2025:PHHC:179156

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

MRC-2-2020
CRA-D-346-2020

State of Haryana ...Appellant

Versus

Virender @ Bholu …Respondent

CRA-S-1306-2020

Kamla Devi ...Appellant

Versus

State of Haryana …Respondent

JUDGEMENT RESERVED ON	JUDGEMENT PRONOUNCED ON	OPERATIVE PART PRONOUNCED OR FULL	UPLOADED ON
18.11.2025	23.12.2025	FULL PRONOUNCED	24.12.2025

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

Present: Mr. Hoshiar Singh Jaswal, Advocate
for the appellant- Virender in CRA-D-346-2020 and
for respondent in MRC-2-2020.

Mr. Rahul Mohan, Addl. A.G., Haryana
Mr. Karan Sharma, D.A.G., Haryana
Mr. Shiva Khurmi, D.A.G., Haryana
Mr. Yuvraj Shandilya, A.A.G., Haryana.

Mr. Bhimsham Kumar Majoka, Advocate and
Ms. Mansi, Advocate
for the complainant.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
377	01.06.2018	Sadar Palwal	363, 366, 302, 201, 120-B Indian Penal Code, 1860 [IPC], and 6 of the Protection of Children from Sexual Offences Act, 2012 [POCSO]

Criminal Case number before the Sessions Court	Sessions Case No. 56 of 2018
Date of Decision	24.01.2020
Date of order on the quantum of sentence	27.01.2020

Name of the accused/convict	**Virender alias Bholu**
Conviction under Sections	302, 376, 120-B, 366, 363, 201 IPC, and 6 of the POCSO Act (in alternative Section 376 AB)

Sentence imposed upon the convict -Virender			
Section	Sentence of imprisonment	Fine in INR	Sentence in default of payment of fine
302, 376 AB IPC	Death sentence, to be hanged by the neck till he is dead	10,000/-	SI for 01 month
120-B IPC	RI for 07 years	5000/-	SI for 01 month
366 IPC	RI for 07 years	5000/-	SI for 01 month
201 IPC	RI for 07 years	5000/-	SI for 01 month
6 of the POCSO Act	No separate sentence awarded as sentence already awarded under Section 376 AB of IPC in view of provision of Section 42 of POCSO Act, 2012	-	-

Name of the accused/convict	**Kamla Devi**
Conviction under Sections	120-B, 201 IPC

Sentence imposed upon the convict – Kamla Devi			
Section	Sentence of imprisonment	Fine in INR	Sentence in default of payment of fine
120-B IPC	RI for 07 years	5000/-	SI for 01 month
201 IPC	RI for 07 years	5000/-	SI for 01 month

1. Seeking confirmation of the Death Sentence, the trial Court had sent the above-mentioned reference to this Court under §366 of the Code of Criminal Procedure, 1973, [CrPC]; and challenging the conviction and the consequent sentence as captioned above, both the appellants, who are son and mother, also came up before this Court by filing the present criminal appeals under §374(2) CrPC.

2. The victim 'K' is a girl-child, whose real name we are substituting, and for this matter, we will affectionately refer to her as '*Laado'*, was a girl-child aged 5 years, 7

months, and 14 days. In the afternoon of May 31, 2018, she was raped and murdered, allegedly by her father's employee, the Appellant Virender alias Bholu.

3. Laado's father worked as a small-time tent installer, and convict Virender had been working with him for about 5-6 years. In the morning of May 31, 2018, Laado's father, along with Virender, had gone to install a tent. They returned around noon, and Virender went to Laado's father's home to bring his lunch. While bringing lunch, Laado also accompanied Virender. Given the simmering hot summers, after taking food, Laado's father fell asleep at the workplace itself. Taking advantage, Virender allegedly took hold of Laado's hand and led her to his home, where he raped her and thereafter killed her with a kitchen knife, and hid her body in a big kitchen container wherein his mother used to store flour (*Atta*), after emptying it. At that time, Virender's mother, convict Kamla Devi, had gone out for duty.

4. After waking up, Laado's father went home, where he did not find her, and then the entire family and the relatives started searching for Laado. When Laado's father questioned Virender, he claimed that the girl had accompanied him only to the workplace. Later, even the community joined the search efforts. Virender was accompanying Suresh Chowkidar [village guard], who was searching for the girl child. In the meantime, some villagers pointed out that they had seen Laado with Virender, and he was taking her towards his home.

5. There was a private school in the vicinity, where CCTV cameras had been installed. The school's owner was contacted, who, along with the technician, played the video recordings from the Digital Video Recorder [DVR], and all of them saw Virender taking Laado by holding her hand. On this, the family members, along with others, reached Virender's home, where his mother, convict Kamla Devi, was present. When they enquired about Laado and Virender, she denied their presence. However, when they tried to enter, she refused to let them in. In response, the people forced their way into her house, but Kamla Devi turned off the electricity by disconnecting the loop from the overhead power line. In the meantime, in the light of the torch of a mobile phone, one of Laado's cousins, named Sonu, and one Satyawati, noticed a container lying in the compound [Chowk /Aangan], and when she opened the lid of the container, Laado's body was concealed in it. The village Sarpanch informed the police, and some people allegedly thrashed Kamla Devi.

6. PW23 ASI Ajit Singh, testified that when he was posted as in-charge of the police post Gadpuri in Police Station Sadar Palwal, Haryana, on May 31, 2018, at 9.30 PM, he had received information from PW9 Kanchhid alias Karan, the Sarpanch of the village

Asawati, regarding the murder of a girl aged five years, and in this regard, DDR No.19 [Ext P29] was recorded, and he proceeded towards the spot. On reaching the spot, he met PW-1 Surender, the brother of Laado's father, who made a written complaint [Ext P1] to him. PW-1 Surender testified that he had informed the Sarpanch about the recovery of the dead body and asked him to call the police.

7. Based on this information, a formal FIR [Ext P20] was registered in Police Station Sadar Palwal, and a copy of the FIR was sent under 157 CrPC to CJM, Palwal, which was received on June 01, 2018, at 9:30 AM.

8. PW23 ASI Ajit Singh stated in his examination-in-chief that on the intervening night of May 31, 2018 and June 01, 2018, PW1 Surender had moved an application Ext P1 before him, on which he had made an endorsement, Ext P28, and sent the same through PW17 Head Constable Parveen for lodging of FIR, who, after getting the FIR registered, returned the original file to PW23 ASI Ajit Singh with endorsement Ex.P21. PW17 HC Parveen testified that he had received the complaint from the Investigator, taken it to the police station, and, after the FIR was registered, returned the file, with the endorsement Ext P21, to the Investigating Officer.

9. The Police began the investigation, detained Kamla Devi, and had the crime scene inspected by a team of Forensic Experts. PW23 ASI Ajit Singh prepared an inquest report of Laado, Ext P-31, and Laado's body was sent for the postmortem examination, where a team of doctors confirmed rape and homicide.

10. PW16 Dr Raj Kumar, Medical Officer, GH, Palwal, tendered in evidence his affidavit Ext PW16/A regarding the medical examination of the accused Kamla Devi, [MLR Ext P22], which mentions injuries on her body, but the prosecution's case is that the villagers thrashed her. Although the 'Arrest Memo' of Kamla Devi is in the Court file, it was not tendered as evidence. However, both the Medico-Legal Report [Ext P22] and the arrest memo of Kamla Devi mentions the date of June 03, 2018.

11. As per the prosecution, on June 01, 2018, the villagers caught Virender, who was also allegedly thrashed and handed over to the police. The Investigator took him to the hospital without any delay, where Virender's medical examination was conducted at 9:50 PM.

12. After completing the investigation, PW24 Devender Singh prepared a challan under §173(2) CrPC against Virender alias Bholu and his mother Kamla Devi and presented it

before the Illaqa Magistrate, who committed it to the Court of Sessions for the trial. The trial Court framed the charges for the offences captioned above, to which the appellants pleaded not guilty. After the prosecution's evidence was completed, both the accused, in their statements under §313 CrPC, denied all the allegations brought on record by evidence as "incorrect" and claimed innocence.

13. Initially vide order dated July 27, 2018, the trial Court had framed charges against accused Kamla Devi under §§120-B and 201 IPC and against accused Virender alias Bholu under §§363, 366, 302, 120-B, and 201 of IPC and §5(m) read with §6 of POCSO Act 2012. After that, the trial had commenced, but later the trial Judge, in her order dated Jan 24, 2020, observed that vide Criminal Law Amendment Act 2018, the legislature had amended the IPC, by inserting §376(AB)[1], which had come into force from Apr 21, 2018, i.e., before the commission of the present offence. The trial Court opined that the charges needed to be altered by inserting §376(AB) IPC. By making these observations, vide order passed on the same day, i.e., on Jan 24, 2020, the charges were altered by adding an offence under §376(AB) of the IPC, and the altered charge was also put to the accused, who did not plead guilty to the altered charges. The order dated Jan 24, 2020, also reveals that after framing the charges, they were read over to the accused, and the counsel for Virender stated that they did not wish to recall or re-summon the witnesses who had already been examined and did not intend to lead any evidence in view of the amended charges.

14. Vide impugned judgment, the trial Court held both the accused guilty, and they were convicted and sentenced as described above.

15. We have heard the Counsel for the parties and have also analyzed the record, and it leads to the following outcome.

16. The fact of the victim Laado's age, rape, and murder is undisputed and is proved by the following evidence.

17. PW24 Inspector Devender Singh obtained Laado's birth certificate and took the same into possession vide memo Ext P3. The prosecution examined PW28, Ashok Kumar, who proved Ext P63, Ladoo's birth certificate, according to which she was born on Oct 17, 2012.

[1] 376AB. Punishment for rape on woman under twelve years of age. —Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:
Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:
Provided further that any fine imposed under this section shall be paid to the victim.

18. On Jun 01, 2018, after the inspection by the Forensic Science team, the death report form Ext P31 inquest was prepared, and Ladoo's dead body was sent for postmortem examination. Ladoo's uncle, PW1 Surender Singh, and one Jai Singh, identified her dead body before the postmortem, and as per the postmortem examination report, Ext P15, the length of her body was 40 inches. The Doctors observed in the column of "Any Other Findings" that the labia majora was congested with blood stains present over the vulva region, a tear of the clitoris, and a tear of the hymen. In addition to the injuries on the private parts of the victim girl, the Doctors also noticed four incised wounds and three contusions on her body. One of the injuries had pierced her peritoneum, and another wound penetrated her abdominal wall muscle, going obliquely downwards, ending up as an incised wound on the right lobe of the liver. Regarding the time between the injury and the death, doctors observed it as "Variable". After postmortem examination, the victim's body was handed over to PW1 Surender Singh vide memo Ext P2.

19. PW10 Dr. Gagan also tendered in evidence the contents of the postmortem report as Ext PW10 /A. PW-10 Dr. Gagan explicitly stated on oath that the possibility of subjecting the deceased to rape, sexual assault cannot be ruled out, as tearing was present on her hymen.

20. The *first circumstance* is Laado reaching her father's workplace along with Virender, when Virender had brought lunch for her father.

21. Laado's father [PW2] testified that on May 31, 2018, in the morning, at around 8:00 or 9:00 AM, he, along with accused Virender alias Bholu, had gone to Munshi's house to install a tent, and after the installation, they returned to their shop around 11/11:45 AM. Virender then went to Laado's father's house to bring lunch, which he brought at 12:30 PM. Laado also came to the shop with Virender. Although the prosecution should have also examined Laado's mother or the person who had handed over the tiffin to the accused to state about Laado leaving with the accused or the accused asking Laado to accompany him, however, the non-production of such evidence does not disprove the fact of Laado reaching at her father's workplace along with the accused. Thus, the circumstance of the victim 'Laado*'* accompanying Virender to her father's workplace is proved.

22. The *second circumstance* is Laado's disappearance and her following search, in which even the accused Virender participated.

23. Laado's father, PW2, testified that after having lunch, he slept at the backside of the shop and woke up at 4:00 PM. When he arrived at his house, he found that his daughter

Laado was not there. On realizing this, the family members, along with Laado's father [PW2] and accused Virender, started searching for her. On inquiry from the neighborhood, they searched for Laado but did not find her. The defence confronted PW2 with his previous statement recorded on June 01, 2018, under §161 CrPC, Ext D1, in which Laado's father had stated that the accused Virender was searching for her in their presence, and when he inquired about Laado, Virender told her father that he had dropped her off at the plant. Thus, this portion was not an improved version.

