Bachan Singh (supra) {[l983] 1SCR 145} sets the bar very high by introduction of *Rarest of rare doctrine*.

127. In Machhi Singh and others v. State of Punjab, [1983] 3 SCR 413, *pg430-431*; 1983-INSC-78, Jul 20, 1983, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [H-D]. 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 brought to book operates as a deterrent to 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 the death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining the death penalty…

128. In Mohinder Singh v. State of Punjab, [2013] 3 SCR 90, *pg108*, 2013-INSC 61, Jan 28, 2013, the Hon'ble Supreme Court holds,

> [20E-F]. It is well settled law that awarding of life sentence is a rule and death is an exception. The application of the "rarest of rare" case principle is dependent upon and differs from case to case. However, the principles laid down and reiterated in various decisions of this Court show that in a deliberately planned crime, executed meticulously in a diabolic manner, exhibiting inhuman conduct in a ghastly manner, touching the conscience of everyone and thereby disturbing the moral fiber of the society, would call for imposition of capital punishment in order to ensure that it acts as a deterrent.

129. In Shankar Kisanrao Khade v. State of Maharashtra, [2013] 6 SCR 949, *pg997*; 2013-INSC-281, Apr 25, 2013, the Hon'ble Supreme Court, while commuting the death sentence of a middle-aged man to life [End of Natural Life under S. 376AB], awarded on the conviction for continuous rape and murder of a girl child aged 11, with moderate intellectual disability, holds,

> [28]. Aggravating Circumstances as pointed out above, of course, are not exhaustive so also the Mitigating Circumstances. In my considered view that the tests that we have to apply, while awarding death sentence, are "crime test", "criminal test" and the R-R Test and not "balancing test". To award death sentence, the "crime test" has to be fully satisfied, that is 100% and "criminal test" 0%, that is no Mitigating Circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society no previous track record etc., the "criminal test" may favour the accused to avoid the capital punishment. Even, if both the tests are satisfied that is the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the Rarest of Rare Case test (R-R Test). R-R Test depends upon the perception of the society that is "society centric" and not "Judge centric" that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the Court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of minor girls intellectually challenged, suffering from physical disability, old and infirm women with those disabilities etc. Examples are only illustrative and not exhaustive. Courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the judges.

130. In Mofil Khan and Anr. v. The State of Jharkhand, R.P. (Crl.) No. 641 of 2015, in Crl.A. No. 1795 of 2009, *pg13*, Nov 26, 2021, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [10]. It is well-settled law that the possibility of reformation and rehabilitation of the convict is an important factor which has to be taken into account as a mitigating circumstance before sentencing him to death…

131. In Sundar @Sundarrajan v. State by Inspector of Police, [2023] 5 S.C.R. 1016, *pg1064*; 2023-INSC-264, Mar 21, 2023, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [89] …..'rarest of rare' doctrine requires that the death sentence not be imposed only by taking into account the grave nature of crime but only if there is no possibility of reformation in a criminal.

132. In Vasanta Sampat Dupare v UOI and Ors., W.P. (Cr.) no. 371-2023, *pg1*, 2025-INSC-1043, Aug 25, 2025, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [1]. The majesty of our Constitution lies not in the might of the State but in its restraint. When the Court contemplates the ultimate punishment, i.e. the Capital Punishment, it enters a domain where justice must be tempered by conscience and guided by the unwavering promises of equality, dignity and fair procedure. A Constitution that proclaims liberty and dignity as its first commitments cannot permit the State to end a human life unless every safeguard of fairness has been honoured and every civilising impulse of the law has been heard. The question is never only what penalty a crime might merit, it is first whether the machinery of the Republic has honoured every safeguard that makes punishment lawful in a constitutional democracy. In the narrow space between guilt and the gallows, a robust Constitution demands that we pause, look again, and ask whether the process itself has measured up to the high bar that humanity and the rule of law together set.

133. After analyzing the factual background in which the Appellant-convict had committed the rape and murder of a helpless young girl, there does not appear to be any mitigating factor.

134. The Trial Court awarded the death sentence by holding that the case fell in the rarest of rare category, and the circumstances established the grave act of the accused, which had only one sentence, which was a death sentence. The Trial Court also stated that the aggravating factors outweigh the mitigating factors, as both the accused and the victim belong to the same strata of society, and she had agreed to go with him to play, but he had raped and killed her.

135. It appears that the subsequent act of murder was in the aftermath of panic to destroy the evidence of rape and not a premeditated act.

136. It is one of those rare cases where the line that separates the categories of the "Rarest of Rare" from "Rare" is on the razor's edge. On one hand, the introduction of a fabricated Extra Judicial Confession, the contradiction in the statement of *Laadli*'s father (PW2), and

non-examination of Ashok Kumar would, although not have any bearing on the outcome of the conviction, still can be an additional factor that does not warrant the capital punishment.

137. PW1 and PW2 realized that *Laadli* had been out with the accused Sonu Singh for some time, which was unusual, and started a search around noon. As per the SHO, they informed the Police around 6:00 PM, and the police proceeded to the spot, which was just 2 kms away. Despite this, FIR was registered at 11:55 PM. Although we have already analyzed that such a delay did not affect the proof of guilt, it would still have a bearing on an irreversible sentence.

138. Another *lacunae* in the investigation is the failure to recover one of the victim's sandals. In the photographs, it is clearly visible that the victim was wearing only one sandal, and the other was missing. It is no one's case that the victim was not wearing both sandals. Once it is not the prosecution's case that the victim was not wearing both sandals, then it became incumbent upon the investigator to have made such a finding for the second sandal. Although this factor would not in any way affect the outcome of the judgment, it still reflects a lack of quality in the investigation and the absence of supervision by Senior Police officers.

139. Furthermore, when the CCTV footage was available on the DVR, there was no reason for the investigator not to seize the DVR or to take a copy of the entire video from the DVR. We watched the video after taking it from the Trial Court's record[6], and it leads to no conclusion. It appears to be a video recording from some camera, most probably a mobile phone, of the screen on which the CCTV footage was being played. Thus, no reliance can be placed on this kind of evidence.

140. Another material deficiency is the failure to examine Ashok Kumar. Probably the police did not associate Ashok Kumar, presuming he would support his relative, Sonu Singh. Nevertheless, in such a situation, his statement should have been recorded under §164 CrPC [§183 BNSS], and if he had resiled, he could have been prosecuted.

