

SUPREME COURT OF INDIA

Molai

Vs.

State of M.P.

(S Kurdukar, K Thomas and N S Hegde JJ.)

26.10.1999

JUDGMENT

S.P. KURDUKAR, J.

1. This criminal appeal is filed by the two appellants challenging the legality and correctness of the judgment and order of conviction and sentence passed by the High Court on 9.12.98 in Criminal References Nos. 3/97, 4/97 and Criminal Appeal No. 525/97 upholding convictions and sentence passed by the Additional Sessions Judge, Reeva for of fences punishable under Sections 376(2)(g), 302/34 and 201 of the Indian Penal Code. Trial Court awarded Capital Punishment to both the appellants subject to confirmation by the High Court. The High Court of Madhya Pradesh vide its judgment and order dated 9.12.98 upheld the conviction and confirmed death sentence of both the appellants.

2. The first appellant Molai (A-2) at the relevant time was working as a guard in Central Jail, Reeva. The second appellant, Santosh (A-1) was a prisoner undergoing a sentence for an of fence under Section 376 I.P.C. and was kept in Central Jail, Reeva.

3. The prosecution case unfolded at the trial is as under :

R.S. Somvanshi (PW 6) was posted as an Assistant Jailor at Central Jail, Reeva. He was having his quarter in the Jail compound and was staying alongwith his wife, two daughters, namely, Naveen aged about 16 years (since deceased), Pratibha (PW 3) aged about 12 years and a son. Some more jail officers were also staying in the same jail compound. The adjoining quarter No. 3, was occupied by Mr. R.K. Mishra, Assistant Jailor and was residing with his wife Shobha Mishra (PW 2) and a daughter Ruchi Mishra (PW 1). Another neighbouring quarter was occupied by Assistant Jailor Shyamji Singh (PW 7). Krishna Kumar Pathak, who also happened to be the Assistant Jailor

attached to the Central Jail, Reeva was residing in the same campus.

The incident in question took place on February 20, 1996 between 10 and 11 a.m. Mr. R.S. Somvanshi (PW 6) had left his house on that day at about 9 a.m. for his official duty whereas Pratibha (PW 3) had left for her school at about 7.30 a.m. Naveen was studying in 10th standard and as she had finished her practical examination, she was staying at home and preparing for annual examination. The wife of Mr. Somvanshi (PW 6) had gone to her parents house along with her son. Resultantly Naveen at the relevant time was alone in the quarter. On the day of incident, Molai (A 2) was sent by Somvanshi (PW 6) to look after his quarter and also to do the house job. Santosh (A 1) who was undergoing a sentence, was also sent to the quarter of Somvanshi (PW 6) to do the work in garden attached to the said quarter. This is how both the appellants A1 and A2 were working at the quarter of Somvanshi (PW 6) between 9 a.m. and 1 p.m. on February 20, 1996.

4. At about 10 a.m. a shriek was heard by Ruchi Mishra (PW 1) and Shobha Mishra (PW 2) coming from the quarter of Somvanshi (PW 6). Both of them came out of their quarter to find out the reason thereof. But nothing suspicious was found from outside. The door was however found closed. At about 11 a.m. Ruchi Mishra (PW 1) went to return a cassette to Naveen and when she gave a call to Naveen there was no reply. She then noticed that both the accused were standing outside the quarter and they told Ruchi Mishra (PW 1) that Naveen was not in the house and that she had gone along with her friend. At about the same time Shailender (PW 4) and his friends were playing cricket near the quarters of the jail officers and it so happened that cricket ball went towards the quarters of Somvanshi (PW 6). When he was searching the ball he noticed both the accused standing in front of the quarter. After some time Ruchi Mishra (PW 1) came out of her quarter and noticed that Santosh (A 1) was taking away the cycle of Naveen towards the back side of the quarter.

