
State of Rajasthan Vs Kunal Majumdar

Criminal Murder Reference No. 1 of 2007

Court: Rajasthan High Court

Date of Decision: Feb. 13, 2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 161, 173, 277, 302, 354#Penal Code, 1860 (IPC) â€” Section 302, 376, 511

Citation: (2013) CriLJ 1998

Hon'ble Judges: Govind Mathur, J; Banwari Lal Sharma, J

Bench: Division Bench

Advocate: K.R. Bishnoi, P.P, for the Appellant; Suchit Mohanti and Dhirendra Singh, for the Respondent

Judgement

Govind Mathur, J.

By judgment dated 9-3-2007 the Additional Sessions Judge (Fast Track) No. 1, Jodhpur recorded conviction of

accused Kunal Majumdar son of Narainchandra, resident of C/165, Survey Park, Santoshpur, Jadavpur, Kolkata, for the offences punishable

under Sections 302 and 376/511, Indian Penal Code and awarded death sentence. The proceedings to this Court are submitted as per provisions

of Section 366(1), Code of Criminal Procedure. To challenge the conviction recorded and sentence awarded, the accused has also preferred

Criminal Appeal No. 243/2007 and Jail Appeal No. 313/2007. The facts of the case, according to the prosecution, are that on 18-1-2006 a

complaint (Ex. P/6) was preferred by one Laltu Manjhi, resident of village Bohran, District Bardman (West Bengal), before the station House

Officer of Police Station, Shastri Nagar, Jodhpur stating therein that about two months earlier one Sudeep Dey, resident of Bohran, came to him to

send his daughter Bharti to Jodhpur as his cousin brother-in-law Kumal Majumdar was in need of a maid servant to discharge little domestic work

and to assist Sheela wife of Kunal, who at that time suffered a caesarean delivery. Accordingly, Bharti was sent to Jodhpur and was employed as a

housemaid at the residence of Kunal. At about 25 days prior to the date of complaint Shri Sudeep Dey, through whom his daughter came to be

employed with the appellant, informed over phone that his daughter wanted to speak to him. When he talked to his daughter, he could sense the

plight of his daughter at the residence of the appellant. His daughter desired to explain her ordeal at the instance of the appellant but she was

prevented from talking to him in detail. On 16-1-2006 at about 5:00 a.m. he received an information through Sudeep Dey that the appellant

informed him over phone that his daughter fell unconscious due to vertigo and was admitted to hospital. On such information, when he reached

Jodhpur, the appellant informed him that his daughter was dead. He saw her body in the mortuary of Mahatma Gandhi Hospital, Jodhpur on 18-1-

2006 and noticed several injuries. The neighbours of the appellant informed him that Bharti (deceased) was constantly tortured by the appellant

during preceding two months, the period in which was employed as maid servant with the appellant. A definite allegation was made in the

complaint that Bharti Manjhi was killed by the appellant by strangulation.

2. Acting upon the complaint received, a case was registered and after investigation, a police report was filed as per provisions of Section 173,

Cr.P.C. before the competent Court. The competent Court committed the report to the Court of Session and the Court of Session framed charges

for commission of offences punishable under Sections 302 and 376, Indian Penal Code. On denial of the same, trial commenced as desired by the

accused appellant.

3. Before the trial Court prosecution witnesses 1 to 17 were examined in support of the prosecution apart from Exhibits P/1 to P/20. An

opportunity was given to the accused appellant to explain the adverse circumstances appearing in the prosecution evidence. The accused appellant

denied the offences alleged with assertion that the deceased was a patient of epilepsy and on the date of incident, she suffered the fits of epilepsy

resulting into breathlessness, thus, fell down and sustained injuries. To provide artificial respiration efforts were made by the appellant and his wife

to open her stiff jaw with the aid of spoon and further water too was poured on her face. She was subsequently taken to the hospital, where she

was declared dead. Necessary information then was given to the parents of Bharti Manjhi. It was also stated that no rape was committed on the

deceased, as such the complaint was false and he was innocent. In defence, testimony of Smt. Sheela (DW-1) wife of the accused appellant was

examined.

4. Learned trial Court after examining the entire evidence arrived at the conclusion that an attempt was made by the accused appellant to commit

rape with deceased Bharti Manjhi, as such he was held guilty to commit the offence of Section 376/511, Indian Penal Code. Learned trial Court

also held the accused appellant guilty for an offence punishable u/s 302, Indian Penal Code. After recording conviction, the trial Court arrived at

the conclusion that the crime committed by the accused appellant comes within the purview of ""rarest of rare"" case. thus, awarded death sentence.