24. PW26 Sonu, in her cross-examination, admitted that the accused Virender was also searching for the deceased with Suresh Chowkidar. After that, she, along with other villagers, perused the CCTV footage from Sarvodaya School and noticed that the accused was leading Laado towards his home, whereas earlier, Virender (the accused) had also been searching for Laado, which would imply that he was leading the search party astray.

25. The *third circumstance* is accused Virender's conduct in making a false explanation to Laado's father about dropping her off at her father's plant.

26. When PW2 had asked Virender about the victim, his daughter 'Laado', Virender told him that he had left her at their workplace. The admission made by the accused to Laado's father [PW2], that he had left her at their workplace (plant), is admissible as *res gestae*. Once it was established that Laado initially came to her father's workplace with Virender, and even after reaching her father's place, she continued to be with Virender, the burden was on Virender to explain how long Laado had been with him and with whom had he left the girl-child. On enquiry later, when Virender told Laado's father that he had dropped her at the plant, which was found to be a false narration, because Laado's body was found at Virender's house, and such an explanation amounts to an admission, which is legally admissible as *res gestae*.

27. The *fourth circumstance* is that the co-villagers, PW6 Harkesh and PW7 Itwari, had seen the accused Virender walking with Laado before her disappearance.

28. PW6 Harkesh was running a clinic in the village. He testified that on May 31, 2018, at about 2:00 PM, when he was in his clinic, he had come out to urinate, and at that time, he had noticed Virender showing something to Laado on his mobile phone. After some time, he saw that Virender was taking Laado by holding her hand.

29. PW7 Itwari testified that on May 31, 2018, at around 2:00 PM, when he was sitting in front of his house, he had seen accused Virender taking Laado towards his house, and when

he confronted the accused, Virender told Itwari that he would be back with Laado after half an hour. PW26 Sonu (aged 29 years), daughter of Laado's uncle, testified that on coming to know about Laado's disappearance at around 1:30 - 2:00 PM, she started searching for her. She stated that Itwari told her that he had seen accused Virender taking the deceased by holding her hand, but he had not seen Virender returning.

30. Although PW7 Itwari proved the material fact that he had talked to the accused Virender, and on this, Virender had told him that he would come back with Laado in half an hour; however, this fact is not mentioned in the initial documents; moreover, perusal of the cross-examination does not mention that PW7 Itwari was confronted with his earlier statement for non-mention of this fact. Even if this portion of Itwari's statement is excluded from consideration, his statement of noticing Virender with Laado is corroborated by PW26, Sonu, and her evidence is admissible as res gestae. Furthermore, the statement of PW6 Harkesh alone is sufficient to prove this circumstance beyond a reasonable doubt.

31. The *fifth circumstance* is that PW1 Surender [Victim's uncle], PW2 [Victim's father], PW26 Sonu [Victim's cousin], and the independent witnesses PW4 Ram Babu, PW5 Raj Kumar, PW9 Kanchid alias Karan [Pradhan], and PW13 Tek Chand had watched the CCTV video recordings of the evening of May 31, 2018, in which they had seen the accused Virender walking towards his house by holding Laado's hand.

32. PW5 Raj Kumar, owner of Sarvodaya Public School at Asawati, testified that on May 31, 2018, at the request of the villagers, he had called technician Tek Chand [PW13] to play CCTV footage on which Tek Chand came and played the same, in the presence of PW5 Raj Kumar and others. He noticed in the video that Virender was taking Laado by holding her hand from the street. PW13, Tek Chand, testified that in April 2018, he had installed four CCTV cameras at Sarvodaya Public School, Asawati. On May 31, 2018, when CCTV footage was checked, he noticed that Virender was taking Laado by holding her hand. Laado's uncle, PW1 Surender, in his cross-examination, admitted that although he did not notice or see Virender taking away Laado, he had seen the accused taking her away in the CCTV camera. PW2 victim's father, PW26 Sonu, and PW4 Ram Babu also testified that in the CCTV footage, they noticed that the accused was taking Laado towards his home.

33. It is not the case of the defence that the video was a deepfake. Even otherwise, in 2018, Artificial Intelligence was not readily accessible, and deepfake[2] technology was still in its developmental stage in the USA. Therefore, no occasion arises for the CCTV recording stored in DVR which were played to the witnesses, was a deepfake.

[2] https://mitsloan.mit.edu/action-learning/when-world-changed-so-did-we

34. Thus, the testimonies of PW1, PW2, and PW26, corroborated by independent witnesses PW4, PW5, PW9, and PW13, are clinching evidence establishing the relevant fact of Virender taking away Laado by holding her hand, after which her dead body was recovered from the compound of Virender's house.

35. The *sixth circumstance* is the accused Virender's identification by PW19 Amit Sharma, on June 01, 2018, and Mar 12, 2019.

36. PW19 Amit Sharma, a Computer Engineer, testified that on June 01, 2018, he had visited the village of Asawati in Sarvodaya Public School to remove the DVR, including the internal hard disk of the CCTV video, which was seized by memo Ext P13. Amit Sharma testified that at that time he had watched the CCTV footage and observed the movements of Laado and the accused present in the Court, and he identified the appellant, Virender, as the person present in the Court to be the same as seen in the CCTV footage. He further testified that on Mar 12, 2019, he had prepared a CD and a pen drive from the DVR, which were taken into possession by the Investigator vide report Ext P25.

37. PW19 Amit Sharma, had watched the video on two occasions, first on June 01, 2018, when he had recovered the DVR along with its hard disk, and secondly on Mar 12, 2019, when the SHO had asked the MHC to take out the DVR and the hard disk from Police Godown [Malkhana], PW19 had watched it to copy the data on CD and Pendrive. The first visuals of Virender were obtained prior to the recovery of the DVR and its hard disk, which were later recovered and seized. PW19 had watched the video recording for the second time on Mar 12, 2019, and after watching it, he had copied the clipping onto the CD and the Pendrive. PW19 Amit explicitly identified Virender as the person who was walking with the girl child in the video footage. Thus, the evidence of an independent witness, PW19, Amit Sharma, identifying the accused, Virender, as the person walking while holding the hand of Laado in the CCTV recording stored on the DVR is proved beyond a reasonable doubt.

38. The *seventh circumstance* is Virender's video with Laado copied on the CD [Ex.MO/A] and the pen drive [Ex. MO/B].

39. Link evidence of DVR of CCTV:

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
01.06.2018 Ext. P13	Memo of possession	DVR sealed on 01.06.2018 by Amit Kumar and on tape there is sign of Amit Kumar and Ajit	233

	of DVR	Singh. Separate parcel for DVR sealed by Investigator with 5 SS stamps. WITNESSES: Raj Kumar & Tek Chand	
12.03.2019 Ext. P25	Recovery memo of one CD and a Pen Drive	Amit Kumar presented the footage of the CCTV stored on the DVR on CD, and the Pen Drive after making it. Taken into police possession and sealed with seal MK WITNESSED by: Amit Kumar and HC Gurmukh [PW14]	247
12.03.2019 Ext. P26	Certificate u/s 65-B	Issued by KK Import Corporation. Signatures of Amit Kumar.	249

40. PW19 Amit testified that on June 01, 2018, they recovered a DVR including the internal hard disk of the CCTV cameras installed at Sarvodaya Public School, and the Investigator took these into possession and placed them in a parcel and affixed five seals of SS on it, vide memo Ext P13. PW24 Inspector Devender stated in his examination-in-chief that he had recovered the DVR from school vide memo Ext P13, which is corroborated by the statement of PW23 ASI Ajit Singh, who further stated that the DVR was sealed in his presence. Independent witnesses, PW5 Raj Kumar and PW13 Tek Chand, also corroborated such recovery and seizure. PW14, HC Gurmukh Singh tendered in evidence his affidavit, Ext PW14/A, in which he mentioned the deposit of a parcel of DVR by PW24 Inspector Devender with him.

41. Initially, the prosecution filed a report under §173(2) CrPC without collecting or extracting the data from the DVR; however, later on, during the pendency of the trial, on Mar 12, 2019, the data was extracted from the hard disk through Computer Engineer PW19 Amit Sharma, and sent to the trial Court by filing a supplementary police report under §173(8) CrPC on Mar 16, 2019.

42. PW19 Amit Sharma testified that on Mar 12, 2019, he prepared a CD and a pen drive from the DVR, and the same was taken into possession vide memo Ex. P25. SI Kuldeep Singh was examined on May 15, 2019, as PW18, wherein he stated that he had gotten the recordings on the CD and the pen drive through Amit Sharma. PW18 Kuldeep Singh had tendered in evidence a CD and a pen drive, as Ext MO/A and Ext MO/B. He also mentioned about preparing a report under §173 CrPC on Mar 13, 2019. SI Kuldeep Singh was again examined on Aug 14, 2019, as PW25, and he testified that he had prepared a supplementary report under §173(8) CrPC and had presented the same before the Court on

receipt of the CD and the pen drive from Amit Kumar, reiterating what he had stated earlier.

43. As per the memo of possession of the CD and the pen drive, Ext P25, PW19 Amit Kumar had prepared the CD and a pen drive after extracting the data from the DVR, and after that, the parcels were again sealed with seal MK. PW14 HC Gurmukh Singh was the attesting witness to Ext P25. However, a perusal of the statement of PW14 HC Gurmukh Singh does not mention about the link evidence that he had kept the DVR in safe custody or that before opening the parcel, the seals were intact, and whose permission was sought for opening the seals. Further, even PW19 Amit Sharma does not mention that, before the DVR was handed over to him, it was sealed in a parcel bearing the seal SS, that it was opened in his presence, and that the seals were intact at the time. Furthermore, neither PW14, HC Gurmukh Singh, nor PW19, Amit Kumar, stated these facts in their statements on oath, and the prosecutor did not prove these facts by leading questions or by confronting them with their previous statements under §161 CrPC.

44. In question no. 6 of the statement put to the accused under §313 CrPC, it was mentioned that the footage/DVR was taken into possession on June 01, 2018. In question no. 12, the circumstance put to the accused Virender was that PW18/25 stated he got prepared a CD and a pen drive, which were taken into possession vide memo Ext P25, to which the accused denied. Thus, no circumstance was put to the accused, Virender, regarding the safe custody of the DVR, the CD, and the Pendrive extracted from the data from the digital video recorder attached to the CCTV on Mar 12, 2019. Given the above, the circumstance that whether the DVR was kept in safe custody of [MHC] PW14, HC Gurmukh Singh who on Mar 12, 2019 had handed over the same to Investigator who after comparing the seals found this to be correct in the presence of PW19 Amit Kumar is not put to the accused Virender in question no. 6 of §313 CrPC, as such these circumstances cannot be read in evidence against the appellant Virender.

45. It would be relevant at this stage to mention that extremely long questions were put to the accused, whereas there should have been shorter questions. However, we are of the considered opinion that no prejudice is caused to the accused, and for this reason, we are not inclined to reframe the questions.

46. In Rama Shankar Singh v. State of West Bengal, 1962 Supp (1) SCR 49, pg62,64, Oct 10, 1961, a three-Judge Bench of the Hon’ble Supreme Court holds,

> In our view, the learned Sessions Judge in rolling up several distinct matters of evidence in a single question acted irregularly. Section 342 of the Code of Criminal Procedure [*1898*] by the first sub-section provides, insofar as it is material: "For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court … shall … question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence". Duty is thereby imposed upon the Court to question the accused generally in a case after the witnesses for the prosecution have been examined to enable the accused to explain any circumstance appearing against him. This is a necessary corollary of the presumption of innocence on which our criminal jurisprudence is founded…. In the present case, we are of the view, having regard to the circumstances, that the appellants have not been prejudiced, because of failure to examine them strictly in compliance of the terms of Section 342 of the Code and that view is strengthened by the fact that the plea was not raised in the High Court by their counsel who had otherwise raised numerous questions in support of the case of the appellants.

47. The *eighth circumstance* is the admissibility of the certificate issued under §65B[3] of the Indian Evidence Act, 1872 [IEA], by a Computer Engineer who had stored on the CD and the Pendrive, the data extracted from the Digital Video Recorder installed with the CCTV camera, in which the accused was seen walking towards his home, holding Laado's hand.