141. Although these shortcomings neither amount to contradictions nor create any dent in the prosecution's case, they would nonetheless be additional grounds for not imposing an irreversible sentence.

[6] The Pendrive was kept in the same paper envelope and transparent tape was affixed on the envelop.

142. Ours is an age of criticism, to which everything must be subjected.[7] Something now appears to you as an error which you formerly loved as a truth... you push it from you and imagine that your reason has there gained a victory.[8]

143. This Court refrains from criticizing those, including the Supervisory Police Officers, Public Prosecutor, and the Trial Judge, who were responsible, but firmly believes that the solution does not lie in passing strictures but in improving the selection process, ensuring that the candidates have unimpeachable integrity, are meritorious, and are not careerists. However, although the lapses are not enough to make any dent in the proof of guilt, these shortcomings are factors against imposing an irreversible sentence of capital punishment.

144. Now, we need to discuss the justification for the death sentence and whether the facts and the circumstances peculiar to this case, the quality of investigation, and the evidence proved leave no '*Residual Doubt*,' all the attending factors rule out any '*Chance of Reformation*', and thus make it fall in the '*Rarest of Rare*' category?

145. Given the facts and circumstances as mentioned in the preceding paragraphs, would be the material factors for commutation of his death sentence.

146. Criminal Justice warrants meticulously following the procedural standards of proof to pin criminal liability, whereby every 'i' ought to be dotted and every 't' ought to be crossed. The yardstick of a fair criminal trial is the quality of the investigation, not just a perfunctory completion, and the quality of the trial, not its mere disposal.

147. The convict's life should not be taken away by the judicial process, and instead, to save the children and females, he can be incapacitated by imposing an appropriate sentence that is also proportionate to the heinous and gruesome crime of raping and killing a girl aged 4 years and 7 months.

148. So, what was Laadli's fault? Was it that she was born in a region where a female, irrespective of her age, is seen by perverts as an object to satisfy lust? Probably, these males became perverts because no one taught them at home or in school to respect a female as an equal human being? *Laadli*'s only fault was that she was born female, and that was just a coincidence. Education is a multifaceted concept that continues, both explicitly through verbal instruction and implicitly through observation, in both formal school settings and the

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[7]. Immanuel Kant [http://nietzsche.holtof.com/reader/friedrich-nietzsche/the-gay-science/aphorism-307-quote_b945c331f.html].

[8] Friedrich Nietzsche [https://quotefancy.com/quote/832227/Immanuel-Kant-Ours-is-an-age-of-criticism-to-which-everything-must-be-subjected].

informal interactions of our daily environment. In fact, all the tell-tale signs of crime point out that she was raped and murdered because *Laadli* was a vulnerable female, and in the perverted sight of the accused, molded by the unfortunate conditioning of our own society, *Laadli* remained nothing but an object, a means to satiate the accused's insatiable lust. What *Laadli* had to endure demonstrates a clear systemic failure of our institutions and communities at all levels. Somewhere between teaching and learning, our curriculum and society failed to educate Bharatiya primitive males basic respect for life and recognition of the dignity of other genders, or simply how to live as civilized human beings as in the present case, where the accused faltered in understanding the difference between a social animal and a beast.

149. Every life, whether young or old, of rich or poor, citizen or an alien, is equally precious and its loss is irreparable, and no one has the right to take it away except by following the due process of law with extreme care. Compulsive retribution by the State, without justifying due process of law, cannot immunize such acts, even when done in the name of the greater public good.

150. To address the problem as to how to keep other females safe from this rapist and murderer of *Laadli*, without taking away his life, it cannot be addressed by keeping the accused in custody unless he undergoes a specified period of incarceration, without counting the remissions, and ensuring such period of custody extends well beyond his middle age, till the Sunset of his virility, and after that, such a convict is not released from the prison unless there is an assurance that he is not likely to be in a physical capacity to rape and won't have motive to murder his victim. May be the accused realizes the gravity of the offence he inflicted on the victim, repents it, and tries to reform himself.

151. The convict was sentenced for DEATH on two counts by the Trial Court, first for the offence of rape on a minor under §6 of POCSO, and second for the offence of murder punishable under §302 IPC.

152. The appellant is already being held guilty of murder, and for awarding an appropriate sentence under §302 IPC, a penal provision which deals with murders, we will deal with the said act of murder, separately.

153. First, we are dealing with the sentence portion awarded under §6 of POCSO Act, 2012.

154. While calculating the sentence for the rape of minor victims, the most significant factors include the victim's age, nature of injuries, cruelty, number of assailants, etc. We are clarifying that we are not discussing any scenario that depicts apparent primafacie

consent but is a statutory rape because at the time of consent, the victim was a minor, and we are also not discussing the rape of adult victims. We do not have any sentencing guidelines to guide us. Even the judicial precedents on proportionality explicitly do not shed sufficient light to help tread without a crash. Clear guidelines are always better than an impulse, and it always fares well to be logical than to be intuitively vacillating. In the concept of the descending-scale for awarding sentences, the median hypothetically starts at the age of consent. The baseline is the age of consent, with *minima* towards the age closest to the age of consent, and *maxima* towards the lowest age. The younger the victim, the higher the sentence; the more the number of perpetrators, the more the sentence. Thus, in the case of a minor victim, when the age of the victim goes down, the sentence goes up. Thus, in the absence of distinct sentencing guidelines, the only process we can follow is the hydraulic force of descending scale model, which would suggest that when the age of the victim goes down, the scale of sentence goes up, increasing its quantum, thus, the descending-scale model suggests that the younger the victim, the higher the sentence. Given the above, a sentence on rape is likely to be more proportional by following the process of the descending-scale model for sentencing than relying on intuition.

155. In the present case, the victim being under five years of age falls within the bracket of four and five years of age, and there was a single perpetrator. In such a situation, the proportionate sentence for rape should be 25 years of rigorous imprisonment and a fine of rupees 25,00,000, and in default of payment of fine, further simple imprisonment for 250 days, which equals ₹10,000 for every day.

156. Regarding the sentence for murder, punishable under §302 IPC, all the circumventing factors compels this Court to award the maximum possible incarceration, other than the capital punishment, which should not violate the accused's right to a sentence proportionate to what was awarded to other similarly placed convicts, as an alternative to a death sentence.

