

**IN THE HIGH COURT OF CALCUTTA
CRIMINAL APPELLATE JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

Death Reference No. 02 of 2019

STATE OF WEST BENGAL

... APPELLANT

Vs.

SURESH PASWAN

... RESPONDENT

With

C.R.A. 384 of 2019

SURESH PASWAN

... APPELLANT

Vs.

STATE OF WEST BENGAL

... RESPONDENT

For the Appellant : Mr. Kallol Mondal, Sr. Adv.
Mr. Krishan Ray, Adv.
Mr. Souvik Das, Adv.
Mr. Anamitra Banerjee, Adv.
Ms. Isita Kundu, Adv.
Mr. Akbar Laskar, Adv.

For the State : Mr. Debasish Roy, Ld. P.P.
Mrs. Trina Mitra, Adv.
Mr. Antarikha Basu, Adv.

Hearing Concluded on : May 16, 2025

Judgment on : June 17, 2025

MD. SHABBAR RASHIDI, J.:-

1. The Death Reference and the Appeal are in assailment of judgment of conviction dated March 26, 2019 and order of sentence dated March 28, 2019 passed learned Chief Judge, City Sessions Court, Calcutta, in connection with Sessions Trial No. 1 (4) of 2014 corresponding to Sessions Case No. 115 of 2013.

2. By the impugned judgment and order, the appellant was convicted for the offences punishable under Sections 364/376A/302 of the Indian Penal Code, 1860 as well as Section 6 of Protection of Children from Sexual Offences Act, 2012. He was sentenced to suffer imprisonment of death for the offence punishable under Section 302 of Indian Penal Code. He was also sentenced to suffer Rigorous Imprisonment of 8 years and a fine of ₹5,000/- for the offence punishable under Section 364 of the Indian Penal Code. In default of payment of fine, the convict was directed to undergo a further imprisonment of 2 years. The convict was further sentenced to suffer rigorous imprisonment of 20 years and a fine of ₹50,000/- and in default of payment of such fine to undergo rigorous imprisonment for a further period of 5 years for the offence punishable under Section 376A of the Code of 1860. The convict was also sentenced to rigorous imprisonment for 8 years and a fine of ₹5,000/- for the offence punishable under Section 6 of the Protection of

Children from Sexual Offences Act, 2012 and in default of payment of fine, the convict was to undergo a further imprisonment of 2 years. All the sentences were directed to run concurrently.

3. It has been submitted on behalf of the appellant/convict that the prosecution has not been bring any eyewitness to the incident. The case is completely based on circumstantial evident. The chain of circumstances has not been proved by the prosecution to be complete so as to draw an inference that the incident must have been perpetrated by none other than the convict alone. There are material contradictions in the testimonies of the prosecution witnesses.

4. It was further contended by learned Senior Advocate for the appellant that the testimony of PW6 and PW7 are wholly unreliable. They claimed to have identified the victim as well as the appellant even under insufficient light and visibility. Learned Senior Advocate also termed the action on the part of such witnesses in appearing voluntarily before the police and linking their sighting the victim with the recovery of the child victim as unnatural, motivated and tutored. According to learned Senior Advocate for the appellant, such an action on the part of prosecution is an attempt to falsely implicate the appellant in the case based on manipulated witnesses. A normal human being cannot, with only one

sight, remember the detailed account as given by such witnesses at the trial.

5. Learned Senior Advocate for the appellant also submitted that the recovery of wearing apparel of the victim at the behest of the appellant is also suspicious as there was no report of such missing garments in the first information report nor in the evidence of PW 3 i.e. the grandmother of the victim. Learned Senior Advocate for the appellant also stated that PW 8 and PW 9 are stock witnesses. They have deposed for the police in many other cases and as such their testimony is not at all trustworthy. Similarly, according to learned Senior Advocate for the appellant, PW 10 and PW 11 were claimed to be the employees of Royal Calcutta Turf Club but the prosecution has not produced any document in support of such employment. In that view of the fact their presence at the relevant point of time is suspect. Such witnesses could not have been relied upon to secure conviction of the appellant.

6. Learned Senior Advocate for the appellant also submitted that the evidence of the medical officer who first examined the victim, PW 14, did not find any injury on the lower part of the body of the victim. The Forensic Science Laboratory also did not find any mark of violence or of forcible intercourse on the wearing apparel of the victim. In such view of

the matter conviction of the appellant for sexual offence cannot be sustained.

7. Learned Senior Advocate for the appellant also submitted that the alleged extra judicial confession allegedly made by the appellant is not admissible and cannot be relied to convict him. Moreover, as argued by learned Senior Advocate, the investigation of the case was perfunctory. There are material contradictions in the testimony of prosecution witnesses.

8. On the other hand, learned Public Prosecutor for the State submitted that the prosecution has been able to prove the case made out by the prosecution with the help of cogent and convincing evidence. He supported the impugned conviction and sentenced imposed upon the appellant. He has submitted that the learned trial court was quite justified in awarding death sentence upon the appellant.

9. One Nayan Sardar made a statement before police on July 21, 2013 to the effect that she along with her family used to reside at footpath beneath a flyover at Khidderpore. One of her daughters Priyanka Bairagi, who has been abandoned by her husband and she also met a railway accident, also resided with her children in the company of the informant. The informant used to beg and sold old plastic bottles whereas her husband used to work as labourer.

10. She further stated that on July 20, 2013 the family, after having dinner, slept at their place under the ramp at about 10.00 p.m. Since her daughter Priyanka was mentally challenged, the informant slept with her grandchildren. At about 12.00/12.30 a.m. she woke up by the sounds of shouting from the side of 'mazar' and went asleep thereafter. Again at about 2.00 a.m. she again woke up to feed milk to the babies and found her granddaughter Victim missing. She then called her husband, other members of the family as well as other dwellers there and all of them started searching for the child from Khidderpore to Victoria but she could not be found.

11. The informant further stated that one Sultan informed her that the appellant was found peeping inside his room at about 12.00/12.30 a.m. whereupon Sultan chased him. He fled away and came toward the dwelling of the informant. She also stated that the statement of Sultan was supported by one watchman at Khidderpore gate of Race Course. He also stated that he saw the appellant moving beside her verandah at late night. The informant also stated that at about 2.30 she saw the appellant wearing a check shirt and black pant, his legs stained with mud along the tram line moving from the side of Fort William. Seeing the people gathered, he tried to flee away back from the direction he was coming, when one of slum dwellers Sahid chased and apprehended the appellant.

On enquiry the appellant stated that he used to reside at 2, Bakery Road, Kolkata-22 and that he was returning to the stable as he was sleeping in the fields of Ladies Golf Club. He expressed his ignorance of the granddaughter of the informant. Believing his statements the appellant was let go.