While concluding as such, the trial Court noticed that deceased Kumari Bharti Manjhi was a minor girl of 14 years and she was working as maid

servant with the accused appellant. The accused exploited poverty of Bharti Manjhi and her family and caused her death after making an effort to

commit rape when the minor girl was under his custody. Having considered the facts mentioned above, the trial Court satisfied itself that no other

sentence except the death sentence shall be appropriate to be awarded in existing set of circumstances.

5. To challenge the conviction recorded and sentence awarded, the accused appellant preferred the present appeals and the proceedings were

also submitted to this Court by the trial Court as per provisions of Section 366(1), Code of Criminal Procedure. The appeals as well as the death

reference came up before coordinate bench of this Court for hearing and on 11-7-2007 and the proceedings came to be disposed of with

following observation and order:--

Where the convictions have not been challenged by the accused, the sentence part is the only aspect on which we have to seriously consider. The

brutality seen in the act of the accused relates to the violation of the person of the deceased, for satisfaction of evil desires. The injuries sustained

resulting into death is not suggestive of a use of force of the severe nature which can take us to the conclusion that it was brutal and in-human.

In that view of the matter, and specifically in the background when the public prosecutor has also not seriously adverted to support the reference,

we are of the opinion that the reference for confirmation of death sentence should be answered in negative and accordingly the reference is

rejected.

Consequently, the appeal of the accused appellant is partly allowed. His convictions under Sections 302, 376 read with Sec. 511, IPC are

maintained. However, the sentence awarded u/s 376 read with Section 511 IPC is maintained, and the sentence awarded u/s 302 IPC is altered to

one of life imprisonment instead of death. Jail appeal is also decided in the aforesaid manner.

6. Hon"ble Supreme Court granted leave to the accused appellant to challenge the judgment dated 11-7-2007, thus, a Criminal Appeal No.

407/2008 was registered. The appeal aforesaid came to be disposed of by Hon"ble Supreme Court under the judgment dated September 12,

2012 with the observations and directions as under:---

We are convinced that it is the bounden duty of the Division Bench to carry out such exercise in the manner set out above and we feel it

appropriate, therefore, to set aside the judgment impugned in this appeal for that reason and remit the matter back to the High Court for deciding

the Reference u/s 366 Cr.P.C. in the manner it ought to have been decided. Inasmuch as the conviction and sentence imposed on the appellant

was by the judgment dated 9-3-2007 of the the trial Court and the offence alleged was dated 16-1-2006, while remitting the matter back to the

High Court, we direct the High Court to dispose of the Reference along with the Appeals expeditiously and in any case within three months from

the date of receipt of the records sent back to the High Court. The appeal stands disposed of with the above directions to the High Court.

7. As per directions of Hon"ble the Supreme Court, the appeals as well as the death reference is before us for consideration.

8. Suffice to mention here that before the trial Court an objection was taken by counsel for the appellant about non-compliance of the provisions of

Section 277, Code of Criminal Procedure, but that was overruled. Learned trial Court noticed that Laltu Manjhi (PW-3), Ashok Manjhi (PW-4)

and Sudeep Dey (PW-5) were not having knowledge of Hindi, English or the language of Court and their statements as per provisions of Section

161 Cr.P.C. were recorded by getting the same translated from Bangla to Hindi with the aid of Sanju. The Court before recording the statements

of above named persons made a note that the language of Court is not known to them and only language known is Bangla, therefore, the

statements given by them were recorded by getting the same translated with the aid of Sanju. The statements were recorded in presence of

accused, who is having good knowledge of Bangla as well as the language of Court. No objection was ever raised by him or his counsel about any

error in translation at any point of time.

