

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL CONFIRMATION CASE NO.3 OF 2016

The State of Maharashtra	Petitioner
versus	
Ankur Narayanlal Panwar	
Respondent	

**WITH
CRIMINAL APPEAL NO.139 OF 2017**

Ankur Narayanlal Panwar Age 26 years, R/o.C/3, BBMB, DESU Colony, Narela, Delhi.	Appellant/Accused
versus	
The State of Maharashtra	Respondent

Mr.A.M.Chimalkar, Special Public Prosecutor, with Mr.Siddharth Jagushte and Tusshar Nirbhavne and Ms.P.P.Shinde, APP, for Petitioner-State.

Mr.Trideep Pais, Mr.Vijay Hiremath, Ms.Anshu Raj Singh and Sanya Kumar for respondent-accused.

**CORAM : B.P.DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.**

Date of Reserving the Judgment	: 28 th March 2019
Date of Pronouncing the Judgment	: 12 th June 2019

JUDGMENT – (Per : Prakash D. Naik, J.) :-

1. This confirmation case is on the basis of death confirmation reference made by Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai, vide judgment and order dated 8th

September 2016 passed in Sessions Case No.311 of 2014. The reference is made under sub-section (1) of Section 366 of Code of Criminal Procedure, 1973.

2. The accused has also preferred an appeal challenging the order of conviction and sentence. The appellant-accused has been convicted for the offence punishable under Section 302 of Indian Penal Code ('IPC') and sentenced to death and be hanged by the neck till he is dead, subject to confirmation by Bombay High Court. The accused is also convicted for the offence punishable under Section 326-B of IPC and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.5,000/-, in default to suffer rigorous imprisonment for six months. The accused is acquitted for the offence punishable under Section 326-A of IPC.

3. The prosecution case is as follows :

(a) The victim Preeti Amarsingh Rathi hailing from Narela, at Delhi, was selected as Nursing Officer in Military Nursing Services held through short service commission. She was supposed to join Naval office at Colaba, Mumbai as Second Lieutenant;

(b) On 1st May 2013 the victim boarded Garibrath Express for Mumbai from Nizamuddin Station, Delhi along with her father Amarsingh Rathi, her uncle Vinodkumar Dahiya and her aunt Sunita Dahiya;

(c) On 2nd May 2013 they arrived in Mumbai. The train reached Bandra Terminus at 8.05 am.. After the victim alighted from

train and was proceeding along with Amarsingh Rathi, Vinodkumar Dahiya and Sunita Dahiya, one person tapped her from back side. When she turned back, the unknown attacker wearing scarf on his face and cap on his head, plunged some liquid on her from one container he was holding and fled from the platform. Her father, maternal aunt and passerby also got spilt of liquid;

(d) Sameer Shaikh was a bottle picker at platform. He was near the coach from which Preeti had alighted. As few drops fell on him, he shouted by asking Salim @ Salman, another bottle picker who was ahead, to catch the miscreant who threw the fluid. The fluid started burning the skin as soon as it fell on the victim and others;

(e) The father, uncle, and aunt of Preeti and other people on platform sustained injuries out of the said spilt. Amarsingh Rathi and Vinodkumar Dahiya immediately lifted Preeti and carried her to Station Master's office. A memo was issued to take Preeti to Bhabha Hospital. The victim was taken to Gurunanak Hospital with the assistance of police constable. It was the nearest hospital. The other injured were sent to Bhabha Hospital by Railway Police;

(f) The police drew spot panchanama of the spot of incident shown by Sameer Shaikh after he returned from hospital. The plastic dabba (container) was found on the spot with some left over fluid. The fluid spread over on the ground and the soil, was collected with the help of cotton swab. There were some burnt pieces of cloths. All the articles were sealed and seized under spot panchanama;

(g) After Amarsingh Rathi returned from hospital, he lodged police report against unknown person and FIR No.36 of 2013 was registered under Sections 307, 326-A and 326-B of IPC. Preeti was not able to speak due to severe burns on her face and neck. Due to lack of medical facilities for treatment and management, the victim was referred to hospital having facility to manage her condition by Gurunanak Hospital. She was taken to Masina Hospital. The condition of Preeti was serious due to severe acid burns. The treatment began for injuries;

(h) The police approached the victim at Masina Hospital to record her statement but she could not speak. She could communicate with her parents and doctors by writing on piece of paper. The sketch of accused was drawn on the basis of description given by the witnesses;

(i) On 4th May 2013 Pawan Kumar made a phone call to sister of Preeti namely Tannu to make inquiry about the health of Preeti. Amarsingh Rathi was informed about the same by Tannu. The said information was provided to the investigating officer and Pawan Kumar was suspected to be the perpetrator of crime. He was arrested on 9th May 2013. After showing the sketch by scribbling on paper, Preeti disclosed that the perpetrator may be Satyam Ankur or Pawan Kumar;

(j) After Preeti was admitted in Masina Hospital, she underwent surgeries as she had trachea-oesophageal fistula causing hole in wind pipe and feed pipe. She was under continuous medical

treatment by the team of doctors till 18th May 2013. Her condition was deteriorating. On 18th May 2013 for her further treatment by specialists, she was shifted to Bombay Hospital. She was continuously on ventilator. In Bombay Hospital she was treated by a team of specialist doctors. However, she succumbed to the injuries after cardiac arrest on 1st June 2013. Due to death of Preeti, Section 307 was converted into Section 302 of IPC;

(k) Post mortem of the dead body was conducted by doctors. Samples collected during the post mortem were sent to FSL for CA and histopathology. After receipt of CA reports final cause of death was opined as septicemia due to acid burn (unnatural). No information was received to show that Pawan Kumar was involved in the crime. The railway police were unable to find evidence showing his involvement. Amarsingh Rathi made inquiries by himself and found that Pawan Kumar was at Rohtak in State of Haryana at the time of incident. He filed an affidavit before the Court stating that Pawan Kumar was at Rohtak at the time of incident. Since investigation was not progressing in proper direction, writ petition was filed by Amarsingh Rathi and the investigation was transferred to DCB, CID, Mumbai;

(l) During investigation carried out by DCB, CID, a team of police officers was sent to Delhi to make inquiry with regards to railway tickets of Preeti and her relatives. During inquiry with relatives of Preeti i.e. Neetu Solanki, name of appellant-accused appeared. When police approached him, he gave evasive answers to the queries regarding his whereabouts on 1st May 2013. Hence he was brought to Mumbai on 17th January 2014. He was having burn

injuries on his both hands. He was arrested and sent to J.J.Hospital for medical examination to get information regarding old healed scars on his fore arms. Those were found as caused by secondary drops of acid. While he was in custody, his statement u/s 27 of Indian Evidence Act was recorded. At his instance the place from where he had obtained the acid was discovered. The seller of acid witness Mukesh Bhargav informed that the accused had obtained the acid sample from him on the ground that he had started business in the name and style “Ankur Batteries”. After arrest of Ankur Panwar (appellant-accused), investigation gained momentum;

(m) The details of mobile phone of the accused were collected. The statements of eye witnesses were recorded. The statements of relatives of Preeti were also recorded. After arrest of Ankur Panwar test identification parade (‘T.I. Parade’) was arranged for his identification through eye witnesses. Sameer Shaikh, Salim @ Salman Shaikh, Pawan Malviya and Vinodkumar Dahiya identified the accused as the person who plunged the acid towards Preeti. Vinodkumar Dahiya had seen him in the train at 4.00 am while the accused was standing near toilet. He also had talk with him. At that time the accused was holding bag. Sameer Shaikh identified the dabba which was in the hands of accused. Mukesh Malviya identified the accused in the T.I.Parade that he had given two kgs sample of sulphuric acid. The words “Divya Pharmacy” and No.B-56025 were embossed on the dabba. The statements of the witnesses were recorded. It was revealed that the accused was in love with the victim and he had informed his friends that he was going to Mumbai for interview;

(n) While Preeti was admitted in Masina Hospital, her cloths and cloths of Sunita Dahiya were seized. The articles were seized under spot panchanama and the cloths of Preeti and Sunita were sent to FSL for CA. The CA report discloses presence of sulfuric acid on the cloths of Preeti, in the articles seized from spot and in the samples collected from body of Preeti. Ample evidence was collected against appellant-accused. Pawan Kumar was discharged and charge sheet was filed against appellant-accused before concerned Court.

4. Since the offence punishable u/s.302, 326-A and 326-B of IPC being exclusively triable by sessions Court, the case was committed to Sessions Court on 28th April 2014.

5. Plea of accused was recorded. The charge was framed by order dated 21st August 2014 for the offences u/s 302, 326-A and 326-B of IPC.

6. The prosecution in support of its case has adduced the evidence of 37 witnesses. After completing the evidence, on 18th July 2016, statement of accused was recorded u/s 313 of Code of Criminal Procedure. In the said statement the accused has stated that he has some documents and wants to produce the same. He was permitted to produce the documents. He contended that this is a false case made against him on false allegations. In April-2013 he returned home after his examination. On 27th April 2013 he was in Bhuvaneshwar. His ATM transaction shows his presence at Orissa. He travelled from Bhuvaneshwar and boarded on 29th April 2013 or 30th April 2013 by train Purushottam Express or Nilanchal Express

and reached Delhi on 1st May 2013 or 2nd May 2013. He reached home at 9 or 10 am. He do not know why he is involved in the case. He had not given this information to police. He preferred an application for taking documents on record as additional statement u/s 313 of Cr.P.C on 21st July 2016. On 12th August 2016, additional statement of accused was recorded u/s 313 of Cr.P.C in respect to CA report. He stated that he want to file some documents. The accused through his advocate preferred an application for taking the documents on record. It was stated that burn injuries were suffered while he was working at Crown Plaza Hotel, Okhala, New Delhi before incident. He was placed as a trainee with the said hotel through school of hotel management. The copy of placement letter and successful completion of training, degree certificate, were annexed to the said application.

7. The Trial Court recorded findings that the prosecution has proved that on 1st June 2014 Preeti died by homicidal death. The prosecution also proved that the accused intentionally plunged the acid on Preeti on 2nd May 2014 at Bandra Railway Terminus on platform no.3 causing her death and committed murder punishable u/s 302 of IPC. It was also held that the prosecution has proved that the accused voluntarily threw acid with intention of causing burns and caused burns to Amarsingh Rathi, Smt.Sunita Dahiya, Smt.Sudeshna Kumari Singh and Sameer Shaikh and committed offence punishable u/s 326-B of IPC. Whereas, it was held that the offence u/s 326-A of IPC has not been proved.

8. The case of prosecution is based on ocular, medical, circumstantial and forensic evidence. The trial court had categorized

the evidence as; (i) eye witnesses; (ii) circumstantial evidence; (iii) medical evidence and (iv) other evidence. PW-1 Vasudev Baberwal is the panch witness for cloths of victim Preeti and her aunt Sunita Dahiya. PW-2 Anand Sandhe is the panch witness in whose presence packet was opened. One more packet was taken from inside. One plastic box was inside, on which "Divya Pharmacy" was written on bottme. PW-3 Mrs.Shreya Sawant is the sister in-charge at Masina Hospital where Preeti and Sunita were treated. PW-4 Raju Yadav is panch witness relating to the statement made by accused about the place from where the acid was purchased by him. PW-5 Mahadev Sapkal is working as Hamal at Bandra Railway Terminus. He acted as panch witness for spot panchanama. PW-6 Sameer Shaikh collects empty bottles at Bandra Railway Terminus. He is the eye witness to the incident. PW-7 Salim Shaikh collects empty bottles at Bandra Railway Terminus. He is an eye witness to the incident. PW-8 Phiroj Maniyar acted as panch witness for arrest of accused. PW-9 Pankaj Malviya is an eye witness to the incident. He was working as CFA at Bandra Railway Terminus. PW-10 Ravikumar Badshah is working at passenger reservation system and provided information about reservation of Preeti and others. PW-11 Vinodkumar Dahiya is the eye witness to the incident. He is relative of Preeti who had accompanied her at the time of journey to Mumbai. PW-12 Anil Deshmukh is the head constable attached to Bandra Railway Police Station. PW-13 Nitu Solanki is the relative of victim Preeti. PW-14 Amarsingh Rathi is the father of victim. He is the eye witness to the incident. He was accompanying the victim at the time of incident. PW-15 Ramkumar Bhargav is in the business of chemical trading and sale of acid. PW-16 Mukesh Bhargav is the son of PW-15. He was conducting the trade with PW-15. PW-17 Subhash Bhamre is