12. The informant further stated that she remembered that on July 21, 2013 at about 5.00/6.00 p.m. the appellant came to her verandah, played with the child Victim and tried to take her nearby for giving sweets but the informant forbade her. It was also stated by the informant that on the following morning at about 6.15 a.m. some children of her slum area namely Ratna Ghorai, Irfan, Toofan and others went to Ladies Golf Club towards Victoria Memorial to collect food given by some Marwari gentleman. They spotted the granddaughter of the informant lying dead in a drain beside the wall of race course. Hearing such information, she along with others went to the spot and the dead body of Victim wearing a frock lying beside the drain. A veil was also found lying beside her dead body. There was bleeding from nose, ears and private organs of her granddaughter with marks of injury on the chin, head and other parts of her body. The dead body was brought back to the residence of the informant. Police was informed and thereafter, police took the dead body accompanied by the family members to P.G. Hospital

where she was declared dead. She also stated that the appellant abducted and killed her granddaughter after sexually exploiting her.

13. On the basis of such information reduced into writing, Hastings Police Station Case No. 208 dated July 21, 2013 under Sections 363/364/376/302 of the Indian Penal Code and Section 4 of Prevention of Children from Sexual Offences Act was started against the appellant.

14. The police took up investigation and on conclusion of such investigation, submitted charge sheet in the case. Accordingly on the basis of materials in the case diary, charges under Sections 364/376A/302 of the Indian Penal Code, 1860 as well as Section 6 of the Prevention of Children from Sexual Offences Act, 2012 were framed against the appellant on April 9, 2014. The appellant pleaded not guilty and claimed to stand trial for such offences.

15. In order to bring home the charges, prosecution examined as many as 32 witnesses in all. In addition, the prosecution also relied upon certain documentary as well as material evidences.

16. A police constable deposed as PW1. He stated that on July 21, 2013 he accompanied the investigating officer of this case to SSKM Hospital morgue. As per the instructions of the investigating officer, he took photographs of the dead body of a minor female child through his official camera. Thereafter, he accompanied the investigating officer to

the place of occurrence near Race Course and Hastings flyover. There also he took some photographs of the place of occurrence as well as the place under the flyover where the victim resided as instructed by the investigating officer. He developed the photographs in the official dark room. He proved the said photographs at the trial as Material Exhibits and his signatures thereon.

17. A Sub-inspector of police attached to Plan Making Section of Detective Department of Lalbazar was examined as PW2. He stated that on July 25, 2013 at the directions of the Officer-in-Charge, Plan Making Section, he accompanied Sub-inspector Chinmoy Banerjee of Homicide Section, Lalbazar near Hastings flyover and prepared rough sketch map of the place of occurrence in connection with Hastings PS Case No. 208 dated July 21, 2013. On the basis of such rough sketch map, he also prepared the final sketch map. He proved such sketch maps prepared in his pen and signature.

18. The informant of the case deposed as PW3. She reiterated her statement made in the First Information Report. She stated gave the details of her family and present residence. She further stated that last year (from June 19, 2014) at about 10.00/10.30 p.m. she went to sleep after taking dinner beneath the Hastings flyover. In the midnight, she woke up hearing sounds of hue and cry from the side of 'Mazar' situated

at Hastings but she did not find anything and thereafter, she again went asleep along with her children and grandchildren. When she again woke up to feed milk to her grand-daughter Victim, she could not find her. She started searching for the child and crying. Hearing her cries, the other dwellers of the slum also started searching for the granddaughter of PW3 towards Victoria Memorial and Khidderpore Bridge.

19. PW3 also stated that one Sultan, a local resident told her that he saw a person roaming around the slum area beneath the Hastings flyover. He also reported that he chased such person who fled away towards the slum where PW 3 resided. Another local Parbati and a gate keeper of Race Course also reported PW 3 that at about 2.30 a.m. they saw one person roaming near the slum of PW 3. One local resident Sahid reported PW3 that he saw a person coming towards the flyover and seeing the people gathered, he started fleeing away. Sahid chased and apprehended him. The apprehended person was brought before the assembled crowd and was identified by Sahid and Sultan. The said person identified himself as Suresh Paswan, the appellant.

20. PW3 further stated that on her queries, the said person showed his ignorance about the missing child or anybody carrying her. About his presence at late night, the appellant also disclosed before PW 3 that he fell asleep at Victoria and that after waking up, he was going to his

residence at 2, Bakery Lane, Hastings. PW 3 was further informed by Sultan that the appellant was found peeping through his slum residence at about 12.30 a.m. and being chased, he fled away toward the slum of PW3. Thereafter, as the appellant showed ignorance about the girl child, he was let go. PW3 further stated after the appellant left, she could recollect that in the evening, she had seen the appellant calling her granddaughter and offering sweets to her.

21. PW3 also stated that in the morning some children of her slum who had gone to collect food at Victoria, reported her to have seen the body of Victim in a drain of Race Course on way to Victoria. Hearing such news, PW3 accompanied by her husband and sons went to the place and found Victim lying dead in the drain with bleeding injuries on her person. She lifted the body and found cut mark on her throat and bleeding from her vagina, ears and nose. She also found finger and palm imprint on her cheek. The body was taken to the slum where PW 3 resided. Local people informed the police and thereafter, PW 3, her husband, son and some local people accompanied the police to PG Hospital where the victim was declared dead on examination. PW 3 also put her Left Thumb Impression on a medical paper. Her statement was recorded by police in the hospital whereupon she put her Left Thumb Impression. PW 3 identified the wearing apparel of the victim at the trial.

She also identified the photographs of the victim and the place where the dead body was found. She also identified the appellant in court.

22. A local witness Sk. Sultan was examined as P.W. 4. He stated that he used to reside beneath the flyover near Syed Baba Mazar at Hastings for last 10/12 years with his family. He further stated that on a Sunday in the month of *Ramazan* at about 11/11:30 p.m. while he was taking dinner, appellant was found peeping into his hut. He enquired him but the appellant did not respond whereupon he drove him away and went on to sleep. After about an hour, P.W. 4 woke up hearing cries from the hut of one masi situated on the other side of the road below the flyover. He went there and enquired whereupon the said masi told that she was not finding her minor granddaughter, aged about 2½ years. P.W. 4 and others started searching for the child. The appellant was found coming from Maidan side towards the 'C' gate of Racecourse near flyover. P.W. 4 asked him whether he had seen any minor child to which he answered in negative and started fleeing away. One Sahid who was also a resident of the slum chased appellant and managed to apprehend him back. P.W. 4 also stated that Daroan of the Racecourse asked him to release the appellant as he knew him. Accordingly, P.W. 4 released the appellant. Thereafter, P.W. 4 went to his hut and went asleep. In the morning at about 6:00 p.m. P.W. 4 again heard hue and cries. He went to

the jhupri of said masi who showed the minor child who was lying dead in a naked condition. P.W. 4 also stated that he saw bleeding from the ear, nose, mouth and other parts of the body. The dead body of the child was taken to P.G. Hospital where doctor declared her dead. P.W. 4 identified the appellant in Court.