157. Given the above, the convict Sonu Singh makes out a case for commutation of his death sentence.

158. In Ravishankar @ Baba Vishwakarma v. The State of Madhya Pradesh, [2019] 14 SCR 285, *pg310, 311*; 2019-INSC-1116, Oct 03, 2019, a three-judge bench of the Hon'ble Supreme Court holds,

Age of girl-child	13 years	Age of Man	Adult

> [61]. In the present case, there are some residual doubts in our mind. A crucial witness for constructing the last seen theory, P.W.5 is partly inconsistent in cross-examination and quickly jumps from one statement to the other. Two other witnesses, P.W.6 and P.W.7 had seen the

appellant feeding biscuits to the deceased one year before the incident and their long delay in reporting the same fails to inspire confidence. The mother of the deceased has deposed that the wife and daughter of the appellant came to her house and demanded the return of the money which she had borrowed from them but failed to mention that she suspected the appellant of commiting the crime initially. Ligature marks on the neck evidencing throttling were noted by P.W.20 and P.W.12 and in the postmortem report, but find no mention in the panchnama prepared by the police. Viscera samples sent for chemical testing were spoilt and hence remained unexamined. Although nails' scrappings of the accused were collected, no report has been produced to show that DNA of the deceased was present. Another initial suspect, Baba alias Ashok Kaurav absconded during investigation, hence, gave rise to the possibility of involvment of more than one person. All these factors of course have no impact in formation of the chain of evidence and are wholly insufficient to create reasonable doubt to earn acquittal.

[62]. We are cognizant of the fact that use of such 'residual doubt' as a mitigating factor would effectively raise the standard of proof for imposing the death sentence, the benefit of which would be availed of not by the innocent only. However, it would be a misconception to make a cost-benefit comparison between cost to society owing to acquittal of one guilty versus loss of life of a perceived innocent. This is because the alternative to death does not necessarily imply setting the convict free.

[63]. As noted by the United States Supreme Court in Herrera v. Collins, [506 U.S. 390 (1993)] "*it is an unalterable fact that our judicial system, like the human beings who administer it, is fallible*." However, death being irrevocable, there lies a greater degree of responsibility on the Court for an indepth scruitiny of the entire material on record. Still further, qualitatively, the penalty imposed by awarding death is much different than in incarceration, both for the convict and for the state. Hence, a corresponding distinction in requisite standards of proof by taking note of 'residual doubt' during sentencing would not be unwarranted.

[64]. We are thus of the considered view that the present case falls short of the 'rarest of rare' cases where the death sentence alone deserves to be awarded to the appellant. It appears to us in the light of all the cumulative circumstances that the cause of justice will be effectively served by invoking the concept of special sentencing theory as evolved by this Court in ***Swamy Shraddananda[9] (supra) and approved in Sriharan[10] case (supra)***.

[65]. For the reasons aforesaid, the appeal is allowed in part to the extent that the death penalty as awarded by the courts below is set aside and is substituted with the imprisonment for life with a direction that no remission shall be granted to the appellant and he shall remain in prison for the rest of his life.

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[9] Swamy Shraddananda @ Murali Manohar Mishra v. State of Karnataka (2008) 13 SCC 767: [2008] 11 SCR 93.

[10] Union of India v. Sriharan alias Murugan and others (2016) 7 SCC 1: [2015] 14 SCR 613.

159. In the following judicial precedents, where the age of the victim girl-child was under 12 years, the Hon'ble Supreme Court, although it commuted the death sentence, imposed imprisonment for life, till the end of natural life.

160. In Rameshbhai Chandubhai Rathod v. The State of Gujarat, [2011] 1 SCR 829, *pg835*, Jan 24, 2011, a three-Judge Bench of the Hon'ble Supreme Court, while commuting the death sentence to the remainder of life, holds,

Age of girl	Studying in Class IV	Age of Man	27 Years

> [2] …..We notice that there is a very thin line on facts which separates the award of a capital sentence from a life sentence in the case of rape and murder of a young child by a young man and the subjective opinion of individual Judges as to the morality, efficacy or otherwise of a death sentence cannot entirely be ruled out. It is now well settled that as on today the broad principle is that the death sentence is to be awarded only in exceptional cases.
>
> …..In arriving at its conclusion, the Court relied on similar observations made in the case of Ramraj v. State of Chhattisgarh [(2010) 1 SCC 573]. We are, therefore, of the opinion that the appellant herein ought to be awarded a similar sentence. We accordingly commute the death sentence awarded to him to life but direct that the life sentence must extend to the full life of the appellant but subject to any remission or commutation at the instance of the Government for good and sufficient reasons.

161. In Chhotelal v. State of M.P., July 14, 2011, [2011] 8 SCR 239, *pg241*; 2011-INSC-492, the Hon'ble Supreme Court holds,

Age of girl-child	10 Years	Age of Man	Adult

> [4]. We, accordingly, dismiss the appeal but direct (in the light of the aforesaid observations) that the appellant would serve out the sentence of imprisonment upto the end of his life but this direction would be subject to any remissions which the Government may choose to give under the circumstances to the appellant...

162. In Amit v. State of Uttar Pradesh, Feb 23, 2012, [2012] 1 SCR 1009, *pg1022*; 2012-INSC-100, the Hon'ble Supreme Court holds,

Age of girl-child	3 Years	Age of Man	28 years

> [12]. …In the present case also, we find that when the appellant committed the offence he was a young person aged about 28 years only. There is no evidence to show that he had committed the offences of kidnapping, rape or murder on any earlier occasion. There is nothing on evidence to suggest that he is likely to repeat similar crimes in future. On the other hand, given a chance he may reform over a period of years. Hence, following the judgment of the three Judge Bench in Rameshbhai Chandubhai Rathod (2) v. State of Gujarat (supra) [(2011) 2 SCC 764], we convert the death sentence awarded to the appellant. to imprisonment for life and direct that the life sentence of the appellant will extend to his

full life subject to any remission or commutation at the instance of the Government for good and sufficient reasons.

