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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

L. NAGESWARA RAO; J, B.R. GAVAI; J, B.V. NAGARATHNA; J.

January 18, 2022

Criminal Appeal Nos. 101-102 of 2022 (@ SLP (Crl.) Nos.4821-4822 of 2018)

Bhagwani *Versus* **The State of Madhya Pradesh**

Summary - Appeal against Madhya Pradesh HC judgment which confirmed death sentence awarded to the appellant accused of rape and murder of 11 year old girl - Partly allowed - Commuted death sentence- Sentenced to life imprisonment for a period of 30 years during which he shall not be granted remission- No evidence has been placed by the prosecution on record to show that there is no probability of rehabilitation and reformation of the Appellant and the question of an alternative option to death sentence is foreclosed. The Appellant had no criminal antecedents before the commission of crime for which he has been convicted. There is nothing adverse that has been reported against his conduct in jail- The Appellant was aged 25 years on the date of commission of the offence and belongs to a Scheduled Tribes community, eking his livelihood by doing manual labour.

Code of Criminal Procedure, 1973; Section 235 (2) - Accused must be given an opportunity to make a representation against the sentence to be imposed on him. A bifurcated hearing for convicting and sentencing is necessary to provide an effective opportunity to the accused. Adequate opportunity to produce relevant material on the question of death sentence shall be provided to the accused by the Trial Court. (Para 13)

Constitution of India, 1950 ; Article 21- Fair Trial - An accused is entitled for a fair trial which is guaranteed under Article 21 of the Constitution of India. (Para 13)

Constitution of India, 1950; Article 136 - Principles governing interference in a criminal appeal by special leave. *[Referred to Dalbir Kaur v. State of Punjab] (Para 7)*

For Petitioner(s) Ms. Adeeba Mujahid, AOR

For Respondent(s) Mr. Gopal Jha, AOR

J U D G M E N T

L. NAGESWARA RAO, J.

Leave granted.

1. These Appeals are preferred against the judgment of the High Court of Madhya Pradesh by which the conviction and sentence of the appellant by the Trial Court under Sections 363, 366A, 364, 346, 376D, 376A, 302, 201 of Indian Penal Code, 1860 ("IPC") and Section 5(g)(m) read with Section 6 of The Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act") were upheld.

2. At 9.00 p.m. on 14.04.2017, Brijlal Yadav (PW-2) along with his wife Kalawati (PW-1), two sons and his daughter went to the house of Anil Maravi to attend a function of Chowk Barhon (naming ceremony). While they were returning back at around 11.00 p.m., they realized that their daughter was missing. They started searching and at about 5:00 AM on the next day, PW-1 found her daughter lying near a hand-pump. Her daughter was in an unconscious condition. PW-1 started howling at which PW-2 and others reached the place and called the police. The District Scientific Officer, Scene of Crime Unit, Dindori, Madhya Pradesh conducted inspection of the place of incident. According to the inspection report, the body of the deceased was lying in a supine position and on the back side of the head of the deceased, there were multiple small pieces of dry grass and Gokhru (Caltrop) in the hair. There was a dry bark of drumstick tree also in the hair. Both eyes were closed. Froth from the nose was observed, small internal injuries were visible and on the left side and right side of the chin, there were small marks of injury. Small injury marks were found in front and left side to the neck. Blood was present in the genitalia. On the sole of the right leg, there was blood. Blood was also present above the ankle of the right leg. There were scratch marks on the left side of the chest and another scratch type of mark below the chest. Blood spots were found on both thighs up to genitalia. Blood was found on the back of the thigh and near anus. Small injury marks were present on the entire back and waist. Directions were given to the investigating officer to send the body for post-mortem and to collect, preserve and pack the visible objects found at the place of occurrence. Further direction was given to seize the clothes worn by the prosecutrix and get them examined. Post-mortem was conducted at 4.00 p.m. on 15.04.2017 by PW-6 Dr. Sajjan Kumar Uikey who found the following injuries: -