23. Another local resident deposed as P.W. 5. She stated that she was residing beneath Hastings flyover near Syed Baba Mazar for the last 4 years and used to work as a sweeper under HRBC. P.W. 5 stated that she knew P.W. 3 who also resided under the Hastings flyover near her slum. P.W. 5 further stated that one Saturday in the month of *Ramazan* about a year ago (from September 5, 2024), she had quarrel with her husband in the night and was standing outside her slum. At about 12:00 hours in the night she saw one person roaming around the slum of P.W. 3 in the street light. She claimed that she will be able to identify that person who was roaming near the slum of P.W. 3. She identified the appellant as the person who was roaming near the slum of P.W. 3. P.W. 5 also stated that on that night at around 1/1:30 a.m. she heard hue and cries outside the slum and came out. She saw P.W. 3 and many other persons. P.W. 3 is said to have reported that she was not finding her granddaughter. Other slum dwellers also assembled and all of them including P.W. 5 started searching for the child. P.W. 5 also stated that

while she along with the others were standing in front of the slum of P.W. 3, they saw one short height and fat person coming through the tram line from Victoria side who was wearing blue coloured check shirt and black pant. On seeing crowd, he tried to flee away but Sahid and others apprehended and brought the said person. P.W. 5 identified the said person in Court as the appellant. She also stated she found mud on the shirt and pant of the appellant. On a query, the said person stated that he had been to the field and felt asleep and after waking up he was going to the horse stable at Hastings where he used to work. P.W. 3 also asked him whether he had seen the granddaughter of P.W. 3 to which he answered in negative. Thereafter, the said person was released and all the persons including P.W. 5 who were assembled there went to their respective residences.

24. P.W. 5 also stated that on the next morning on a Sunday at about 6/7 a.m. she heard hue and cry and went near the slum of P.W. 3. She found P.W. 3 crying and a number of persons assembled there. She also saw the dead body of the victim. On her query, P.W. 3 informed her that she found the dead body in the drain on the way to Victoria which was first seen by the daughters of PW 5 and other children who were going to Victoria to collect food. Thereafter, P.W. 3 went there and brought the dead body. P.W. 5 also stated that she saw cut mark on the

throat of the victim and bleeding from the ear, nose and her private parts. After sometime police came and took the dead body of the victim along with P.W. 3 and others to P.G. Hospital. P.W. 5 also identified the photographs of the dead body and the place of occurrence.

25. P.W. 6 is a businessman. He stated that on July 20, 2013 he was returning home on foot after watching movie and having food with his friend. When they reached the Racecourse through Chitpur Road at about 1/1:30 a.m. Near the Racecourse at the mouth of flyover he found one man coming with a child in his lap. The child was asleep. P.W. 6 further stated that he crossed the man and went away who was wearing blue check shirt and black trousers. Thereafter P.W. 5 went to his home. He also stated that the child was wearing white and pink coloured frock and one orna. On the next day, his friend Sarfaraz informed him that a child was murdered and thrown in a gutter near the Racecourse. P.W. 6 went to Watgunge P.S. wherefrom he was sent to Hastings P.S. On Hastings P.S., the police officer had shown him photo of the child in a mobile phone to which P.W. 6 identified as the child. He saw her on the previous night in the lap of a man. His statement was noted in a diary. After 15-20 days P.W. 6 received a notice from the police station asking him to go to the correctional home to identify the miscreant. P.W. 6 identified the photographs of the victim as the child he had seen. He also

identified the photographs of place where the dead body was found and that of the wearing apparels of the child. P.W. 6 also identified the wearing apparels of the appellant. P.W. 6 identified the appellant in Court.

26. A friend of P.W. 6 was examined as P.W. 7. He stated that he was a businessman at 28, Dr. Sudhir Bose Road, Kolkata – 13. He along with his friend P.W. 6 had gone to watch movie in the night. After watching movie and taking food, they were returning walking towards their home. Near the flyover at Racecourse P.W. 7 found one person coming towards him from the opposite side having a child in his lap. The child was wearing pink coloured frock and orna tied around her waist. The man carrying the child was short height with a small hair and was wearing check shirt and black trousers. P.W. 7 also stated that on the following morning when he came out from his house, he heard a minor girl child was lifted from the footpath, murdered and thrown near the Racecourse. P.W. 7 made a phone call to P.W. 6 and, thereafter, both of them went to Watgunge P.S. and narrated the incident before the police officer. They were advised to go to Hastings P.S. In the Hastings P.S. one police officer Saikat Neogi heard the entire incident from P.Ws. 6 and 7. Thereafter, the officer showed him the photograph of the child in his mobile phone which P.W. 7 identified as the child whom he saw in the

lap of a man in the previous night. P.W. 7 also identified the victim in the photographs (Mat Exts.- I, I/I, and I/II). He also identified the wearing apparels of the appellant as well as that of the victim.

27. A seizure list witness deposed as P.W. 8. He stated he was a resident of 106, Diamond Harbour Road, Khiderpore. He also stated that about 2½ or 3 years ago (from April 26, 2016) he was going towards Khiderpore from Babughat. Just before Khiderpore flyover, he was requested by a police officer to be a witness in the case.

28. The appellant was also present there. P.W. 8 and his friend Imran accompanied the police. Thereafter the police took the apprehended person towards a garbage under the bridge followed by P.Ws. 8 and others. The apprehended person took out one black polythene bag from the garbage and gave it to the police officer. On opening the said polythene bag, police found one black pant and a blue and white jangiya which were seized by the police under a seizure list prepared on the spot. P.W. 8 signed on the said seizure list (Ext. 7). He proved his signature on the seizure list as well as on the label attached to the packed (Mat. Exts. VI, VII and VII). He also identified the appellant in Court.

29. On his further examination of recall, P.W. 8 identified the polythene packet recovered by police as shown by the appellant and the jangiya recovered as shown by the appellant together with his signature on the label attached to the packet.

30. Another seizure list witness, who is a friend of P.W. 8, was examined as P.W. 9. He stated that he was a resident of Khiderpore at 45H/9, Nazir Lane, Kolkata – 23. He stated that about three years ago (from May 11, 2016) at about 4:20 p.m. he was going from Babughat towards Hastings on a bike. Before the flyover one police van was standing and the police officer requested him to be a witness in connection with a murder case to which he agreed. He also stated that the appellant who was identified by P.W. 9 in Court was accompanying the police at the relevant time. The police took the appellant to a place where garbage was kept under the bridge. P.W. 9 accompanied them. There the accused took up one black polythene from the garbage and handed it over to the police officer. On opening the said packet, the police found one black pant and one check coloured jangiya of a child which were seized by the police officer under a seizure list. P.W. 9 and his friend P.W. 8 also signed the seizure list. According to P.W. 9 the appellant also put his left thumb impression on the seizure list. The aforesaid articles were sealed and packed by the police. P.W. 9 also

signed on the labels attached to such packets. P.W. 9 identified his signatures on the seizure list as well as the labels. He also identified the wearing apparels recovered by the police.