Assistant Sub Inspector attached to Bandra Railway Police Station. He recorded the FIR. PW-18 Sitaram Gaikwad is the police constable attached to Bandra Railway Police station. He was posted at Bandra Railway Terminus on duty. PW-19 Narendra Thakur is the Naib Tahsildar who conducted T.I.Parade. PW-20 Dr.Amita Hiremath is a Plastic Surgeon at Bombay Hospital. PW-21 Dr.Gajanan Chavan is medical officer who examined the accused at J.J.Hospital. PW-22 Dr.Aniket Pote was attached to Masina Hospital during treatment of victim Preeti. PW-23 Dr.Shrikant Pai is the medical officer attached to Gurunanak Hospital where the victim was taken for treatment. PW-24 Nivrutti Katkar is the head constable attached to Bandra Railway Police Station. He was deputed to deliver mudeemal to FSL, Kalina. PW-25 Dr.Bhalchandra Chikhalkar was attached to J.J.Hospital and conducted post mortem. PW-26 Dr.Manisha Bharti was the medical officer attached to Bhabha Hospital, Bandra. She had examined Amarsingh Rathi, Sudeshna and Sameer Shaikh. PW-27 Dr.Dhaval Gandhi was attached to Masina Hospital. PW-28 Dr.Ashok Kumar Gupta was attached to Bombay Hospital. PW-29 Virendra Chavan was Assistant Police Inspector attached to Bandra Railway Police Station. He went to spot and seized the articles. PW-30 Navnath Ghuge was attached to Crime Branch. He recorded statement of Neeta Solanki at Delhi. PW-31 Vijay Dhopavkar is the investigating officer attached to Bandra Railway Police Station. PW-32 Shaikh Hamid was attached to Local Crime Branch and Senior Police Inspector, who forwarded the samples to FSL. PW-33 Deoram Vadmare is Senior Police Inspector, Crime Branch. PW-34 Ashok Khot is Police Inspector attached to Crime Branch and conducted investigation. PW-35 Vijay Dhamal is the investigating officer. PW-36 is Praful Bhosale who is Assistant Commissioner of Police and the

officer who headed the investigation. PW-37 Rehman Shaikh is the operator of shop of sim card.

9. Apart from ocular evidence, the prosecution has relied upon several documents which were exhibited in evidence through witnesses.

10. The Trial Court on analyzing the evidence held that the accused is liable to be convicted. The Trial Court also held that this is one of the rarest of rare case which warrants capital punishment and thus awarded death penalty for the offence u/s 302 of IPC.

11. Learned advocate for appellant-accused had made following submissions :

(i) The evidence of eye witnesses viz PW-6, PW-7, PW-9, PW-11 and PW-14 is not consistent with each other. Their inconsistency vis-a-vis their position in relation to the victim and the manner in which they saw the accused, is appearing in their evidence;

(ii) Non involvement of PW-7 and PW-11 in the spot panchanama proceedings raises serious doubt as to whether two of them were present at all. The fact that PW-9 chose to speak to police on the next day, is suspicious circumstance and should be viewed seriously;

(iii) The incident occurred in few seconds as stated by PW-14, PW-6, PW-7 and PW-9, who saw the accused momentarily raising doubt about their ability to identify the accused in T.I.Parade which

was conducted after eight months from the date of alleged incident. None of the eye witnesses is clear as to the position of the accused and the victim. PW-6 was not asked to identify his position in the spot panchanama proceedings by PW-29;

(iv) The cross-examination of PW-6 and PW-31 make it clear that PW-6 did not describe the accused to police in his statement u/s 161 of Cr.P.C in the manner he described the accused before Court. PW-11 and PW-14 refers to yellow shirt allegedly worn by the accused, whereas, none of the other witnesses do so. The cap and the bag of the accused were not recovered. The disclosure statement of accused u/s 27 does not mention intention about yellow t-shirt or the red bag;

(v) The statement of PW-35 reveals that even before the accused was arrested he was being suspected since 12th January 2014. Since the victim's family lived in the same locality as the accused, the possibility of family having seen him, cannot be ruled out. The accused was picked up on 16th January 2014 without being arrested and brought to Mumbai and subsequently arrested on 17th January 2014. Thus he was in illegal custody from 16th January 2014 to 17th January 2014. Hence disclosure of his identity to the witnesses such as PW-11 cannot be ruled out. He was kept in police custody till 31st January 2014 but there was no application for T.I.Parade till 31st January 2014 and the T.I.Parade was conducted after a further delay on 12th February 2014. While the appellant was in police custody, PW-16 arrived at police station from Delhi on 28th January 2014 and in all probability PW-16 had occasion to see the appellant-accused in custody. The delay in conducting the T.I.Parade was deliberate to acquaint the witnesses with the accused;

(vi) Chavanprash Dabba containing some acid was recovered three hours after the incident, even though according to PW-6 three trains had passed that way and according to PW-4 six trains had passed in those three hours. The spot of incident was left unguarded for three hours, even though several policemen were present at the railway station;

(vii) On the basis of statement of PW-11 the sketch of accused was prepared and shown to the victim, who stated that the accused may be Pawan Kumar. The victim also wrote down that she had seen Pawan Kumar at Hazrat Nizamuddin Railway Station while boarding the train to Mumbai. Pawan Kumar called younger sister of the victim and inquired about the victim's well being after the attack. Based on this circumstance, Pawan Kumar was arrested on 9th May 2013, however, in spite of Pawan Kumar being in custody from 9th May 2013 to 26th July 2013 and thereafter from 5th August 2013 to 9th August 2013, no T.I.Parade was conducted to show him to the witnesses. Contradictory claims regarding Pawan Kumar were made at various stages of the case. While opposing his bail it was claimed that Pawan Kumar was not in touch with any one on his mobile phone between 27th April 2013 and 2nd May 2013. In the Court it was claimed by the investigating officer that DCR of Pawan Kumar indicated that he was at Rohtak at the time of incident. In addition to this contradictory claim, no CDR of Pawan Kumar was brought on record to prove his exact location. The name of one Pawan Kumar was mentioned in the train reservation chart. PW-35 has deposed that the person was Pawankumar Randhirsingh and not the accused Pawan Kumar. However, nothing was brought on record to prove the said fact;

(viii) When the appellant was arrested Pawan Kumar was out on bail and not discharged. Hence, joint T.I.Parade could have been conducted;

(ix) The appellant allegedly made a statement u/ 27 of Indian Evidence Act disclosing to the police the place from where he had purchased the acid. On the basis of such statement he was taken to Delhi where they found that the person from whom he had allegedly purchased the acid, was in Goa. Police issued summons to the owner of shop and headed back to Mumbai without seizure of any register or document regarding sale/hand over of sample to the appellant. PW-16 came to Mumbai on 28th January 2014 and for the first time presented the sample register with nine entries from 8th April 2013 to 5th July 2013. Apart from these nine entries, the said register was brand new and empty book which did not inspire confidence. PW-16 claimed that register was at his home but the prosecution offered no explanation as to why police did not seize the register from house of PW-16 on 21st January 2014. The limited number of entries in the register and it's non-disclosure by police, goes to show that the register was fabricated to suit prosecution and create circumstance against the accused. No question was put to appellant u/s 313 of Cr.P.C whether he had voluntarily pointed out the shop from where acid was procured;

(x) According to PW-36, the CDR of mobile number of appellant showed that he was in train. However, no CDR was exhibited. The prosecution claimed that CCTV footage was collected but the same was not relied upon or exhibited on the ground that footage was not clear. However, nothing is put on record to prove

that CCTV footage was unclear. CCTV footage was not sent to FSL nor played in the Court;

(xi) White dabba was recovered during spot panchanama which was allegedly used by accused to throw the acid at the victim. No finger prints were taken from the same in spite of fact that finger print match would have been the evidence and accused could have been linked to the crime;

(xii) The Trial Court has relied upon the alleged false explanation given by appellant in his statement u/s 313 of Cr.P.C to hold that same acts as a missing link in the chain of circumstances against appellant. The appellant cannot be convicted only on the basis of false statement and the burden to prove its case by prosecution never shifts on the accused;

(xiii) Without admitting that the appellant is connected with the crime, it is submitted that the manner in which the crime was allegedly committed and the medical evidence, do not show the intention to kill but only to dis-figure. The accused could have used other methods to kill the victim. The evidence of doctor show that condition of victim was fair initially and became critical later. In fact it seems that if the treatment had been given in a different manner and the fistula had been discovered earlier, the results may have been different. The percentage of burns suffered by victim is not clear from the evidence on record and the doctors have given conflicting opinions. As per Masina Hospital case papers, the victim was treated initially and she had 15.57 % burn injuries. However, as per post mortem report, the burn injuries were 26%. The doctor who conducted the post mortem opined that the injuries were

sufficient to cause death of person. The said opinion was offered without looking at the treatment papers. He had no access to the treatment of first sixteen days at Masina Hospital. His opinion cannot be treated as reliable and conclusive on the question of injuries being sufficient to cause death. The victim stayed in the hospital for around one month and neither CT scan nor endoscopy was carried out for sixteen days. The condition of the victim deteriorated subsequently. The opinion of doctor at Bombay Hospital shows that the treatment could have been done differently. Sufficiency of injuries, thus, cannot be inferred from the evidence. It cannot be held that the appellant had intention to cause death. It is submitted that the case would fall within purview of either Section 304(I) or Section 304(II) of IPC;

(xiv) The T.I.Parade was defective. The T.I.Parade was conducted belatedly. No credible investigation was carried out about involvement of Pawan Kumar. While apprehending appellant in the crime, the involvement of Pawan Kumar was not eliminated. The investigation was mala fide. The father of victim has protected the real perpetrator of crime. He filed affidavit exonerating Pawan Kumar. While Pawan Kumar had filed an application for bail, the prosecution had opposed the same by filing reply and supported its case. The parade for identification of Pawan Kumar was not conducted deliberately. The defence of the appellant was not appreciated in proper perspective. The alibi of appellant was not considered. The benefit of doubt ought to have been given to the appellant-accused. The documents were fabricated to suit the prosecution case. No evidence to establish the presence of appellant on Garibrath train is laid. The version of Neeta Solanki is after

thought. She did not disclose the incident narrated by the victim to any family members and for the first time after a period of eight months she had referred to the alleged harassment by person namely Ankur as disclosed to her by the victim. Her evidence was hearsay. The documents tendered in statement u/s 313 of Cr.P.C by accused were not taken into consideration; The explanation to injuries on person of applicant has not been considered. The documents furnished through PW-21 who examined the appellant were doubtful.

(xv) Assuming that charge sheet u/s 302 is proved, the Trial Court ought not to have awarded the capital punishment as the case cannot be termed as rarest of rare case. The sentencing exercise undertaken by the Trial Court is improper and against the mandate of Hon'ble Supreme Court in cases of **Muniappan Vs. State of Tamil Nadu**¹, **Ajay Pandit Vs. State of Maharashtra**², **Rajendra Prahladrao Wasnik Vs. State of Maharashtra**³. The Trial Court did not provide sufficient time to defence and no efforts were made by the Court to elicit information from the accused for proper sentencing exercise. The Trial Court relied on collective conscience to hold that the accused deserves death penalty. The decision was contrary to the parameters laid down by Supreme Court in **Santosh Bariyar Vs. State of Maharashtra**⁴ and in case of **Channulal Vs. State of Chattisgarh**⁵. The Trial Court relied on the crime test to hold that the case is rarest of rare while ignoring criminal test, as laid down in various cases, like **Bachan Singh Vs. State of Punjab**⁶,

1 (1981)3-SCC-11

2 (2012)8-SCC-43

3 Review Petition (Crl) No.306-307 of 2013

4 (2009)6-SCC-498

5 Criminal Appeal No.1482/83 of 2018

6 (1980)2-SCC-684

Shankar Kishore Khade Vs. State of Maharashtra⁷ and **Santosh Bariyar Vs. State of Maharashtra (supra)**.