"Rigor mortis present in both lower limb and partially passed in both upper limb. Eye-closed, mouth-closed, fiesthalf open, cornea congested, pupil dilated, face- cyanosed, lip-cyanosed, finger and· hand- cyanosed. Blood mixed froth present over the both nostril. Blood mixed saliva both angle on mouth up to lower margin of mandible. Four contusion mark over left side of neck, medial aspect of neck. Three contusion mark on left side of neck middle third size of contusion between 1 ½ cmx 1 cm. 1 cm x 1 cm. contusion over both cheek, 1 cm x 1 ' cm. infraorbital left side. 11/2 cm contusion on the left side of xiphisternum. One intrascapular contusion 1 Y, cm two 1/2 cm x v, cm contusion over the left buttock. Clotted blood found over the pink colour aspect dry clotted blood present over the perinea! area lower middle third of both thigh all around anal area. Blood present in the vaginal opening three 3 cm. anterior to posterior and full thickness of muscle and skin. Dry clotted blood present over the anal opening and inner aspect of anus. Opening is dilated 2 fingers easily admitted. All injuries are antemortem in nature."

The cause of the death was given as asphyxia, neurogenic shock due to neck pressing, severe injuries and bleeding in vagina and anal opening by committing rape forcefully.

3. On suspicion, the Appellant and Satish s/o Jehar Singh Dhoomketi were arrested on 16.04.2017. The statement of Satish was recorded pursuant to which the blanket and shawl of the deceased and clothes worn by him were seized. Similarly, the clothes worn by the Appellant which were concealed in his cowshed were seized pursuant to the statement made by him. On completion of investigation, the final report was filed on 27.06.2017. Charges

were framed against Satish and the Appellant under Sections 363, 366-A, 364, 346, 376D, 376A or in the alternative under Sections 302, 201 IPC and Section 5(g)(m) read with Section 6 of the POCSO Act. 12 witnesses were examined by the prosecution. The Sessions Judge, Dindori convicted the Appellant and Satish for the offences charged and sentenced them to death. The High Court answered the reference against the Appellant and Satish by upholding the conviction and sentence imposed by the Trial Court**.** Aggrieved thereby, the Appellant and Satish approached this Court. During the pendency of the Appeals, Satish died and therefore, his Appeal has abated.

4. As there is no direct evidence regarding the kidnapping, rape and murder of a girl aged 11 years, the case hinges on circumstantial evidence. Keeping in mind the well settled principles settled by this Court in **Sharad Birdhichand Sarda** v. **State of Maharashtra**, **(1984) 4 SCC 116** the Trial Court scrutinized the evidence on record. Reference was made to the testimony of PW-1 who stated that the Appellant and Satish were present at the Chowk Barhon function at Anil Maravi's house and made themselves scarce after the recovery of the dead body. Reference was also made to the oral testimony of PW-4, Chain Singh who runs a small hotel in the village. He deposed that the victim girl had come to his shop at 9.00 pm on 14.04.2017 to purchase *Kurkure* and she had a blanket and shawl with her. Fifteen minutes thereafter, the Appellant also visited the shop for purchasing *namkeen*. The Trial Court considered the disclosure statements made by the accused and the recoveries of shawl and blanket of the victim girl and the clothes of Satish and the Appellant. The seizure of a blanket and button from the place of incident was proved to be from the shirt of Satish. The evidence of Dr. Vijay Paigwar (PW-11) who examined the injuries of Satish and the Appellant was considered by the trial Court. The Appellant had a scratch mark of size 1 inch on the upper portion of the left shoulder, scratch mark of size 0.5 inch on left side below shoulder, scratch mark of size 0.5 inch on the lower portion of the back of the body, scratch marks of 2 inches on the right arm and abrasion mark of 1 cm sized on the cheek and 4 inches sized abrasion on the ribs. The answers given by the Appellant and Satish during their examination under Section 313 of the Code of Criminal Procedure, 1973 ("the CrPC") were also examined by the Trial Court. The admission of the Appellant that he had alcohol with Satish on the evening of the day of incident and that both of them visited Jaipal Singh (PW-9) and requested for alcohol on the next day morning was taken note of by the trial Court. The version of the Appellant that he was taken home by his mother on the night of 14.04.2017 and as she was abusing him, the Appellant went to the house of his neighbour, Deepa was not accepted by the Trial Court as neither his mother nor Deepa were examined. Having been convinced that the circumstances were consistent with the hypothesis of the Appellant, the Trial Court convicted them for the offences charged. After hearing the Appellant and Satish, the Trial Court sentenced them to death as they were found guilty of committing heinous crimes of rape and murder. While considering the reference, the High Court re-appreciated the evidence on record and upheld the conviction and sentence imposed by the Trial Court.