31. The gateman of the Race Course deposed as PW10. He stated that he used to work as security guard at 2, Bakery Road stable employed by Jupiter Company. There were horses, horsemen and some porters in the stable. He also stated that on July 20, 2013, his duty hours were between 10.00 p.m. and 6.00 a.m. There were two gates one of which remained closed and he used to be on duty on the gate which remained open. The gate used to be closed at 12.30 in the night. There were two security guards and one supervisor remained on duty at the gate. Sk. Bakul was the supervisor. PW10 further stated that on July 20, 2013 at about 2.30/2.45 a.m. one person came to the gate of stable and requested to allow him inside the stable as he used to work there. PW10 did not identify such persons and therefore, refused to open the gate. He asked the said person that he could enter only after the gate is open after 4.00 a.m. Thereafter, at the instructions of his Supervisor, PW10 opened the gate and allowed such person to come inside. The person was wearing blue shirt and black trouser. After sometime, the said person went outside wearing khaki uniform of RCTC. PW10 identified the appellant in court as the person whom he let inside the stable.

32. The security supervisor deposed as PW 11. He stated that he used to reside at 41D, Jon Nagar and was employed as a security guard in Jupiter Company. He had his duty in the stable between 8.00 p.m. and 8.00 a.m. he further stated that on the date of incident, PW 10 and one Birendra were on duty with him. The stable consisted of the places where the horses were kept and quarters were for the caretakers. PW 11 also stated that there were 200 to 250 caretakers who used to stay in the quarters. The racecourse was adjoining the stable and the stable quarters were within the compound of racecourse. There were two gates to the entire compound. One gate was used for entry and exit and the other gate was open for access of garbage vehicles. The gates used to remain open from 4 AM to 12:30 AM.

33. PW 11 further stated that on the date of incident the night the gate was shut as usual. At about 2/2.30 a.m. the appellant was shouting at the gate. One of his guards i.e. PW 9 could not identify him. PW 11 identified the man as his staff who used to reside in Kholi No. 15. On his query, the appellant told him that he had a friend at racecourse and he slept there. PW 11 identified the appellant in court as a caretaker of the stable and his wearing apparels. He also stated that on the date of incident, the appellant was wearing blue shirt and black trouser. According to PW 11, he opened the gate for the appellant and he went to

his Kholi. Thereafter, at about 3/3.30 a.m. the appellant returned to the gate wearing a khaki uniform carrying a black coloured polythene bag in his hand and went out of the gate.

34. An employee of racecourse deposed as PW 12. He stated that he was employed as a supervisor in the racecourse at Hastings under Javed Khan for the last one and half year (from July 16, 2016). He was employed there in July 2013 as well. Javed Khan was owner of 40 horses kept in the stable in the racecourse. There were as many caretakers who looked after the horses. PW 12 also stated that his job was to maintain a register of caretakers and track their attendance. The register used to be kept with Javed Khan. He also stated that there were three persons employed as caretakers named Sudesh Paswan. PW 12 further stated that on July 21, 2013 Sudesh Paswan No. 3 was not on duty as appearing from the attendance register. Prior to that he was sent from duty. He proved the attendance register (Exhibit 8). He also proved his signature on the seizure list through which the attendance register was seized.

35. Javed Khan was examined as PW 13. He has stated that he was a professional horse trainer at racecourse, Royal Calcutta Golf Club and a resident of Merlin Regency, 25, Dr Suresh Sarkar Road, Kolkata 14. He further stated that he obtained a license for horse training in 1988 and

has been working as such. On July 26, 2013 he had 40 horses in the Racecourse. He identified his signature in the attendance register. He further stated that the horses were kept in the stable provided by the club at 2, Bakery Road. Going through the register, he stated that in the month of July, there were 57 employees who used to look after the horses. PW 13 also stated that there were three persons named Suresh Paswan being identified by numbers 1, 2 and 3. The appellant was identified in court as Suresh Paswan No. 3 who was a temporary employee. PW 13 stated that the appellant travelled to Kolkata with one of the horses from Bangalore and was employed in Kolkata for 5/6 months. PW 13 also stated that on July 26, 2013 at Suresh Paswan was absent from duty and on the next day the police came to the society office and asked PW 13 to accompany them with the attendance register. PW 13 and Ram Kishen accompanied him and handed over the register to the police which was seized from the racecourse employees' office. PW 13 stated that he heard that Suresh Paswan had gone around the area, abducted the minor, raped and molested her and murdered her. PW 13 proved his signature on the seizure list which he signed after going through it.

36. A medical officer was examined as PW14. He stated that on July 21, 2013 he was posted as Emergency Medical Officer at SSKM Hospital.

On the said day at about 7.30 a.m. one female child aged about 2 ½ years i.e. the victim was brought dead in the emergency before him by the police officers of Hastings police station which was identified by her grandmother Nayan Sardar. On examination, he prepared a medical certificate which he identified (Exhibit 11). In his cross examination, PW14 admitted that there was no reflection of any injury on the lower portion of the body of the child as there was no such injury.

37. A Sub-inspector of police deposed as PW15. He stated that on July 21, 2013, he held inquest over the dead body of the victim aged about 2 ½ years in presence of witnesses. The body was identified by Nayan Sardar and Palan Sardar who put their left thumb impression over the inquest report. PW15 proved the inquest report prepared in his pen and signature (Exhibit 12).

38. The Deputy Manager of CESC deposed as PW16. He stated that in pursuance to a letter dated July 29, 2013 from Joint Commissioner of Police, his officer responded through a letter by the Manager, System and Control, CESC, dated September 6, 2013. The letter was in respect of a query, if there was any load shedding from the south eastern side of RCTC to its northern side along with Khidderpore Road and ramp along Vidyasagar Setu and its vicinity between 17.00 hours on July 20, 2013

and 6.00 hours on July 21, 2013. PW16 proved the two letters (Exhibits 13 & 14).

39. The autopsy surgeon deposed as PW17. He stated that on July 21, 2013 he conducted post mortem examination on the dead body of the victim aged about 2 ½ years. The dead body was identified by police Constable Swapan Kumar Haldar. He proved the post mortem report in his pen and signature (Exhibit 15).

40. PW17 also stated that on in the same capacity, on July 23, 2013, he performed medico legal examination of the appellant identified by the police officers. On examination, he prepared his report which he proved (Exhibit 16). In his further examination on recall, PW17 narrated the details of injury found on the person of the victim viz.