5. At about 12 noon Pratibha (PW 3) returned home from the school and found that her sister was not there. She, therefore, enquired with the accused who told her that she had gone on cycle along with her friend. At about 12.30 p.m. Molai (A 2) told Pratibha (PW 3) that some snacks were kept for her and she may eat the same. At about 1 p.m. Molai (A 2) left the house. Somvanshi (PW 6) returned to his house from his duty at 1.30 p.m. and found that Naveen was not there. He enquired from Pratibha (PW 3), who told him that the accused persons had told her that Naveen had gone with her friend on a cycle. Somvanshi (PW 6) at about 3 p.m. went to his office and returned at 6 p.m. Somvanshi (PW 6) again enquired as to whether Naveen had come back but Pratibha (PW 3) told him that she had not returned so far. At that time both the accused had come back to do the work and they also told Mr. Somvanshi (PW 6) that Naveen had gone on a cycle along with her friend. This caused a great anxiety to Somvanshi (PW 6), who then started searching Naveen. He also enquired with Naveen's friends but they told that she had not come to their house. In the evening both the accused returned to their respective barracks.

6. On 21.2.96 when Somvanshi went to the cattle shed, which is outside the quarter and near the septic tank, he noticed that the cover of the said tank was displaced and a blue colour frock of Naveen was floating in the said tank. He, therefore, went to the police station and lodged a report Exh. P-1. Police party then arrived at the spot and after removing the cover of the septic tank the dead body of Naveen was taken out. After making the inquest panchnama, the body was sent to the hospital for post mortem examination. During the investigation they suspected Santosh (A 1) and Molai (A 2) might be the offenders and, therefore, they were taken into custody on 21.2.96. During the investigation Santosh (A 1) made a statement under Section 27 of the Evidence Act which led to the recovery of a cycle from the septic tank. One Toulia of white khadi, one handkerchief, cotton

underwear of khadi, and a piece of khadi cloth (white) were also recovered which were concealed in the Parchhi (where the cow fodder was stored). Molai (A 2) also made a disclosure statement under Section 27 of the Evidence Act, which led to the recovery of piece of Pajama, one bed-sheet and a Pajama, which were concealed in the fodder in the Parchhi. A knife, which was concealed in the heap of cow dung cakes was also recovered. Santosh (A 1), who had some injuries on his person, was sent for medical examination and was accordingly examined. The incriminating articles recovered at the instance of both the accused were sent to F.S.L. Sagar for examination. After receipt of the report and on completion of the investigation a charge sheet came to be filed against both the accused for offences punishable under Section 376, 302/34 and 201 of the Indian Penal Code. The criminal case was then committed to the Sessions Court for trial.

7. The Additional Sessions Judge framed the charges against appellants for the offences mentioned hereinabove. Both the appellants (accused) pleaded not guilty to the aforesaid charges and pleaded that they are innocent and were falsely implicated. Molai (A 2) pleaded that on 20.2.96 he was posted at cloth godown, which was under the supervision of Somvanshi (PW 6) and was working there from 8 a.m. to 11 a.m. and after closing the godown he went to the court as he was to appear before Shri Srivastava Magistrate, and after attending the court he left for his village at 12.30 p.m. He also produced certified copy of the Roznama dated 20.2.1996 (Ex. D-9). Thus both the accused prayed that they be acquitted.

8. The prosecution case solely rested on circumstantial evidence and in order to bring home the guilt of both the appellants (accused) the prosecution at the trial relied upon the following circumstances :

(1) On 20.2.1996 Molai (A 2) was working in the house of Somvanshi (PW 6) when Ku. Naveen was alone inside the house. Santosh (A 1) was working in the garden around the quarter of Somvanshi (PW 6). They came at about 9 a.m.

(2) Shrieks were heard at about 10 a.m. by Ruchi Mishra (PW1), Shobha Mishra, PW 2 and Shailender (PW 4).

(3) Both accused falsely told to Ku. Ruchi Mishra (PW 1) and Shailender Singh (PW 4) at about 11 a.m. that Ku. Naveen had gone with her friend on cycle.

(4) At about 11.30 a.m. Santosh (A 1) was seen by Ruchi Mishra (PW 1) taking cycle of Naveen towards the back side of her house. Both the accused thus made a false statement as regards whereabouts of Ku. Naveen and her cycle to these two witnesses.

(5) At about 12 noon when Pratibha (PW 3) returned from her school, both the accused falsely told her that Naveen had gone on cycle with her friend.