9. The trial Court after deciding the objection aforesaid considered the evidence in detail and founded its conclusion on basis of the circumstances,

those are -

1. As per Laltu Manjhi (PW-3), Ashok Manjhi (PW-4) and Sudeep Dey (PW-5), Bharti Manjhi came to Jodhpur from Bohran (West Bengal) to

serve as housemaid at the residence of accused Kunal Majumdar and at that time she was of about 13-14 years of age;

2. As per the witnesses already referred above and PW-6 Naresh Kumar, PW-7 Ravi Sharma, PW-10 Smt. Snehlata, PW-11 Abdul Kalam and

PW-12 Dinesh, Kumari Bharti was residing in the custody of accused appellant as housemaid at 38, Vyas Colony, Air Force Area, Jodhpur;

3. The medical evidence adduced by PW-9 Dr. P. C. Vyas, who conducted autopsy on the person of Kumari Bharti Manjhi;

4. The fact about several injuries on the body of deceased Bharti Manjhi would have been within the knowledge of the accused being custodian,

but he failed to prove the correct cause and he also never disclosed to PW-15 Navratan that while facing the fits of epilepsy Bharti was wriggling,

and;

5. The extra judicial confession made by the accused before PW-15 Navratan and further narration of the entire incident by Navratan to PW-6

Naresh Kumar, PW-7 Ravi Sharma and PW-12 Dinesh.

10. In appeal, the arguments advanced on behalf of the appellant are that --

1. The learned trial Court failed to appreciate that as per prosecution. Laltu Manjhi (PW-3), Ashok Manjhi (PW-4) and Sudeep Dey (PW-5)

came to Jodhpur on 18-01-2006 in morning and they went to the residence of Kunal Majumdar and received all necessary information pertaining

to the crime, but no FIR was lodged with police. The report Ex. P/6 was lodged at least after a delay of more than seven hours and prior to that

"panchnama" (Ex. P/4), postmortem (Ex. P/9), "supurdgi" of dead body (under Ex. P/5) and recovery of clothes of deceased were already made;

2. Admittedly Laltu Manjhi, Ashok Manjhi and Sudeep Dey were not having knowledge of Hindi, but the entire investigation through these persons

was made in Hindi with the aid of some Bengali person Sanju, but that person has not been examined as witness by the prosecution. The fact that

who translated the version given by three witnesses named above remained undisclosed in entire trial. Laltu Manjhi (PW-3), Ashok Manjhi (PW-

4) and Sudeep Dey (PW-5) stated that Naresh Kumar, Ravi Sharma and Dinesh told them about commission of rape and causing death of Bharti

by strangulation, but this fact is not mentioned in first information report (Ex. P/6). No reference of this fact is also made in Ex. D/1, D/2 and D/3,

the police statements of above named three persons;

3. The trial Court heavily relied upon the statements of PW-15 Navratan, but failed to appreciate that his statement was taken after a lapse of four

days from the date of incident. Notwithstanding to the above, the version given by PW-15 Navratan is not at all reliable and trustworthy;

4. No extra judicial confession could have been made by the accused before a stranger;

5. The medical evidence adduced nowhere suggests the reasons to arrive at the conclusion that the death of Bharti was caused due to asphyxia;

6. The statements given by PW-6 Naresh Kumar, PW-7 Ravi Sharma and PW-10 Snehlata and PW-12 Dinesh do not bear any confidence,

therefore, no reliance could have been placed on the evidence adduced by these persons; and

7. The explanation given by the accused appellant and the evidence adduced, by Smt. Sheela (DW-1) is more plausible and natural, but the trial

Court ignored the same without any just reason.

11. Learned Public Prosecutor, while opposing the appeal, urged that adequate evidence is available on record to establish that an attempt was

made by the accused appellant to commit rape with minor girl who was in his custody. The accused also tortured her to the extent that she died

and as such the offences punishable under Sections 302 and 376/511 Indian Penal Code are well established.

12. Heard learned counsel for the appellant as well as learned Public Prosecutor. As already stated, the instant one is a case wherein the

conviction is based on circumstantial evidence. It is well settled that the conviction while relying upon circumstances can be made only if a chain of

circumstances pointing out only one conclusion i.e. involvement of the accused in crime in question exists.

13. In the case in hand, so far as the circumstance about coming of Bharti Manjhi to Jodhpur as housemaid at the residence of accused Kunal

Majumdar, is admitted. The circumstance that deceased Bharti was residing in the house of accused Kunal Majumdar as housemaid at 38, Vyas

Colony, Air Force Area, Jodhpur, is also not in dispute. She being minor, was in custody of the accused appellant.