163. In Md. Mannan @ Abdul Mannan v. State of Bihar, [2019] 8 SCR 266, *pg295,296*; 2019 INSC 196, Feb 14, 2011, a three-Judge Bench of the Hon'ble Supreme Court holds,

Age of girl-child	8 Years	Age of Man	42-43 years

[86]. It is also pertinent to note herein that the relevant Prison Rules also recognise the phenomenon of post-conviction mental illness and state that the execution of such persons shall be deferred, pending orders of the Government.[11] In the light of the aforesaid considerations, we conclude that the mental health of the petitioner at the time of execution is a relevant mitigating factor which must be taken into consideration in the present case. As observed above, there are materials put forward now, in the form of medical opinion, which show that the petitioner is not mentally sound. For the reasons discussed above, we are of the view that it would not be appropriate and/or safe to affirm the death sentence awarded to the petitioner.

[89]. Even though life imprisonment means imprisonment for entire life, convicts are often granted reprieve and/or remission of sentence after imprisonment of not less than 14 years. In this case, considering the heinous, revolting, abhorrent and despicable nature of the crime committed by the petitioner, we feel that the petitioner should undergo imprisonment for life, till his natural death and no remission of sentence be granted to him.

164. In Rajendra Pralhadrao Wasnik v. State of Maharashtra, [2018] 14 S.C.R. 585, *pg594*; 2018-INSC-1194, Dec 12, 2018, a three-Judge Bench of the Hon'ble Supreme Court holds,

Age of girl-child	3 Years	Age of Man	Adult

[1]. 'Sentenced to death' – these few words would have a chilling effect on anyone, including a hardened criminal. Our society demands such a sentence on grounds of its deterrent effect, although there is no conclusive study on its deterrent impact. Our society also demands death sentence as retribution for a ghastly crime having been committed, although again there is no conclusive study whether retribution by itself satisfies society. On the other hand, there are views that suggest that punishment for a crime must be looked at with a more humanitarian lens and the causes for driving a person to commit a heinous crime must be explored. There is also a view that it must be determined whether it is possible to reform, rehabilitate and socially reintegrate into society even a hardened criminal along with those representing the victims of the crime.

[43]. At this stage, we must hark back to ***Bachan Singh*** and differentiate between possibility, probability and impossibility of reform and

[11] Bihar Prisons Manual 2012, Rule 642.

rehabilitation. ***Bachan Singh*** requires us to consider the probability of reform and rehabilitation and not its possibility or its impossibility.

[45]. The law laid down by various decisions of this Court clearly and unequivocally mandates that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. This is one of the mandates of the "special reasons" requirement of Section 354(3) CrPC and ought not to be taken lightly since it involves snuffing out the life of a person. To effectuate this mandate, it is the obligation on the prosecution to prove to the court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated. This can be achieved by bringing on record, *inter alia*, material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the convict can produce evidence on these issues as well.

[46]. If an inquiry of this nature is to be conducted, as is mandated by the decisions of this Court, it is quite obvious that the period between the date of conviction and the date of awarding sentence would be quite prolonged to enable the parties to gather and lead evidence which could assist the Trial Court in taking an informed decision on the sentence. But, there is no hurry in this regard, since in any case the convict will be in custody for a fairly long time serving out at least a life sentence.

[47]. Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be over-emphasised. Until ***Bachan Singh***, the emphasis given by the courts was primarily on the nature of the crime, its brutality and severity. ***Bachan Singh*** placed the sentencing process into perspective and introduced the necessity of considering the reformation or rehabilitation of the convict. Despite the view expressed by the Constitution Bench, there have been several instances, some of which have been pointed out in Bariyar and in ***Sangeet v. State of Haryana*** [(2013) 2 SCC 452], where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in ***Sangeet*** "In the sentencing process, both the crime and the criminal are equally important." Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and analyse this information is certainly not an easy task but must nevertheless be undertaken. The process of rehabilitation is also not a simple one since it involves social re-integration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social re-integration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible.

[80]. For all these reasons, we are of opinion that it would be more appropriate looking to the crimes committed by the appellant and the material on record including his overall personality and subsequent events, to commute the sentence of death awarded to the appellant but direct that he should not be released from custody for the rest of his normal life. We order accordingly.

165. In Dattatraya @ Datta Ambo Rokade v. The State of Maharashtra, [2019] 11 SCR 295, *pg340*; 2019-INSC-247, Feb 21, 2019, a three-Judge Bench of the Hon'ble Supreme Court holds,

Age of girl-child	5 Years	Age of Man	Adult

> [144]. Even though life imprisonment means imprisonment for entire life, convicts are often granted reprieve and/or remission of sentence after imprisonment of not less than 14 years. In this case, considering the heinous, revolting, abhorrent and despicable nature of the crime committed by the appellant, we feel that the appellant should undergo imprisonment for life, till his natural death and no remission of sentence be granted to him.
>
> [145]. For the above reasons, we are of the view that the present appeals are one of such cases where we would be justified in holding that confinement till natural life of the accused-appellant shall fulfil the requisite criteria of punishment considering the peculiar facts and circumstances of the present case. Accordingly, the death sentence awarded by the trial court is hereby modified to "life imprisonment" i.e., imprisonment for the natural life of the appellant herein. The appeals are allowed accordingly to the extent indicated above.

166. In Accused 'X' v. State of Maharashtra, [2019] 6 S.C.R. 1, *pg39*; 2019-INSC-518, Apr 12, 2019, a three-Judge Bench of the Hon'ble Supreme Court, while commuting the death sentence for the rape and murder of two minor girls, who were raped, killed and their dead bodies thrown in a well, holds,

Age of girl-child Two girls	Students of Classes I and Class IV	Age of Man	Adult

> [73]. At the same time, we cannot lose sight of the fact that a sentence of life imprisonment *simpliciter* would be grossly inadequate in the instant case. Given the barbaric and brutal manner of commission of the crime, the gravity of the offence itself, the abuse of the victims' trust by the Petitioner, and his tendency to commit such offences as is evident from his past conduct, it is extremely clear that the Petitioner poses such a grave threat to society that he cannot be allowed to roam free at any point whatsoever. In this view of the matter, we deem it fit to direct that the Petitioner shall remain in prison for the remainder of his life...

167. In the following judicial precedent of rape and death by asphyxiating the girl, the Hon'ble Supreme Court commuted the death sentence to imprisonment for life.

168. In Akhtar v State of U.P., MANU-SC-1008-1999, *pg2*; (1999) 6 SCC 60, Feb 02, 1999, the Hon'ble Supreme Court holds,

> [3]. …The medical evidence also indicates that the death is on account of asphyxia. In the circumstances we are of the considered opinion that the case in hand cannot be held to be one of the rarest of rare cases justifying the punishment of death. We, therefore, uphold the conviction of the appellant under Section 302, IPC, but looking to other mitigating

> circumstances, we commute the sentence of death to imprisonment of life.