(xvi) The Trial Court relied on cases like **Dhananjay Chatterji Vs. State of West Bengal⁸**, **Mohamed @ Abdul Mannan Vs. State of Bihar⁹**, which were disputed in **Shankar Khade Vs. State of Maharashtra (supra)** and **Sangeet and another Vs. State of Haryana (2013)2-SCC-452**;

(xvii) No evidence was laid down by prosecution to prove that the accused is beyond reformation and rehabilitation as mandated in case of **Bachan Singh (supra)**, **Rajendra Wasnik (supra)**, **Rajesh Kumar Vs. State (NCT of Delhi)¹⁰** and **Santosh Bariyar (supra)**;

(xviii) The Trial Court has also ignored other mitigating circumstances, such as, young age of the accused who was 23 years of age at the time of commission of offence and unblemished conduct in jail. The principle enunciated in the case of **Bachansingh (supra)**, **Guruvail Sigh and another Vs. State of Punjab (2013)2-SCC-713**, **Shyam Singh @ Bhima Vs. Saate of Madhya Pradesh (2017)11-SCC-265**, **Santosh Kumar Singh Vs. State of Madhya Pradesh (2014)12-SCC-650**, were not taken into consideration. The Supreme Court has considered lack of criminal antecedents and unblemished record in jail as mitigating circumstance in the case of **Gudda @ Dwarikendra Vs. State of Madhya Pradesh (2013)16-SCC-596**, **Santosh Kumar Singh Vs. State of Madhya Pradesh (supra)**, **Shyam**

7 (2013)5-SCC-546

8 (1994)2-SCC-220

9 (2011)5-SCC-317

10 (2011)13-SCC-706

Singh @ Bhima Vs. State of Madhya Pradesh (supra), Channulal Vs. State of Chattisgarh (supra). The Supreme Court in the recent decision in **Yogendra @ Jogendra Singh Vs. The State of Madhya Pradesh**¹¹, has held that the act of throwing acid shows only that the accused intended to disfigure and not to kill and as such it is a rarest of rare case. Taking into consideration the mitigating circumstances and the improper sentencing exercise, the present case is not a rarest of rare case and does not deserve death penalty.

12. Learned counsel for appellant in addition to the decisions referred to hereinabove, has also relied upon following decisions :

- (a) Vikramjit Singh Vs. State of Punjab¹²;
- (b) Bhagirath Vs. State of Madhya Pradesh¹³,
- (c) Juwarsingh Vs. State of Madhya Pradesh¹⁴;
- (d) Tomaso Bruno and another Vs. State of U.P¹⁵;
- (e) Datar Singh Vs. State of Punjab¹⁶;
- (f) Habal Shaikh and others Vs. The State¹⁷;
- (g) Ganesh Bhavan Patel and anr Vs. State of Maharashtra¹⁸;
- (h) Brijmohan and anr Vs. State of Rajasthan¹⁹;
- (i) Uday Singh Vs. State²⁰;

11 Criminal Appeal Nos.84-85 of 2019, dated 17-1-2019

12 (2006)12-SCC-306

13 (1976)1-SCC-20

14 1980 (Supp)-SCC-417

15 (2015)7-SCC-178

16 AIR-1974-SCC-1193

17 Criminal Appeal No.299 of 1988 of DB High Court of Calcutta

18 (1978)4-SCC-371

19 AIR-1994-SC-739

20 2009(107)DRJ-105 (DB)

- (j) Dharampal and others Vs. State of Delhi²¹;
- (k) Sidhanki Ram Reddy Vs. State of Andhra Pradesh²²;
- (l) Satrugan @ Satrugana PaPavida and others Vs. State of Orissa²³;
- (m) Rajesh Govind Jagesha Vs. State of Maharashtra²⁴;
- (n) Vilas Pate Vs. State of Maharashtra²⁵;
- (o) Ashraf Shah Vs. State of Maharashtra²⁶;
- (p) Harchandsingh and another Vs. State of Haryana²⁷.

13. Learned Special Public Prosecutor submitted that the prosecution has established the charge u/s 302 of IPC as well as Section 326-B of IPC beyond all reasonable doubt. There is sufficient evidence to prove the guilt of the accused. The Trial Court has analyzed the evidence in detail and has given findings about involvement of appellant in the crime. The ocular evidence as well as documentary evidence establishes the charge against the accused. The eye witnesses have given ocular account of the incident and there is no doubt to discard their evidence. The defence has not been able to demolish their evidence. The appellant has been identified by the witnesses. The evidence of eye witnesses have been corroborated by other witnesses. The medical evidence supports the prosecution case. The examination of accused by the medical officer establishes the injuries on her persons being caused by sulphuric acid. The presence and participation of the appellant in the crime has been proved by prosecution. Minor infirmities in the evidence of witnesses would not be fatal to the prosecution case. The accused is

21 ILR (2004)II-DELHI-317
 22 (2010_7-SCC-697
 23 1995 (supp)4-SCC-448
 24 (1999)-8-scc-428
 25 1996-CRLJ-1854
 26 1996-CRLJ-3147
 27 (1974)3-SCC-397

involved in serious crime. Apart from the evidence of eye witnesses, the circumstantial evidence, medical evidence, forensic evidence and other piece of evidence, indicate commission of crime by the appellant. The presence of PW-6 and PW-7 at the scene of offence and being eye witnesses to the incident is being natural. Merely on account of arrest of another person who was discharged subsequently, would not entitle the appellant the benefit of doubt as there is voluminous evidence to show participation of the appellant in crime. There is evidence on record to show that the appellant had motive to commit crime. He collected the acid, he followed the victim, he was aware about the consequences of acid being thrown on the person of deceased. He tapped the victim on her back so that she can turn around, which would facilitate him to throw the acid on her face. Thus, there was clear intention of the accused to commit murder. The result of plunging the acid on the face of accused had caused severe damage to the body of victim, which resulted into her death. It is difficult to reconcile that the intention of appellant was only to disfigure and not to commit murder. The fact that the accused has collected the acid and chased her up to Mumbai and poured the same directly from close vicinity on the face of deceased, clearly indicate he intended to kill her. Learned Special Public Prosecutor drew our attention to the evidence of PW-6, PW-7, PW-9, PW-11 and PW-14. It is submitted that PW-6, PW-7 and PW-9 were present at Bandra Railway Terminus. PW-7 and PW-8 were collecting empty bottles at platform no.3 in routine course. They were directed to collect the bottles by Nasim Chacha. Nothing has been brought on record through cross examination of these witnesses to discard their evidence. The victim was accompanied by PW-11 and PW-14. The acid which was plunged at the deceased also spilt

on the person of PW-11 and PW-14. They were treated by the doctors. The doctors have opined that the injuries were sufficient in the ordinary course of nature to cause death. The prosecution has also established through the evidence of PW-15 and PW-16 that the acid was delivered to appellant which was supported by entries in the register. The container in which the acid was brought and thrown by the accused on the victim, was recovered from the spot and the residue were sent for chemical analysis, which was found to be containing sulphuric acid. PW-6 Sameer Shaikh had also suffered injury on account of the drops of acid spilt on his person. The presence of eye witnesses at the place of incident, therefore, cannot be ruled out and it has been positively established by the prosecution. Learned Special Public Prosecutor drew our attention to the evidence of aforesaid witnesses and the medical officers and submitted that the prosecution has been able to establish the chain of circumstances to prove that the appellant has committed the crime. The appellant could not explain about the old healed injury scares on the hands and chest. The doctor who had examined the accused have stated that the injuries on the person of accused were burn injuries which would have been caused by corrosive substance. The appellant has been identified by the witnesses. They had seen the accused flinging acid on victim. They are natural. They have given reasons why they were at railway station at the time of incident. PW-11 and PW-14 were with Preeti. They have no enmity against accused. They are injured witnesses. Article-C was brought by appellant. It was obtained from PW-16. As per PW-21, it is strong corrosive liquid. The same liquid was found on the clothes of victim and Sunita, platform no.3, scalp hair of Preeti. The defence has taken plea of alibi and that old healed scars can be caused due to oil

burn, but has not brought anything in evidence to prove the same. The accused could not be arrested on victim could not speak. It is only when Neetu Solanki revealed name of appellant which lend support to his involvement. Delay in holding parade would not be fatal to prosecution. The manner in which crime was committed had impact upon witnesses who could identify him in parade. The delay in recording statements has been explained by circumstances in which the incident had occurred.

14. Learned Special Public Prosecutor submitted that the Trial Court has rightly awarded death penalty. He submitted that in the decision of Supreme Court in case of Bachan Singh (supra), it is laid down that life imprisonment is a rule and death penalty is an exception and criteria as to when the case can be considered as to rarest of rare case. He also relied on the decision in the case of **Macchi Singh Vs. State of Punjab**²⁸ wherein it was emphasized that the Court should draw balance sheet on aggravating and mitigating circumstances and thereafter giving maximum weightage to mitigating circumstances, arrive at a proper decision by finding out on which side the balance tilts. According to learned Special Public Prosecutor, the evidence adduced indicate aggravating circumstances justifying no other punishment except death penalty. There are no mitigating circumstances at all. The crime was brutal. The victim was defenceless young girl. There was no provocation from victim. It was a preplanned murder. The accused followed the victim who was supposed to join her employment in as Lieutenant in Army. The accused procured sulphuric acid on false ground. He had issued caution warning to the victim not to go to Mumbai. Hence, capital

28 (1983)3-SCC-470

punishment is justified. The Trial Court has analysed the reasons for awarding death to the accused. The Trial Court has given cogent reasons for convicting the appellant and interference in the decision of the Trial Court is not warranted. Reliance is also placed on decision of Supreme Court in the case of Mukesh and others Vs. State of NCT of Delhi and others²⁹.

15. Learned Special Public Prosecutor relied upon following decisions :

- (a) Laxmi Vs. Union of India³⁰;
- (b) Mohd. Farooq Abdul Gafur and others Vs. State of Maharashtra³¹;
- (c) Ramcharan Bhudiram Gupta Vs. State of Maharashtra³²;
- (d) Hema Vs. State, through Inspector of Police, Madras³³;
- (e) Hasan Sk Khannu Rayaliwale Vs. State of Maharashtra³⁴.
- (f) State of UP Vs. Devendra Singh³⁵;
- (g) Ravinder Kumar and anr. Vs. State of Punjab³⁶;

16. We have analysed the evidence on record. The prosecution has adduced the evidence of eye witnesses which inspire confidence. There is nothing to doubt the veracity of the evidence and the witnesses examined by the prosecution. The incident had occurred on 2nd May 2013. The victim girl Preeti and her relatives had

29 (2017)6-SCC-1
30 (2014)4-SCC-427
31 (2010)14-scc-641
32 1996(1)-Bom.C.R.-190
33 (2013)10-SCC-192
34 2003 (105)(4) Bom.L.R.-428
35 2005-SC (CR)-582
36 2001-SCC (CRI)-1384

boarded Garibrath Express for Mumbai from Hazrat Nizamuddin Station. They arrived in Mumbai on 2nd May 2013. The train reached Bandra Railway Terminus at about 8.05 am. The victim had alighted from train and was proceeding along with her father Amarsingh Rathi (PW-14), Vinodkumar Dahiya (PW-11) and his wife Sunita Dahiya. The victim was tapped from back side. When she turned back, the attacker wearing scarf on his face and cap on his head, plunged the acid on the victim from one container he was holding and fled from the platform. PW-6 Sameer Shaikh (PW-7) and Salim @ Salman were working for Nasim Chacha as empty bottle pickers at Bandra Railway Terminus. PW-6 was at platform no.3 as he was allotted coaches to collect bottles. He was given J-1 to J-4 coaches. He was standing near J-2 as people were getting down. One girl alighted from J-2 Coach. Other persons were also getting down following her. PW-6 went towards J-3. He saw Preeti. One boy came from back side by giving push to him and went ahead. He was holding dabba. He tapped the girl by his hand on which she turned back. He plunged the contents of dabba on the face of the girl. It also spilt on his hands. PW-6 shouted and told Salman (PW-7) who was ahead of him, "Pakad Saale Ko". The attacker turned back. The cap he was wearing fell down and scarf slid down. PW-6 saw him. PW-6 sustained burn injury on his hand. PW-7 Salim ran behind the attacker and came back stating that the attacker has escaped. The face of Preeti was burnt. PW-6 was taken to Bhabha Hospital. His statement was recorded on the same day i.e. on 2nd May 2015. In his cross-examination the defence has brought some omissions which are not fatal to the prosecution case. The omissions were with regards to description of victim in statement, liquid on both hands, complexion of boy (accused). PW-6 has identified the