- i. One abrasions 0.5x0.3 cm over right side of frontal region of scalp 8" right to midline and 3.5" above right eyebrow.*
- ii. One abrasions 0.4x0.2 cm over right side of frontal region of scalp 5cm right to midline and 3 cm above right eyebrow.*
- iii. One abrasions 0.6x0.4 cm over right side of frontal region of scalp 5cm right to midline and 1.5 cm above right eyebrow.*
- iv. One lacerated wound 3.5 cm x 1 cm x muscle over lower border of right side of body of mandible extended from midline.*
- v. One abrasion 1 cm x 0.5 cm over antero-lateral aspect of right side of neck 3.5cm below mandible and 3cm right to midline almost vertically placed.*

- vi. One abrasion 1.2 cm x 0.5 cm over antero-lateral aspect of right side of neck 5cm below mandible and 3cm right to midline almost vertically placed.*
- vii. One abrasion 0.5 cm x 0.4 cm over antero-lateral aspect of right side of neck 6.5cm below mandible and 3cm right to midline almost vertically placed.*
- viii. One abrasion 1.5 cm x 0.5 cm over antero-lateral aspect of right side of neck 3.5cm below mandible and 3cm left to midline placed obliquely lower end downwards and medially directed.*
- ix. One abrasion 7 cm x 2 cm over left mandible antero-lateral, left lateral and left side of posterior aspect of neck and 5cm below mandible and 2.5cm left to midline and post end at posterior midline of neck and 2.5 cm below external occipital protuberance and 3 cm below left mastoid prominence; placed obliquely.*
- x. One lacerated wound 2.5 cm x 1cm x muscle deep over posterior aspect of external genitalia at vaginal introitus with evidence of oozing of blood from it and evidence of bruise all around introitus.*

41. PW17 also stated that following injuries were found upon dissection of the dead body, that's to say:

- xi. One haematoma 6cm x 5cm over right side of frontal region of scalp.*
- xii. One haematoma 7cm x 5cm x muscle over middle portion of occipital region of scalp.*

xiii. One bruise 3.5cm x 2cm x muscle over antero lateral aspect of right side of neck corresponding to injury nos. v, vi and vii.

xiv. One bruise 2.5cm x 1cm x muscle over antero lateral aspect of left side of neck corresponding to injury no. viii.

xv. Fracture over right clavicle 5cm lateral to medial end of right clavicle.

xvi. One bruise 3cm x 2cm x muscle over right lateral aspect of larynx.

xvii. One bruise 2cm x 1cm x muscle over left lateral aspect of larynx.

42. To an answer to court, PW17 stated the injuries were sufficient to show that the victim had been subjected to manual strangulation and throttling and that injury no. 10 clearly suggested that the victim had been subjected to sexual assault. He also opined that in injury nos. xi to xvii there was no sign that the victim was brutally raped but said injuries were sufficient to cause death of a minor due to manual strangulation.

43. In his cross examination, PW17 stated that injury nos. i to ix were caused by finger nails and that injury nos. xiii, xiv, xvi and xvii suggested that the victim died of manual strangulation. PW17 denied a suggestion advanced by the defense that the injuries found on the person of the victim could be caused being thrown on a rough surface or by falling in a drain.

44. PW18 is a police constable. He carried the dead body of the victim from SSKM morgue to SSKM police morgue and identified the dead body before the doctor. He identified the victim through the photograph shown to him in court.

45. A local inhabitant was examined as PW19. He stated that he used to reside near Syed Baba Mazar, Hastings and used to go every day to Victoria to collect food with 10/12 friends. He further stated that on one morning about 3 years ago, when he was on his way to Victoria as usual, near the Racecourse, he found the dead body of granddaughter of Nayan lying in the drain wearing a frock and wrapped in an 'orna', bleeding from nose and had a cut injury on her chin. PW19 and others went and called the grandmother of the victim who came there and picked up the child took her towards the mazar. Thereafter police arrived. PW19 identified the victim and the place from where she was recovered through the photographs shown in court.

46. One assistant director of Biology Division in the state forensic science laboratory was examined as PW20. He stated that on August 26,2013, one packet was received by office of director, FSL in connection with Hastings DD P.S case no.208 dated July 21,2013. PW 20 also stated that he examined the contents of the parcel and prepared the report which he proved (Exhibit 17). He also stated that after the examining the

content of the parcel, blood stain samples were collected and sent to Serologist for determination of origin and proof of blood under his letter dated October 9,2013. PW 20 has also proved the letter as well as the report of the serologist. He has proved the his signature on the Material exhibits.

47. The assistant engineer of electrical Division in PWD deposed as PW 21. He stated that own October 24,2013 he was posted in maidan Division of PWD. One report was called by the crime branch from the executive engineer, PWD, West Kolkata Electrical Division as to whether the street was properly illuminated at that time. In response to such query, PW 21 submitted his report on October 23,2013. He proved the report (Exhibit 18).

48. A local resident deposed as PW 22. She stated that she was a resident of Hastings near the 'mazar'. She also stated that on a Sunday in the morning at about 6 a.m. she along with her friends had gone to collect food from Victoria. On the way her sister noticed something lying in the drain. It was the dead body of a child. She was wearing a frock and was wrapped in an orna. PW22 could notice a cut mark on her chin and bleeding from the nose of the child. She then reported the matter to her grandmother and others. They came and took out the child from the drain. She was taken to maidan. Thereafter, police arrived and examined

PW22 and others. She also stated that in the previous night her grandmother had asked her about the child to which she replied in the negative. PW22 identified the victim and the place from where her dead body was recovered as well as wearing apparel of the victim through photographs.

49. A police officer who was the member of raiding party deposed as PW23. He stated that he along with the police force being accompanied by the maternal uncle of the appellant travelled to Vaishali, Bihar to secure arrest of the appellant. Upon identification of the maternal uncle of the appellant, he entered into a house and found the appellant. He was arrested accordingly. Upon his arrest, a 2nd class railway ticket from Sealdah to Hajipur for July 21, 2013 was recovered from the pocket of appellant which was seized. The police also obtained the left thumb impressions of appellant and his maternal uncle on the backside of the ticket. The seizure list and the ticket were proved by PW23.

50. Senior Scientific Officer of Forensic Science Laboratory deposed as PW24. He proved the forensic report dated February 20, 2014 in connection with Hastings PS Case No. 208 dated July 21, 2013 prepared in his pen and signature in respect of multicolor top and panty.

51. PW25 was the Project Manager (Electrical) of HRBC which maintain lights on the bridges within the jurisdiction of Calcutta. He

proved the report dated March 12, 2014 sent in pursuance of a requisition received from the Joint Commissioner of Police, Detective Department. The report was in connection with a query whether the High Mast Light around Syed Baba Mazar, Hastings more right up to western side of Royal Calcutta Turf were on at the relevant point of time.

52. A Sub-inspector of police was examined as PW 26. He corroborated the statement of PW23. He also went to Vaishali district in Bihar and as per identification of the maternal uncle of the appellant, the appellant was arrested from his house. A railway ticket from Sealdah to Hajipur was also recovered from his possession. PW26 also proved the seizure list as well as the railway ticket recovered from the appellant.