169. In the following judicial precedents, where the age of the victim girl-child was under 12 years, the Hon'ble Supreme Court commuted the death sentence to imprisonment for life.

170. In Mohd. Chaman v. State (N.C.T. of Delhi), Crl.A. No. 68-69 of 1999, *pg10*, Dec 11, 2000, the Hon'ble Supreme Court holds,

Age of girl-child	1 year 6 months	Age of Man	30 years

> Coming to the case in hand, the crime committed is undoubtedly serious and heinous and the conduct of the appellant is reprehensible. It reveals a dirty and perverted mind of a human-being who has no control over his carnal desires. Then the question is: whether the case can be classified as of a 'rarest of rare category justifying the severest punishment of death. Testing the case on the touchstone of the guidelines laid down in Bachan Singh (*supra*), Machhi Singh (*supra*) and other decisions and balancing the aggravating and mitigating circumstances emerging from the evidence on record, we are not persuaded to accept that the case can be appropriately called one of the 'rarest of rare cases deserving death penalty. We find it difficult to hold that the appellant is such a dangerous person that to spare his life will endanger the community. We are also not satisfied that the circumstances of the crime are such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances in favour of the offender. It is our considered view that the case is one in which a humanist approach should be taken in the matter of awarding punishment. Accordingly, the capital sentence imposed against the appellant by the Courts below is set aside, instead the appellant shall suffer rigorous imprisonment for life. Subject to the above modification of sentence, the appeals filed by the accused are dismissed.

171. In Raju v. State of Haryana, [2001] Supp. 3 SCR 409, *pg414*; 2001-INSC-247, May 02, 2001, the Hon'ble Supreme Court holds,

Age of girl-child	11 years	Age of Man	Adult

> [C – D]. There is nothing on record to indicate that the appellant was having any criminal record nor he can be said to be a grave danger to the society at large. In these circumstances, it would be difficult to hold that the case of the appellant would be rarest of rare case justifying imposition of death penalty.
>
> We, therefore, uphold the conviction of the appellant under Section 302, but commute the sentence of death to imprisonment of life.

172. In Bantu @ Naresh Giri v. State of M.P, [2001] Supp. 4 SCR 298, *pg301,302*; 2001-INSC- 518, Oct 17, 2001, the Hon'ble Supreme Court holds,

Age of girl-child	6 Years	Age of Man	Under 22 years

[G-H]. In the present case, there is nothing on record to indicate that the appellant was having any criminal record nor it can be said that he will be a grave danger to the society at large. It is true that his act is a heinous and requires to be condemned but at the same time it cannot be said that it is rarest of the rare case where accused requires to be eliminated from the society. Hence, there is no justifiable reason to impose the death sentence.

[A-B]. In the result, we confirm the conviction of the appellant under Section 302 IPC but modify the sentence by commuting the sentence of death to an imprisonment for life. For the offence punishable under Section 376 IPC, he is sentenced to undergo rigorous imprisonment for 10 years. Both the sentences to run concurrently. The appeal is partly allowed accordingly.

173. In Amit @ Ammu v. State of Maharashtra, 2003 SUPP. (2) SCR 285, *pg289*; 2003-INSC-373, Aug 06, 2003, the Hon'ble Supreme Court holds,

Age of girl-child	11-12 years and student of VI standard	Age of Man	20 years

[D-E]. The next question is of the sentence. Considering that the appellant is a young man, at the time of incident his age was about 20 years; he was a student; there is no record of any previous heinous crime and also there is no evidence that he will be a danger to the society, if the death penalty is not awarded. Though the offence committed by the appellant deserves serve condemnation and is a most heinous crime, but on cumulative facts and circumstances of the case, we do not think that the case falls in the category of rarest of the rare case. We hope that the appellant will learn a lesson and have opportunity to ponder over what he did during the period he undergoes the life sentence. Having regard to the totality of the circumstances, we modify the impugned judgment and instead of death penalty, award life imprisonment to the appellant for offence under Section 302, IPC.

174. In Surendra Pal Shivbalakpal v. State of Gujarat, [2004] SUPP. 4 SCR 464, *pg469*; 2004-INSC-526, Sep 16, 2004, the Hon'ble Supreme Court holds,

Age of girl-child	Little Child-Accused carried her on shoulder	Age of Man	36 years

[A-C]. The next question that arises for consideration is whether this is a 'rarest of rare case', we do not think that this is a 'rarest of rare case' in which death penalty should be imposed on the appellant. The appellant was aged 36 years at the time of the occurrence and there is no evidence that the appellant had involved in any other criminal case previously and the appellant was a migrant labour from U.P. and was living in impecunious circumstances and it cannot be said that he would be a menace to the society in future and no materials are placed before us to draw such a conclusion. We do not think that the death penalty was warranted in this case. We confirm conviction of the appellant on all the counts, but the sentence of death penalty imposed on him for the offence under Section 302 IPC is commuted to life imprisonment.

175. In Bishnu Prasad Sinha v. State of Assam, [2007] 1 SCR 916, *pg945*; 2007 INSC 42, Jan 16, 2007, the Hon'ble Supreme Court holds,

Age of girl-child	7-8 Years	Age of Men	Both were Adults

> [62]. There is another aspect of this matter which cannot be overlooked. Appellant No. l made a confession. He felt repentant not only while making the confessional statement before the Judicial Magistrate, but also before the learned Sessions Judge in his statement under Section 313 of the Code of Criminal Procedure.
>
> [63]. It is, therefore, in our opinion, not a case where extreme death penalty should be imposed. We, therefore, are of the opinion that imposition of punishment of rigorous imprisonment for life shall meet the ends of justice. It is directed accordingly. Both the appellants, therefore, are, instead of being awarded death penalty, are sentenced to undergo rigorous imprisonment for life, but other part of sentence imposed by the learned Sessions Judge are maintained.