5. Mr. Shri Singh, learned counsel appearing for the Appellant submitted that none of the discoveries and the recoveries implicate the Appellant. He argued that the disclosure statement of Satish was recorded at 1340 hrs. on 16.04.2017 and the disclosure statement

of the Appellant was recorded one and half hours later. Both the statements were recorded by PW-10. He submitted that the Courts below have committed an error in relying upon the disclosure statement of the Appellant. He further stated that none of the articles that have been recovered from the alleged place of offence have any connection with the Appellant. According to him, the packet of *Kurkure* which was purchased was not identified in Court by PW-4 from whose shop it was purchased. The black button seized from the spot of offence is from the shirt of Satish with which the Appellant had no connection. Commenting on the seizure of the shirt, red sando baniyan and jeans pant, Mr. Shri Singh submitted that serological testing was not done to prove that the blood found on the clothes was human blood. He argued that the injuries of the Appellant cannot be taken as a circumstance as he is a labourer doing physical work. He pointed out that the column of "injury marks" in the arrest memo was found to be blank. The learned counsel for the Appellant submitted that the evidence of the accused last seen together with the victim has not been properly appreciated by the Courts below. He referred to the evidence of Bhagat Singh (PW-5) and submitted that the Appellant was apprehended from his house, and it was only Satish who was absconding. He argued that the statements made by the Appellant in his examination under Section 313 CrPC were not appreciated properly. The learned counsel for the Appellant pointed out that the admissions made by him in the statement under Section 313 CrPC cannot be treated as substantive evidence. According to learned counsel for the Appellant, the chain of circumstances is incomplete and is not consistent with only one hypothesis, proving the guilt of the Appellant. On the sentence of death, the learned counsel for the Appellant submitted that there is violation of the right to fair trial which is guaranteed under Article 21 of the Constitution of India as effective legal assistance was not afforded in the instant case. Sufficient time was not given to the amicus curiae appointed by the Court to cross-examine witnesses and no opportunity was given to the Appellant to submit relevant material before sentencing. Mitigating circumstances have not been taken into consideration. The probability of reformation of the Appellant and the sentence of life imprisonment being unquestionably foreclosed were not taken into account by the Courts below. The learned counsel for the Appellant further argued that the Appellant could not have been convicted under Section 376A IPC. After the amendment in 2013, gang rape was taken out of the ambit of Section 376 (1) and (2) IPC. The prosecution did not produce any evidence to establish any common intention between the Appellant and Satish to commit an offence under Section 376D IPC. Sentence for commission of gang rape is imprisonment for life. Therefore, the imposition of death sentence is unsustainable.

6. Ms. Ankita Chaudhary, learned Deputy Advocate General for the State of Madhya Pradesh defended the judgments of the Trial Court and the High Court by submitting that there is no break in the chain of events/ circumstances. According to her, the prosecution proved that there was a function of Chowk Barhon at the house of Anil Maravi, the victim was seen at the shop of Chain Singh (PW-4) and after a short while, the Appellant visited the shop and PW-5 witnessed the deceased going to the house of Satish which was corroborated by Satish in his statement under Section 313 CrPC in which he admitted that the deceased came to his house to keep her black shawl. The deceased disappeared thereafter, and her body was found the next day morning. The medical evidence disclosed