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[3] **65B. Admissibility of electronic records.** — (*1*) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.
(*2*) The conditions referred to in sub-section (*1*) in respect of a computer output shall be the following, namely: —
(*a*) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
(*b*) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
(*c*) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
(*d*) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities. ….

48. PW5 Raj Kumar, owner of Sarvodaya Public School at Asawati, had testified that the CCTV camera was installed at his school. PW13, Tek Chand, testified that in April 2018, he had installed four CCTV cameras at Sarvodaya Public School, Asawati.

49. PW19 Amit Sharma testified that on March 12, 2019, he had prepared a CD and a pen drive from the DVR and had given a report, Ext P25. He also issued a certificate under §65-B of the IEA and tendered it in evidence as Ext P26. PW19 Amit Sharma, in his cross-examination, stated that he is a Computer Engineer and has done a Computer Engineering degree. He further stated that no manipulation can be done by collecting the data in a pen drive or a CD from the DVR.

50. Thus, the certificate under §65-B of the IEA was issued by PW19, whereas there is no evidence that he was managing the DVR from May 31, 2018, to June 01, 2018, and until Mar 12, 2019. Simply because a computer engineer copies the data would not imply that such an Engineer was the person in control, as defined under §65-B of the IEA. Since the DVR was never maintained or was under Amit Kumar's control, the certificate Ext P26, issued by PW19 Amit Sharma, has no evidentiary value under §65-B of the IEA and cannot be used against Virender.

51. In State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru, [2005] Supp 2 SCR, pg203: 2005-INSC-333, the Hon’ble Supreme Court holds,

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

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

52. The *ninth circumstance* is the accused Kamla Devi resisting a search of her house to trace Laado and switching off the electricity.

53. PW1 Surender testified that he, along with his brother and other villagers, went to the house of the accused. When they tried to enter the house, Virender's mother Kamla Devi did not permit them to search her house, however they insisted and entered the house and in the meantime Kamla Devi switched off electricity of her house by pulling the wire, however Sonu [PW26] turned on the light from her mobile phone and noticed the dead body of Laado, concealed in a drum, lying in a corner of the house's compound (Chowk; Aangan). PW1, in his cross-examination, also stated that the drum in which the dead body was lying was kept in the courtyard.

54. Thus, given the credibility of evidence, the circumstance of the appellant Kamla Devi resisting the search of her house to trace Laado and switching off the electricity is proved; however, its impact would be discussed in the later part of the judgment.

55. The *tenth circumstance* is the discovery of Laado's body concealed in a drum from the compound of the house of both the accused, Virender and his mother Kamla Devi.

56. PW26 Sonu, testified that when they, along with the other co-villagers, had entered the house of accused, and Kamla Devi had turned off the electricity, then in the light from the torch of her mobile phone, she opened the lid of a drum lying in the courtyard, within the boundary wall of the house of the accused, she noticed the dead body of Laado, which was taken out. Testimonies of PW1 Surender, PW-2 Laado's father, PW4 Ram Babu, and PW9 Kanchid alias Karan [Pradhan] are also along similar lines. Laado's body was taken out of the drum and kept on the cot inside the accused's home, as mentioned in the Crime-Scene report Ex P27.

57. The SHO of the Police Station Sadar, Palwal, PW24 Inspector Devender Singh testified that on June 01, 2018, upon receiving the information of the rape and murder of a minor girl, he, along with the police team, reached the crime scene in the village of Asawati.

58. PW23 ASI Ajit Singh testified in his examination-in-chief that he had recovered a drum and a blood-stained stone from the spot, which was taken into possession vide Ext P23. PW23, ASI Ajit Singh stated in his examination-in-chief that he had prepared the site

plan Ext. P30. In the site plan, Ext P30, a drum containing the dead body was recovered from the corner of the compound, marked as 'A', and the place has been mentioned by the Investigator in Hindi as Aangan [chowk] in Ext P30. The site plan of the place of crime was also prepared and tendered in evidence as Ext P4, at which point 'C' was shown where the drum was kept in the Chowk [compound/Aangan] of the house, and at point 'A' was the bed where the rape was committed with the child.

59. It is clarified that the drum was in the *Aangan* [Compound], which is generally referred to as '*Chowk'*. However, there is no confusion that the drum containing the dead body was present within the boundaries of the house of the accused and not outside.

60. PW17 HC Parveen testified that the Investigator had lifted a blood-stained stone and a drum from the spot, which was taken into possession vide memo Ext P23. PW17 HC Parveen identified the drum Ext MO/3 and blood-stained stone as Ext MO/2.

61. PW27 Dr. Anshuman Rai, Senior Scientific Assistant, DNA Division of Forensic Laboratory, Haryana, Madhuban at Karnal, tendered in evidence the report of the laboratory as Ext PX4. He testified after seeing the drum in the Court, that it was the same drum he had examined and was exhibited as MO/3.

K-1. DRUM MO/3 [Mentioned in Ext P30]

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
01.06.2018 Ext P23	Memo of possession of flour drum	During investigation from the crime spot in house of Virender @ Bholu, a flour drum was recovered which had blood stains and the drum was sealed with one separate SS seal.	243
29.06.2018 Ext PX1	Report of RFSL, Bhondsi (Gurugram)	Exhibit-1. One brown gatta drum with iron ring on top stained with brown stains. Exhibit-1 (Gatta Drum) was stained with blood stains.	137-138
20.12.2018 Ext PX4	Report of FSL, Madhuban, Karnal	1 brownish cardboard drum without lid stained with few dark brown stains marked as item No.1. The Autosomal STR analysis indicates that the DNA profile of stains on source of item No.1 (cardboard drum) Source of item no. 2 (dirty piece of stone) is matching with DNA profile of Source of item No.4A (jeans knickers), source of item no.4B (T-shirt), source of item No.5A (i) (swab), source of item No.5B (i) (swab), source of item	131-132

		No.5C (i) (Swab). DNA profile of stains on source of item no. 6 (underwear), source of item no.8A(T-shirt), source of item no.8B(Pants) is matching with the DNA Profile of Virender @ Bholu (Source of item No.7) and not matching with the DNA profile of stains on source of item No.1 (cardboard drum) Source of item no. 2 (dirty piece of stone), Source of item No.4A (jeans knickers), source of item no.4B (T-shirt), source of item No.5A (i) (swab), source of item No.5B (i) (swab), source of item No.5C (i) (Swab)	

62. As per the reports of the laboratories Ext PX1 and Ext PX4, the DNA profile of stains on the drum matched with the DNA profile of the victim's clothes, i.e., knickers, T-shirt, vaginal swabs, and vulval swabs. Thus, the scientific evidence establishes that the victim's body was kept in the drum MO/3, which was taken into possession vide memo Ext P23.

63. As per the reports of the laboratories, Ext PX1 and Ext PX4, the DNA profile of stains present on the clothes of the accused did not match the DNA profile of stains on the drum. However, given the sterling quality of the primary evidence corroborated by the Scientific evidence, the circumstance of the dead body of the victim concealed in a drum, which was kept in the compound of the house of the accused, is proved beyond a reasonable doubt.

64. The *eleventh circumstance* is the inspection of the crime scene by a team of Forensic Science Experts.

65. The Investigator summoned the Forensic Science Laboratory [FSL] team from Palwal, and they gave a report of the crime scene as Ext P27, and in this report, the recovery of a girl child who was murdered at Bharat Nagar Colony near the railway station was mentioned.

66. PW21 Vinod Kumar Singh, Senior Scientific Officer, testified that upon receiving a telephone call at about 12 midnight and having reached the spot at about 1:00 AM, they entered the crime scene. As per the report, Ext P27, the Forensic Science team noticed the body of the baby girl on the cot. A cloth *dari* [A small & thin carpet] and a bed sheet were also spread under the body of the girl on the cot, which had bloodstains, and the team also noticed multiple injuries on her person. The team, noticing the genital region of the baby girl, observed that her vagina was gaping. The investigator was advised to preserve

evidence, such as the victims' clothes, bed sheets, carpets, etc., and to send it to the laboratory for testing.

67. The *twelfth circumstance* is genetic evidence to connect Virender with Laado.

68. In the PMR [Ext P-15] the doctors had collected one vulval swab sealed with a single seal for seminal analysis, one vaginal swab sealed with a single seal for DNA, one vaginal swab sealed with a single seal for seminal analysis for RFSL, and an envelope containing two vaginal and one vulval swab bearing five seals addressed to Assistant Director RFSL, Bhondsi, Gurugram. PW23, ASI Ajit Singh testified that after the post-mortem, the Doctor handed over the sealed parcels to him, which were taken into police possession vide memo Ex. P24.

69. PW12 Constable Hari Om stated that after the Investigator arrested the accused, he was medically examined at the Government Hospital, Palwal. PW12 Constable Hari Om testified that at the hospital, the doctors handed over sealed parcels of blood sample and underwear of the accused Virender to him, which he took into possession vide memo Ext P18. The prosecution has tendered in evidence the MLR report of Virender as Ext P14. As per the report, he was medically examined on June 01, 2018, at 9:50 PM without any delay. He was described as a 24-year-old male. Injuries were noticed on his person. The prosecution examined Dr. Ashutosh Sharma as PW8, and he tendered in evidence his affidavit Ext PW8/A, in which the narration of MLR of accused Virender was reproduced.

70. PW24 Inspector Devender Singh stated in his cross-examination that the accused Virender was arrested from the village Asawati near his house at about 8:00 PM on June 01, 2018. PW12 Constable Hari Om, in his cross-examination, corroborated the time of the arrest of the accused Virender, with a clarification that he was arrested from the village Asawati at about 7:30 PM; however, the discrepancy of 30 minutes is immaterial to the facts and events of this case.

71. As per MLR report of Virender Ext P14, several injuries were noticed on the person of the accused. On being questioned about the blood stains on the clothes of the accused, Virender, the Investigator feigned ignorance and did not explain. However, he testified that there were some injuries on the body of the accused, Virender, at the time of his arrest. Although the investigator did not explain the injuries, he had stated in his cross-examination that the accused was handed over to him by the villagers, and it has come to light in the investigation and other evidence that, before handing the accused over to the police, the villagers had thrashed him. It is not unusual that, upon noticing such a grave and

heinous offence, some members of society would lose their temper and thrash the accused. In fact, the injuries observed on the accused are not serious. It probably implies that some sane people had intervened and tried to protect the accused from the mob lynching.

72. PW12 Constable Hari Om testified that doctors had handed over a pair of trousers and a T-shirt of the accused to the Investigating Officer PW24 Devender Singh, in his presence, which were taken in police custody vide memo Ext P19. PW27 Dr Anshuman Rai, Senior Scientific Assistant (B), DNA Division, FSL, Madhuban, Karnal, identified the T-shirt as Ext MO/4; one pair of blue underwear as Ext MO/5, and a grey pair of trousers as Ext MO/6 tendered in evidence.