53. The Judicial Magistrate who conducted the test identification parade of the appellant was examined as PW27. He proved the test identification parade report prepared in his pen and signature (Ext. 23). The appellant was identified at such test identification parade by witnesses Sk. Sarfaraj and Md. Azharuddin.

54. A police officer deposed as PW28. He stated that on July 21, 2013 he was on night patrolling duty. On his duty, when he reached near Vidyasagar Setu, he saw some persons assembled. He was informed that the victim girl went missing while sleeping. He also tried to trace out the missing victim. Later on, he was informed that the missing girl was

traced. PW28 went there and came to know that the missing girl was found lying in a drain on the northern side of Race Course. She was taken by her grandmother to the place where she was sleeping. PW28 also stated that he saw the dead body wearing a frock and orna but there was no panty. There was bleeding from her nose as well as private parts. He took the victim to SSKM Hospital with her grandmother and other relatives where the doctor declared her dead. PW28 identified the wearing apparel of the victim. He also issued requisition for inquest and post mortem and collected death certificate of the victim. He informed the Officer-in-charge about the incident, guarded the place of occurrence and lodged GDE in this regard.

55. A maternal uncle of the appellant deposed as PW29. He stated that he used to work in the stable. The appellant also worked there and used to stay where he lived. He stated that as per the request of police he accompanied police to native place of appellant in Bihar where the appellant was arrested. He further stated that police also recovered and seized a railway ticket and certain photographs from the possession of appellant in his presence.

56. A co-worker was examined as PW30. He stated that he knew the appellant as well as PW29. He also stated that police came to the kholi where the appellant used to reside, and upon search, recovered some

photographs from the wearing apparel of the appellant. PW30 proved the wearing apparel of the appellant and the recovered photographs as also his signature on seizure list.

57. Another police officer deposed as PW31. He stated that on July 21, 2013, as per instructions of his superiors, he visited SSKM Hospital morgue. He found the dead body wearing a multi color frock with one Orna stained with mud and blood. She was not wearing pant. He also found cut mark on her chin and injury on her head bleeding from nostrils ears and private parts. He also met with the grandmother and other relative of the victim. He also examined and recorded the statement of grandmother of the victim which he proved and was later treated as complaint. He also filled up the formal First Information Report and started specific case. He was endorsed with the investigation of the case. He has narrated the steps taken by him in course of investigation. He sent requisition for photograph of the place of occurrence and visited there. He identified the photographs of the victim and place of occurrence. In course of investigation, PW31 tried to arrest the appellant, made search in his residence and recovered certain photographs. He examined the witnesses. The appellant is alleged to have confessed before witness Girdhari Paswan that he committed rape and murder of

the victim girl. Later on, the investigation of the case was handed over to homicide squad. Accordingly, he handed over the case papers.

58. The second investigating officer deposed as PW32. After receiving the investigation of the case, PW32 sent the appellant for his medico-legal examination, got the rough sketch map of the place of occurrence prepared with the help of plan making Section of Lalbazar. He also sent requisition and collected the list of employees of RCTC as well as attendance register and seized the same under proper seizure list. He also recorded the statement of available witnesses. PW32 also sought report from the electricity division of PWD, CESC and other authorities and collected its reports. He also proved the relevant portion of the statement of the appellant which led to recovery of the wearing apparel of the victim girl as also the seizure list under which such articles were seized. He also sent prayer for holding Test Identification Parade of the appellant and collected its report, sent the seized articles including viscera for chemical examination. On completion of investigation, PW32 submitted charge sheet against the appellant.

59. From the trend of cross examination of the prosecution witnesses as well as examination of the appellant under Section 313 of the Code of Criminal Procedure, it transpires that the appellant has pleaded complete innocence. According to the appellant, he has no

connection with the incidence involved in the case. He has been falsely implicated on mere suspicion. It was also submitted on behalf of the appellant that in the preliminary medical report, no injury was found on the lower part of the body of the victim which completely rules out any possibility of sexual assault upon the victim.

60. From the case made out by the prosecution, the victim was aged about 2 ½ years. On the alleged date of incident, she was sleeping with her grandmother i.e. the de facto complainant. In the night when PW3 woke up to feed bottled milk to the victim, she could not be found. The de facto complainant raised hue and cry, reported the matter to the neighbours. A search operation was conducted by several persons but the victim was not found. On the following morning i.e. on July 21, 2013, when the children of the slum went towards Victoria to collect food, they saw a body of the victim lying in the drain. The children reported such recovery to the grandmother of the victim. Thereafter, PW3 accompanied by local people went to the spot, identified the dead body to be that of her granddaughter and brought it back to where she used to reside beneath the flyover at Hastings.

61. After that, police information was given to police. Police arrived there and took the dead body of the victim to SSKM Hospital where she was declared dead. According to the case set out by the prosecution, the

dead body of the victim contained bleeding from nostrils and ears. There were other injuries on other parts of the body like chin, head etc. The medical officer who first examined the victim on July 21, 2013 at 7.30 a.m. i.e. PW14 has proved his medical examination report Exhibit 11. Later on, PW17 conducted post mortem examination on the dead body of the victim on July 21, 2013 itself. From the evidence of PW17 together with the post mortem report prepared by him, Exhibit 16, it appears that the autopsy surgeon had found as many as 17 injuries on the person of the victim. According to the evidence of PW17 coupled with the testimony of exhibit 16, it is quite evident that the victim died in an incident of assault. In his deposition, PW17 categorically stated that injury No. 1 to 9, noted by him, were caused due to manual strangulation and were sufficient, in the ordinary course of nature, to cause death of a minor due to manual strangulation. Evidence of PW17 also revealed that injury No. 10 was sufficient evidence to establish that the victim was subjected to sexual assault prior to her death. The autopsy surgeon also opined that injury Nos. 1 to 9 were caused by finger nails and that injury Nos. 13, 14, 16 and 17 were sufficient to hold that the victim died due to manual strangulation. PW17 categorically ruled out the possibility of such injuries caused due to fall on rough surface.

62. Therefore, in view of the case of the prosecution coupled with the medical evidence adduced on behalf of the prosecution, it is quite evident that the victim girl died an unnatural death due to manual strangulation. The evidence so adduced also suggests the victim, being a child, was subjected to sexual assault before her death and in order to wipe out the evidence of crime, the victim girl was killed.

63. As regards the person responsible for the rape committed upon the victim girl and her death, according to the case of the prosecution, the appellant kidnapped the girl child from her residence beneath the Hastings flyover, committed sexual assault upon her and with a view to causing disappearance of the evidence of such crimes, murdered the child. As noted in the evidence adduced on behalf of the prosecution, the appellant used to reside in a Kholi built for the purpose of residence of horsemen of Race Course. He used to reside there with a number of other horsemen and other staff of RCTC. All on a sudden, in the night of incidence, the girl child went missing while sleeping with her grandmother, PW3.