appellant-accused in the identification parade and Court. PW-6 was examined by doctor for the burn injuries sustained by him. PW-7 heard screams of the girl from platform from coach no.J-2. He also heard shouts of PW-6. He saw one boy running from his side and went ahead. He followed him. He could see the face of the accused as the scarf had slid down. He chased the assailant but he fell down and the assailant disappeared. He came back to Sameer Shaikh. He saw the victim. He described the attacker. He identified the appellant in the T.I.Parade and Court. PW-9 is clearing forwarding agent of parcels at Bandra Terminus. He used to be present at Bandra Terminus. On 2nd May 2013 he was standing near platform no.3 with his parcels when Garibrath Express arrived from Delhi. According to him J-2 coach was in front of him. The passengers were alighting from the train. He saw one boy with scarf on his face, wearing a cap and holding plastic dabba/container and going towards engine. The boy tapped one girl from back side. The girl turned back and the attacker hurled the liquid from dabba on the face of girl and ran away. The attacker threw dabba. Girl screamed. Sameer shouted `pakdo...pakdo`. He ran after boy. The attacker turned twice. He could see his face as the scarf had come down. He was cross examined by defence. However, there was nothing to doubt his presence at the place of incident. He identified the accused in the T.I.Parade and Court. He identified dabba used by accused for throwing acid. PW-11 was accompanying Preeti. He is the husband of aunt of deceased. Aunt Sunita Dahiya was also accompanying them. By adjusting seats all of them traveled together. He stated that on 2nd May 2013 he went to toilet towards J-3 coach at about 4 am. He noticed one boy standing near the door of toilet. He was told to go and sit on his seat. The boy told him that he got bored

and therefore standing outside. PW-11 alighted from the train with wife Sunita, Preeti and Amarsingh Rathi (PW-14) at Bandra Terminus. According to him, he saw one boy wearing cap and scarf on face and hurling something from box on Preeti. She shouted. The attacker ran away. He looked behind. His scarf had come down to his neck. The witness saw his face and identified him as the same boy with whom he talked in the train near toilet. Preeti sustained burn injuries. She was taken to Gurunanak Hospital. Then she was shifted to Masina Hospital. He identified the accused in T.I.Parade. He also identified him in the Court. He was cross examined on identification parade and other aspects. There was nothing in cross examination to doubt his evidence.

17. PW-14 Amarsingh Rathi (father of Preeti) stated that he along with Vinodkumar Dahiya (PW-11) and Sunita Dahiya travelled with Preeti by Garibrath Express from Delhi to Bandra Terminus. When they alighted from train at Bandra Terminus and they were walking, they heard screams of Preeti. Acid fell on hands, leg and back side of shoulder of PW-14. He saw the person covering his face by scarf and wearing a cap, running away. He was taken to Bhabha Hospital. He went to Bandra Police Station and lodged FIR. The victim had sustained burn injuries. He was cross examined by defence. He admitted that he filed affidavit to withdraw case against Pawan and he collected information that Pawan Kumar was not at the spot. Some omissions were brought on record. He stated that police did not call him to see CCTV footage and Vinodkumar Dahiya was called for that purpose. Incident took place in few seconds.

18. PW-13 Neeta Solanki was in friendly relations with Preeti being of her age. She was related to Preeti. Preeti was visiting her house. She used to stay over night at her house. In March-2013 Preeti told that one boy namely Ankur residing in BBMB colony where Preeti was residing with her parents, was behaving differently. Preeti had informed her that once the boy had stopped her on the way and told her that he liked her and proposed her for marriage. Preeti had rejected the proposal and asked him to first make his career and then to think about marriage. Preeti had also stated, according to this witness, that 15 to 20 days prior to the incident Preeti met Neetu and she had told her that Ankur had asked her as to why she is going to Mumbai and her going to Mumbai was not good. Preeti had told him to mind his own business. The witness, however, admitted that she did not disclose to family of Preeti about conversation of Preeti and Ankur. She did not disclose it to police as she had taken it lightly. She disclosed it to the family members before her statement was recorded. She was not knowing Ankur.

19. PW-5 was working at Bandra Terminus. He was called by police. He acted as panch witness to the spot punchanama (Exhibit-45). One white coloured dabba without lid was recovered from spot. The words "Divya Pharmacy" were written on the container. The fluid spread on the ground was collected with cotton swabs. Pieces of clothes were also collected from spot. Soil was collected. The witness identified the dabba seized in his presence from the spot. In cross examination he stated that during 8.00 to 11.00 am six trains arrive and six trains go. Due to crowd station gets dirty and it is cleaned time to time. There was no police when he was taken to spot.

20. PW-1 Vasudev Baberwal acted as panch for seizure of clothes of Preeti. He stated that clothes were looking like burnt and torn. Clothes of maternal aunt of Preeti, Sunita Dahiya were also seized. Those were also found like burnt. The panchanama was marked as Exhibit-28. PW-2 Anand Sandhe deposed that he acted as panch for opening and resealing of article. The box was removed from packet. 'Divya Pharmacy' was written at bottom. It was again kept in packet and resealed. He identified the box in Court. Panchanama was marked as Exhibit-34. On 19th January 2014 PW-4 was called by police at Kurla Crime Branch office. The accused was present at the police station. He told his name as Ankur Panwar and disclosed his readiness to show the place from where and from whom he purchased the acid at Narela, Delhi. The memorandum of statement was recorded vide Exhibit-41. PW-4 with other panch and PW-35 went to Delhi along with accused on 20th January 2014 by train. The accused Ankur took them to one godown which was closed. PW-15 who is the owner of godown was called. He came there. The accused stated that he did not purchase the acid from PW-15 but from a young man. The accused stated that he purchased the acid from same godown. PW-15 informed that his son Mukesh (PW-16) also sit at the said shop. He had gone to Goa. He opened the godown. Ramkumar stated that shop is shifted to another place. Panchanama was recorded and adduced in evidence as Exhibit-42.

21. PW-15 Ramkumar Bhargav stated that he sells sulphuric acid, hydrochloric acid and nitric acid through his company. His son Mukesh helps him in his business. Police visited his godown with accused in veil. Police did not ask for registers from him. He did not

give registers. His son was in Goa. PW-16 Mukesh Bhargav deposed that samples can be given upto 5 kgs. They give samples to party so that they can verify the quality and place the order. He came to Mumbai on 28th January 2014. There was an entry in the name of Ankur Battery who had taken 2 kg sample of sulphuric acid. It was given for the purpose of business of battery newly started by that person. He had shown identify proof. Name was entered in kaccha register. He brought chavanprash dabba. He was given 2 kgs sulphuric acid. The witness was called by police on 12th February 2014. He identified the accused in jail. He also identified him in Court. He also identified dabba in which acid was given to accused. Witness identified register and entry therein. In cross-examination, omission was brought on record with regard to word 'sale' in connection with sample of acid. He did not give documents of sales tax as police did not ask for same.

22. PW-10 supplied information to police in respect to PNR numbers which were automatically generated and saved in the server when the ticket is purchased. He has supplied information with regards to ticket purchase in the name of Amarsingh Rathi, Preeti Rathi, Vinodkumar Dahiya and Sunita Dahiya. He also produced certificate u/s 65B of Indian Evidence Act. He retrieved the information from server.

23. PW-8 Phiroj Maniar is panch witness for arrest of appellant. One mobile phone was found in his possession. Two sim cards were also recovered from him. The articles found with accused were sealed. The same were identified by this witness. Accused was arrested on 17th January 2014. The police told him that the

accused/appellant was brought from Delhi. PW-37 Rehman Shaikh conducts mobile accessory business. He stated that accused had visited his shop on 9th May 2012 to get new sim card. He filled up form. Documents tendered forms bears his photograph and signature.

24. PW-19 Narendra Thakur is Nayab Tahsildar. He conducted parade on 12th February 2014. There were seven witnesses present for identification parade. All witnesses identified appellant/accused. He followed the procedure for holding parade. He took precaution to see that witnesses had no opportunity to see accused before parade was conducted. Nasim Chacha identified accused. Salim Shaikh, Vinodkumar Dahiya, Samir Shaikh, Rohit Singh, Mukesh Bhargav, Pankaj Malviya identified accused. He was cross-examined. In cross examination he stated that witnesses did not tell him for the cause of identification of accused by them.

25. Medical evidence is vital for the prosecution in the present case. It corroborates evidence of witnesses. It determines the cause of death of Preeti. It also indicates old healed injury scares on the hands and chest of accused. PW-26 Dr.Manisha Bharti was attached to Bhabha Hospital on 2nd May 2013 when Amarsingh Rathi, Sudeshna Singh, Sameer Shaikh were brought to hospital. She examined Amarsingh Rathi and noticed superficial to deep burns over upper back right and left hand and left thigh. The injuries were 4 to 5 per cent burns. Sudeshna Singh was having deep burns over left arm and fore arm and thai. Sameer Shaikh had sustained burn injuries over both the fore arms and left shoulder. The certificates vide Exhibits-134, 135 and 136 were issued by PW-26 in respect to

aforesaid persons. The defence tried to contend that there were infirmities in the MLC register regarding entry of patients made at 6256, 6257 and 6258. Preeti was initially treated at Gurunanak Hospital. PW-23 Dr.Shrikant Pai examined her. He noticed burns over face of Preeti along with throat, trunk and right upper limb. He monitored her vitals and secured intravenous line and started IV fluid. He started ringer lactate fluid and informed the relatives about lack of facilities of treatment for proper management. He advised him to shift to other hospital. PW-3 Mrs.Shreya Sawant was sister in-charge at Masina Hospital. Preeti was brought to hospital by her relatives and police. She stated that Preeti had burns over face, chest and upper arms. She was not in a position to talk but she was conscious. Her maternal aunt Sunita Dahiya and her husband Vinodkumar were with her. Sunita was having burns on her body. Both were given medical treatment. Clothes of Preeti and Sunita were seized by police. PW-22 Dr.Pote was in Masina Hospital where Preeti was brought by PW-11 and police constable. According to him, Preeti had chemical facial burn injuries with injuries on neck, shoulder, chest and back. Preeti was not stable and unable to speak and had difficulty in breathing. She had internal injuries and was unable to speak. An endoscopy was done on 18th May 2013. Tracheotomy was done on Preeti. Tracheo-oesophagial fistula was noticed on endoscopy. She was referred to Bombay Hospital. The defence is trying to contend that the treatment was delayed, which has caused her death PW-27 Dr.Gandhi is a Plastic Surgeon in Masina Hospital. He treated Preeti from 2nd May 2013 to 18th May 2013. Endoscopy was advised to rule out possibility of tracheo esophageal fistula. In the cross-examination he has stated that when patient was transferred from Masina Hospital she was evaluated 15%

burns over body surface area. The general condition of patient can be good, fair and poor. The condition of patient was neither good nor poor. Hence he has written fair. PW-20 Dr.Amita Hiremath is attached to Bombay Hospital on 18th May 2018. Preeti was admitted in Bombay Hospital with history of acid burns. She was transferred to Bombay Hospital from Masina Hospital. She stated that the condition of victim was critical. Preeti had burns to face, oral cavity, chest and upper extremities and airway, lungs and upper gastro intestinal tract. She was critical on admission and was on ventillator. She had tracheao esophageal fistula. She had developped sepsis and multiple organ failure. She had cardiac arrest on 1st June 2013. She died at about 4.00 p.m. She issued certificate Exhibit-99 in respect of treatment of Preeti. She was cross-examined to elicit that medical treatment given to Preeti was not proper, the record was not properly maintained in respect to treatment and documents are fabricated. However, no medical negligence or improper recording is brought on record to doubt the medical treatment given to the victim or genuineness of the record. PW-28 Dr.Ashok Kumar Gupta also treated Preeti at Bombay Hospital. He noticed loss of vision on right eye of Preeti with loss of upper and lower eyelid. He stated that on the left eye there was perception of light but not of the object. There was inflammation of lungs. She was not able to speak. Preeti was critical when admitted to Bombay Hospital. He produced report of examination and the measures taken and procedures carried out till 27th May 2013. He brought original case papers of treatment of Preeti till her death. Report was marked as Exhibit-154.