14. So far as medical evidence is concerned, the antemortem injuries received by deceased Bharti Manjhi are also not in dispute. The antemortem

injuries received by her are as under:--

1. Abrasion 2 x .2 cm with blackish hard scab, on left parietal region.
2. Bruise 2 x 1 1/2 cm reddish-brown in colour, on left zygomatic region of face.
3. Diffuse swelling on both side cheek, but no bony injury appreciated.
4. Multiple abrasions of size .5 x .2 cm to .2 x .2 cm on posterior part of right ear pinna with soft scab.
5. Bruise 1 x .75 cm dark reddish in colour, just below right ear lobule.
6. Multiple abrasions of size 1 x .2 cm to .2 x .2 with black hard scab, on right side neck posterolaterally.
7. Bruise 4 x 3 cm dark reddish in colour at right angle of mandible.
8. Bruise 4 x 1 1/2 cm reddish in colour, just below right angle of mandible.
9. Abraded bruise 2 1/2 x 2 cm dark reddish in colour with soft scab on abrasion, present on right side chin inferiorly.
10. Bruise 3 x 3 cm reddish in colour, on left malar region of face.
11. Bruise 2 x 1 1/2 cm bluish in colour, on left lower eyelid.
12. Multiple abrasions of size 1 x 1/2 cm to 1/2 x 1/2 cm with soft scab, on lower lip both sides and upper lip in mid line, on mucosal aspects.
13. Recently healed lesions with pinkish brown raw area present on left side cheek of size 1 x .2 cm to .2 x .2 cm.
14. Multiple abrasions of size 2 x .2 cm to .4 x .2 cm with brownish-black hard scab on front of neck in mid line and also on right side.
15. Abrasion 1 x .2 cm with brownish hard scab, on left side back of chest lower 1/3rd.
16. Abrasion 2 x .2 cm with brownish black hard scab, on right arm upper 1/3rd laterally.
17. Lesion P/2 x 1 cm with healthy granular tissues on right wrist dorsally.
18. Six lesions of size 2 1/2 x 2 cm to 1/2 x 1/2 cm with healthy granular tissues on right palm, right thumb, right index and right middle fingers
on palmar aspects.
19. Abrasion 1 1/2 x 1 cm with brownish hard scab, around right
20. Two lesions with peeled off scab of size 1 x .2 cm and .5 x .5 cm above left nipple.
21. Three abrasions of size 1 1/2 cm, 1/2 x 1/2 cm with brownish black hard scab around left nipple in circular fashion.
22. Abrasion 3 x .2 cm on left shoulder, laterally with brownish hard scab.

23. Multiple abrasions of size 1 x 1/2 cm to 1/2 x 1/2 cm with almost peeled off scab, on dorsum of left hand, left index and left middle fingers.

24. Abrasion 1 x .2 cm with brownish scab on left forearm lower 1/3rd.

25. Abrasion 1 x .2 cm on right lateral side of chest lower 1/3rd.

26. Two abrasions of size 1 1/2 x 1 cm and 1 x 1 cm with brownish black hard scab, just above umbilicus and at umbilicus

27. Multiple abrasions of size 5 x 1/2 cm to 1/2 x 1/2 cm brownish black hard scab, on right knee, right leg and right ankle joint anteriorly at

places, left knee and left leg anteromedially at places.

On dissection of neck - Antemortem reddish coloured haematoma present on left side neck underneath the skin and in underlying soft tissues. On

further exam patchy ante-mortem reddish dark haematoma present below epiglottis on both sides and also in soft tissues at upper part of trachea.

Hyoid bone, thyroid and.... cartilages found intact. Mucosa, of trachea also congenial in upper half.

15. The cause of death prescribed in the medical opinion is antemortem injury of neck that was sufficient to cause death.

16. The first submission of counsel for the appellant that delay occurred in lodging the first information report, in our opinion, is not having any

merit. The first informant Shri Laltu Manjhi (PW-3) is a resident of Bohran, District Bardman (West Bengal) and he reached Jodhpur after

receiving information about serious ailment of his daughter. On arriving to Jodhpur he came to know about her death in the locality where Kunal

Majumdar was residing and then he went to mortuary of Mahatma Gandhi Hospital. Laltu Manjhi (PW-3), Ashok Manjhi (PW-4) and Sudeep

Dey (PW-5), all coming from Bohran, a village in the State of West Bengal, were absolutely strangers for Jodhpur city and they were also not

knowing local dialect. In such circumstances, a little delay caused is absolutely non-consequential.