(6) Both the accused had an opportunity to commit the offences.

(7) Santosh (A1) was having nail injuries on his person.

(8) Medical evidence on record has proved that Ku. Naveen was raped and thereafter she was strangulated and stabbed.

(9) Recovery of certain incrimination articles pursuant to the disclosure statement recorded under

Section 27 of the Evidence Act of A-1 and A-2. Some of these articles were identified to be of Naveen which had blood and semen stains.

(10) The plea of alibi taken by both the accused was found to be false.

9. The circumstances mentioned at SI. Nos. 1 to 4 could be taken together since the witnesses in this behalf are common. As regards the first circumstance Mr. Somvanshi (PW 6), who was the Assistant Jailor has stated that he had asked Molai (A 2) to go to his quarter and do the work in his house. He stated that Santosh (A1) was also doing the work in the garden when he left. He refers to the practice followed in that jail where the prisoners were sent to do such work in the garden around the quarters. This evidence also gets corroboration from the defence witness Ramraj Saundhia (DW 1), who was working as a Head Constable at the Central Jail Reeva. He stated that Molai (A 2) was working as a guard and he had taken 5 prisoners, one of them being Santosh (A 1) to work in garden No. 5-6. Ruchi Mishra (PW 1), Shobha Mishra (PW 2) and Shailender (PW 4) in their evidence have also stated that Molai (A 2) was working in the house whereas Santosh (A 1) was working in the garden. Thus the presence of both accused at the relevant time stands established.

10. The three other circumstances, namely, hearing of shriek at about 10 a.m., both the accused falsely telling Ruchi (PW 1) and Shailender (PW 4) that Naveen had gone with her friend on cycle and the same falsehood was repeated to Pratibha (PW 3) when she came from her school at about 12 noon. Ruchi Mishra (PW 1) in her evidence has stated that when she was sitting in the verandah she heard shrieks coming from the house of Somvanshi (PW 6). Shobha Mishra (PW 2) is the mother of Ruchi Mishra (PW 1) who was then working in the kitchen also heard shrieks. Both of them went towards the house of Somvanshi (PW 6) but they did not notice anything unusual and therefore, they came back to their quarter. They also heard the barking of a dog. Shailender (PW 4), who was playing cricket with his friends in front of his quarter also heard shrieks and when he came near the quarter of Somvanshi (PW 6) he did not see anybody around the quarter of Somvanshi (PW 6) and, therefore, he came back and started playing the cricket. All these three witnesses were cross-examined on behalf of defence but there is nothing in the evidence to discredit them on any score. Minor omissions, namely, that Ruchi (PW 1) and Shobha Mishra (PW 2) did not state before the police that after hearing the shrieks they came out of their quarter. The courts below have attached no importance to this omission and in our opinion rightly because both these witnesses as well as Shailender Singh (PW 4) have consistently stated that they heard shrieks coming from the house of Somvnsi (PW 6) at about 10 a.m.

11. Ruchi (PW 1) and Shobha (PW 2) have asserted that when they went near the quarter of Somvanshi (PW 6) they did not see either of the accused and the door of the quarter was closed. The evidence of Shailender (PW 4) also corroborates the evidence of Ruchi Mishra (PW 1) and Shobha Mishra (PW 2) in this behalf. He has stated that when he was playing a cricket he heard the shrieks at about 10 a.m. and after some time when he went to search his ball near the quarter of Somvanshi (PW 6) both the accused were not seen in the compound and the door was closed. It was suggested to Shailender Singh (PW 4) that he was not playing the cricket at the relevant time and he was responsible for the present crime. He denied the said suggestion. There is nothing in the evidence of Shailender Singh (PW 4) which would persuade us to disbelieve his evidence. Thus the evidence of all these three witnesses unerringly establishes that about 10 a.m. shrieks were heard by them. Santosh (A 1) was not in the garden, Molai (A2) was working in the house and the door of the quarter was closed.