26. PW-25 Dr.Chikhalkar conducted post mortem of dead body of Preeti on 1st June 2013. He is a professor in Forensic Medicine at

J.J.Hospital. He noticed burn injuries over face and neck, chest and abdomen, right and left upper limb, right and left lower limb and on back of Preeti. He deposed that injuries on the face and chest were sufficient to cause death. He opined provisional cause of death as evidence of septicemia with pulmonary consolidation with pulmonary haemorrhage with chronic passive venous congestion liver in a hospitalized case of superficial to deep burns. While conducting post mortem, Doctor Thube and Dr.Waghmare were with him. PW-25 and Dr.Waghmare gave final cause of death as complications due to acid burns (un-natural) and issued certificate Exhibit-130. According to PW-25, as the acid had reached the upper respiratory tract and esophagus, it developed septicemia causing complications. He was extensively cross-examined. He admitted that sufficient acid is corrosive poison and that it is possible that due to inhalation of corrosive poison, lungs were damaged, but disagreed with the contention that 2.5 sq.cm piece of affected area is required in case of poisoning to detect the same. He also stated that cardiac pulmonary arrest was the cause of death as a result of sepsis and multiple organ failure confirmed.

27. PW-21 Dr.Gajanan Chavan with Dr.Thube and Dr.Niturkar examined accused on 20th January 2014. He was working as Associate Professor in Forensic Medical Department at J.J.Hospital. They noticed seven old healed scars of injuries on right and left forearm on flexor aspect and over right side chest. Old healed injuries on right forearm were :

(i) 0.05 cm x 0.04 cm non tender, smooth, white, glistening over right forearm flexor aspect. 0.05 cm above wrist joint;

(ii) 2.5 x 0.8 cm non tender, smooth, white, glistening, margins with brown pigmentation of neovascularization with coalescence (merging) at places over right forearm flexor aspect 7 cm above wrist joint;

(iii) 3.00 cm x 1.00 cm non tender, smooth, glistening, white, over right forearm flexor aspect 9.5 cm above wrist joint;

(iv) 1.5 cm x 0.9 cm non tender, smooth, glistening, white, over right forearm flexor aspect 11.00 cm above wrist joint;

(v) 1.0 cm x 0.3 cm non tender, smooth, glistening, white, over right forearm flexor aspect 9.00 cm above wrist joint and lateral to injury no.3;

(vi) 2.00 x 0.8 cm non tender, smooth, glistening, white, over left forearm flexor aspect 4.00 cm above wrist joint margins ill defined because of artificial tattoo mark;

(vii) 1.00 cm x 0.2 cm horizontal, over right chest 8.00 cm, below and lateral to right nipple in intercostal space, non tender, smooth, glistening, white.

28. The CA report of viscera does not reveal any poison. Exhibit-119 is the CA report of scalp hair of Preeti. Exhibit-120 is in respect of same hair in which sulphate from sulphuric acid is detected. Exhibit-121 is in respect of cloths of Preeti and Sunita Dahiya detecting sulphate from sulphuric acid. Article-C was the dabba with brownish liquid which is detected as concentrated sulphuric acid. Articles seized from the spot of crime, clothes of Preeti and Sunita seized from hospital. Scalp hair collected after the death of Preeti and the contents of Article-C detected concentrated sulphuric acid.

29. PW-12 is head constable attached to Bandra Railway Police Station. Station Master gave memo to him to carry victim to Bhabha Hospital. The victim was in pain due to acid burns on her face. Vinodkumar Dahiya and Sunita Dahiya were with victim Preeti. They told PW-12 to take Preeti to nearest best hospital. Therefore, he took them to Gurunanak Hospital. Doctors gave first aid to victim at Gurunanak Hospital and advised them to take her to Masina Hospital. Then Preeti was admitted to Masina Hospital. PW-18 Sitaram Gaikwad was posted at Bandra Railway Police Station. He was on duty at Bandra Terminus. The station master gave him memo and told him to take injured persons to nearest hospital. He took them to Bhabha Hospital. There were three injured persons out of acid attack. They were treated. One of them was Amarsingh Rathi. After treatment he took them to Bandra Police Station. The other injured persons were Sudesha Kumari and Sameer Shaikh. In cross-examination he stated that there are CCTV cameras at Bandra Terminus.

30. PW-17 Subhash Bhambare was at the relevant time attached to Bandra Railway Police Station as Assistant Sub Inspector. Amarsingh Rathi lodged report. The witness recorded complaint. FIR was registered. PW-24 Nivrutti Katkar is head constable attached to Bandra Railway Police Station. PW-31 deputed him to take articles to FSL, Kalina. He took articles and delivered to FSL. The condition as sealed is not mentioned in his statement. PW-29 Virendra Chavan was API attached to Bandra Railway Police Station. He went to platform. Spot was shown by Sameer Shaikh. He saw acid stains on platform. PW-30 Navnath Ghuge was API attached to Crime Branch.

As per order of High Court, investigation was transferred to DCB, Crime Branch. ACP Bhosale directed him to go to Delhi to record statement of Neetu Solanki (PW-13). He recorded the statement of said witness at Delhi. He also collected information regarding status of Garibrath Express. In cross he stated that he did not collect call details of Neetu Solanki.

31. PW-31 Vijay Dhopavkar is Senior Inspector of Police. He seized clothes of Preeti and Sunita. He recorded statement of Salim Shaikh, Sameer Shaikh, Sudesha Kumari and Dipendra Singh. In cross he stated that Sameer Shaikh (PW-6) has not described Preeti in his statement. Sameer has not stated about fair complexion of boy. He had collected CCTV footage and seen them. He had not shown CCTV footage to witnesses except Vinodkumar. CCTV footage was not clear. Therefore not shown to anybody. PW-32 Shaikh Hamid, Senior Police Inspector, attached to Dadar Railway Local Crime Branch at relevant time, added Section 302 of Indian Penal Code after death of Preeti. He forwarded six sealed bottles of samples to FSL at Kalina. In cross he stated that he did not collect call details of Pawan Kumar Name of Pawan Kumar is seen in chart. PW-33 Devram Vadmare was attached to Railway Crime Branch. He stated that Pawankumar was arrested. He was arrested on suspicion. He collected CDR of his phone number. It was revealed that Pawankumar was at Rohtak at the time of incident. He had attached papers of communication for CDR with papers of investigation. He had seen CCTV footage which was not clear. He did not collect CCTV footage and did not send it to FSL. PW-34 Ashok Khot is Police Inspector. He conducted search of accused/appellant. He found articles. Old injury scar was seen on left hand. He took

accused to J.J.Hospital. The accused was examined by doctor. PW-35 Vijay Dhamal is API. He was directed by PW-36 to go to Delhi to investigate about passenger on seat no.92 namely Pawankumar in bogey no.J/4 who travelled in same train from Delhi to Mumbai. He found name of Pawankumar as Randhir Singh. ACP Bhosale made inquiry with accused Ankur. PW-36 is the investigation officer. He called for CDR of Ankur (appellant). The mobile location of said number on the date of incident was seen from Narela to Nizamuddin to Bandra.

32. On analysis as stated above we are of the considered opinion that the prosecution has clearly established that the accused-appellant is involved in commission of crime. The overt act attributed to the accused, the preparation made to commit the crime, the manner in which acid was plunged on the face of victim, the nature of injuries, opinion expressed by medical officers, cause of death reflected in the medical evidence, would indicate that accused had intention to commit murder. He plunged the acid on the face which resulted in her death.

33. Both the sides have relied upon several judicial pronouncements in support of their arguments on merits of case. In case of Vikramjit Singh Vs. State of Punjab (supra) relied upon by the defence, it was observed that suspicion cannot be a substitute for proof. In case of Bhagirath Vs. State of Madhya Pradesh (supra) it was observed that the Court cannot reconstruct the story different from the one propounded by prosecution and convict the accused on that basis. It is well settled that prosecution can succeed by substantially proving the story it alleges. It must stand on its own

legs. It cannot take advantage of weaknesses of defence. In the case of Juwarsingh Vs. State of Madhya Pradesh (supra), it was observed that failure to cross-examine does not make the testimony true or acceptable. If oral testimony of witness is contrary to proved facts, his evidence might be discarded on that ground. In Tomaso Bruno and another Vs. State of Uttar Pradesh (supra), it was held that failure to produce evidence would render the prosecution case unreliable. In the case of Datar Singh vs. State of Punjab it is observed that judicial process can only operate on the firm foundations of actual and credible evidence on record. Mere suspicion or suspicious circumstances cannot relieve the prosecution of its primary duty of proving its case against accused beyond reasonable doubt. The Courts cannot be swayed by sentiments or prejudice against the person accused of commission of crime. In Harchand Singh (supra), it is observed that the function of the Court in a criminal trial is to find whether the person arraigned before it as the accused, is guilty of the offence with which he is charged. For this purpose the Court scans the material on record to find whether there is any reliable and trustworthy evidence upon the basis of which it is possible to find the conviction of the accused and to hold that he is guilty of the offence with which he is charged. If in a case the prosecution leads two sets of evidence, each one of which contradicts and strikes at the other and shows it to be unrealisable, the result would necessarily be that the Court would be left with no reliable and trustworthy evidence upon which the conviction of the accused might be based. Inevitably the accused would have the benefit of such situation. Learned counsel for appellant relied upon decision of Calcutta High Court in case of Habal Shaikh and others (supra) on the point of identification of accused. In the said decision it was

observed that the facts which establish identify of accused, are relevant u/s 9 of Evidence Act. The identification should be held without much delay inasmuch as early opportunity to identify tends to minimize the chances of memory of identifying witnesses fading away by reason of long lapse of time. When no explanation is given for delay in holding parade, there is room for doubt as to whether delay in holding parade was in order to enable the identifying witnesses to see the accused in the police lock up or in the jail premises and make a note of his features. In the decision of this Court in the case of Vilas Patil, the Court considered the effect of identification parade as it was evident that the witness was sitting at the police station while the accused were in lock-up and there was reasonable possibility for witness to see the accused before parade. This would discard evidence of identification. The defence has contended that when PW-16 Mukesh Bhargav had visited police station during investigation, the accused was in lock-up. Hence, there was opportunity for witness to see the accused. However, in the evidence or in cross-examination, no such circumstance has been brought/established to indicate that witness had occasion to see the accused at police station. In the case of Brijmohan (supra), the Supreme Court has held that once the investigating officer suspects that the arrested persons are accused in case, they should be put up for test identification at the earliest. In Siddanki Ram Reddy (supra), it was observed that when an attack is made on injured/deceased by a mob in a crowded place and the eye witnesses had little time to see the accused, the substantive evidence should be sufficiently corroborated by a test identification parade held soon after the occurrence and any delay in holding parade may be held to be fatal to prosecution. The Court made reference to decision in the case of

Lalsingh Vs. State of Uttar Pradesh, wherein it was observed that where witness had only a fleeting glimpse of the accused at the time of occurrence, delay in holding a test identification parade, has to be viewed seriously. Learned counsel for accused contends that although Pawankumar was arrested as suspect in this crime, he was not put to test identification parade. In the case of Rajesh Jagesha (supra), the Supreme Court has considered the effect of delay in holding parade. The Court also noted discrepancies in the parade with regard to appearance of accused and dummy. The Court also held that possibility of witnesses having seen accused between date of arrest and parade cannot be ruled out. Reference was made to decision of Supreme Court in the case of State of Andhra Pradesh Vs. M.V.Reddy wherein it was held that unexplained delay in holding the parade, the evidence cannot be held absolutely reliable. In Satrugana @ Parida (supra), it was noted that there was delay of one and half month in holding parade and after the expiry of maximum permissible period (15 days) for producing the accused before Court for which there was no explanation and there was nothing on record to show that while taking the accused to and producing them before Court, identity of accused was not revealed. It is the duty of prosecution to explain why the identification parade could not be arranged. In the factual matrix of the present case, the ratio of the aforesaid decisions would not be applicable. In **Ashraf Shah Vs. State of Maharashtra**³⁷, this Court has dealt with the issue relating to delay in recording the statements of witnesses. According to the defence, statement of Neetu Solanki was recorded belatedly and tailor made to suit the prosecution case. In the decision of Ganesh Dhavan Patel (supra) it was held that delay in examining witnesses by investigating officer can on peculiar facts of case,

³⁷ 1996-Cr.L.J.-3147

amount to serious infirmity to prosecution case. Strange conduct inconsistent with human nature and behaviour will affect his credibility of being an eye witness. In support of the submission that offence would fall within the purview of Section 304(I) or Section 304(II) of IPC, reliance was placed on the decision of Delhi High Court in case of Udai Singh Vs. State (supra) and Dharampal and others Vs. State of Delhi (supra). In Udaisingh's case decided by the Delhi High Court, the conviction of accused was modified from Section 302 IPC to 304(1) IPC. It was observed that in deciding the question whether the offence of culpable homicide amounts to murder the medical opinion regarding nature of injuries as well as period after which death takes place are important factors and depending upon the facts and circumstances of each case. In the case, the medical opinion as to whether the burn injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death were absent. The opinion of autopsy surgeon was that death was caused due to shock and secondary infection. In case of Dharampal (supra), the conviction was altered from 302 to 304(1) IPC on the ground that accused had no intention to cause death but had knowledge that acid mixed with liquor would result in such injuries to stomach as are likely to cause death.