K-2. VICTIM'S VAGINAL SWABS:

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
01.06.2018 Ext P24	Memo of possession of parcel of Khushi	During post-mortem, doctor prepared 3 envelops in the name of RFSL, Bhondsi out of which two were sealed with 5 SS seals and one was sealed with 3 SS seal. That on the one envelope vaginal swab for DNA/AND semen analysis was written and one parcel was of Khushi which was sealed with 5 SS seals was presented.	245
25.06.2018 Ext PX	Report of RFSL, Bhondsi (Gurugram)	Exhibit-5a(i): Three microscopic glass slides. Exhibit-5a(ii): One cottonwool swab on stick kept in a polythene packing (1 seal of SS) described as vaginal swab. Exhibit-5b(i): Two microscopic glass slides. Exhibit-5b(ii): One cottonwool swab on stick kept in a polythene packing (1 seal of SS) described as vaginal swab. Exhibit-5c(i): Two microscopic glass slides. Exhibit-5c(ii): One cottonwool swab on stick kept in a polythene packing (1 seal of SS) described as vulval swab. Blood was detected on exhibit-5a(i) (Slides), exhibit-5a(ii) (Vaginal Swab), exhibit-5b(i) (Slides), exhibit-5b(ii) (Vaginal Swab), exhibit-5c(i)(Slides), exhibit-5c(ii) (Vulval Swab) Semen could not be detected on exhibit-5a(i) (Slides), exhibit-5a(ii) (Vaginal Swab), exhibit-5b(i) (Slides), exhibit-5b(ii) (Vaginal Swab),	135-136

		exhibit-5c(i)(Slides), exhibit-5c(ii) (Vulval Swab)	
20.12.2018 Ext PX4	Report of FSL, Madhuban, Karnal	5A(i) One cut cotton wool swab on a stick kept in a white envelope, marked as item No.5A(i). 5A(ii). Three microscopic glass slides, marked as item No.5A(ii). 5B(i). One cut cotton wool swab on a stick kept in a white envelope marked as item No.5B(i). 5B(ii). Two microscopic glass slides, marked as item N.5B(ii). 5C(i). One cut cotton wool swab on a stick kept in a white envelope marked as item No.5C(i). 5C(ii). Two microscopic glass slides, marked as item No.5C(ii). There is no amplification of DNA in item No.3, 5A(ii), 5B(ii) and 5C(ii). The Autosomal STR analysis indicates that the DNA profile of stains on source of item No.1 (cardboard drum), source of item No.2 (dirty piece of stone) is matching with DNA profile of Source of item No.4A (jeans knickers), source of item no.4B (T-shirt), source of item No.5A (i) (swab), source of item No.5B (i) (swab), source of item No.5C (i) (Swab) DNA profile of stains on source of item no. 6 (underwear), source of item no.8A (T-shirt), source of item no.8B(Pants) is matching with the DNA Profile of Virender @ Bholu (Source of item No.7) and not matching with the DNA profile of stains on source of item No.1 (cardboard drum), Source of item no. 2(dirty piece of stone) Source of item No.4A (jeans knickers), source of item no.4B (T-shirt), source of item No.5A (i) (swab), source of item No.5B (i) (swab), source of item No.5C (i) (Swab)	131-132

K-3. Victim's clothes -Jeans Knickers [4A], T-shirt [4B]:

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
01.06.2018 Ext P15	Post Mortem	General Description	181-191

	Examination Report	A thin built female baby wearing printed blood stained T shirt, blood stained denim shorts lying besides body.	
25.06.2018 Ext PX	Report of RFSL, Bhondsi (Gurugram)	Exhibit-4a: One dirty blue colored shorts/knickkars Blood was detected on exhibit-4a (Shorts/knickkars) Semen could not be detected on exhibit-4a (Shorts/knickkars) Exhibit-4b: One dirty light brown colored printed Tshirt. Blood was detected on exhibit-4b (T-shirt) Semen could not be detected on exhibit-4b (T-shirt)	135-136
29.06.2018 Ext PX1	Report of RFSL, Bhondsi (Gurugram)	Exhibit-4a. One blue knicker or denim shorts stained with brown stains Blood was detected on exhibit-4a (knicker/denim shorts) Exhibit-4b. One tear & torn light brown printed T-shirt stained with brown stains. Blood was detected on exhibit-4b (T-shirt)	137-138
20.12.2018 Ext PX4	Report of FSL, Madhuban, Karnal	One cut & dirty blue colored jeans knickers stained with dark brown stains marked as item No.4A. One cut & torn dirty white printed T-shirt with dark brownish stains marked as item No.4B. The Autosomal STR analysis indicates that the DNA profile of stains on source of item No.1 (cardboard drum), source of item No.2 (dirty piece of stone) is matching with DNA profile of Source of item No.4A (jeans knickers), source of item no.4B (T-shirt), source of item No.5A (i) (swab), source of item No.5B (i) (swab), source of item No.5C (i) (Swab) DNA profile of stains on source of item no. 6 (underwear), source of item no.8A(T-shirt), source of item no.8B(Pants) is matching with the DNA Profile of Virender @ Bholu (Source of item No.7) and not matching with the DNA profile of	131-132

		stains on source of item No.1 (cardboard drum), Source of item No. 2 (dirty piece of stone), Source of item No.4A (jeans knickers), source of item no.4B (T-shirt), source of item No.5A (i) (swab), source of item No.5B (i) (swab), source of item No.5C (i) (Swab).	
30.01.2019 PW10	Dr. Gagan, Medical Officer, GH, Palwal	In Examination-Chief the witness has identified a denim pant as Ex.MO/2 and a shirt as Ex. MO/3. The witness has stated that both these articles were worn by the deceased at the time of autopsy. Stated on affidavit Ex.PW10/A: belongings of the deceased sealed handed over to the police.	109-120

73. As per the FSL report, Semen could not be detected on the victim's vaginal swab, vulval Swab, knickers, and T-shirt, and the DNA testing establishes that Virender's DNA profile did not link with the victim's DNA profile.

74. PW17 HC Parveen testified that the Investigator had lifted a blood-stained stone and a drum from the spot, which was taken into possession vide memo Ext P23. PW17 HC Parveen identified the blood-stained stone as Ext MO/2.

K-4. STONE

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
01.06.2018 Ext P23	Memo of possession of blood stained stone	During investigation from the crime spot in house of Virender @ Bholu, a blood stained stone was taken into police possession as evidence and blood stained stone parcel was sealed with 3 SS seals.	243
29.06.2018 Ext PX1	Report of RFSL, Bhondsi (Gurugram)	Exhibit-2. One stone piece soiled with earth. Blood was detected on exhibit-2 (stone pieces)	137-138
20.12.2018 Ext PX4	FSL, Madhuban, Karnal	One dirty piece of stone stained with dark brown stains marked as item No.2. The Autosomal STR analysis indicates that the DNA profile of source of item No.2 (dirty piece of stone) is matching with DNA profile of Source of item No.4A (jeans knickers), source of item no.4B (T-shirt), source of item No.5A (i) (swab), source of item No.5B (i) (swab), source of item No.5C (i) (Swab)	131-132

		DNA profile of stains on source of item no. 6 (underwear), source of item no.8A(T-shirt), source of item no.8B(Pants) is matching with the DNA Profile of Virender @ Bholu (Source of item No.7) and not matching with the DNA profile of stains on Source of item no. 2 (dirty piece of stone), Source of item No.4A (jeans knickers), source of item no.4B (T-shirt), source of item No.5A (i) (swab), source of item No.5B (i) (swab), source of item No.5C (i) (Swab)	

75. Although the blood of the victim was found on the stone, and her DNA profile matched with the stains present on the stone, Ext MO/2, the DNA profile of Virender did not match with the stains on the stone. However, the stone was recovered near the drum, lying in the compound, in which Laado's body was concealed. An analysis of this evidence does not connect the stone with the accused; furthermore, the prosecution did not prove that the stone was used to cause any injury to Laado. The possibility of blood oozing from Laado's dead body and falling of the same on the stone cannot be ruled out.

V-1. Blood Sample of the accused Virender and the clothes which Virender was wearing at the time of the crime- Underwear [Item no. 6]; T-shirt [8A]; Pants [8B].

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
01.06.2018 Ext P14	Medical Examination Report	4 ML BLOOD SAMPLE TAKEN IN EDTA VIAL TAKEN, SEALED AND HANDED OVER TO POLICE FOR DNA ANALYSIS AT RFSL Bhondsi GURUGRAM	193-203
01.06.2018 Ext P18	Memo of possession of parcel of accused	Blood sample of the Virender was taken and it was sealed with SS seal.	239
01.06.2018 Ext P18	Memo of possession of parcel of accused	Parcel of Accused Virender's underwear was sealed with SS seal and 3 Sample seal sealed with SS were prepared in the name of RFSL Bhondsi.	239
01.06.2018 Ext P19	Memo of possession	During investigation accused Virender @ Bholu removed his clothes Pant, shirt and a parcel of the clothes was prepared and it was sealed with SS seal. Parcel of clothes was taken into Police possession	241
20.12.2018 Ext PX4	Report of FSL, Madhuban, Karnal	Blood sample marked as item No.7 DNA profile of stains on source of item no. 6 (underwear), source of item no.8A(T-shirt),	131-132

		source of item no.8B(Pants) is matching with the DNA Profile of Virender @ Bholu (Source of item No.7).	
25.06.2018 Ext PX	Report of RFSL, Bhondsi (Gurugram)	Exhibit-6: One dirty blue colored underwear Blood was detected on exhibit-6(Underwear) Semen could not be detected on exhibit-6(Underwear)	135-136
29.06.2018 Ext PX1	Report of RFSL, Bhondsi (Gurugram)	Exhibit-6: One blue underwear Exhibit-8a: One dirty blue tear and torned T-shirt stained with brown stains. Exhibit-8b: One dirty grey pants soiled with earth and stained with brown stains. Blood was detected on Exhibit-6 (underwear)	137-138
29.06.2018 Ext PX2	Report of RFSL, Bhondsi (Gurugram) Serology Analysis of Blood	6.Underwear, 8a. T-shirt and 8b. Pants have human blood	139
20.12.2018 Ext PX4	Report of Forensic Science Laboratory, Madhuban, Karnal	6). One dirty cut blue colored Underwear marked as item No. 6 8A). One dirty cut blue colored T-shirt with DBS marked as item No.8A 8B). One dirty grey colored pant with DBS marked as item No. 8B The Autosomal STR analysis indicates that the DNA profile of stains on source of item No.1 (cardboard drum), source of item no.2 (dirty piece of stone) is matching with DNA profile of Source of item No.4A (jeans knickers), source of item no.4B (T-shirt), source of item No.5A (i) (swab), source of item No.5B (i) (swab), source of item No.5C (i) (Swab) DNA profile of stains on source of item no. 6 (underwear), source of item no.8A(T-shirt), source of item no.8B(Pants) is matching with the DNA Profile of Virender @ Bholu (Source of item No.7) and not matching with the DNA profile of stains on source of item No.1 (cardboard drum), source of item no.2 (dirty piece	131-132

		of stone), Source of item No.4A (jeans knickers), source of item no.4B (T-shirt), source of item No.5A (i) (swab), source of item No.5B (i) (swab), source of item No.5C (i) (Swab)	

76. Although the blood present on the clothes of the accused Virender matched with his own blood. Still, it is insignificant because the evidence establishes that when the villagers nabbed the accused Virender, he was thrashed. Even in his MLR Ex P14, injuries were noticed by the doctor; as such, the possibility of the blood found on his clothes as a result of beatings cannot be ruled out.

77. The *thirteenth circumstance* is the accused Kamla Devi's disclosure statement, Ext P16.

78. On June 3, 2018, Kamla Devi, in police custody, made a disclosure statement, [Ext P16]. She stated that she worked at the Automen company and as usual, on 31st May 2018, she left for her job at 7.30 AM and when she returned home after her duty, she noticed that flour was strewn in the kitchen and that a girl's body was lying inside the container. She inquired from the accused and then, she kept the container, in which the dead body of Laado was concealed, in the chowk [Aangan] outside of the room and covered it so that, in the evening, she, along with Virender, could take the container and keep it on the railway line, where because of being crushed by the train, the victim Laado would not be identified. She further stated that in the night, some people, while searching for the victim, reached her house and inquired about Virender and the victim. However, she did not let them come inside. After this, they called the Sarpanch and then forcibly entered and again inquired about Laado, and inside the house in the chowk (Aangan; compound), they found her dead body, concealed inside the drum.

79. Ext P16, the disclosure statement of Kamla Devi, is inadmissible in evidence because the fact of the dead body concealed in a drum that was lying in the corner of her compound was already known because of the discovery of the dead body by PW26 Sonu, and others, on May 31, 2018. Further, no fact was discovered pursuant to her disclosure statement, Ext P16; as such, it is hit by §s 25 and 26 and cannot be admitted as an exception to §27 of the IEA. Thus, the circumstance of the disclosure statement Ext P16 of Kamla Devi is not proved.

80. In Pulukuri Kottaya and Others v. Emperor, AIR 1947 PC 67, pg262, 1946 SCC OnLine PC 47, Dec 19, 1946, the four-Judge Bench of the Privy Council holds,

> ….it is fallacious to treat the “fact discovered” within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that “I will produce a knife concealed in the roof of my house” does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added “with which I stabbed A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

81. In Ramkishan Sharma v. State of Bombay, [1955] 1 SCR 903, pg924 :1954-INSC-99, Decided on Oct 22,1954, a three-Judge Bench of the Hon’ble Supreme Court holds,

> The expression "whether it amounts to a confession or not" has been used in order to emphasise the position that even though it may amount to a confession that much information as relates distinctly to the fact thereby discovered can be proved against the accused. The section seems to be based on the view that if a fact is actually discovered in consequence of information given some guarantee is afforded thereby that the information was true and accordingly can be safely allowed to be given in evidence. But clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. [*Kottaya* v. *Emperor]*.