64. When the child went missing, a ruckus broke out. People from the locality assembled. Search was conducted to trace out the child, however, she could not be found instantly. When the local people assembled, it came out that one person being the appellant, was found

peeping into the residence of some local inhabitants and PW4 shooed him away. He was also found roaming in the locality in the late night. PW5 also saw the appellant roaming around the locality. The appellant was apprehended by the local people and was brought to the assembled crowd. However, he was released at the instance of the gateman of the Race Course who knew him. PW3 also stated that the appellant was first apprehended by local people and brought before the crowd. The crowd asked him as to what was he doing at such late hours of night, to which he replied that he had gone to Race Course and fell asleep. He was returning to his residence in the Race Course after waking.

65. Not only that, PW6 and PW7 was returning home after watching movie and taking dinner in a restaurant. While returning, near the Race Course at the mouth of the flyover, they saw the appellant with a child in his lap. They not only identified the appellant and his wearing apparel at the relevant point of time but also identified the child in the lap of the appellant from the photographs of the dead body taken in course of investigation. Such witnesses also identified the wearing apparel of the victim as well. The statement of PW6 and PW7 was duly verified by the investigating officer. In his deposition, the investigating officer has testified that he examined the owner of the restaurant who corroborated the statement of the PW6 and PW7 to the effect that they had taken

dinner at his restaurant in the night of the incident. Knowing of the incident on the following day, the aforesaid witnesses voluntarily went, first to Watgunge Police Station wherefrom they were sent to Hastings Police Station. PW6 also identified the appellant in the Test Identification Parade, as the person whom he saw in the night of incident moving with the child in lap.

66. The wearing apparel of the victim child was recovered as per the leading statement of appellant. The appellant is said to have made a statement before the investigating officer that he would assist in recovery of wearing apparel of the victim. Relevant part of such statement was proved by the investigating officer. Such wearing apparels were recovered as shown by the appellant in presence of independent witnesses. PW8 and PW9 testified such recovery in their presence and as shown by the appellant. They also identified the recovered articles as well as their signature on the seizure list as well as the labels attached to such articles. The aforesaid witnesses firmly stated that recovery of a black polythene containing the wearing apparel from the garbage was made as pointed by the appellant. They also identified the appellant in court as the person who accompanied the police and pointed to the recovered articles lying in a black polythene in the garbage. Therefore, on the basis of such evidence, there can be no doubt that the wearing apparel were

recovered in terms of the provisions of Section 27 of the Indian Evidence Act, 1872.

67. PW10 has testified that the appellant had knocked the gate of stable at 2, Bakery Lane, at 2.30/2.45 a.m. in the night of July 20, 2013 requesting to let him inside. He first refused as he did not identify the appellant. But later, as instructed by the supervisor, the appellant was allowed to enter into the stable. PW10 also gave the description of the wearing apparel the appellant was wearing at the relevant time which was blue shirt and black trouser. He also stated that after a while, the appellant again went outside wearing Khaki uniform of RCTC. The statement of PW10 was fully corroborated by the supervisor PW11. He also corroborated that after sometime, at about 3.00/3.30 a.m. the appellant left the stable wearing khaki uniform carrying a black polythene. Both the witnesses identified the appellant in court as the person who entered and left the stable in the relevant night. The attendance register of the stable was also brought on record which showed that on July 21, 2013 as well as on July 26, 2013, the appellant was absent from his duty, however, prior to that he did not remain absent.

68. It transpires from the record, that the appellant, after committing the offence, came back to the stable in the night and shortly

thereafter, he left the stable with a black polythene, possibly to dispose of the evidence of crime i.e. wearing apparel of the victim. Such wearing apparel was later recovered as per the leading statement of the appellant. Thereafter, the appellant, who has never been absent from his duty, fled away to his native place in Vaishali district of Bihar. He was arrested from his native village at Bihar by the police. Record also shows that a railway ticket was also recovered from the possession of appellant showing the date of journey on July 21, 2013.

69. Witnesses had seen and identified the appellant carrying a child in his lap. The child in lap was also identified by the witnesses as the victim girl child. The prosecution proved reports from CESC, PWD (Electrical Division) as well as officials from HRBC which goes to establish that there was sufficient light in and around the Hastings flyover and Syed Baba Mazar area in the night of July 20, 2013/ July 21, 2013. There was no report of any technical snag or power cut on the date of incident. Therefore, such reports establish that there was sufficient light on the roads, flyover and surrounding areas of Hastings to enable the witnesses identify the appellant. Not only the appellant but the victim and wearing apparels of the appellant as well as the victim were identified beyond any shadow of doubt.

70. Therefore, in view of such overwhelming evidence with regard to suspicious presence of the appellant at the date time and place of occurrence, recovery of the victim child as also the recovery of the wearing apparel of the victim as per the leading statement of the appellant, it is established that the appellant and appellant alone is responsible for committing rape upon the victim coupled with her murder. The circumstances, set forward by the prosecution, leave no space for any other hypothesis but of the guilt of the appellant alone. No circumstance, whatsoever, is forthcoming, on the basis of evidence on record to propose slightest of hypothecation pointing to involvement of any person other than the appellant, in the commission of the offences involved in this case. In that view of the facts we find no fault with finding of the learned trial court in so far as conviction of the appellant for the offences punishable under Sections 364/376A/302 of the Indian Penal Code, 1860 as well as Section 6 of Protection of Children from Sexual Offences Act, 2012 is concerned. We uphold such conviction.

71. The appellant, having been found guilty of the offences punishable under Sections 364/376A/302 of the Indian Penal Code and Section 6 of Protection of Children from Sexual Offences Act, 2012 was awarded with death penalty for the offence under Section 302 of the

Indian Penal Code besides punishments for other offences he was found guilty of.

72. We have considered the impugned judgment as well as the psychological evaluation report in respect of the appellant. The appellant is 45 years of age. His psychological evaluation report suggests that his current intellectual functioning fell under the category of mild mental disability which could be attributed to his nil education. The socio-economic report of the appellant represents that the appellant was the only child of her parents. His father died before his death and was brought up by his mother who worked as agricultural labourer. His life has been reeling under poverty.