12. In continuation of the above chain of circumstances Ruchi Mishra (PW 1) and Shailender Singh (PW 4) have stated that when they asked A-1 and A-2 about Naveen they told them falsely that Naveen had gone with her friend on cycle. Evidence of Ruchi Mishra (PW 1) is quite clear and emphatic that when she had gone to the house of Naveen to return her cassette, both the accused falsely told her that Naveen had gone along with her friend on cycle. Thus the first three circumstances were rightly held proved by the courts below.

13. At about 11.30 a.m. Ruchi Mishra (PW 1) saw Santosh (A 1) taking the cycle of Naveen towards the back side of her house. This has significance because both the accused had told Ruchi Mishra (PW 1), at about 11 a.m. that Naveen had gone along with her friend on cycle. The evidence of Ruchi Mishra (PW 1) clearly proves that both the accused gave false information in this behalf. This clearly shows that Naveen had not gone with her friend on cycle but it was very much there.

14. The next circumstance that when Pratibha (PW 3) returned to her house from her school at about 12 noon she asked the whereabouts of Naveen to accused persons. Thereupon both of them had told her that she had gone along with her friend on cycle. Molai (A 2) told her that Naveen had kept some snacks and she may take the same.

15. The above set of circumstances thus clearly indicates that Naveen was alone in the house when Molai (A 2) was working in the house at about 9 a.m. and thereafter Santosh (A 1) had come to work in the garden. They were together till 12 noon and during this period A-1 and A-2 had an opportunity to commit the present crime.

16. Both the accused did not dispute that Naveen had met with a homicidal death. The medical evidence in the present case assumes a great importance because it supports the prosecution case as regards the rape, strangulation and thereafter causing a stab injury on the person of Naveen. Dr. B.K. Sharma (PW 10), who was attached to Forensic Medicine Department, Medical College, Reeva, in his evidence has stated that dead body of Ku. Naveen was brought to the Medical College Hospital on 21.2.96 at about 12.45 p.m. He along with Dr. D.S. Kapoor and Dr. Neeta Mishra, performed the autopsy on the dead body and found the following injuries :

(i) A bruise with abrasion on the right maxillary and cheek area crescent shape looking to be from deep kissing with intermittent marks of teeth size 2 cm. X 2 cm. I have shown its picture in post-mortem report.

(ii) Abrasion of right mandible region 4 cm. right to the medial line sized 1/2 cm. x 1/2 cm.

(iii) Abrasion with bruise present just below the left lower eye lid in lateral aspect 1 cm. x 1/2 cm.

(iv) Stab wound present 10 cm. below the xiphoid process, on the upper portion on stomach upto the depth of stomach a cut wound 18 cm. in length on the wall of the stomach. The intestines had been cut. Peritoneum had been cut: Undigested food was coming out from the wound.

(v) A brown colour piece of underwear was tightly tied on the neck over the thyroid cartilage. This cloth was horizontal and two ordinary knots were tied in it which in the front of the neck. One part of the cloth was elastic and main cloth was synthetic. This cloth had been taken out and preserved...

17. All these injuries were ante-mortem.

Dr. Sharma noticed the following injuries on the private part of Ku. Naveen :

There were bruise marks on Libya majora and Libya minora. The hymen was found torn at 6 to 4 and there was bleeding from the vagina with some blood mixed matter on the vagina of which slides were prepared. Advice was given for its examination so that it could be known whether sperms were present or not.

18. Dr. Sharma then noted that as vaginal discharge was coming from her vagina, he prepared a slide of this discharge and forwarded it to the chemical analyser for his opinion and report. The report of the chemical analyser is at Ex. P-29, wherein it is stated that blood with semen and human sperms were found on the slide.

19. Dr. Sharma opined that rape on Naveen must have been committed first and thereafter she was strangulated followed by a stab injury. All these injuries were ante-mortem. The cause of death was failure of cardiac and blood circulation as a result of strangulation. Dr. Sharma opined that death must have occurred within 18-36 hours before the post-mortem. Thus the medical evidence on record clearly establishes that Ku. Naveen was subjected to rape and thereafter she was strangulated as ligature marks were present around her neck and then followed by an assault by sharp edged weapon. Thus the prosecution has proved that before committing the murder of Ku. Naveen she was subjected to rape, strangulation and then injury by sharp edged weapon. We accordingly confirm the finding in this behalf recorded by the courts below.