82. In Udai Bhan v. State of UP, [1962] SUPP 2 SCR 830, pg835-837: 1962 INSC 30, the Hon’ble Supreme Court holds,

> Thus, s. 27 partially removes the ban placed on the reception of confessional statements under s. 26. But the removal of the ban is not of such an extent as to absolutely undo the object of s. 26. All it says is that so much of the statement made by a person accused of an offence and in custody of a police officer, whether it is confessional or not, as relates distinctly to the fact discovered is proveable. Thus, in this case taking the recovery memos the statements in regard to the key was this that the appellant handed over the key and said that he had opened the lock of the shop of the complainant with that key. The handing over of the key is not a confessional statement but the confession lies in the fact that with that key the shop of the complainant was opened and, therefore, that portion will be inadmissible in evidence and only that portion will be admissible which distinctly relates to the fact discovered i.e., the finding of the key.

> Similarly, the recovery of the box is proveable because there is no statement of a confessional nature in that memorandum.
> xxxxxxxxx
> Thus it appears that s. 27 does not nullify the ban imposed by s. 26 in regard to confessions made by persons in police custody but because there is the added guarantee of truthfulness from the fact discovered the statement whether confessional or not is allowed to be given in evidence but only that portion which distinctly relates to the discovery of the fact. A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence.

83. The *fourteenth circumstance* is the recovery of a knife [Ext P10] [FSL Item No. 3] pursuant to the accused Virender's disclosure statement Ext P7.

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
03.06.2018 Ext P10	Memo of possession	A iron knife was found in two pieces. It was stained with blood stains. On measuring the knife, it was found to be 18.2 cms and iron piece was 6.3 cms; length of handle was 12 cms.	227
03.06.2018 Ext P11	Khakha knife	Sketch of knife	229
03.06.2018 Ext P12	Rough site plan recovery of knife	Mark A in the map shows the place where on the bed of living room, it was accepted by the accused that he had raped the girl on it. He presented a blood stained knife in a polythene which was kept under the bed.	231
29.06.2018 Ext PX1	Report of RFSL, Bhondsi (Gurugram)	Exhibit-3: One broken knife approx (12cm) having Broken metallic blade green metallic plastic handle Blood was detected on exhibit-3 (Knife)	137-138
20.12.2018 Ext PX4	Report of FSL, Madhuban, Karnal	One brown knife with green plastic handgrip marked as item No.3. There is no amplification of DNA in item No.3, 5A(ii), 5B(ii) and 5C(ii).	131-132

84. PW-10 Dr. Gagan stated that injuries Nos. 4 to 7 were possible from the knife Ext MO/1. An analysis of the laboratory reports regarding the knife points out that blood was detected on the knife, but it could not be scientifically connected because no DNA of the victim, Laado, was recovered from it to connect the knife [Item No. 3] with the injuries inflicted on her.

85. However, in the circumstances mentioned above, the presence of blood alone would be sufficient to connect the knife with the injuries. However, it would connect the knife with the accused Virender. Given this, the evidence regarding the disclosure statement based on which the knife is connected with Virender is analyzed as follows:

86. PW24 Inspector Devender Singh testified that on June 03, 2018, when he was interrogating accused Virender, he made a second disclosure statement, Ext P7, pursuant to which he demarcated the place from where he had kidnapped Laado, i.e., Ext P8, and subsequently also demarcated the place of occurrence, Ext P9, where accused Virender had raped and murdered the deceased and the accused produced a knife [Ext P10], and PW24 Inspector Devender Singh had prepared its sketch Ext P11, and site plan Ext P12.

87. PW20, HC Dharmender, testified that, in his presence, during interrogation, accused Virender made a disclosure statement, [Ext P6]. PW20 further stated that Virender had retracted from his earlier disclosure statement, i.e., Ext P6, and made another disclosure statement, Ext P7, in his presence and that of PW4 Ram Babu.

88. PW4 Ram Babu, an independent witness to the disclosure statements and most of the recoveries, testified that, in his presence, Virender was interrogated and made a disclosure statement, identifying his own signature on Ext P6, the first disclosure statement. PW4 Ram Babu also stated in his examination-in-chief that on June 03, 2018, Virender made another disclosure statement, Ext P7, and pursuant to the disclosure statements, Ext P6 and Ext P7, Virender led the police party to the place from where the deceased was abducted and also took the police to the place of murder. He further stated in his examination-in-chief that the accused Virender got recovered a knife in his presence.

89. PW4 Ram Babu stated in his examination-in-chief that the accused Virender had recovered a knife in his presence, which was taken into police possession vide recovery memo Ext P10, and a rough sketch [Ext P11] of the knife was prepared, and a sketch of the place of recovery of the knife [Ext P12] was also prepared. During the trial, PW4 Ram Babu identified the broken knife [Ext MO/1], which had been recovered at the instance of the accused. Since the knife was purportedly recovered pursuant to the accused's statement made in police custody, such a statement needs to be tested to determine whether it is hit by §26[4] of the IEA, or is covered under the exception of inadmissibility under §27[5]?

[4] [26]. Confession by accused while in custody of police not to be proved against him. — No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate4, shall be proved as against such person.

[5] [27]. How much of information received from accused may be proved.— Provided that, when any fact is deposed to as discovered inconsequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates

90. Vide recovery memo Ext P10 dated June 03, 2018, accused Virender led the police party to his residential house, where, from beneath the bed, he took out a white polythene bag, and when it was checked, it had a knife, broken in two pieces, which was bloodstained. The sketch of the knife was prepared vide Ext P11.

91. The police also prepared a spot map of the place from where the knife was recovered. The reason for referring to this portion is that the recovery of knife was made from his house whereas in the disclosure statement [Ext P6] he had informed the police that he had left the place, taken the knife and concealed it under the bed of his sister's house, as such the recovery of knife is not pursuant to this disclosure statement and as such it is not covered under exception to the confession before the police and is hit by §§25 and 26 of IEA where a confession before the police should not be proved. The map is tendered in evidence as Ext P12. In the notes of the map, point 'A' is mentioned as the place where the accused admitted to having raped the girl. This portion, "*accused admitted to having raped the girl*," is inadmissible evidence under §26 of the IEA, and, as such, is not referred to.

92. In the disclosure statement, Ext P6, this Court is not referring to the inadmissible portion regarding the confession allegedly recorded of the way he had committed the murder, but this Court is only concerned with the discovery of facts, and the accused stated that her body was put in a drum after emptying it of flour. He further disclosed that he had kept the knife in a polythene bag and had concealed it in the house of his sister who lived at Tajupur Hills in Delhi. It is relevant to state that in the disclosure statement, the accused stated that "*I had kept the bloodstained knife in a polythene bag and had taken it to my sister's home at Lajurpur Hills in Delhi, where I concealed it under the bed*"; the words used are in the past tense, mentioning that he had already left and concealed the knife in his sister's house.

93. There is an interpolation of the first digit of the date on the first disclosure statement, Ext P6. A perusal of the original disclosure statement, Ext P6, reveals that number '2' has been overwritten, subsequently tampering with the number beneath '3'. There is indeed tampering with the date, and '3' was probably changed to '2' to make the disclosure statement's date 2-6-2018.

94. PW20, HC Dharmender, was cross-examined regarding overwriting on the date of Ext P6; however, he stated that he could not say whether the date 02-06-2018 was overwritten on 03-06-2018. In fact, PW20 stated in his cross-examination that the Investigator had recorded his statement on June 02, 2018, at 9:00 AM, and on June 03,

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distinctly to the fact thereby discovered, may be proved.

2018, at 9:15 AM. He admitted that in his statement recorded [under §161 CrPC], on June 03, 2018, he did not mention about the first disclosure statement, Ext P6.

95. In the first disclosure statement, Ext P6, the accused Virender had disclosed that he had concealed a knife in the house of his sister. However, PW20 HC Dharmender testified that Virender had retracted from his earlier disclosure statement, i.e., Ext P6, and made another disclosure statement, Ext P7, in his presence and that of PW4 Ram Babu. However, in the statement of PW20 HC Dharmender, with respect to the accused Virender retracting from earlier statement, no memo was tendered in evidence, and no other supportive evidence has been given in this regard.

96. In the second disclosure statement, Ext P7, which bears the date of '3-6-2018', there is no interpolation over date '3'. In this disclosure statement, the accused also mentioned the knife and keeping the dead body in the drum, and that later on, the drum was kept in the compound (Aangan). The drum was already recovered prior to the disclosure statement of accused Virender, and as such, this portion of the statement does not fall under the exception of §27 of IEA.

97. Further, the statement regarding "*the crowd had beaten me and my mother*" does not fall under §27 of the IEA because the Doctors had already examined both accused Kamla Devi and Virender, and did not document the history of injuries, i.e., in the MLR, which is unusual as the cause and manner of receiving injuries is usually mentioned by the Investigator. Thus, the statement of the accused Virender that the crowd had given beatings to them cannot be treated as reversing the initial burden, which was on the prosecution to explain that how had they suffered the injuries. Further, Kamla Devi was detained by the villagers, before Virender, and he could not have witnessed his mother being thrashed by the crowd, such part of the statement would fall under hearsay and would make it inadmissible.

98. Moreover, the admission made by accused Virender while making the alleged disclosure statement, Ext P7, when he was in the police custody, that he had taken Laado to his home, and regarding being beaten by the crowd, are inadmissible because of the bar of §26 of the IEA, because no new relevant fact was discovered, and as such, no reference can be placed on that. In the statement under §313 CrPC, the MLR of the accused Virender was put in question no. 3, and the accused's answer was that it was incorrect. Further in question no 10 put to Kamla Devi, her MLR was put under §313 CrPC, and she answered the same as '*It is incorrect*'.

99. Believing the version of the police to be questionable, especially considering the interpolation of the dates in Ext P6. The tampering of the original date scribed on the Ext P6 and the absence of any memo of the accused Virender retracting the first disclosure statement Ext P6, creates a serious doubt about the authenticity of the subsequent disclosure statement Ext P7, and the prosecution has failed to prove the disclosure statements Ext P6 and P7, beyond a reasonable doubt.

100. Another improbability in the truthfulness of the disclosure statements, Ext P6 and Ext P7, is the inspection of the crime scene by Forensic Experts.

101. On noticing Laado's dead body in a drum, her family had taken it out and placed it on the cot inside the accused's house. PW21, Vinod Kumar Singh, Senior Scientific Officer, testified that he received a telephone call around midnight [Intervening night of May 31, 2018, and June 01, 2018] and reached the scene by 1:00 AM. On reaching the spot, the Senior Scientific Officer, along with his team, had inspected the crime scene. According to their report, Ext P27, the investigator was advised to preserve evidence and send it to the laboratory for testing.

102. The crime scene had already been inspected by a team of experts and the color of the polythene bag where the knife was concealed was white, which could be easily noticed, it is highly improbable that the Police had not noticed the knife or the FSL team could not find it out. It was not impossible to trace such a polythene bag. It was not a large or palatial house, from which tracing a polythene bag would be difficult, and it is highly unlikely that the police overlooked it or that the FSL team failed to find it. Another perspective on the failure to recover the knife from under the bed is that if the expert forensic team was unable to find such a visible weapon, this would raise serious doubts about their capability and would be a clear sign of incompetence, which is not the case.

103. In Anter Singh v. State of Rajasthan, [2004] 2 S.C.R 123; 2004-INSC-88, Feb 05, 2004, the Hon'ble Supreme Court holds,

> [129 C – D] Though recovery from an open space may not always render it vulnerable, it would depend upon factual situation in a given case and the truthfulness or otherwise of such claim. In the case at hand the recovery was made from an open space visible from the place where the dead body was lying and at a close proximity. It is not clear from evidence that it was hidden in such a way so as making it difficult to be noticed.

> [132 A – E] The various requirements of the Section can be summed up as follows:
> (1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.
>
> (2) The fact must have been discovered.
>
> (3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.
>
> (4) The persons giving the information must be accused of any offence.
>
> (5) He must be in the custody of a police officer.
>
> (6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.
>
> (7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

104. The recovery of the knife from the house of the accused is suspicious for the following reasons:

(i) In the earliest disclosure statement of Virender, Ext P6, there is an interpolation on the date, and something has been cut to show it as 2.