34. Whereas prosecution has placed reliance on the decision in case of Laxmi Vs. Union of India (supra) wherein guidelines were issued with regards to usage of acid. Learned Special Public Prosecutor relied upon the decision in case of Mohamad Farooq Abdul Gafur and others Vs. State of Maharashtra (supra) on the issue of identification parade. In the said case there was delay of 45 days in conducting I.T. parade. The Court observed that it is not such a

long period to cast any doubt over the evidentiary value of I.T.parade. Even otherwise T.I.praade does not constitute substantive evidence but can only be used for corroboration of statement in Court. It is primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation is proceeding on the right lines. Reference was made to its earlier decision in the case of Amitsingh BhikansinghThakur Vs. State of Maharashtra (2007)2-SCC-310 wherein it was observed that if the circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution. The facts which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in Court. The purpose of prior test identification is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witness in Court as to the identity of accused who are strangers to them in the form of earlier identification proceedings. This rule of prudence is, however, subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely without such or other corroboration. He also relied upon the decision in the case of Ramcharan Gupta (supra) and submitted that all the prerequisites for holding parade enumerated in this decision were complied. Reliance was also placed on the decision of Supreme Court in the case of Hema Vs. State (supra) wherein it was observed that for certain defects in investigation the accused cannot be acquitted. Merely on account of some defect in investigation, lapse on the part of investigating officer, it cannot be a ground for acquittal. In the

decision delivered by Division Bench of this Court in Hasan Sk Khannu Rayliwale Vs. State of Maharashtra 2003(105)(4)-Bom.L.R.-428, the plea of alibi taken by accused was considered. Learned special public prosecutor relied on observations in para 27 of the decision where it is observed that it is needless to say that when the appellant has taken a specific plea of alibi, then burden lies on him to establish the same. The appellant has not led any evidence to substantiate his plea of alibi. So in the absence of establishing the plea of alibi for cogent evidence, necessary consequence of adverse inference has to be drawn. The Supreme Court in State of Uttar Pradesh Vs. Devendra Singh (supra) has observed that to discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way. There is not set rule of natural reaction. Human behaviour varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter attacking the assailants. Some may remain tight-lipped, overawed either on account of the antecedents of the assailant or threats given by him. Each one reacts in his special way even in similar circumstances, leave alone the varying nature depending upon a variety of circumstances. Learned special public prosecutor strongly relied on

judgment of Supreme Court in Ravinder Kumar and another (supra). The Court while dealing with issue of identification after lapse of time has observed that the psychological phenomenon that human memory is very often a conditioned characteristic. Anything which has any special or peculiar lineament can create an impact on the human mind lasting long after. While it is true that routine events in a man's day to day life may not remain in his mind for being remembered later, any odd or bizarre happenings involving him in front of him, have the tendency to stick in his mind indelibly. If there is any cause for him to recollect such events again, they get refreshed again. That is why he is able to narrate such events with all details when asked to do so. This applies to all witnesses in criminal cases involving serious offences. The other aspect dealt by the Court was in respect to motive by observing that it is generally an impossible task for the prosecution to prove what precisely would have impelled the accused to commit murder of a particular person. All that the prosecution in many cases would point to is the possible mental element which could have been the cause for murder.

35. As narrated hereinabove, there is sufficient evidence to prove the offences under Sections 302 and 326(B) of IPC, for which the appellant-accused has been convicted. The evidence of eye witnesses of actual incident viz PW-6, PW-7, PW-9 and PW-11 is consistent that they saw the appellant throwing acid on Preeti and thereafter ran away. The defence has not been able to discredit the testimony of these witnesses. PW-14 is the father of Preeti who was with her. He travelled along with Preeti, Vinodkumar and Sunita Dahiya. The deposition of the said witnesses is depicted hereinabove. He lodged the complaint. The complaint was then forwarded to the Magistrate.

PW-12 carried the victim Preeti, Vinodkumar and Sunita Dahiya to Gurunanak Hospital. Then Preeti was shifted to Masina Hospital. PW-18 took the injured to Bhabha Hospital. One of the injured was PW-14 and the others were Sudeshakumari and Sameer Shaikh. Clothes of Preeti and her aunt Sunita Dahiya were seized at Masina Hospital. PW-24 delivered articles to FSL. PW-5 was working as hamal at Bandra Terminus. He acted as panch witness. Plastic dabba was recovered from the spot. There was blackish liquid in it. Soil samples were taken. Map of the spot was drawn. PW-6 showed the spot. PW-29 went to the spot and drew spot panchanama. PW-13 was friendly with Preeti being of her age. She has disclosed the role of accused in the crime. PW-8 was present as panch at Kurla Police Station. He identified the accused as the person who was at the police station. The accused was arrested and his physical search was conducted. Articles were seized. On 19th January 2014 PW-4 was called at the police station. The accused disclosed his readiness to show the place from where and from whom he had purchased the acid at Narela, Delhi. Police team along with accused proceeded to Delhi at the place from where the acid was purchased by accused. PW-15 is the owner of Bhargav Chemical Trading Company from whom the accused had purchased the acid. It was revealed that the acid was purchased while son of PW-15 was at the shop. PW-16 then visited police station with register. Test identification parade was conducted. The accused was identified by PW-6, PW-9, PW-11 and PW-16. PW-19 conducted T.I. parade. He was cross-examined by defence. However, no infirmities could be pointed out which would discard the evidence of identification parade. All the witnesses identified the accused. In the cross-examination nothing is seen to doubt the identification by the witnesses. There was no

opportunity for the witnesses to see the accused before T.I. parade was held. PW-30 was part of the investigating team. PW-36 is the main investigating officer. PW-31 has also conducted investigation. The statements of witnesses were recorded by them. Documentary evidence was collected. Pawankumar was not found connected to crime. He was discharged. Various investigating officers investigated the crime. Each has played its role for that part of investigation. The previous investigation was carried out by Bandra Railway Police Station. Further investigation was carried out by DCB, CID. Though it is challenged by defence counsel that documents are fabricated, no such possibility is shown even to doubt the documents and the investigation.

36. Medical evidence is material piece of corroborative evidence regarding injuries caused to the injured witnesses and Preeti as well as cause of death of Preeti. It is clinching piece of evidence as regards old healed injury scars on the hands and chest of the accused. PW-26 was at Bhabha Hospital. She examined PW-14, Sudeshhakumari and PW-6. She noticed superficial to deep burn over upper back, over left and right hands and left thigh of Amarsingh Rathi. Sudeshhakumari was also deep burns over left arm and forearm and left thigh. PW-6 sustained burn injuries over both the forearms and left shoulder. PW-20 has stated that injuries can be caused by throwing acid. The defence had tried to point out the discrepancies in the sequence of examination of patients. However, the difference in sequence of examination of injured and respective MLC number, cannot falsify the examination and injuries sustained by the aforesaid persons. Thus it was established that Sameer, Sudeshhakumari and Amarsingh Rathi were injured out of acid burns.

Preeti was initially treated at Gurunanak Hospital. Thereafter she was shifted to Masina Hospital. PW-22 treated her. Preeti had chemical facial burn injuries. History was recorded vide Exhibit-107. She was then referred to Bombay Hospital. PW-27 is the plastic surgeon in Masina Hospital. He treated Preeti from 2nd May 2013 to 18th May 2013. The findings mentioned in the report were co-related with clinical findings and other reports. PW-20 was at Bombay Hospital when Preeti was admitted with the history of acid burns brought from Masina Hospital. Preeti was under care of Dr.Ashok Gupta, PW-28, since her admission. A team of doctors were treating Preeti. PW-20 issued certificate Exhibit-99 in respect of treatment to Preeti. She was cross-examined to elicit that medical treatment given to Preeti was not proper and the record was not maintained properly in respect of her treatment. No medical negligence was brought on record. Prosecution brought complete treatment of Preeti on record. PW-25 conducted post mortem of dead body of Preeti on 1st June 2013. He noticed injuries. The injuries on face and chest were sufficient to cause death. He opined provisional cause of death as evidence of septicemia with pulmonary consolidation with pulmonary haemorrhage with cronic passive venous congestion liver in a hospitalized case of superficial to deep burns. CA report and histo-pathology with memorandum of post mortem examination, was sent to obtain final cause of death. PW-25 and Dr.Waghmare gave final cause of death as complication due to acid burns and issued Exhibit-130. He was extensively cross-examined. PW-25 admitted that sulphuric acid is corrosive poison and that lungs were damaged due to inhalation of corrosive poison. The lungs were damaged. Cardiac pulmonary arrest was the cause of death as a result of sepsis and multiple organ failure. From the

post mortem report and the evidence of PW-25 the injuries found on the body of Preeti were as follows :

- 1) Over face and neck : Deep burns on anterior part of face of size 17x16 cm with surrounded zone of inflammation parts involved are forehead, both eyes, nose, right and left cheek, upper and lower lips upto the chin, right ear, upper part of neck total burn area of face is 7%. Superficial burns present over neck region at few places;
- 2) On chest and abdomen multiple areas of superficial to deep burns present over upper part of chest more prominent on left side spread over area of 12x11 cm extending upto upper part of anterior abdomen. Total area of burn is 1%;
- 3) Right upper limb : Deep burns on right upper limb extending from shoulder to right hand. Full thickness burn present over whole area of extensor aspect and partially on flexor aspect. Total area of burn is 7%;
- 4) Left upper limb : Superficial to deep burn on left upper arm seen over area of 5x5 cm (superficial) on left mid arm, left forearm 3x3 cm, deep burns, left mid forearm region shows deep burn area of 2x2 cm with granulation and slough. Left forearm, flexor aspect extending upto wrist area of 8x6 cm present, left hand area of 7x5 cm on dorsal aspect present. Total area of burn is upto 3%;
- 5) Right lower limb : Superficial to deep burn on right thigh lower part extending to knee joint of area 6x4 cm, total area of burn is 1%;
- 6) Left lower limb : Superficial burn injury on left lower limb over knee of size 5x2 cm present. Total area of burn is 1%;

- 7) Back : Deep burns present on posterior aspect of neck spread over area area of 8x6 cm reddish in colour and deep burn present over right scapular region of size 8x6 cm and over mid scapular region of 20x5 cm. Total area of burn is 6%. Margins shows zone of inflammation eroded raw surface shows granulation tissue with yellowish, slough at places;
- 8) Perinium and genitalia : total area of burn 0%. No injuries.
- 9) Total burn injuries all over body is of 26%. Dermo epidermal, superficial to deep, all these burn injuries shows zone of inflammation, presence of reddish granulation at areas of burns and yellowish slough at places present.
- 10) Injury nos.1 and 2 as mentioned above were in vital parts of the body. Those were sufficient to cause death of the person.
- 11) He also noticed surgical injuries which he has mentioned separately in PM notes of column no.17, in the separate sheets attached with the memorandum of Pm;
- 12) On internal examination the internal injuries noticed are mentioned by him in column no.20 of memorandum of PM. Those are Laryngial edema and congestion present, Necrotic changes and erosions of trachea with haemorrhagic luminal surface and tracheo-esophageal fistula. There was congestion and edema of lungs with interparenchymal haemorrhage and consolidation;
- 13) In abdomen 150 cc yellowish exudative fluid within peritoneal cavity. In buckle cavity. Coagulative necrosis of the oral mucosa, upper and middle part of esophagus with abraded raw (fresh) haemorrhagic mucosal surface. In

stomach there were stress ulcers at places. Liver was congested. Adrenals and spleen were congested and haemorrhagic. Both kidneys congested.”