17. So far as the argument advanced with regard to non-production of Sanju in witness box is concerned, suffice to mention that this person

translated the statements of witnesses Laltu Manjhi (PW-3), Ashok Manjhi (PW-4) and Sudeep Dey (PW-5) before the Court also in presence of

the accused appellant, who is very much acquainted with the language of Court as well as Hindi and English. He never raised any objection relating to

translation made by Sanju. If the accused had any grievance with the translation made, he would have objected the same before the Court.

18. Much emphasis is given by counsel for the appellant regarding reliability and trustworthiness of Shri Navratan (PW-15), before whom

extrajudicial confession by the accused was made. While placing reliance upon the judgment of Hon"ble Supreme Court in Kojja Sreenu Vs. State

of A.P., and Jaswant Gir Vs. State of Punjab, it is submitted that Navratan was absolutely a stranger for the accused appellant, therefore, no

extra judicial confession could have been made by him before this witness. According to learned counsel, Navratan was not a person of

confidence of the accused, therefore, no reason exists for making any extra judicial confession before him. It is further asserted that the conduct of

Navratan (PW-15) too makes him quite unreliable. This man after knowing about alleged heinous crime by the accused appellant did not choose

to tell anything to the police authorities for good four days.

19. We have examined this aspect of the matter thoroughly. True it is, PW-15 Navratan was not much known to the accused appellant and he was

also not a person of his confidence, as such, in normal circumstances no extra judicial confession could have been made before him, however, the

facts of this case are quite different. As per the evidence available, the accused appellant called Navratan, a taxi driver, to carry deceased Bharti

Manjhi to hospital. He took Bharti Manjhi at the first instance to a private hospital, where he was advised to go to Mahatma Gandhi Government

Hospital, Jodhpur. At Mahatma Gandhi Hospital the girl was declared dead, thus, he returned to home with dead body. A person who happens to

be in employment of Indian Air Force residing at a place i.e. not much known to him and who is otherwise lonely, may in such circumstance utter

certain truths even before a person who is not much known to him. An another important aspect of the matter is that Navratan was not having any

enmity with the accused appellant, he was not going to get anything by making a false statement, as such, no reason exists for telling lie by him and

that too of a nature having extreme consequences. So far as conduct of this witness for not disclosing the events to the investigating agency for

good four days is concerned, suffice to mention that only after few hours of the incident the details relating to extra judicial confession made were

given by him to Naresh Kumar, Ravi Sharma and Dinesh. PW-15 Navratan is a taxi driver and in the next morning of the incident in question he

left Jodhpur for some other destination with customers. A person coming from lower economic echelons having day to day earning may prefer his

earning vis-a-vis conveying all happening to the police authority at first, specifically in the circumstances that the details were already conveyed by

him to certain other persons. Looking to all the circumstances discussed above, we do not find any wrong in believing testimony of PW-15

Navratan. This witness in most unambiguous terms stated that while returning from hospital, accused stated him about ill-behaviour extended to

Bharti Manjhi. The ill-attitude of the accused appellant with Bharti Manjhi has been substantiated by other witnesses also who were living in

neighbourhood of the accused.

20. PW-10 Smt. Snehlata Parihar, a neighbour of accused appellant, stated that on several occasions she heard screams of Bharti Manjhi from the

house of accused. She also stated that Bharti Manjhi was normally not permitted to come out from the house, however, whenever she came out

her looks were carrying sadness. From the evidence adduced by PW-15 Navratan, PW-10 Snehlata, PW-12 Dinesh, PW-7 Ravi Sharma and

PW-6 Naresh Kumar, it is apparent that Navratan conveyed that an attempt was made by accused to commit rape with Bharti Manjhi and then

she was killed. All these witnesses are independent persons and no reason exists for them to tell any lie.

21. An important argument advanced by learned counsel that the medical evidence does not support the prosecution case, but the case of defence

as advanced with the aid of the statement made by DW-1 Smt. Sheela. It is stated that though PW-9 Dr. P. C. Vyas opined that cause of death

was an injury given on neck which was sufficient to cause death in normal course of life, but no reason for such opinion is available. It is further

submitted that the injuries available on person of deceased Bharti Manjhi could have been very well received because of epilepsy attack.

According to learned counsel deceased Bharti Manjhi while facing the epilepsy attack was wriggling, therefore, the bruises and abrasions

occurred.