(ii) Secondly, in the earliest disclosure statement, the accused had stated that he had concealed the knife in the house of his sister and he had taken it there, however no evidence has been pointed out that whether any search was made in the house of the accused or in the house of the accused’s sister and a statement is recorded on June 03, 2018 as per which the accused made another disclosure statement vide Ext P7 and got recovered a knife under the bed concealed in a white polythene bag;

(iii) The third suspicious factor, which is most significant, is the crime inspection report. Immediately after the crime was noticed, the forensic science team was called, and they gave a report, Ext P27, and they did not recover any weapon of offence, whereas a knife was later recovered from the crime scene, lying in a white polythene under the bed.

105. On analysis of the evidence, qua the knife Ext P10, the only logical conclusion is that the knife was either planted later or recovered from another location. On the contrary, the police version does not appear credible given the alteration of the date in Ext P6.

106. Thus, in the entirety of facts and circumstances, the recovery of the knife cannot be considered as a circumstance proved under §27 of the Indian Evidence Act to bring it into an exception of §26 of the IEA.

107. There is a contradiction in the timing of when Laado's father came to know about her disappearance. The complainant, Surender [PW1], testified that on May 31, 2018 at about 1.30 PM, his children told him that Laado was missing. PW26 Sonu, in her cross-examination, stated that she was also present at Sarvodaya Public School while checking CCTV footage. The footage was checked around 3:00 PM, and at that time, their uncle was with them, but PW26 Sonu did not inquire from the accused Virender about Laado, but some of the villagers had inquired from Virender. Whereas, as per PW2, Laado's father testified that he had gone to his house at 4 PM, and at that time he learned about the disappearance of Laado. An analysis of the sequence of events shows that the inconsistency in timing does not suggest any benefit from false information; instead, the time difference likely results from stress and anxiety at that moment or from a delay in recording their statements in the trial Court.

108. PW2, Laado's father, in his cross-examination, stated that Laado had come to the shop with accused Virender, and PW2 was confronted with his statement, Ext D1, wherein this was not so recorded. PW2 further stated, in his cross-examination, that he was trying to locate Laado from 4:00 PM to 8:00 PM, and that during this period the accused did not accompany him. He also stated that in his recorded statement to the police (Ext D1), he did not mention this fact. This contradiction is also insignificant because this fact is mentioned in the complaint made by PW-1, who was the brother of PW-2, and he, along with many co-villagers, had started searching for Laado, who was last seen with the accused.

109. PW21 Vinod Kumar Singh, Senior Scientific Officer, who had examined the scene of the crime, testified that he had received a telephone call at about 12 midnight and had reached the spot at 1:00 AM. However, PW17 HC Parveen Kumar, in his cross-examination, stated that he had received information from the Sarpanch of the village Asawati at 2:00 AM, and the FIR Ext P20 mentioned that the information was received at the police station at 3:30 AM, whereas the Forensic Science Laboratory report, Ext P27, contradicts this, stating that the police were informed at 7:00 PM. It shall be appropriate to refer to (vi) of the report, which reads as "*this occurrence was stated to be of 31st May 2018*

at around 1:30 PM and the police was informed at around 7:00 PM". The report of the Forensic Science Laboratory Ex. P27 is silent that at 7:00 PM whether Laado's disappearance was reported or the recovery of her dead body was reported.

110. Thus, PW17 HC Parveen Kumar's statement that they received the information at 2:00 AM is contradicted by the Scientific Expert, who would have a better assessment of the time than the investigator. Be that as it may, this Court would give credence to the testimony of the Scientific Expert who had explicitly stated that he had received information at 12 midnight and had reached the spot at 1:00 AM. An analysis of these contradictions does not create any dent in the prosecution's case.

111. Another contradiction is in the testimony of PW26 Sonu, where in her cross-examination she stated that they reached the house of the accused at around 6:00 or 7:00 PM. However, in the same breadth, she also stated that at that time it was dark, which shows that she was not keeping a sense of time at that place, maybe because of acute anxiety or stress. Needless to say, the incident occurred on May 31, during summer, with very long days and sunlight lingering until late into the evening. On May 31, 2018,[6] the Sun had set in Delhi at 7:13 PM, and civil twilight was up to 07:40 PM. It means the contradiction regarding the time of 6 to 7:00 PM is simply due to anxiety at that time and has nothing to do with improvement or false narration.

112. PW9 Kanchhid alias Karan stated that when he had gone to the house of the accused, both the accused were present. In his cross-examination, he stated that the accused Virender was present in the school with them, and he also stated that when he had gone to the house of the accused, the accused Virender was also present at the house. However, there is no other evidence that the accused was also thrashed at that very time by the villagers or he was detained by the villagers, as such this portion of the statement of PW9 that when he had reached the house of accused, he had noticed both the accused present has to be read with and considered by analyzing the other evidence in this regard. Furthermore, PW4 Ram Babu stated in his cross-examination that the Police had arrested Virender on the spot and was interrogated at the spot. However, in the Arrest Memo, the place of arrest is mentioned only as Village Asawati and not any particular spot.

113. Another reason that casts doubt about the credibility of the statement of PW9 is that the injuries were noticed on both the accused, whereas being Sarpanch, he was supposed to ensure that people did not beat up the accused, but he is absolutely silent in this regard. Be that as it may, even if it is taken that the accused Virender was also present at the spot, he

[6] https://www.timeanddate.com/sun/india/new-delhi?month=5&year=2018

was detained at that very time; still, this Court has not relied upon the evidence of recovery of a knife.

114. Given the above, the biological evidence did not connect the accused Virender with the victim Laado or the drum, from where her body was discovered.

115. The main concern it raises is the pathetic quality of the investigation, which was conducted at a place that is too close to the heart of the National Capital; nevertheless, it does not alter the outcome of the case.

116. PW9 Kanchhid alias Karan stated in his cross-examination that the accused is a quarrelsome person. He had intervened in many altercations involving the accused. Still, this circumstance of conduct is irrelevant and has nothing to do with the present crime of rape, and even otherwise, this circumstance was not put to the accused Virender under §313 CrPC, and as such, it cannot be used against him.

117. An analysis of the evidence against Kamla Devi would lead to the following inference.

118. PW4 Ram Babu stated in his cross-examination that the accused Kamla Devi was working in M/s Automen Company. The accused's Counsel examined DW1, Rajesh Kumar Rai, Contractor, to prove that the accused, Kamla Devi, was employed at Automen Company, Palwal, as a laborer, and that her working hours were from 8:00 AM to 8:00 PM. There was no need for the defense to examine DW1, as it was never disputed that Kamla Devi was working elsewhere and was not present at home at the time of the commission of the offense. Regarding her presence in the company from 8:00 AM to 8:00 PM, in cross-examination conducted by the Public Prosecutor, DW1 Rajesh Kumar Rai stated that it was the supervisor who personally makes the entries. The defense did not examine the supervisor; thus, it cannot be said that she would come home on that day only after her office time from 8:00 AM to 8:00 PM was over, and it is nobody's case that she was present even earlier. The case set up by the prosecution through the villagers is that when they had reached the house of the accused, it was dark, and at that time, she did not let them come inside her house.

119. The evidence proved against Appellant Kamla Devi is that she had chided Laado's family members and other villagers that why were they taking rounds of her place, and she did not let them enter her house. However, it raised suspicions in the minds of others, and when they forcibly entered, she started yelling at them. PW26 Sonu testified that when they

had entered the house of the accused, Kamla Devi took off the wire, which made the electricity go off. Needless to say, in some of the unauthorized colonies, people often use wire hooks to hang onto overhead wires to get electricity. Thus, the villagers' statement that, upon noticing villagers forcibly entering her house, Kamla Devi had taken off the hook from the overhead wire, which turned off the light cannot be disbelieved.

120. It is also not clear at what time Virender dumped Laado's body in the drum of wheat flour. None of the witnesses testified about the time when Kamla Devi had returned home from work. In fact, it is not the case of the prosecution that she was present at home when the accused had brought Laado to his home, where he had raped and killed her. Further, Kamla Devi, who was working in Automen Company, there is no evidence that she was at home when the crime took place, and at what time was Laado's body concealed in the drum, and at what time the drum was kept in the compound of the house. Since there is no evidence to establish the presence of Kamla Devi at home, and the defence evidence qua her absence from her home being out for work, cannot be ruled out.

121. Accused Kamla Devi was arraigned as an accused because she did not allow villagers to search her house; however, it was not the police who were conducting the search, which would constitute an offense of obstructing public servants in the performance of their official functions. It did not come in the statement of the Sarpanch that he was discharging some official duty by searching. Further, there is no evidence that she had conspired to conceal the dead body with her son or had helped her son in destroying the evidence. The disclosure statement of the accused Virender Ext P6 and Ext P7, or even the disclosure statement Ext P16 of the accused Kamla Devi, regarding the admission part, which did not lead to the discovery of any fact, cannot be legally proved. Regarding not letting the people search her house, we cannot rule out a likely possibility in the mind of Kamla Devi, that on seeing Laado's condition, the mob might have lynched her son. Therefore, no offence punishable under §201 IPC is made out against Kamla Devi.

122. Kamla Devi was convicted based on evidence of criminal conspiracy and hiding Laado's body, by concealing it in a drum, with an intention to dispose it off later; however, the prosecution did not adduce any evidence to prove that, after she entered the home, the conspiracy to conceal the body was hatched. The defence witness clearly stated that Kamla Devi's office hours were from 8 AM to 8 PM, and the occurrence was certainly before that time. In fact, the other evidence is of the disclosure statement, in which she disclosed that when she entered her house, she found wheat flour strewn across the floor and questioned the accused, Virender, about it. Because this evidence is taken from Kamla Devi's

disclosure statement Ex P16, which is self-inculpatory, and did not even remotely lead to any subsequent recovery, hence is hit by the bar of §26 of IEA, in addition to Article 20(3) of the Constitution of India. Thus, there is no evidence either of criminal conspiracy or destruction of evidence against Kamla Devi. Consequently, no offence punishable under §120-B of IPC is made out against Kamla Devi.

123. Unfortunately, in this part of India, family members, especially mothers, often have such blind love for their "precious" sons that, no matter how imperfect or villainous they might be, they are still regarded as '*Raja Betas*.' Kamla Devi, after discovering that her *Raja-beta*, *"Bholu*," was not as gullible as his name suggested, and he had assaulted and brutally killed a girl-child aged five, prioritized shielding her son instead of informing the police or seeking justice for *Laado*. This social attitude, however appalling, is not new; it is deeply embedded in the region's patriarchal mindset and culture. Although Kamla Devi would have been shocked upon seeing the girl murdered by her *Raja-beta*, yet her orthodox conditioning attempted to protect her *Raja-beta*; whereas in a civilized society, this barbaric incident would not have happened and if still happened, then a mother would have preferred justice for *Laado* then for her *Raja-beta*.

124. Kamla Devi's only fault is that she was trying to protect her *Raja-beta*, for which she cannot be punished under the Indian Penal Code; however condemnable her conduct may be. Thus, there is no legally admissible evidence to make out a case for criminal conspiracy or for destruction of evidence against Kamla Devi. Consequently, the conviction and sentence of Kamla Devi for the offences punishable under§§201 & 120-B IPC are quashed and set aside, and she is acquitted of all the charges. Her bail bonds and surety bonds are discharged.

125. However, qua Virender alias Bhola, as discussed above, an analysis of the evidence fully establishes that the chain of circumstances is complete, unbroken, and leads to the sole inference of Virender's guilt beyond any reasonable doubt.

126. In Hanumant v. The State of Madhya Pradesh, [1952] 3 SCR 1091, pg1097: 1952-INSC-41, Sep 23, 1952, the Hon'ble Supreme Court holds,

> It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there

> must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused...

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

> [E-G]. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. The State of Madhya Pradesh [(1952) SCR 1091] This case has been uniformly followed and applied by this Court in a large number of later decisions uptodate, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969 3 SCC 1981] and Ramgopal v.State of Maharashtra [AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant's case (supra): "It is …..accused."
>
> [C-B]. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra [(1973) 2 SCC 793] where the following observations were made:
>
> "Certainly, it is a primary principle, that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."
>
> (2) The facts so established should be-consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty,
>
> (3) the circumstances should be of a conclusive nature and tendency,

> (4) they should exclude every possible hypothesis except the one to be proved, and
>
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.
>
> These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

128. All the parameters mentioned in the above judicial precedents are fully met against the accused Virender. The chain of circumstances is so complete that it leads to no other conclusion except his guilt.