37. Medical examination of the accused was conducted by PW-21 Dr.Gajanan Chavan with Dr.Thube and Dr.Niturkar on 20th January 2014. The injuries sustained by the accused are disclosed hereinabove. The said witness has stated that injuries no.1 to 7 appeared to be burn injuries, caused by corrosive substance of age 6 months to 12 months on the date of examination. He opined on the basis of appearance, distribution, extent and location of scars the possibility of spilt of corrosive substance as a cause of these injuries. The appearance without trickling marks is most likely to be caused by secondary drops after throwing corrosive liquid. The team of doctors prepared a report Exh.102 written by Dr.Tube and signed by PW-21 and two other doctors in team. On 14th February 2014 as per the query of ACP vide Exh.103 the team of doctors opined that concentrated sulphuric acid comes under corrosive substance/liquid category of poison. The defence tried to show that the medical examination of accused was defective and doubtful as the time of the examination of the accused is not mentioned in Exh.102. The witness answered that it would be in the afternoon. It is challenged that the corrosive liquid was not shown to the doctors regarding which the opinion was sought. However, PW-21 maintained that all three of them decided the report as per their examination. Prosecution could establish that the old healed injuries scars present on the hands and chest of the accused were caused due to corrosive substance was probably secondary drops of corrosive substance, liquid.

38. Thus, there is sufficient evidence to show the involvement of appellant-accused in the crime. In the light of the evidence of PW-25 and the evidence of eye witnesses, the submission of learned counsel for appellant that offence would not fall within the purview of murder and that it would be at the most culpable homicide not amounting to murder, is devoid of merits. Apart from the aforesaid evidence, the documentary evidence adduced by the prosecution forms the significant part of prosecution case. Exhibit-28 pertains to seizure of clothes of Preeti and Sunita Dahiya. Exhibit-34 is panchanama of de-sealing and re-sealing of Article-C seized on 2nd May 2013. The said article was containing corrosive liquid hurled at Preeti. It was sent to FSL for CA. PW-5, PW-6 and PW-20 identified the article as it was seized under spot panchanama. Exhibits-41 and 42 are statement of accused and discovery of source of sulphuric acid. Exhibit-45 is the spot panchanama. Exhibits-49 and 57 are arrest panchanama of the accused. Exhibit-61 is the inquest panchanama. Exhibits-64,64,65 and 66-1 to 66/3, Exhibits-67 and 68 are the documents regarding travel of victim and her relatives from Hazrat Nizamuddin Railway Station Delhi to Bandra Terminus at Bandra. Exhibit-74 is a memo given to carry injured to Bhabha Hospital. Exhibits-77 and 77-A are FIR and format of FIR. Exhibits-80, 81 and 82 are are license for acid sale held by Ramkumar and Mukesh Bhargav and Exhibit-163 is the entry of acid sample given to accused. Exhibit-88 is station diary dated 2nd May 2013 which discloses the information of incident dated 2nd May 2013 and the FIR lodged. It corroborates the oral testimony of PW-14 and PW-17. Exhibit-91 is the memo for medical examination of other injured persons. Exhibit-96 is T.I.parade. Exhibits-101,102,103 and 104 is

medical examination of the accused. Exhibits-107, 108, 110, 138, 148 and 152 are the papers from Masina Hospital in respect of treatment to Preeti from 2nd May 2013 to 18th May 2013. Exhibits-203 and 154 are medical treatment documents in Bombay Hospital and Exhibit-124 is the memorandum of post mortem. Exhibit-168 is reservation chart of Garibrath Express and Exhibits-175, 176, 177, 178, 179 are station diary entries carrying accused to J.J.Hospital for medical examination. Exhibit-204 is the sim card purchased by accused. All these documents corroborate the ocular testimony of witnesses examined by prosecution. Considering the nature of evidence, the submissions advanced by defence counsel are devoid of merits.

39. The evidence adduced by the prosecution in the form of FIR, station diary entry, motive and intent of the accused, the facts discovered u/s 27 of Indian Evidence Act, T.I.parade, spot panchanama, inquest panchanama, entries on the person of accused, are the major points which supports the case of prosecution. Sulphuric acid is a corrosive poison. This chemical is unique because it not only causes chemical burns but also secondary thermal burns as a result of dehydration. This dangerous chemical is capable of corroding skin, metal and even stone in some cases. If comes direct contact with eyes, it can cause permanent blindness. It destroys outer skin and enters in the flesh under the skin. In case of inhalation it causes life threatening accumulation of fluid in the lungs i.e. pulmonary edema. Severe exposure to sulphuric acid can result into long term damage. There is overwhelming evidence on record to prove not only the credence of evidence but the nature of offence. The injuries were not only causing death but would have

caused permanent dis-figurement despite post medical treatment. The photographc Exhibit-154 depicts the effect of acid. The CA report regarding clothes of Preeti and Sunita showed presence of acid. Exhibit-120 regarding hair which was collected after the death of Preeti shows the acid. Article-C was with brownish liquid which was concentrated sulphuric acid.

40. the accused could not explain old healed injury scars on hands and chest. The inquest panchanama showed burn injuries at various parts of body. The contradictions and omissions brought on record by defence are not sufficient to discard the evidence on record, which supports prosecution case. Looking at the factual aspects, the evidence on record, it is implicit that the accused was responsible for committing murder. The purpose of amendment to Section 326 is to deter the accused from causing acid burns or acid attack. In the recent decision of the Supreme Court in the case of **Omanakattan Vs. State of Kerala**³⁸, it was observed that acid is undoubtedly a corrosive substance within the meaning of Section 326 of IPC. The victim remained hospitalized for more than fifty days. It would be wholly unrealistic to postulate that even with such extensive acid burns injuries from head to thigh on the left side of his body and long drawn hospitalization, the victim may not have in severe bodily pain for more than twenty days. It was also observed that the act of causing grievous hurt by use of acid by this very nature is gruesome and horrendous, which apart from causing severe bodily pain, leaves the scars and untold permanent miseries for the victim. The legislature having taken note of gravity of such offence, by way of Act No.XIII of 2013, inserted sections 326(A) and 326(B) of IPC

38 Criminal Appeal No.873 of 2019 decided on 9-5-2019

providing higher punishment with minimum imprisonment for the offence of voluntarily causing grievous hurt by use of acid and voluntarily throwing or damaged to throw acid.

41. We have observed hereinabove that prosecution has established its case beyond doubt and the conviction of appellant-accused u/s 302 of IPC thus deserves to be confirmed. The question now which falls for consideration is whether capital punishment awarded by the Trial Court deserves to be confirmed. The Trial Court while awarding death penalty has observed that this is a rarest of rare case as enunciated in the case of Bachan Singh Vs. State of Punjab (supra). The Court has also referred to the decision of Machhi Singh Vs. State of Punjab (supra) wherein it was observed that reason why the community as a whole does not endorse the humanistic approach reflected in death sentence in no case doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of reverence for life principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. The Court also referred to the decision in the case of Dhananjay Chatterjee Vs. State of West Bengal (1994)2-SCC-220, The State of Madhya Pradesh Vs. Munna Choubey (2005)2-SCC-710, Gurvail Singh @ Gala and another Vs. State of Punjab (2013)2-SCC-713 and Ajitsingh Harnamsingh Gujral Vs. State of Maharashtra (2011)14-SCC-401. Jashubha Gohil Vs. State of Gujarat, Mahesh Vs. State of Madhya Pradesh (1987)2-SCC-710, Devendra Pal Singh Vs. State (2002)5-SCC-234, Maniappen Vs. State of Tamilnadu, State of Rajasthan Vs. Vinodkumar (2012)6-SCC-770. The Trial Court felt that aggravating circumstances which would

invite the capital punishment in the present case, were that offence was committed in preplanned manner, it was exceptionally cruel attitude and involves extreme perversity, ante-social nature of crime, shocking the conscience of the society. Whereas, the mitigating circumstances put forth by the accused were that he is of young age. The age of accused was 23 years at the time of commission of crime. There was possibility to reform and socio-economic status.

42. Learned Special Public Prosecutor has relied upon the decision in the case of Mukesh and others Vs. State of Delhi (supra) to support imposition of capital punishment in the present case. The Supreme Court in the said case has analyzed several decisions dealing with death penalty and in paragraph 508 it has observed that we have a responsibility to set good values and guidance for posterity. Crime against women not only affects women's self esteem and dignity but also degrades the pace of societal development. The gruesome incident in the capital and the death of young women will be an eye opener for the mass movement to end violence against women and respect for women and her dignity and sensitizing public at large on gender justice.

43. In case of Rajendra Wasanik (supra) (Review Petition Nos.306-307/2013) it was held by the Supreme Court in paragraph 75 that it may be mentioned, in conclusion, that there is really no reason for the Trial Judge to be in haste in awarding a sentence in a case where he might be considering death penalty on the ground that any other alternative option is unquestionably foreclosed. The convict would in any case remain in custody for a fairly long time since the minimum punishment awarded would be imprisonment for life.

Therefore, a Trial Judge can take his time and sentence the convict after giving adequate opportunity for the prosecution as well as for the defence to produce material, as postulated in Bachan Singh so that the possibility of awarding life sentence is open to the Trial Judge as against the death sentence. It must be appreciated that a sentence of death should be awarded only in the rarest of rare cases, only if an alternative option is unquestionably foreclosed and only after full consideration of all factors keeping in mind that a sentence of death is irrevocable and irretrievable upon execution. It should always be remembered that while the crime is important, the criminal is equally important insofar as the sentencing process is concerned. In other words, the Courts must make assurance double sure. In paragraph 79 it was observed that in the said case that the Sessions Court and the High Court as well as Supreme Court did not take into consideration the probability of reformation, rehabilitation and social re-integration of appellant into society. Indeed no material or evidence was placed before the Courts to arrive at any conclusion in this regard one way or the other and for whatever it is worth on the facts of the case. The prosecution was remiss in not producing the available DNA evidence and the failure to produce material evidence must lead to an adverse presumption against the prosecution and in favour of the appellant for the purposes of sentencing. The Court took into consideration the material on record including over all personality, subsequent events to commute the sentence of death awarded to the accused and directed that he should not be released from custody for rest of his normal life. While deciding the said review, the Supreme Court has analyzed principles laid down in several decisions of the Supreme Court including the decision in the case of Mukesh and others Vs. State of Delhi (supra).

44. In case of Shankar Kisanrao Khade (supra), the Supreme Court has referred to the decision in the case of Mohammad Mannan Vs. State of Bihar wherein the factors for awarding death sentence, both in the negative and positive, were considered. It was held that number of persons killed by the accused is not a decisive factor nor is the mere brutality of the crime decisive. However, if the brutality of the crime shocks the collective conscience of the community, one has to lean towards the death penalty. In paragraph 122 the Court has laid down the broad analysis and referred to decisions in the case of Dhananjay Chatterjee and other decisions. It would be relevant to quote paragraph 123 of the said decision :

“123. However, what is more significant is that there are cases where the factors taken into consideration for commuting the death penalty were given a go-by in cases where the death penalty was confirmed. The young age of the accused was not taken into consideration or held irrelevant in Dhananjay Chatterjee aged about 27 years, Jai Kumar aged about 22 years and Shivu aged about 20 and 22 years while it was given importance in Amit V State of Maharashtra, Rahul, Santosh Kumar Singh, Rameshbhai Chandbhai Rathod (2) and Amit V State of U.P. The possibility of reformation or rehabilitation was ruled out, without any expert evidence, in Jai Kumar, B.A. Umesh and Mohd. Mannan in much the same manner, without any expert evidence as the benefit thereof was given in Nirmal Singh, Mohd. Chaman, Raju, Bantu, Surendra Pal Shivbalakpal, Rahul and Amit V. State of U.P. Acquittal or life sentence awarded by the High Court was considered a not good enough reason to convert the death sentence in Satish, Ankush Maruti Shinde and B.A.Umesh, but it was good enough in State of T.N. V Suresh, State of Maharashtra V. Suresh, Bharat Fakira Dhiwar and Santosh Kumar Singh. Even though the

crime was not premeditated, the death penalty was confirmed in Molai notwithstanding the view expressed Akhtar, Raju and Amrit Singh.”

In paragraph 30 of the aforesaid decision reference is made to the decision in the case of Dhananjay Chatterji Vs. State of West Bengal (supra), which was considered by the Trial Court while imposing death penalty. Reference is also made to the earlier decision in the case of Rajendra Wasanik Vs. State of Maharashtra which was reviewed subsequently as stated hereinabove. Paragraph 49 refers to the principles for awarding sentence laid down in the case of Bachan Singh and Macchi Singh. In paragraph 124 it was observed that Bachan Singh is more than clear that crime is important but criminal is also important this unfortunately has been overlooked in several cases in the past and even in some of the cases referred to above. It is these individualized sentencing that has made this Court worry in the recent past of imposing death penalty and instead sentencing it for fixed term of sentence exceeding fourteen years or awarding consecutive sentences.