22. We do not find any merit in this argument too. Deceased Bharti Manjhi received 27 injuries in lateral and post lateral sides of her body. The

availability of bite marks on her neck, lips and close to breast nipples tells absolutely a different story. As a matter of fact, the injuries available on

the body of deceased Bharti clearly indicates the evil desires of the accused in whose custody she was and while making efforts to satisfy such

desires he knowingly committed imminently dangerous acts necessarily causing death.

23. In view of the evidence discussed above, we do not find any wrong with the finding arrived by the trial Court about involvement of the accused

appellant with crime in question. As such, the conviction recorded for the offences punishable under Sections 302 and 376/511 Indian Penal Code

suffers from no wrong.

24. The important question now requires consideration is about death sentence awarded by the trial Court.

25. As per sub-section (3) of Section 354 Code of Criminal Procedure, the Courts are having obligation to have special reasons for awarding

death sentence, thus, the capital sentence is an exceptional form of punishment. In Bachan Singh Vs. State of Punjab, Hon"ble Supreme Court

concluded that the real and abiding concern for the dignity of human life postulates resistance to taking a life through law"s instrumentality and that

ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.

26. In Machhi Singh and Others Vs. State of Punjab, Hon"ble Apex Court provided five categories of murder, within which the rarest of rare

doctrine was to be practically applied. These five contingencies include the motive, the manner of commission of crime, the magnitude, the anti-

social or abhorrent nature of the crime and the personality of the victim,

27. The issue again came up before Hon"ble Apex Court in Ramnaresh and Others Vs. State of Chhattisgarh, wherein the Court reiterated the 13

aggravating and 7 mitigating circumstances as laid down in the case of Bachan Singh Vs. State of Punjab, required to be taken into consideration

while applying the doctrine of ""rarest of rare"" case.

28. In *Brajendrasingh Vs. State of Madhya Pradesh*, the Apex Court while reiterating, the principles set out in *Bachan Singh Vs. State of Punjab*,

and *Ramnaresh and Others Vs. State of Chhattisgarh*, added that the Court while examining ""rarest of rare"" case is required to see that whether

any other sentence except death penalty would be inadequate in the circumstances existing. The circumstances so noticed are as under:--

Aggravating Circumstances:

1. The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, etc. by the accused with a prior record of

conviction for capital felony.

2. The offence was committed while the offender was committing another serious offence.

3. The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon

or device which clearly could be hazardous to the life of more than one person.

4. The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

5. Hired killings.

6. The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

7. The offence was committed by a person while in lawful custody.

8. The offence was committed, to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself

or another. For instance, murder is of a person who had acted in lawful discharge of his duty under S. 43 Cr.P.C.

9. When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

10. When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter

or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

11. When murder is committed for a motive which evidences total depravity and meanness.

12. When there is a cold blooded murder without provocation.

13. The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating Circumstances:

1. The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or

extreme provocation in contradistinction to all these situations in normal course.

2. The age of the accused is a relevant consideration but not a determinative factor by itself.

3. The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and

rehabilitated.

4. The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his

criminal conduct.

5. The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental

imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and

circumstances of the case, the accused believed that he was morally justified in committing the offence.

6. Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the

death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the

commission of the primary crime.

7. Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused.

8. As per the law laid down in the case of *Brajendrasingh (supra)* an important factor i.e. required to be taken into consideration is that whether

any other circumstance except death penalty would be inadequate looking to the facts of the case concerned.

29. By keeping in mind the aggravating and mitigating circumstances noticed by Hon"ble Supreme Court in the case of *Ramnaresh and Others Vs.*

State of Chhattisgarh, and Brajendrasingh Vs. State of Madhya Pradesh, this Court in *State of Rajasthan v. Devilal (DB Criminal Murder*

Reference No. 01/2012), decided on 30th January, 2013, observed as under:--

The aggravating and mitigating circumstances noticed above may be much more in different circumstances and whatever circumstances noticed by

Hon"ble Supreme Court as above are inclusive. No straight jacket formula can be prescribed for application of the doctrine ""rarest of rare

situation. The contingencies for application of the doctrine aforesaid may differ circumstances to circumstances and time to time, but in any event

the Court while considering the case for awarding severest punishment, which as a matter of fact akin to divine authority, is required to be

extremely cautious with absolute vigilance about the factual circumstances, objective conditions and other relevant factors applicable to the society

wherein the crime is committed. The Court while considering the case for awarding capital punishment must understand that an exceptional

authority must be exercised in most exceptional case, with utmost care, caution and only after arriving at the conclusion that no other punishment in

any circumstance shall serve and satisfy the injury caused to the social order. The Indian society is a multilayer, multi dimensional, multi class, multi

caste and multi cultural society with several virtues and several ills of every variant. An individual living in such society carries these virtues and ills

with him. The Courts cannot ignore all these factors while making necessary consideration for settling a severest sentence.