176. In Purna Chandra Kusal v. State of Orissa, Crl.A. No. 1228 of 2008, *pg3*, Jul 12, 2011, the Hon'ble Supreme Court holds,

Age of girl-child	5 years	Age of Man	30 Years

> [5]. We are, however, of the opinion that the death sentence in the present case was not called for. The appellant was a labourer living in a basti along side the railway line and was, at the time of the incident, about 30 years of age. We also see that the entire evidence is circumstantial in nature. Concededly, there is no inflexible rule that a death sentence cannot be awarded in a case resting on circumstantial evidence but courts are as a matter of prudence, hesitant in awarding this sentence, in such a situation. It is true that the crime was indeed a heinous one as the victim was only five years of age and the daughter of P.W. 5 who was a neighbour of the appellant. On a cumulative assessment of the facts, we are of the opinion that the death sentence should be commuted into one for life.

177. In Kalu Khan v. State of Rajasthan, Crl.A. No. 1892-2014, *pg29*, Mar 10, 2015, a three-Judge Bench of the Hon'ble Supreme Court commuted the death sentence in murder, abduction, and rape of a girl child aged 4, holding as follows,

Age of girl-child	4 years	Age of Man	Adult

> [30]. …We are of the opinion that the four main objectives which the State intends to achieve namely deterrence, prevention, retribution and reformation can be achieved by sentencing the appellant-accused for life.

178. In Sunil v. State of Madhya Pradesh, Crl.A. No. 39-40 of 2014, *pg9*, [(2017) 4 SCC 393], Apr 08, 2016, a three-Judge Bench of the Hon'ble Supreme Court holds,

Age of girl-child	4 years (Niece of Accused)	Age of Man	25 Years

> [9]. …In the present case, one of the compelling/mitigating circumstance that must be acknowledged in favour of the accused-appellant is the young age at which he had committed the crime. The fact that the accused can be reformed and rehabilitated; the probability that the accused would not commit similar criminal acts; that the accused would not be a continuing threat to the society are the other circumstances which could not but have been ignored by the learned trial court and the High Court.
>
> [10]. We have considered the matter in the light of the above. On such consideration we are of the view that in the present case, the ends of justice would be met if we commute the sentence of death into one of life imprisonment…

179. In Vijay Raikwar v. State of Madhya Pradesh, Crl.A. No. 1112 of 2015, *pg6*, Feb 05, 2019, a three-judge bench of the Hon'ble Supreme Court holds,

Age of girl-child	7 ½ years	Age of Man	19 years

> [7]. Now, so far as the request and the prayer made on behalf of the accused to commute the death sentence to life imprisonment is concerned, having heard the learned counsel appearing on behalf of the accused on the question of death sentence imposed by the learned Sessions Court, confirmed by the High Court and considering the totality and circumstances of the case and the decisions of this Court in the cases of *Bachan Singh* (supra) and *Shyam Singh* (supra), we are of the opinion that the present case does not fall within the category of 'rarest of rare case' warranting death penalty. We have considered each of the circumstance and the crime as well as the facts leading to the commission of the crime by the accused. Though, we acknowledge the gravity of the offence, we are unable to satisfy ourselves that this case would fall in the category of 'rarest of rare case' warranting the death sentence. The offence committed, undoubtedly, can be said to be brutal, but does not warrant death sentence. It is required to be noted that the accused was not a previous convict or a professional killer. At the time of commission of offence, he was 19 years of age. His jail conduct also reported to be good. Considering the aforesaid mitigating circumstances and considering the aforesaid decisions of this Court, we think that it will be in the interest of justice to commute the death sentence to life imprisonment.

180. In the following judicial precedents, where the age of the victim girl-child was 14 years, the Hon'ble Supreme Court, although commuted the death sentence to imprisonment for life, with clarification that the convict must serve a minimum of 35 years in jail without remission.

181. In Rajkumar v. State of M.P., [2014] 3 SCR 212, *pg229*; 2014-INSC-136, Feb 25, 2014, the victim used to address accused as 'Mama', victim's parents called him to stay at their house because they had to go to irrigate the fields, and during the night he raped and murdered her, the Hon'ble Supreme Court holds,

Age of girl-child	14 years	Age of Man	32 years

> [19]. The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. Before opting for the death penalty the circumstances of the offender also require to be taken into consideration alongwith the circumstances of the crime for the reason that life imprisonment is the rule and death sentence is an exception. The penalty of death sentence may be warranted only in a case where the court comes to the conclusion that imposition of life imprisonment is totally inadequate having regard to the relevant circumstances of the crime. The balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and mitigating circumstances before option is exercised.
>
> [20]. A three-Judge Bench of this Court in *Swami Shraddananda @ Murali Manohar Mishra v. State of Karnataka*, AIR 2008 SC 3040, wherein considering the facts of the case, the Court set aside the sentence of death penalty and awarded life imprisonment, but further explained that in order to serve the ends of justice, the appellant therein would not be released from prison till the end of his life.
>
> [21]. Thus, taking into consideration the aforesaid judgments, we are of the view that in spite of the fact that the appellant had committed a heinous crime and raped an innocent, helpless and defenceless minor girl who was in his custody, he is liable to be punished severely but it is not a case which falls within a category of rarest of rare cases. Hence, we set aside the death sentence and award life imprisonment. The appellant must serve a minimum of 35 years in jail without remission, before consideration of his case for pre-mature release. However, it would be subject to clemency power of the Executive.

182. In the following judicial precedents, where the age of the victim girl-child was under 12 years, the Hon'ble Supreme Court, although commuted the death sentence to imprisonment for life, with clarification that the convict must serve a minimum of 30 years in jail without remission.

183. In Neel Kumar v. State of Haryana, [2012] 5 SCR 696, *pg714*; 2012-INSC-204, May 7, 2012, on the allegation against the appellant of rape and murder of his 4-year-old daughter, the Hon'ble Supreme Court holds,

Age of girl-child	4 years	Age of Man	Adult

> [27]. Thus, in the facts and circumstances of the case, we set aside the death sentence and award life imprisonment. The appellant must serve a minimum of 30 years in jail without remissions, before consideration of his case for pre-mature release.

184. In Selvam v. State Thr. Insp. of Police, Crl.A. No. 1287 of 2011, *pg10*, May 02, 2014, while commuting the death sentence for the rape and murder of a girl-child aged 9, a three-Judge Bench of the Hon'ble Supreme Court holds,

Age of girl-child	9 years	Age of Man	Adult

> [9]. …As a result, we do not find any cogent reason to interfere so far as the findings of guilt recorded by the courts below are concerned. However, considering the facts and circumstances of the case the death sentence awarded by the courts below require to be converted into life imprisonment but taking note of the diabolic manner in which the offence had been committed against a child, it is desirable that the appellant should serve minimum sentence of 30 years in jail without remission, though subject to exercise of constitutional power for clemency.