129. An analysis of all the evidence shows that the accused Virender had gone to the house of Laado's father to bring lunch from his home, and at that time, Laado had also accompanied him. After having lunch, Laado's father slept, and he had no reason to foreknow the accused's evil intentions, because Virender had been employed with him for the last 5-6 years. When he woke up at 4:00 PM, and he returned to his home, and he found Laado missing. There may be some confusion about the time when he woke up, whether it was 4 PM or earlier, but when the villagers got to know that Laado was missing, a frantic search was made. This fact is not disputed because they contacted PW5 Raj Kumar, the owner of Sarvodaya Public School, who, along with PW26 Sonu, PW2 Laado's father, and PW4 Ram Babu, saw CCTV footage and noticed that the accused was taking Laado with him. After that, on enquiry from the villagers upon search efforts, the fact of the accused Virender taking Laado holding her hand came up, and when they reached his house, by that time, it was already dark. There is no specific evidence whether the accused was present at his home or not, but none of the witnesses stated the presence of the accused at his home; only the presence of the co-accused Kamla Devi, i.e., the mother of Virender, at the home was stated. It was Virender alone who had put Laado's body in the drum, after emptying it of flour, and then had taken the drum in the compound with a view to abandoning it later in a secluded place or on the Railway Track. Thus, the prosecution has proved the evidence of the accused Virender being last seen with the victim and the recovery of the dead body of Laado from the house of the accused without any significant time gap in between.

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

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

131. In Bodhraj v. State of J&K, 2002 Supp (2) S.C.R. 67; pg. 85, 2002-INSC-360, Sep 03, 2002, the Hon'ble Supreme Court holds,

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

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

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

133. In Ramreddy Rajeshkhanna Reddy v. State of Andhra Pradesh, [2006] 3 S.C.R. 348, pg 359, 2006-INSC-173, Mar 24, 2006, the Hon'ble Supreme Court holds,

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

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

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

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

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

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

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

137. In Ram Gopal v. State of M.P. SLP Crl. No. 9221 of 2018, 2023-INSC-133, Feb 17, 2023, the Hon'ble Supreme Court holds,

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

138. In Anees v. NCT, [2024] 6 S.C.R. 164; 2024-INSC-368, May 3, 2024, the three-Judge Bench of the Hon'ble Supreme Court holds,

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

139. The evidence of last seen has been duly proved with the evidence of recovery of the dead body of a young girl who had been raped and then murdered from the accused's home, and at that time, the mother of the accused was not present at her home, and the accused was alone at his home. Thus, in light of the fact of discovery of dead body of Laado, who had been raped before she was murdered, and its recovery from the compound of the house of Virender alias Bhola, the prosecution has been able to make out a case against Virender beyond a reasonable doubt.

140. In Shambu Nath Mehra vs. State of Ajmer, [1956] 1 SCR 199, pg203-204, 1956 INSC 15, Mar 12, 1956, the Hon'ble Supreme Court, explaining the scope of Section106 of the Evidence Act in criminal trial, holds,

> This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. Emperor [AIR 1936 PC 169] and Seneviratne v. R. [(1936) 3 All ER 36, 49].

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

> [D] Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond

> reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or, which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused.

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

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

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

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

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

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

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

145. In Dilip Mallick v. State of West Bengal, CrA. L. No. 130 of 2012; 2017-INSC-139, Feb 14, 2017, the Hon'ble Supreme Court holds,

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

146. In Deen Dayal Tiwari v. State of U.P., CrA Nos. 2220-2221 of 2022; 2025-INSC-111, Jan 16, 2025, the three-Judge Bench of the Hon'ble Supreme Court holds,

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

147. In Haresh Mohandas Rajput v. State of Maharashtra, [2014] 11 S.C.R. 921, [E-SCR] 2011-INSC-700, September 20, 2011, while commuting the death sentence awarded for the rape and murder of a girl-child aged 10 years, the Hon'ble Supreme Court holds,

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

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

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

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

150. Given the above, the conviction of Virender alias Bholu for the commission of the offences under §§376, 376AB, 363, 366, 302, 201 IPC, and §5/6 POCSO is upheld on all counts except the charge of conspiring with his mother Kamla Devi. As a result, the convict, Virender, is acquitted of the offense of criminal conspiracy, punishable under

§120-B of the IPC, because there is sufficient evidence to infer that it was Virender who had concealed the dead body of Laado in the drum and had kept the drum in the Aangan of his house.

151. Now coming to the part of death sentence, the trial Court had imposed death sentence considering the gravity of offence and also by drawing a balance where aggravation had outweighed the mitigation and the learned trial Court was also of the view that if it imposes death sentence on the accused, then it would be preventing at least one more person from being raped by the present accused Virender.

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

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

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

153. In Vasanta Sampat Dupare v UOI, 2025-INSC-1043, Aug 25, 2025, a three-Judge Bench of the Hon'ble Supreme Court holds,

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

154. In Bachan Singh v. State of Punjab, [l983] 1SCR 145, pg229, 237:1980-INSC-120, Aug 16, 1982, Constitutional Bench of the Hon'ble Supreme Court while upholding the Constitutional validity of the Capital Sentence, in a reference to the Constitution Bench regarding the constitutional validity of death penalty for murder provided in Section 302,

Penal Code, and the sentencing procedure embodied in sub-section (3) of Section 354 of the Code of Criminal Procedure, 1973, holds,

> [A-C] [151]. Section 354(3) of the Code of Criminal Procedure, 1973, marks a significant shift in the legislative policy underlying the Code of 1898, as in force immediately before Apr 1, 1974, according to which both the alternative sentences of death or imprisonment for life provided for murder and for certain other capital offences under the Penal Code, were normal sentences. Now, according to this changed legislative policy which is patent on the face of Section 354(3), the normal punishment for murder and six other capital offences under the Penal Code, is imprisonment for life (or imprisonment for a term of years) and death penalty is an exception.
>
> [F]. In the context, we may also notice Section 235(2) of the Code of 1973, because it makes not only explicit, what according to the decision in Jagmohan's case was implicit in the scheme of the Code, but also bifurcates the trial by providing for two hearings, one at the pre-conviction stage and another at the pre-sentence stage.
>
> [C-E]. Now, Section 235(2) provides for a bifurcated trial and specifically gives the accused person a right of pre-sentence hearing, at which stage, he can bring on record material or evidence, which may not be strictly relevant to or connected with the particular crime under inquiry, but nevertheless, have, consistently with the policy underlined in Section354(3) a bearing on the choice of sentence. The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302, Penal Code, the Court should not confine its consideration "principally" or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal.

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

> Rarest of rare dictum, as discussed above, hints at this difference between death punishment and the alternative punishment of life imprisonment. The relevant question here would be to determine whether life imprisonment as a punishment will be pointless and completely devoid of reason in the facts and circumstances of the case? As discussed above, life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second exception to the rarest of rare doctrine, the court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigor when the court focuses on the circumstances relating to

> the criminal, along with other circumstances. This is not an easy conclusion to be deciphered, but Bachan Singh (supra) {[l983] 1SCR 145} sets the bar very high by introduction of Rarest of rare doctrine.

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

> [H-D]. The reasons why the community as a whole does not endorse the humanistic approach reflected in "death sentence in no case" doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of "reverence for life" principle. When a member of the community violates this very principle by killing another member, the society may not feel itself, bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by 'Killing' a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so (in rarest of rare cases) when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict the death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining the death penalty…

157. In Mohinder Singh v. State of Punjab, [2013] 3 SCR 90, 2013-INSC 61, Jan 28, 2013, a three-Judge bench of the Hon'ble Supreme Court holds,

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

158. In Shankar Kisanrao Khade v. State of Maharashtra, [2013] 6 SCR 949; 2013-INSC-281, Apr 25, 2013, the Hon'ble Supreme Court, when a girl child aged 11, with moderate intellectual disability, was continuously raped and murdered, commuted death sentence of a middle-aged man to life [End of Natural Life under S. 376AB].

> [28]. Aggravating Circumstances as pointed out above, of course, are not exhaustive so also the Mitigating Circumstances. In my considered view

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

159. In Mofil Khan v. State of Jharkhand, RA CR.641 of 2015 In CRL.A 1795 of 2009, 2021-INSC-791, [para 10], Nov 26, 2021, a three-Judge Bench of the Hon'ble Supreme Court holds,

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

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

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

161. We have perused the psychological evaluation report of a Board comprising a Psychiatrist, a Medical Officer, and a psychologist, and as per the Board's opinion, the convict Virender does not have any significant mental health problems. After analyzing the factual background in which the convict had committed the rape and murder of a helpless young girl, there does not appear to be any mitigating factor. However, the prosecution did

not bring to the Court's notice any report by the Jail Superintendent mentioning the violent conduct of the convict in prison.

162. While deterrence through threat of death may still be a promising strategy in some frightful areas of murderous crime, to espouse a monolithic theory of its deterrent efficacy is unscientific and so we think it right to shift the emphasis, to accept composite factors of penal strategy and not to put all the punitive eggs in the 'hanging' basket but hopefully to try the humane mix.[7]

163. It appears, that the subsequent murder was because of panic to destroy evidence of rape and not a premeditated act. Therefore, the convict's life should not be taken away by the judicial process and instead, to save the children and females, he can be incapacitated by imposing a suitable sentence that is also proportionate to the heinous and gruesome crime of raping and killing a girl aged 5½ years, whom the accused was well familiar with.

164. There is no allegation to substantiate that there is no possibility of the reformation of the convict on the death row, which creates an alternative view that would not validate the capital punishment, giving rise to the two views theory— one favoring capital punishment when in the given situation keeping a criminal alive is so dangerous that taking away life remains the only option, and the other view is to keep such a convict in custody for the longest possible time permissible under the law to do substantial justice to all concerned. Therefore, when two views are possible before this Court, to impose or not to impose death sentence, then the view for not awarding the capital punishment must be preferred over the other extreme irreversible sentence.

165. There is also no evidence on record to suggest that the appellants would be a menace and threat to the harmonious and peaceful co-existence of the society.[8] However, without commenting on such observations of the trial Court, that the death sentence was given to save other persons, this aspect can be taken care of by keeping the accused in custody till a minimum period of incarceration, which can extend much beyond his middle age.

166. Given the above, the convict Virender alias Bholu makes out a case for commutation of his death sentence.

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[7] Justice V. R. Krishna Iyer, in Ediga Anamma v. State of Andhra Pradesh, Supreme Court of India, CrA-67-1973, decided on Feb 11, 1974.
[8] Supreme Court of India, Bachhitar Singh v. State of Punjab, [E-SCR] SCR [2002] SUPP 2 S.C.R.621; 2002 INSC 410, decided on 26-09-2002.

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

168. In Rameshbhai Chandubhai Rathod (2) v. State of Gujarat: CrA No. 575 of 2007, Jan 24, 2011, in case of rape and murder of a girl who was studying in Class IV, the three-Judge Bench of the Hon'ble Supreme Court, while commuting the death sentence to the remainder of life, holds,

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

169. In MD Mannan v. State of Bihar, [2019] 8 SCR 266; 2019 INSC 196, Feb 14, 2011, while commuting the death sentence awarded for the rape and murder of a girl-child aged eight, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [86] It is also pertinent to note herein that the relevant Prison Rules also recognise the phenomenon of post-conviction mental illness and state that the execution of such persons shall be deferred, pending orders of the Government. In the light of the aforesaid considerations, we conclude that the mental health of the petitioner at the time of execution is a relevant mitigating factor which must be taken into consideration in the present case. As observed above, there are materials put forward now, in the form of medical opinion, which show that the petitioner is not mentally sound. For the reasons discussed above, we are of the view that it would not be appropriate and/or safe to affirm the death sentence awarded to the petitioner.
>
> [89] Even though life imprisonment means imprisonment for entire life, convicts are often granted reprieve and/or remission of sentence after imprisonment of not less than 14 years. In this case, considering the heinous, revolting, abhorrent and despicable nature of the crime

> committed by the petitioner, we feel that the petitioner should undergo imprisonment for life, till his natural death and no remission of sentence be granted to him.