brutal rape and murder of the deceased. Scientific evidence clearly showed that Satish committed the offence of rape. Satish and the Appellant were seen together on the evening of 14.04.2017 and they had also visited PW-9 on the next day morning. They were disheveled and requested PW-9 for liquor. Satish went missing thereafter and was apprehended in the afternoon. Pursuant to the disclosure statement, the clothes of the Appellant were seized from the cowshed in the house of the Appellant. The learned counsel for the State referred to the injuries on the body of the Appellant which were not explained by him. She also relied upon the DNA report prepared by Forensic Science Laboratory (FSL), Sagar. Specific reference was made to Article D which was a full pant belonging to the Appellant on which there was a blood stain near the zip area. Ms. Chaudhary argued that multiple peaks were observed while examining Article D which denotes that there is more than one DNA trait on Article D. The learned counsel for the State further submitted that the Appellant could not prove his plea of alibi. The Appellant failed to examine his mother and Deepa in whose house he had slept on the night of 14.04.2017. Referring to the answers given to questions posed to the Appellant during his examination under Section 313 CrPC, the learned counsel for the State relied upon the law laid down by this Court and submitted that mere denial would provide additional link if the circumstances are proved. It was argued by the learned counsel for the State that though the statement under Section 313 CrPC cannot be made the basis for conviction, it can be used as evidence against the accused to the extent it supports the case of the prosecution. A helpless girl at a tender age was mauled to death after being raped and the Appellant deserves no lenience. The contention of the State is that there is no error committed by the Trial Court in imposing the sentence of death on the Appellant for the heinous offences committed by him.

7. This Court in **Dalbir Kaur v. State of Punjab, (1976) 4 SCC 158** summarized the principles governing interference in a criminal appeal by special leave as follows: -

“(1) that this Court would not interfere with the concurrent finding of fact based on pure appreciation of evidence even if it were to take a different view on the evidence;

(2) that the Court will not normally enter into a reappraisement or review of the evidence, unless the assessment of the High Court is vitiated by an error of law or procedure or is based on error of record, misreading of evidence or is inconsistent with the evidence, for instance, where the ocular evidence is totally inconsistent with the medical evidence and so on;

(3) that the Court would not enter into credibility of the evidence with a view to substitute its own opinion for that of the High Court;

(4) that the Court would interfere where the High Court has arrived at a finding of fact in disregard of a judicial process, principles of natural justice or a fair hearing or has acted in violation of a mandatory provision of law or procedure resulting in serious prejudice or injustice to the accused;

(5) this Court might also interfere where on the proved facts wrong inferences of law have been drawn or where the conclusions of the High Court are manifestly perverse and based on no evidence.”

This Court exhorted the counsel for the parties to confine their arguments within the four corners of the above principles to save time, energy and expertise.

8. The undisputed facts are that PW-2 along with his family members attended the Chowk Barhon ceremony at the house of Anil Maravi on the evening of 14.04.2017. His 11 years old daughter went missing and was found dead on the next day morning. The Appellant and Satish were arrested on the next day and on the basis of the statements made by them, recoveries of their clothes were made. The medical evidence shows that she was raped and killed. A green shirt of check pattern whose two front black buttons were broken, which is torn near the shoulder and has blood spot was seized from the flowerpot on the roof of the cowshed of the Appellant. A red colour sando *baniyan* with black stripe which is torn near shoulder with dark blood spot was also seized along with one jeans pant of sky blue colour with lining of 28 no. and HARW was mentioned on the right side back. There was a dark blood spot in front of the sky-blue jeans pant. The report of the State Forensic Science Laboratory, Civil Lines, Sagar showed that all the alleles observed in the male DNA profile of Satish were found to be the same as the DNA profile observed from the prosecutrix's vaginal and rectal slides. Same female autosomal STR DNA profile was detected on the source of the deceased prosecutrix, dhoti and underwear of Satish. Insofar as Article D which is a full pant of the Appellant is concerned, according to DNA report multiple peaks were observed.

9. The Appellant and Satish were present in the function at the house of Anil Maravi as deposed by PWs-1, 3 and 5. PW-4 deposed that he runs a small hotel in the village and the deceased visited his shop to purchase *Kurkure* at 9.00 p.m. 15 minutes thereafter, the Appellant visited the shop to purchase *namkeen*. Jaipal (PW-9) stated that the Appellant and Satish visited his house on 15.04.2017. Their eyes were red, hair was scattered and they were scared. They informed him that they have committed a big scandal. At that time, Munni Bai- the mother of the Appellant came, and Satish and the Appellant went away. Half an hour later, there was an uproar in the village when the body of the deceased was found.