185. In Raju Jagdish Paswan v. The State of Maharashtra, CrA Nos. 88-89 of 2019, *pg10*, Jan 17, 2019, the Hon'ble Supreme Court holds,

Age of girl-child	9 years Studying in Class IV	Age of Man	22 years

> [9]. The Appellant dragged a girl of nine years into a sugarcane field, raped her and dumped her in a well. The cause of death according to the medical evidence was signs of recent sexual intercourse with death due to drowning. There is no doubt that the murder involves exceptional depravity which is one of the aggravating circumstances. The manner of commission of the crime is extremely brutal. However, we are of the considered opinion that the Appellant does not deserve the sentence of death in view of the following mitigating circumstances:
>
> a) On a thorough examination of the offence, we are unable to accept the prosecution version that the murder was committed in a pre-planned manner.
> b) The Appellant was a young man aged 22 years at the time of commission of the offence.
> c) There is no evidence produced by the prosecution that the Appellant has the propensity of committing further crimes, causing a continuing threat to the society.
> d) The State did not bring on record any evidence to show that the Appellant cannot be reformed and rehabilitated.
>
> [10]. In view of the above, we are unable to agree with the courts below that the sentence of death is appropriate in this case. Applying the guidelines laid down by this Court for sentencing an accused convicted of murder and being mindful that a death sentence can be imposed only when the alternative option is unquestionably foreclosed, we are of the opinion that this case does not fall within the rarest of rare cases.
>
> [13]. Though we have already expressed our view that the Appellant does not deserve to be put to death, he is not entitled to be released on completion of 14 years while serving life imprisonment. The brutal sexual assault by the Appellant on the hapless victim of nine years and the grotesque murder of the girl compels us to hold that the release of the Appellant on completion of 14 years of imprisonment would not be in the interest of the society. Considering the gravity of the offence and the manner in which it was done, we are of the opinion that the Appellant deserves to be incarcerated for a period of 30 years….

186. In Parsuram v. State of Madhya Pradesh, Crl.A. No. 314-315 of 2013, *pg9*, Feb 19, 2019, commuting the death sentence of a boy aged 22, who had raped and murdered a minor girl, a three-Judge Bench of the Hon'ble Supreme Court holds,

Age of girl-child	Student	Age of Man	22 years

[14]. Having regard to the totality of the facts and circumstances of the case, more particularly when the accused has taken advantage of his relationship with the family of the victim as a tutor, though we find that the instant case does not fall in the category of the "rarest of rare" cases deserving imposition of the death penalty, the interest of justice would be met if the appellant herein is sentenced to undergo imprisonment of 30 years (without any remission). Accordingly, we partly allow the appeals. While confirming the conviction, we modify the sentence imposed on the appellant from death to life imprisonment of an actual period of 30 years (without any remission).

187. In Irappa Siddappa Murgannavar v. State of Karnataka, [2021] 11 S.C.R. 51, *pg73*; 2021-INSC-707, Nov 08, 2021, a girl-child aged 5 years and 2 months was raped and killed by strangulation, and then her body was put in a gunny bag and disposed of in the stream, a three-Judge Bench of the Hon'ble Supreme Court holds,

Age of girl-child	5years and 2 months	Age of Man	23/25 years

[30]. …The appeals are, however, partly allowed by commuting the death sentence to that of life imprisonment with the stipulation that the appellant shall not be entitled to premature release/remission before undergoing actual imprisonment of 30 years for the offence under Section 302 of the Code and further the sentences awarded shall run concurrently and not consecutively.[12]

188. In Arvind @ Chhotu Thakur v. State of M.P., Crl.A. No. 12 of 2022, *pg3*, Jan 04, 2022, the Hon'ble Supreme Court holds,

Age of girl-child	10 years	Age of Man	Adult

In the facts and circumstances of this case, the appellant is convicted for offences under Sections 376-A, 302, 363, 201 IPC and Section 6 of POCSO Act and is sentenced to imprisonment for a period of 30 years. He shall not be entitled to seek remission.

189. In Pappu v. State of Uttar Pradesh, [2022] 2 S.C.R. 13, *pg100*; 2022-INSC-164, Feb 09, 2022, the allegations in the matter were that the accused had enticed a seven-year-old girl to accompany him under the pretext of picking lychee fruits; then, he committed rape upon the child, caused her death, and dumped her body near a bridge on the riverbank, and commuting the death Sentence to 30 years of actual life imprisonment, a three-Judge bench of the Hon'ble Supreme Court holds,

Age of girl-child	7 years	Age of Man	33-34 years

[45]. The appellant was about 33-34 years of age at the time of commission of crime in the year 2015. Looking to the overall facts and circumstances, in our view, it would be just and proper to award the punishment of

[12] In view of the Constitutional Bench decision in ***Union of India v. V. Sriharan alias Murugan and Others***, (2016) 7 SCC 1, the above direction would not affect the constitutional power of the President or Governor under Article 72 or 161 of the Constitution of India.

> imprisonment for life to the appellant for the offence under Section 302 IPC while providing for actual imprisonment for a minimum period of 30 years. Having regard to the circumstances of this case and other punishments awarded to the appellant, it is also just and proper to provide that all the substantive sentences shall run concurrently.

190. In Bhaggi @Bhagirath @Naran v. The State of Maharashtra, [2024] 2 S.C.R. 111, *pg122*; 2024-INSC-82, Feb 05, 2024, the Hon'ble Supreme Court holds,

Age of girl-child	7 years	Age of Man	40 years

> [21]. We further direct that the petitioner-convict shall not be released from jail before completion of actual sentence of 30 years, subject to the observation made in the matter of its computation, as mentioned above.

191. Although there are precedents awarding death sentences, imprisonment for life specifying that it shall continue until the end of natural life, life imprisonment without specifying a minimum mandatory incarceration, and life imprisonment specifying a minimum mandatory incarceration, most of these verdicts are based on various factors and circumstances peculiar to the facts of those cases. As such, the Courts have to form their independent opinion after considering all available aggravating and mitigating factors primafacie proved or not disputed in a given case.