170. In Rajendra Pralhadrao Wasnik v. State of Maharashtra, [2018] 14 S.C.R. 585, 2018-INSC-1194, Dec 12, 2018, while commuting the death sentence awarded on the conviction for rape and murder of a girl-child aged 3 years, the three-Judge Bench of the Hon'ble Supreme Court holds,

> [1] 'Sentenced to death' – these few words would have a chilling effect on anyone, including a hardened criminal. Our society demands such a sentence on grounds of its deterrent effect, although there is no conclusive study on its deterrent impact. Our society also demands death sentence as retribution for a ghastly crime having been committed, although again there is no conclusive study whether retribution by itself satisfies society. On the other hand, there are views that suggest that punishment for a crime must be looked at with a more humanitarian lens and the causes for driving a person to commit a heinous crime must be explored. There is also a view that it must be determined whether it is possible to reform, rehabilitate and socially reintegrate into society even a hardened criminal along with those representing the victims of the crime.
>
> [43] At this stage, we must hark back to Bachan Singh and differentiate between possibility, probability and impossibility of reform and rehabilitation. Bachan Singh requires us to consider the probability of reform and rehabilitation and not its possibility or its impossibility.
>
> [45] The law laid down by various decisions of this Court clearly and unequivocally mandates that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. This is one of the mandates of the "special reasons" requirement of Section 354(3) Code of Criminal Procedure and ought not to be taken lightly since it involves snuffing out the life of a person. To effectuate this mandate, it is the obligation on the prosecution to prove to the court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated. This can be achieved by bringing on record, inter alia, material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the convict can produce evidence on these issues as well.
>
> [46] If an inquiry of this nature is to be conducted, as is mandated by the decisions of this Court, it is quite obvious that the period between the date of conviction and the date of awarding sentence would be quite

prolonged to enable the parties to gather and lead evidence which could assist the trial court in taking an informed decision on the sentence. But, there is no hurry in this regard, since in any case the convict will be in custody for a fairly long time serving out at least a life sentence.

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

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

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

171. In Dattatraya Datta Ambo Rokade v State of Maharashtra, CrA. Nos. 1110-1111 of 2015, 2019-INSC-247, Feb 21, 2019, while commuting the death sentence awarded for conviction on the charges of rape and murder of a girl-child aged 5, the three-Judge Bench of the Hon'ble Supreme Court holds,

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

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

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

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

174. In Kalu Khan v. State of Rajasthan, CrA 1892-2014, Mar 10, 2015, a three-Judge Bench of the Hon'ble Supreme Court commuted the death sentence in murder, abduction, and rape of a girl child aged 4, holding as follows,

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

175. In Sunil v. State of Madhya Pradesh (2017) 4 SCC 393, a three-Judge Bench of the Hon'ble Supreme Court held that the ends of justice would be met if the death sentence of the appellant, who was then about 25 years old, and who had raped and murdered his niece, aged 4, is commuted into life imprisonment.

176. In the following judicial precedents, where the age of the victim girl-child was under 12 years, the Hon'ble Supreme Court, although commuted the death sentence to imprisonment for life, with clarification that the convict must serve a minimum of 35 years in jail without remission:

177. In Rajkumar v. State of Madhya Pradesh, [2014] 3 SCR 212: 2014-INSC-136, Feb 25, 2014, the accused/appellant at that time aged 32, was well known to the victim's family and the victim aged 14 used to address him as 'Mama', victim's parents called him to stay at their house because they had to go to irrigate the fields, and during the night he raped and murdered her, the Hon'ble Supreme Court holds,

> [19]. The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. Before opting for the death penalty the circumstances of the offender also require to be taken into consideration alongwith the circumstances of the crime for the reason that life imprisonment is the rule and death sentence is an exception. The penalty of death sentence may be warranted only in a case where the court comes to the conclusion that imposition of life imprisonment is totally inadequate having regard to the relevant circumstances of the crime. The balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and mitigating circumstances before option is exercised.
>
> [20]. A three-Judge Bench of this Court in Swami Shraddananda @ Murali Manohar Mishra v. State of Karnataka, AIR 2008 SC 3040, wherein considering the facts of the case, the Court set aside the sentence of death penalty and awarded life imprisonment, but further explained that in order to serve the ends of justice, the appellant therein would not be released from prison till the end of his life.
>
> [21]. Thus, taking into consideration the aforesaid judgments, we are of the view that in spite of the fact that the appellant had committed a heinous crime and raped an innocent, helpless and defenceless minor girl who was in his custody, he is liable to be punished severely but it is not a

> case which falls within a category of rarest of rare cases. Hence, we set aside the death sentence and award life imprisonment. The appellant must serve a minimum of 35 years in jail without remission, before consideration of his case for pre-mature release. However, it would be subject to clemency power of the Executive.

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

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

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

180. In Selvam v. State, Cr.A No. 1287 of 2011; 2014-INSC-353, May 02, 2014, while commuting the death sentence for the rape and murder of a girl-child aged 9, the three-Judge Bench of the Hon'ble Supreme Court holds,

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

181. In Raju Jagdish Paswan v. State of Maharashtra, CrA Nos. 88-89 of 2019; 2019-INSC-51, Jan 17, 2019, commuting the death awarded for the rape and murder of a minor girl aged about nine years studying in Class IV, sentence to life with clarification that the Appellant shall suffer an imprisonment for a period of 30 years without remission, the Hon'ble Supreme Court holds,

> [9] The Appellant dragged a girl of nine years into a sugarcane field, raped her and dumped her in a well. The cause of death according to the medical evidence was signs of recent sexual intercourse with death due to drowning. There is no doubt that the murder involves exceptional depravity which is one of the aggravating circumstances. The manner of commission of the crime is extremely brutal. However, we are of the

considered opinion that the Appellant does not deserve the sentence of death in view of the following mitigating circumstances:

a) On a thorough examination of the offence, we are unable to accept the prosecution version that the murder was committed in a pre-planned manner.

b) The Appellant was a young man aged 22 years at the time of commission of the offence.

c) There is no evidence produced by the prosecution that the Appellant has the propensity of committing further crimes, causing a continuing threat to the society.

d) The State did not bring on record any evidence to show that the Appellant cannot be reformed and rehabilitated.

[10] In view of the above, we are unable to agree with the courts below that the sentence of death is appropriate in this case. Applying the guidelines laid down by this Court for sentencing an accused convicted of murder and being mindful that a death sentence can be imposed only when the alternative option is unquestionably foreclosed, we are of the opinion that this case does not fall within the rarest of rare cases.

[13] Though we have already expressed our view that the Appellant does not deserve to be put to death, he is not entitled to be released on completion of 14 years while serving life imprisonment. The brutal sexual assault by the Appellant on the hapless victim of nine years and the grotesque murder of the girl compels us to hold that the release of the Appellant on completion of 14 years of imprisonment would not be in the interest of the society. Considering the gravity of the offence and the manner in which it was done, we are of the opinion that the Appellant deserves to be incarcerated for a period of 30 years….

182. In Parsuram v. State of Madhya Pradesh, CrA 314-315 of 2013, Feb 19, 2019, commuting the death sentence of a boy aged 22, who had raped and murdered a minor girl, the Hon'ble three-Judge Bench of the Supreme Court holds,

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

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

> [30] …The appeals are, however, partly allowed by commuting the death sentence to that of life imprisonment with the stipulation that the appellant shall not be entitled to premature release/remission before undergoing actual imprisonment of 30 years for the offence under Section 302 of the Code and further the sentences awarded shall run concurrently and not consecutively.[9]

184. In Arvind @ Chhotu Thakur v. State of M.P., CrA No. 12 of 2022, pg 3, Jan 04, 2022, while commuting the death sentence for the rape and murder of a girl-child aged 10, the Hon'ble Supreme Court holds,

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

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

> The appellant was about 33-34 years of age at the time of commission of crime in the year 2015. Looking to the overall facts and circumstances, in our view, it would be just and proper to award the punishment of imprisonment for life to the appellant for the offence under Section 302 IPC while providing for actual imprisonment for a minimum period of 30 years. Having regard to the circumstances of this case and other punishments awarded to the appellant, it is also just and proper to provide that all the substantive sentences shall run concurrently.

186. In Bhaggi @Bhagirath @Naran v. State of Maharashtra, [2024] 2 S.C.R. 111; 2024-INSC-82, Feb 05, 2024, while commuting the death sentence to the appellant aged 40, for the rape and murder of a girl-child aged 7, the Hon'ble Supreme Court holds,

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

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

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

188. Any sentence to be proportionate must be stable and balanced like a table, and for any table to be stable, all its legs must be comparable. Thus, the Courts, while awarding a sentence, are under an obligation to consider the (a) Crime, (b) Victim, (c) Criminal and his family, and (d) Society and the State.

189. The relevant facts proved and established on the record indicate the gruesome crime because Laado was walking with the convict, swaying her one hand and letting the convict hold her other hand in absolute trust, without the mental age or information to suspect the probable evil of a devil. However, the convict has no criminal antecedents, and his conduct in prison is not violative, which makes reformation possible. To save the other kids and females, the convict must stay inside the four walls of the prison until he is closer to the Sunset of his virility.

190. In the light of the above referred judicial precedents, the death sentence is commuted to the rigorous imprisonment for life; however, considering the victim's age to be 5 years and 7 months, we are convinced to impose a sentence of 30 years, without remission, which, in the peculiar facts and circumstances, would be justified and would also safeguard the other girls on the street from the pervertedness of the convict. Further, the fine amount is enhanced to Rs. 30,00,000/-.

191. As a result, the appeal is partly allowed, he is acquitted for the commission of the offence punishable under §120-B IPC, and for the remaining offences, the conviction and sentence awarded by the Trial Court to the Convict (Virender alias Bholu) is modified and shall stand substituted in the following manner: -

(i) The conviction of the appellant of offences under §§376, 376AB, 363, 366, 302, 201 IPC, and §5/6 POCSO is upheld, and the sentences awarded to him are modified,

however the death sentence is commuted and the fine amount is enhanced, and the death sentence for the offence under §§302 and 376AB IPC, is commuted and altered as mentioned below.

(ii) The death sentence awarded to the appellant for the offence under §302 IPC and 376 AB IPC is commuted to Life imprisonment, with the clarification that Virender alias Bholu shall not be released from prison until he has served either 30 years (Thirty years) of total actual sentence.

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

(iv) The other terms of the sentences awarded to the appellant, including the amount of fine and default stipulations, are also confirmed. Further, the entire fine amount shall be paid to the victim's parents and siblings, in equal proportions, as compensation.

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

193. In Sharad Hiru Kolambe v. State of Maharashtra, [E-SCR]; 2018-INSC-852, decided on 20.09.2018, Para 15, the Hon'ble Supreme Court of India holds,

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

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

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

196. As an outcome, the conviction and sentence awarded by the Trial Court to the Convict (Virender @ Bholu) is modified and shall stand substituted as follows:

Section	Sentence of imprisonment	Fine in INR	Sentence in

			default of payment of fine
302 IPC & 376 AB IPC	**Life imprisonment, with the clarification that Virender @ Bholu shall not be released from prison until he has served 30 years (Thirty Years) of the actual custody, in prison or otherwise**	**30,00,000/- (INR Thirty Lacs)**	**SI for 300 days**
6 of the POCSO Act	**No separate sentence awarded as sentence already awarded under Section 376 AB of IPC in view of the provision of Section 42 of POCSO Act, 2012**	**-**	**-**
366 IPC	**RI for 07 years**	**5,000/- (INR Five Thousand)**	**SI for one month**
201 IPC	**RI for 07 years**	**5,000/- (INR Five Thousand)**	**SI for one month**

197. The sentence shall include total custody till date, including remission if earned till date, as actual custody.

198. Fine, whatever is recovered, shall be paid to the victim's parents and siblings in equal shares, and the concerned Court shall take steps to disburse the fine, and all the Authorities concerned shall fully cooperate in tracing the victim's parents and siblings, so that the fine can be distributed evenly to all who are surviving at the time of disbursement.

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

200. **CRA-S-1306-2020 filed by Kamla Devi is allowed, and she is acquitted of all charges.**

201. **CRA-D-346-2020 filed by Virender is partly allowed in the terms mentioned above**.

202. **Murder Reference No. 2 of 2020 is dismissed because of the commutation of the death sentence to the sentence as mentioned above.**

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

204. As a result, all the matters stand closed in the terms mentioned in this verdict. All pending miscellaneous applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

(SUKHVINDER KAUR)
JUDGE

Dec 23, 2025
Jyoti Sharma

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