30. Hon"ble Supreme Court in its recent judgment in *Sangeet and Another Vs. State of Haryana*, thrashed the entire issue and concluded as

under:--

1. This Court has not endorsed the approach of aggravating and mitigating circumstances in Bachan Singh. However, this approach has been

adopted in several decisions. This needs a fresh look. In any event, there is little or no uniformity in the application of this approach.

2. Aggravating circumstances relate to the crime while mitigating circumstances relate to the criminal. A balance sheet cannot be drawn up for

comparing the two. The considerations, for both are distinct and unrelated. The use of the mantra of aggravating and mitigating circumstances

needs a review.

3. In the sentencing process, both the crime and the criminal are equally important. We have, unfortunately, not taken the sentencing process as

seriously as it should be with the result that in capital offences, it has become Judge-centric sentencing rather than principled sentencing.

4. The constitution Bench of this Court has not encouraged standardization and categorization of crimes and even otherwise it is not possible to

standardize and categorize all crimes.

5. The grant of remissions is statutory. However, to prevent its arbitrary exercise, the legislature has built in some procedural and substantive

checks in the statute. These need to be faithfully enforced.

6. Remission can be granted u/s 432 of the Cr.P.C. in the case of a definite term of sentence. The power under this Section is available only for

granting ""additional"" remission, that is, for a period over and above the remission granted or awarded to a convict under the Jail Manual or other

statutory rules. If the term of sentence is indefinite (as in life imprisonment), the power u/s 432 of the Cr.P.C. can certainly be exercised but not on

the basis that life imprisonment is an arbitrary or notional figure of twenty years of imprisonment.

7. Before actually exercising the power of remission u/s 432 of the Cr.P.C. the appropriate Government must obtain the opinion (with reasons) of

the presiding Judge of the convicting or confirming Court. Remissions can, therefore, be given only on a case-by-case basis and not in a wholesale

manner.

31. We have examined case of the accused appellant in light of the conclusion mentioned above. No doubt that the accused appellant has been

found guilty of committing a very heinous crime involving inhuman treatment and torture with a person who was in his custody. The victim was

innocent, helpless and was relying upon the trust of social norms, being housemaid with the family of accused appellant. These circumstances

certainly impress to award severest punishment as awarded by the trial Court, however, while assessing the circumstances to settle severest

sentence, the Court is also required to examine the mitigating circumstances in light of the objective conditions relating to criminal i.e. accused

appellant. The age of the accused though is not a determinative factor in itself, but certainly a relevant consideration. In the case in hand, the

accused is quite a young boy and he is having a young wife and a little baby. The death of minor Bharti Manjhi occurred in the course of

commission of some other crime and it is also the position admitted that the accused appellant took her to the hospital and as per the evidence

available, while transporting to hospital the girl was alive. The accused appellant also informed the family members of deceased about is based on

circumstantial evidence which as a matter of fact found trustworthy, but while exercising the most exceptional authority akin to the divine power,

the Court should as far as possible restrain itself to do anything that cannot be undone at a later stage. Whenever any ray of hope, may that be

quite dim, exists for reformation of a human being a chance should be given for such reformation. The death penalty is required to be given only

after arriving at a conclusion that the criminal is nothing but a menace for the society and no hope exists for reformation. In the case in hand the

accused appellant was serving in Indian Air Force, he is in his quite young age and he too is having a liability to provide a good life to his own

daughter. No material is available to arrive at the conclusion that he is a menace for society. Looking to all these circumstances we are having a

little hope of his reformation and just to get that materialised, we are not inclined to confirm the death sentence. Accordingly, the conviction of

accused Kunal Majumdar son of Narainchandra, resident of C/165, Survey Park, Santoshpur, Jadavpur, Kolkata, for the offences punishable

under Sections 302 and 376/511 Indian Penal Code is affirmed. However, the death sentence awarded by the trial Court is substituted by life term

imprisonment. The death reference made by learned Additional Sessions Judge (Fast Track) No. 1, Jodhpur stands concluded accordingly. The

appeals preferred by the accused appellant are also allowed in part in the terms aforesaid.