10. During the course of examination of Satish under Section 313 CrPC, he admitted that he was present at the house of Anil Maravi on 14.04.2017 and that he visited PW-9 on the morning of 15.04.2017. The Appellant also admitted his presence at Anil Maravi's house on 14.04.2017 and at the house of PW-9 on 15.04.2017 in the morning. He further stated in his examination under Section 313 CrPC that his eyes were red, hair was scattered and he and Satish demanded liquor from PW-9. It is relevant to note that the Appellant also stated that he had gone to Sudgaon along with Satish for work at 9.00 a.m. on 14.04.2017. While returning, he had liquor along with Satish. He visited Anil Maravi's house along with Satish at 7.00 p.m. They were asked to leave as they were in a drunken condition. The Appellant, thereafter, went to the shop of Chain Singh from where his mother took him home. He slept in the house of his neighbour, Deepa.

11. The Appellant was examined by Dr. Vijay Pegwar (PW-11) on 17.04.2017 and the following injuries were found on his body:

i) Scratch mark of 1 inch on the upper side of the shoulder,

ii) 0.5 inch scratch mark on the lower left shoulder,

iii) 0.5 inch scratch mark on the lower portion on the back of the body,

iv) 2 inches scratch marks on the right arm,

v) Abrasion mark of 1 cm on cheek, and

vi) 4 inches sized abrasion injury on the right lower lateral rib. Scratch marks that were found on the body of Satish were also examined by Dr. Vijay Pegwar.

12. Clothes worn by the Appellant were seized from a flowerpot on the roof of the cowshed belonging to him pursuant to the disclosure statement. FSL report pertaining to Article B which is a full pant of Appellant on which there was a blood stain near the zip showed multiple peaks. The Appellant and Satish had alcohol and were together at the house of Anil Maravi. As they were creating nuisance, they were chased away. The next day morning, they went to PW-9 and told him that a big blunder took place. DNA profiling of the articles Q, R and S which are the vaginal slide, rectal slide and dried blood on the hair of the deceased showed Y (male) STR. Blood sample of Satish matched with the articles found on Q, R and S. The Appellant miserably failed to prove an alibi. Importantly, there is lack of any explanation for the scratch injuries found on the body of the Appellant. We are in agreement with the concurrent findings that the Appellant is guilty of committing the offences as charged and we find no fault with the conviction of the appellant.

13. It is travesty of justice as the Appellant was not given a fair opportunity to defend himself. This is a classic case indicating the disturbing tendency of Trial Courts adjudicating criminal cases involving rape and murder in haste. It is trite law that an accused is entitled for a fair trial which is guaranteed under Article 21 of the Constitution of India. In respect of the order of conviction and sentence being passed on the same day, the object and purpose of Section 235 (2) CrPC is that the accused must be given an opportunity to make a representation against the sentence to be imposed on him. A bifurcated hearing for convicting and sentencing is necessary to provide an effective opportunity to the accused[3]. Adequate opportunity to produce relevant material on the question of death sentence shall be provided to the accused by the Trial Court[4].

3 Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498

4 Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2019) 12 SCC 460

14. Mr. K.G. Sahu, Advocate appointed through Legal Aid appeared for the Appellant before the Sessions Court on 04.07.2017 when the matter was adjourned to 25.07.2017 for framing of charges. On 25.07.2017, Mr. M.K. Kannaujiya, Advocate filed his appearance memo. On the same date, the Trial Court recorded that arguments were heard on the charges. Charges were framed and the schedule for trial was given. On 02.08.2017, 9 witnesses were scheduled to be examined and on 03.08.2017, the remaining witnesses would be examined. On 02.08.2017, Mr. Kannaujiya, Advocate represented to the Court that he was not willing to defend the accused. Mr. Satyendra Yadav, Advocate was appointed to represent the accused. On the same day, PWs-1,2 and 3 were examined and on the next day, PWs-4 and 5 were also examined. Final arguments were heard on 26.10.2017 and the judgment was

dictated on 03.11.2017. On the same day, the Trial Court passed an order, sentencing the Appellant and Satish to death penalty.