73. It is trite law that imposition of death penalty should be resorted to if the circumstances of the case and the evidence led therein leave an impression that the option of imposition of any other penalty stands foreclosed. Possibility of future reformation is also a relevant factor to be taken into consideration while awarding death sentence to a convict. The Hon'ble Supreme Court in the case reported in **2025 SCC OnLine SC 575 (Ramesh A Naika vs. Registrar General, High Court of Karnataka Etc.)** laid down that,

“12. The ground of the case being based on circumstantial evidence, although, addressed in the main judgment, is amiss in the order of sentencing. A Three-Judge Bench in

Shatrughna Baban Meshram v. State of Maharashtra, considered this question in detail. It was concluded as hereinbelow:

“49. These cases discussed in preceding paragraphs show that though it is accepted that the observations in Swamy Shraddananda (2) [Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113] did not lay down any firm principle that in a case involving circumstantial evidence, imposition of death penalty would not be permissible, a definite line of thought that where the sentence of death is to be imposed on the basis of circumstantial evidence, the circumstantial evidence must be such which leads to an exceptional case was accepted by a Bench of three Judges of this Court in Kalu Khan [Kalu Khan v. State of Rajasthan, (2015) 16 SCC 492 : (2015) 4 SCC (Cri) 871]. As a matter of fact, it accepted the caution expressed by Sinha, J. in Swamy Shraddananda v. State of Karnataka [Swamy Shraddananda v. State of Karnataka, (2007) 12 SCC 288, para 87 : (2008) 2 SCC (Cri) 322] and the conclusions in Santosh Kumar Satishbhushan Bariyar [Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150] to restate the principles with clarity in its decision.

50. It can therefore be summed up:

50.1. It is not as if imposition of death penalty is impermissible to be awarded in circumstantial evidence cases.

50.2. If the circumstantial evidence is of an unimpeachable character in establishing the guilt of the accused and leads to an exceptional case or the evidence sufficiently convinces the

judicial mind that the option of a sentence lesser than death penalty is foreclosed, the death penalty can be imposed.

51. It must therefore be held that merely because the instant case is based on circumstantial evidence there is no reason to commute the death sentence. However, the matter must be considered in the light of the aforestated principles and see whether the circumstantial evidence is of unimpeachable character and the option of a lesser sentence is foreclosed.”

(Emphasis supplied)

13. As is clear from the above, the award of death penalty is not precluded. The rule only is that the circumstantial evidence ought to be unimpeachable, and the matter at hand be an exceptional case, or the evidence be so convincing that the option of imposition of any other penalty stands foreclosed in the judicial mind. Therefore, nonconsideration of this ground cannot be said to be damaging to the sanctity of the sentencing order.

14. It has been said in Swamy Shraddananda (2) v. State of Karnataka¹⁰ that “The absolute irrevocability of the death penalty renders it completely incompatible to the slightest hesitation on the part of the Court.” Given that recently, this Bench in Deen Dayal Tiwari v. State of U.P. considered that multiple factors, including the absence of criminal antecedents, may be a ground to commute the sentence of the accused.”

74. In the case reported in **(1980) 2 Supreme Court Cases 684 (Bachan Singh vs. State of Punjab)**, the Hon’ble Supreme Court laid down the principles of evaluation of aggravating circumstances and

mitigating circumstances in order to decide a case where death penalty could be awarded or avoided in the following terms, that is to say;

“02. Drawing upon the penal statutes of the States in U.S.A. framed after Furman v. Georgia [33 L Ed 2d 346 : 408 US 238 (1972)] , in general, and clauses 2 (a), (b), (c) and (d) of the Penal Code, 1860 (Amendment) Bill passed in 1978 by the Rajya Sabha, in particular, Dr Chitale has suggested these “aggravating circumstances”:

“Aggravating circumstances: A court may, however, in the following cases impose the penalty of death in its discretion:

(a) if the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed—

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.”

75. The Hon’ble Supreme Court also observed, in the case of **Bachan Singh** (supra) that,

“205. In several countries which have retained death penalty, pre-planned murder for monetary gain, or by an assassin hired for monetary reward is, also, considered a capital offence of the first-degree which, in the absence of any ameliorating circumstances, is punishable with death. Such rigid categorisation would dangerously overlap the domain of legislative policy. It may necessitate, as it were, a redefinition of ‘murder’ or its further classification. Then, in some decisions, murder by fire-arm, or an automatic projectile or bomb, or like weapon, the use of which creates a high simultaneous risk of death or injury to more than one person, has also been treated as an aggravated type of offence. No exhaustive enumeration of aggravating circumstances is possible. But this much can be said that in order to qualify for inclusion in the category of “aggravating circumstances” which may form the basis of “special reasons” in Section 354(3), circumstance found on the facts of a particular case, must evidence aggravation of an abnormal or special degree.

206. Dr Chitale has suggested these mitigating factors:

“Mitigating circumstances.—In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.”

76. Similarly in the case reported in **(1983) 3 SCC 470 (Machhi Singh vs. State of Punjab)**, the Hon’ble Supreme Court, noted the following principles in respect of awarding death penalty as,

“38. In this background the guidelines indicated in Bachan Singh case [(1980) 2 SCC 684: 1980 SCC (Cri) 580: AIR 1980 SC 898: 1980 Cri LJ 636] will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following

propositions emerge from Bachan Singh case [(1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636] :

“(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the ‘offender’ also require to be taken into consideration along with the circumstances of the ‘crime’.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A 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 the mitigating circumstances before the option is exercised.”

77. In the case at hand, as noted hereinbefore, the appellant is aged 45 years and comes from a very poor economic background. He was married but his wife has left the appellant. He used to reside alone in the

horse stable. The circumstances of the case do not suggest that the offence committed was preplanned or was an outcome of any rivalry or enmity with the family of the victim. As has been held by the Hon'ble Supreme Court in many cases that every murder is gruesome but does not justify death penalty. In any case, we are not in a position to return a finding that the offence involved in the case at hand falls under the category of 'rarest of rare cases' to justify the punishment of death.

78. Therefore, taking into consideration the entire facts and circumstances of the case discussed hereinbefore and in consideration of the ratio laid down by the Hon'ble Supreme Court, we are minded to commute the death sentence awarded to the appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860, into one of life imprisonment. However, considering the age of the appellant as well as other circumstances obtaining from the facts of the case, the imprisonment of life so awarded to the appellant shall mean imprisonment for life without remission until 50 years from the date of his arrest.

79. The other portions of the sentence imposed by the impugned judgment and order for the offences punishable under Section 376A/364 of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012 are affirmed.

80. Accordingly, Death Reference 2 of 2019 along with the appeal being C.R.A. 384 of 2019 are disposed of.

81. A copy of this judgment along with the Trial Court records be remitted to the appropriate Court forthwith. In view of the commutation of the death penalty of Suresh Paswan, any warrant issued by the appropriate Court with regard thereto in respect of Suresh Paswan stands modified in terms of this judgment and order. Department will inform the Correctional Home, where the appellant is lodged, as to this judgment and order. The Correctional Home will record the fact of commutation of death penalty to the sentence awarded by this judgment and order in respect of Suresh Paswan, in their records.

82. Period of detention already undergone by the appellant shall be set off against the substantive punishment in terms of the provisions contained in Section 428 of the Code of Criminal Procedure.

83. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

84. I agree.

[DEBANGSU BASAK, J.]