20. The next circumstances relied upon by the prosecution relates to the nail injuries on the person of Santosh (A 1). Dr. R.P. Shrivastava, (PW 8) who was attached to Gandhi Memorial Hospital, Reeva, examined Santosh (A 1) on 21.2.96 and recorded the following injuries :

Small scratch injuries in right and left side of neck, which were 1 cm. x 5 cm. and above the mastoid bone behind the right ear and left ear and three scratch injuries were present on his right forearm towards front side.

21. Dr. Srivastava described them as nail injuries and stated that they might have been caused within 36 hours of examination. He further examined Santosh Kumar (A 1), who was found to be capable of sexual intercourse. There is nothing in the evidence to discard his evidence. The explanation given by the accused is that he was subjected to ill treatment by the investigating of ficer causing injuries to him. Courts below have rightly discarded this explanation. The only legitimate inference in this behalf is that Ku. Naveen must have resisted sexual assault and in that process the accused had sustained nail injuries. We may also add here that Dr. B.K. Sharma, who performed that autopsy on the dead body had also noticed an injury on the cheek of Naveen and according to him having regard to the size and shape of the said injury it could have been caused when the assailant tried to have a deep kiss.

22. We may now take up a very importance circumstance which relates to the recovery of various incriminating articles - some of which were the clothes of Naveen. During the course of investigation Santosh (A 1) on 21.2.96 at about 2.30 p.m. made a disclosure statement under Section 27 of the Evidence Act. Memorandum is at Exh. 6. He disclosed that he had hidden the clothes in the Parchhi (cow shed). He further stated that he would produce Naveen's cycle which he had thrown into septic tank.

23. Molai (A 2) was separately interrogated and he made a disclosure statement under Section 27 of the Evidence Act stating that he had concealed a knife in the heap of cow dung cakes. He then stated he had concealed a piece of underwear, one bed sheet and one Pajama in the fodder room near the septic tank and he would produce the same. The memorandum is at Ex. P-7.

24. Both these memorandums were drawn in the presence of two witnesses, Mirza Safdar Beg and Shyamji Singh (PW 7). Both the accused then led the panch witnesses and the investigating team separately to the respective places and produced these various incriminating articles. Santosh Kumar (A 1) produced the following items, which came to be seized vide panchnamas Ex. P-8 and P-9. The items mentioned therein are :

- (i) one white khadi cloth stained with blood at two places;
- (ii) one handkerchief and an underwear, which were having blood and semen stains; and
- (iii) one white khadi cloth.

25. Santosh (A 1) then took the panch witnesses and the investigating officer to the septic tank from where a cycle belonging to Naveen was recovered.

26. Molai (A 2) then took the panch witnesses and the investigating officer towards the heap of the cow dung cakes near the septic tank from where he took out a knife which was stained with blood. Molai (A 2) then produced an underwear, a bed sheet and one pajama, which were concealed in the fodder room near the septic tank. All these items were seized under the Panchnama (Ex. P-10 & P-11).

27. In order to prove this recovery at the instance of A1 and A2, the prosecution examined Shyamji Singh s/o Rajbhan Singh, (PW 7). In his evidence he has given all minute details as to how the disclosure statements came to be recorded under Section 27 of the Evidence Act and how all these incriminating articles were recovered at the instance of A1 and A2. This witness has been searchingly cross-examined by the learned advocates appearing for the respective accused but we do not find any material on record which would discredit his evidence. The evidence of Shyamji Singh (PW 7) was accepted by the trial court as well as by the High Court and Mr. Shukla, the learned senior counsel appearing for the accused could not persuade us to reject his evidence. Thus the prosecution has established the recovery of various incriminating articles of which some belonged to Naveen. All these articles were sent to F.S.L. Sagar for its report. The F.S.L's report is Ex. P-30. The findings of the F.S.L. are that the under-garments of Naveen had blood stains as well as semen stains. The under-garments and other articles which do not belong to Naveen also contained blood and semen . stains except cycle. As far as the knife recovered at the instance of Molai (A-2), it did have the human blood but the blood group could not be determined. These incriminating articles connect the accused with the crime in question. Mr. Shukla, the learned senior counsel, however, urged that it would be unsafe to connect the said knife with the crime in question and attribute the use of the same by the accused persons in the absence of determination of the blood group. This argument does not appeal to us because the FLS's report has clearly certified that the blood found on the knife was human origin. This question fell for consideration in State of Rajasthan v. Teja Ram and Ors. , and this Court held that it would be an incriminating circumstance if blood on the weapon was found to be of human origin. Mr. Shukla while assailing the findings as regards the recovery of