45. In the case of Santosh Bariyar (supra), it was observed that another aspect of rarest of rare doctrine which needs serious consideration is interpretation of latter part of the dictum that ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed. Bachan Singh suggested selection of death punishment as the penalty of last resort when alternative punishment of life imprisonment will be futile and serves no purpose. In paragraph 157 it was observed that while imposing any sentence on the accused the Court must also keep in mind the doctrine of rehabilitation. This considering Section 354(3) of the

Code, is especially so in the cases where the Court is to determine whether the case at hand falls within the rarest of rare case. In paragraph 158 it was observed that reasons assigned by the Courts do not satisfy Bachan Singh test. Section 354(4) of the Code provides for an exception. General rule of doctrine of proportionality, therefore, would not apply. We must read the said provision in the light of Article 21 of Constitution of India. The law laid down by Bachan Singh and Macchi Singh interpreting Section 354(3) of the Code should be taken to be a part of our constitutional scheme. In paragraph 172 it was observed that we have previously noted that judicial principles for imposition of death penalty are far from being uniform. Without going into the merits and de-merits of such discretion and subjectivity we must nevertheless reiterate the basic principle stated repeatedly by this Court, that life imprisonment is the rule and death penalty an exception. Each case, therefore, must be analyzed and the appropriateness must be determined on the case by case basis when death sentence not be awarded except in the rarest of rare case where reform is not possible.

46. Similarly, in case of *Sham Singh @ Bhima* (2017)11-SCC-265, similar principles were enunciated. In case of **Gudda @ Dwarkendra Vs. State of Madhya Pradesh**³⁹, in paragraph 31 and 32, it is observed as follows :

“31. As stated above, on one hand the crime is premeditated in respect of the deceased husband, while on the other, no motive or pre-orchestration could be culled out for the other two deceased persons. The two murders seem to have translated due to his sudden

3 9 (2013)16-SCC-596

realisation and extreme fear of being caught for the murder of Sunil Gupta and also, to save himself from being shunned by the society. Having said so, the brutality envisaged in the premeditated murder of Sunil Gupta alone, in the light of present facts, does not inspire confidence so as to place it in the category of “the rarest of the rare”. Further, the appellant is a young man of about 35 years and neither does he have any criminal antecedents nor is it stated that he is or has been an anti-social element. The future possibilities of his reform also cannot be ruled out.

32. In a civilised society – a tooth for a tooth and an eye for an eye ought not to be the criterion to clothe a case with “the rarest of the rate” jacket and the courts must not be propelled by such notions in a haste resorting to capital punishment. Our criminal jurisprudence cautions the courts of law to act with utmost responsibility by analysing the finest strands of the matter and it is in that perspective that a reasonable proportion has to be maintained between the brutality of the crime and the punishment. It falls squarely upon the court to award the sentence having due regard to the nature of offence such that neither is the punishment disproportionately severe nor is it manifestly inadequate, as either case, would not subserve the cause of justice to the society. In jurisprudential terms, an individual's right of not to be subjected to cruel, arbitrary or excessive punishment cannot be outweighed by the utilitarian value of that punishment.

47. In the case of **Rajesh Kumar Vs. State (NCT of Delhi)**⁴⁰, the Supreme Court has observed that from the fact that accused can be rehabilitated in the society and is capable of being reformed, since the State has not given any evidence to contrary, is certainly a mitigating circumstance which the High Court has failed to take into consideration. The High Court has also failed to take into

4 0 (2011)13-SCC-706

consideration that the accused is not a continuing threat to the society and in the absence of any evidence to the contrary, the High Court was influenced with the brutality in the manner of committing the crime. In **Mohinder Singh Vs. State of Punjab**⁴¹, it was observed in paragraph 25 that it is well settled law that awarding of life sentence is rule and death is exception. The application of rarest of rare case principle is dependent upon and differs from case to case. However, the principles laid down and reiterated in various decisions of Supreme Court show that in a deliberately planned crime, execution meticulously in a diabolic manner, exhibits inhuman conduct in a ghastly manner, touching the conscience of everyone and thereby disturbing the moral fibre of the society, would call for imposition of the capital punishment in order to ensure that it acts as a deterrent. It was further observed that probability of the offender's rehabilitation and reformation is not foreclosed. In paragraph 37 it was observed that various principles laid down in the decision in case of *Swamy Shraddananda Vs. State of Karnataka*, *Santosh Kumar Bariyar Vs. State of Maharashtra* and other decisions, apart from the principles laid down in *Bachan Singh* and also the requirement of a balance sheet of aggravating and mitigating circumstances, the following principles are required to be borne in mind; such as : (a) a conclusion as to the rarest of rare aspect with respect to a matter shall entail identification of aggravating and mitigating circumstances relating both to the crime and the criminal; (b) the expression 'special reasons' obviously means 'exceptional reasons' founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal; (c) the decision in *Ravji Vs. State of Rajasthan*, which was subsequently followed in other cases, wherein it was held that it is only

4 1 (2013)3-SCC-294

characteristics relating to crime, to the exclusion of the ones relating to criminal, which are relevant to sentencing in criminal trial, was rendered per incuriam qua Bachan Singh in the decision in Santosh Kumar Bariyar; (d) public opinion is difficult to fit in the rarest of rare matrix. People's perception of crime is neither an objective circumstance relating to crime nor to the criminal. Perception of public is extraneous to conviction as also sentencing, at least in capital sentencing according to the mandate of Bachan Singh and Santosh Kumar Bariyar; (e) capital sentencing is one such field where the safeguards continuously take strength from the Constitution; (f) the rarest of rare case comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of the rarest of rare case. There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society; (g) life sentence is the rule and the death penalty is the exception. The condition of providing special reasons for awarding death penalty is not to be construed linguistically but it is to satisfy the basic features of a reasoning supporting and making award of death penalty unquestionable; (h) the circumstances and the manner of committing the crime should be such that it pricks the judicial conscience of the Court to the extent that the only and inevitable conclusion should be awarding of death penalty.

In the case of Gurvail Singh @ Gala and another Vs. State of Punjab (supra), again the Supreme Court has considered the principles underlining imposition of death sentence. In paragraph 19 it was held that the age definitely is a factor which cannot be

ignored, though not determinative factor in all fact situation. Probability that accused person could be reformed and rehabilitated is also a factor to be borne in mind. To award death sentence, the mitigating circumstance (crime test) have to be fully satisfied and there should be no mitigating circumstance (criminal test) favouring the accused. Even if both the tests are satisfied as against the accused, even then the Court has to finally apply the rarest of rare cases test, which depends on the perception of the society and not judge-centric i.e. whether the society will approve the awarding of death sentence to certain types of crime or not. While applying this test, the Court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like rape and murder of minor girls, especially intellectually challenged minor girls, minor girls with physical disability, old and infirm women with those disabilities etc. The Courts award death sentence because situation demands due to constitutional compulsion, reflected by the will of the people and is not judge-centric.

48. In the recent decision of Supreme Court in the case of **Yogendra @ Jogendra Singh Vs. State of Madhya Pradesh**⁴², the Court considered imposition of capital sentence upon a person who was convicted for the offences under Sections 302, 326A) and 326(B) of IPC. The case related to the conviction for the murder of victim by pouring acid on her. In paragraph 8 it was observed that question remains to be considered is whether there are special reasons as to why the appellant should be sentenced to death. The term 'special reasons' undoubtedly means reasons that are one of a

4 2 Criminal Appeal Nos.84-85/2009 decided on 17-1-2019

special kind and not general reason. In the present case, there is one factor which might warrant imposition of death sentence, as vehemently urged by the State. That reason is that the appellant committed the crime when he was out on bail in another case where he has been convicted for murder. In paragraph 9 it was observed that the question related to the appellant being disappointment in his relation with the deceased who he believed to have been deserted him. The circumstance of the case and particularly the choice of acid do not disclose a cold blooded plan to murder the deceased. The Court took into consideration the observations in Bachan Singh case and Macchi Singh case and observed that there is no particular depravity or brutality in the acts of appellant that warrants a classification of this case as rarest of the rate.

49. In Bachan Singh Vs. State of Punjab (supra), which is a guiding judicial pronouncement for considering the imposition of capital punishment and which has been followed in various decisions, the Supreme Court in paragraph no.163 has observed as follows :

“163. Another proposition, the application of which, to an extent is affected by the legislative changes, is No. (v). In portion (a) of that proposition, it is said that circumstances impinging on the nature and circumstances of the crime can be brought on record before the pre-conviction stage. In portion (b), it is emphasised that while making choice of the sentence under Section 302, Penal Code, the Court is principally concerned with the circumstances connected with the particular crime under inquiry. Now, Section 235(2) provides for a bifurcated trial and specifically gives the accused person a right of pre-sentence bearing, at which stage, he can bring on record material or evidence, which may not be strictly relevant to or connected with

the particular crime under inquiry, but nevertheless, have consistently with the policy underlined in Section 354(3), a hearing on the choice of sentence. The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302, Penal Code, the Court should not confine its consideration “principally” or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal.

In paragraph 206, the Court has laid down mitigating circumstance for imposing death penalty, which are as follows :

“206.

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.”

In paragraph 207 it was observed that these are undoubtedly relevant circumstances and must be given great weight in determination of sentence. Some of these factors like extreme youth can instead be of compelling importance. In several States of India, there are in force special enactments, according to which a child, that is a person who at the date of murder was less than 16 years of age, cannot be tried, convicted and sentenced to death or imprisonment for life for murder, not dealt with according to the same criminal procedure as an adult. The special acts provide for a reformatory procedure for such juvenile offenders or children. There are numerous other circumstances justifying the passing of the lighter sentence, as there are countervailing circumstances of aggravation. Similar view was expressed in the case of Channulal Vs. State of Chattisgarh (supra) (Criminal Appeal No.1482-1483/2018), Sangeet and another Vs. State of Haryana (2013)2-SCC-452, Ajay Pandit Vs. State of Maharashtra (2012)8-SCC-43.

50. The Trial Court relied on collective conscience to hold that the appellant deserves death penalty. The Trial Court has also relied on the crime test to hold that the case is rarest of rare while ignoring the

criminal test, as laid down in several decision referred to hereinabove. There was nothing to indicate that the accused was beyond reformation and rehabilitation, as mandated in the case of Bachan Singh and other cases. The mitigating circumstance that the accused was of young age at the time of commission of offence, was ignored by the Trial Court. In the circumstances, although conviction of the accused can be confirmed, the death sentence will have to be commuted to imprisonment for life.

51. Considering the mitigating circumstances while awarding death penalty, as enunciated in the case of Bachan Singh (supra), which included whether the offence was committed under the influence of extreme mental or emotional disturbance, the age of accused; if the accused is young or old, he shall not be sentenced to death, the probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society, the probability that the accused can be reformed and rehabilitated, re to be considered. In the present case, the Trial Court has not applied its mind to the aforesaid factors. The accused was young boy aged about 23 years. There is no past criminal record. The mitigating circumstances reflected as referred to in the aforesaid decision, were not considered in proper perspective by the Trial Court. Taking into consideration over all circumstances, we do not find that present case can be termed as “rarest of the rare” case and hence the appellant do not deserve death penalty. Hence, the sentence of death penalty is required to be set aside while confirming the conviction.

52. Accordingly, we pass following order :

ORDER

- (a) Criminal Appeal No.139 of 2017 is partly allowed;
- (b) The sentence of conviction for the offences under Section 302 of IPC and u/s. 326(B) of IPC imposed by Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai, in Sessions Case No.311 of 2014, dated 8th September 2016 is confirmed;
- (c) The impugned judgment and order passed by learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai, in Sessions Case No.311 of 2014, dated 8th September 2016, is modified by setting aside the sentence of death penalty awarded for conviction u/s 302 of IPC and commuted to sentence of imprisonment for life;
- (d) Criminal Appeal No.139 of 2017 and Criminal Confirmation Case No.3 of 2016 are disposed off.

(PRAKASH D. NAIK, J.)

(B.P.DHARMADHIKARI, J.)

MST