192. In India, in the absence of statutory sentencing guidelines, this Court has relied on the above judicial precedents. For any sentence to be proportionate, it must be stable and balanced like a table, and for a table to be stable, all its legs must be comparable. Therefore, while awarding a sentence, the Courts are obligated to consider the (a) Crime, (b) Victim, (c) Criminal and his family, and (d) Society and the State. Although we have made efforts to find all relevant rulings of the Hon'ble Supreme Court, some may have been overlooked. We have observed variations in sentences for similar categories, with the most critical factor being the victim's age, and despite each of these crimes being extremely gruesome, the element of cruelty being involved, most perpetrators were under 30 years of age. To ensure that criminal tendencies are restrained and reconditioned, so the convict does not continue down the same deviant and reprehensible path, the safest approach to safeguard the other children and females from the perversion of such a rapist and a murderer is that he remains incarcerated until well beyond the prime age of virility. Based on this, when the Court opts not to impose capital punishment and instead sentences a person to the only other available alternative of life imprisonment which implies the imprisonment for whole of the life, the *just desert*s for every adult rapist and murderer of a child under five years of age would be that such a convict must not be released from prison unless he has served at least fifty years of actual imprisonment without remission.

193. In our considered opinion, in the facts and circumstances peculiar to this case, and considering the victim to be under five years of age, it is a fit case where the appropriate sentence for murder would be that the convict Sonu Singh must be confined within the four walls of the compound of the prison for at least a minimum of fifty years, and after that, he can be released, subject to the remissions earned during his incarceration.

194. As a result, the appeal is partly allowed, the conviction is upheld on all counts; however, the sentence is reduced and modified under §6 of POCSO, his death sentence is commuted and for the commission of the offence punishable under §6 of POCSO, the convict Sonu Singh shall undergo Rigorous imprisonment for twenty-five years, and the fine is increased to Rs. Twenty-five lacs, and in default of payment of fine, to undergo SI for 250 days. Regarding sentence under §302 IPC, the death sentence is commuted to Rigorous imprisonment for Life, with the clarification that Sonu Singh shall not be released unless he has served a minimum actual sentence of fifty years, without counting remissions, and after that, he can be released, subject to the remissions earned during his incarceration, and the fine is enhanced to Rs. Fifty lacs, and in default to undergo SI for 500 days, on each count.

195. Given the above, the conviction of the appellant Sonu Singh for all the charges is upheld, and the sentence shall stand modified to the following terms: -

(i) The death sentence awarded under §6 of POCSO Act is commuted, and the convict is sentenced under §6 of POCSO Act to suffer Rigorous imprisonment for twenty-five years, and the fine is increased to Rs. Twenty-five lacs, and in default of payment of fine, to undergo SI for 250 days.

(ii) The death sentence awarded under §302 IPC is commuted to Rigorous imprisonment for Life, with the clarification that Sonu Singh shall not be released unless he has served a minimum actual sentence of fifty years, without counting remissions, and after that, he can be released, subject to the remissions earned during his incarceration, and the fine is enhanced to Rs. Fifty lacs, and in default to undergo SI for 500 days.

(iii) **Both of the substantive sentences shall run concurrently. Period already undergone from arrest in this FIR till the award of sentence shall be set off in terms of §428 CrPC [§468 BNSS].**

196. In Sharad Hiru Kolambe v. State of Maharashtra and others, [2018] 11 SCR 720, *pg736*; 2018-INSC-852, Sep 20, 2018, the Hon'ble Supreme Court of India holds,

> [15]. In the circumstances, we reject the submission regarding concurrent running of default sentences, as in our considered view default sentences, inter se, cannot be directed to run concurrently.

197. In light of the judicial precedents mentioned above, the sentences in default of fine shall run consecutively.

198. The Trial Court to order the destruction of all other case property in accordance with rules, notifications, and office orders, if any, after six months of the pronouncement of this Judgement, and if any SLP/Appeal/Review/Curative Petition is filed before the Hon'ble Supreme Court of India, then as per their directions, if made qua the case property, and if no such directions are made, then after six months of the final order of the Hon'ble Supreme Court.

199. As an outcome, the conviction and sentence awarded by the Trial Court to the Convict Sonu Singh is modified and shall stand substituted as follows:

Sentence imposed upon the convict – Sonu Singh			
Section	**Sentence of imprisonment**	**Fine in INR**	**Sentence in default of payment of fine**
6 of the POCSO Act	**Rigorous imprisonment for twenty-five years.**	**25,00,000/- Rs. Twenty five Lacs**	**SI for 250 days**
302 IPC	**Rigorous imprisonment for Life, with the clarification that Sonu Singh shall not be released unless he has served a minimum actual sentence of fifty years, without counting remissions, and after that, he can be released, subject to the remissions earned during his incarceration.**	**50,00,000/- Rs. Fifty Lacs**	**SI for 500 days**

200. All the substantive sentences awarded to the appellant shall run concurrently.

201. The sentence shall include total custody till date, including remission if earned till the date of pronouncement of this judgment, as actual custody.

202. In case the prisoner Sonu Singh suffers from any mental or health issues, then during that time, he may be kept out of prison in some other facility, subject to and in terms of the opinion of the Doctors and the Subject Specialists, and the period spent for this term shall be considered as if he had served his actual sentence.

203. Fine, whenever whatever is recovered, shall be paid to the victim's parents and siblings in equal shares, and the concerned Court shall take steps to disburse the fine, and all the Authorities concerned shall fully cooperate in tracing the victim's parents and

siblings, so that the fine can be distributed evenly to all who are surviving at the time of disbursement.

204. CRA-D-658-2025, filed by Sonu Singh, is partly allowed on the terms mentioned above.

205. Murder Reference No. 2 of 2025 is dismissed because of the commutation of the death sentence to the sentence as mentioned above.

206. To comply with § 412 BNSS, 2023 [371 CrPC, 1973], the proper officer of the High Court shall, without delay, send either physically or through electronic means, a copy of the order, under the seal of the High Court and attested with their official signature, to the Court of Session.

207. Both matters stand closed on the terms set out in this verdict. All pending miscellaneous applications, if any, stand disposed of.

(SUKHVINDER KAUR)	**(ANOOP CHITKARA)**
JUDGE	**JUDGE**

Mar 19, 2026
Jyoti Sharma

Whether speaking/reasoned	YES
Whether reportable	**YES**