15. After considering the judgements of this Court in **Bachan Singh** v. **State of Punjab, (1980) 2 SCC 684; Machhi Singh v. State of Punjab, (1983) 3 SCC 470** this Court in **Mohd. Mannan @ Abdul Mannan** v. **State of Bihar, (2019) 16 SCC 584** observed as follows: -

"The proposition of law which emerges from the judgments referred to above is that death sentence cannot be imposed except in the rarest of rare cases, for which special reasons have to be recorded, as mandated in Section 354(3) of the Criminal Procedure Code. In deciding whether a case falls within the category of the rarest of rare, the brutality, and/or the gruesome and/or heinous nature of the crime is not the sole criterion. It is not just the crime which the Court is to take into consideration, but also the criminal, the state of his mind, his socio-economic background, etc. Awarding death sentence is an exception, and life imprisonment is the rule."

16. In **Mofil Khan and Another v. The State of Jharkhand, RP (Crl.) No.641 of 2015 in Crl. A. 1795 of 2009** this Court observed as follows: -

"8. *One of the mitigating circumstances is the probability of the accused being reformed and rehabilitated. The State is under a duty to procure evidence to establish that there is no possibility of reformation and rehabilitation of the accused. Death sentence ought not to be imposed, save in the rarest of the rare cases when the alternative option of a lesser punishment is unquestionably foreclosed (See: Bachan Singh v. State of Punjab, (1980) 2 SCC 684). To satisfy that the sentencing aim of reformation is unachievable, rendering life imprisonment completely futile, the Court will have to highlight clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigour when the Court focuses on the circumstances relating to the criminal, along with other circumstances (See: Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498). In Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2019) 12 SCC 460 this Court dealt with the review of a judgment of this Court confirming death sentence and observed as under:*

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

17. A perusal of the judgments of the Trial Court and the High Court would disclose that the gravity of the crime was taken into consideration while imposing death sentence. The mitigating circumstances and the probability of reformation and rehabilitation of the accused

have not been considered. It is relevant to refer to the following observations of this Court in **Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2019) 12 SCC 460:**

*"**47.** Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be overemphasised. Until Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] , the emphasis given by the Courts was primarily on the nature of the crime, its brutality and severity. Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] placed the sentencing process into perspective and introduced the necessity of considering the reformation or rehabilitation of the convict. Despite the view expressed by the Constitution Bench, there have been several instances, some of which have been pointed out in Bariyar [Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150] and in Sangeet v. State of Haryana [Sangeet v. State of Haryana, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in Sangeet [Sangeet v. State of Haryana, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] "In the sentencing process, both the crime and the criminal are equally important." Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the Courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and analyse this information is certainly not an easy task but must nevertheless be undertaken. The process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social reintegration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible."*

18. The Appellant was aged 25 years on the date of commission of the offence and belongs to a Scheduled Tribes community, eking his livelihood by doing manual labour. No evidence has been placed by the prosecution on record to show that there is no probability of rehabilitation and reformation of the Appellant and the question of an alternative option to death sentence is foreclosed. The Appellant had no criminal antecedents before the commission of crime for which he has been convicted. There is nothing adverse that has been reported against his conduct in jail. Therefore, the death sentence requires to be commuted to life imprisonment. However, taking into account the barbaric and savage manner in which the offences of rape and murder were committed by the Appellant on a hapless 11 year old girl, the Appellant is sentenced to life imprisonment for a period of 30 years during which he shall not be granted remission.

19. The Appeals are partly allowed. The conviction of the Appellant under Sections 363, 366A, 364, 346, 376D, 376A, 302, 201 of Indian Penal Code, 1860 ("IPC") and Section 5(g) (m) read with Section 6 of The Protection of Children from Sexual Offences Act, 2012 is upheld and the sentence is converted from death to that of imprisonment for life for a period of 30 years without remission.