various incriminating articles urged that the prosecution ought to have examined other panch witnesses to corroborate the evidence of Shyamji Singh (PW 7). No such contention was raised in the courts below and we do not think it proper to entertain at this late stage. In addition to this, it is not necessary to examine both the panch witnesses. If the accused wanted the other panch witness for cross examination, certainly he could have taken proper recourse during the trial. The trial court as well as the High Court accepted the evidence of Shyamji Singh (PW 7), who has proved recovery of articles pursuant to the disclosure statements (Ex. P-6 and P-7) and the recovery thereof vide Exs. P-8, P-9, P-10 and P-11. The prosecution in our opinion has successfully proved this circumstance beyond every reasonable doubt.

28. Coming to the next circumstance that both the accused had an opportunity to commit the offence need not detain us any longer. The evidence of Ruchi Mishra (PW 1), Shobha Mishra (PW 2) and Shailender (PW 4) unmistakably point out that A-1 was working in the garden where as A-2 was working in the house of Somvanshi (PW 6) at about 9 or 10 A.M. when Naveen alone was inside the house. When these witnesses heard the shriek they went near the quarter of Somvanshi (PW 6) but they could not see either of the accused in the garden and the door was closed. Thus Santosh (A1) and Molai (A2) had full opportunity to commit the crime in question. It cannot be disputed that Molai (A2) was a Guard working at the quarter of Somvanshi (PW 6), who had reposed full confidence in him as regards safety and security of Naveen. Santosh Kumar (A 1) was working in the garden as he was then undergoing a sentence for the offence of rape. Mr. Shukla, learned senior counsel, however, informed us that the High Court has acquitted A-1 of the said charge. Both the accused in our opinion have totally misused the confidence reposed by Somvanshi (PW 6) and behaved in a most shameful, barbaric and a brutal manner by committing rape and murder of Naveen. This circumstance is also proved by the prosecution beyond any pale of doubt.

29. The next circumstances relied upon by the prosecution is the injuries on Santosh Kumar (A 1). Dr. R.P. Srivastava (PW 8) examined Santosh Kumar (A 1) on 21.2.1996 and he found small scratch/injuries on his right and left side of the neck and above the mastoid bone behind the right ear and left ear and three scratch injuries on his right forearm towards front side. According to him, these injuries could be caused with nails and they were within 36 hours of examination. The explanation given by Santosh Kumar (A 1) in his statement recorded Under Section 313 Cr. P.C. is that because of scratching by himself he got these injuries. This explanation is untenable. The only legal inference that must follow from these injuries is that Naveen must have resisted sexual assault and in that process A1 had received these injuries. However, it needs to be noted at this stage that no injuries were found on the person of Molai (A 2). The courts below, in our opinion, were right in drawing a legitimate conclusion that Naveen must have resisted the sexual assault committed by accused persons and in that process A-1 had sustained these injuries. This circumstance clearly shows the complicity of A-1 in the present crime.

30. The next circumstance, namely, the false explanation given by A-1 and A-2 when Ruchi Mishra (PW 1) went to return the cassette to Naveen at her quarter, they told her that Naveen had gone along with her friend on a cycle. The same false information was also given to Pratibha (PW 3), the sister of Naveen, when she returned from the school at about 12 noon. This false explanation itself is a circumstance which can be used against A-1 and A-2. The courts below have rightly taken this circumstance as proved against both the accused.

31. The next circumstance which has also got a bearing on the complicity of accused person is when Ruchi Mishra (PW 1) saw Santosh Kumar (A 1) taking cycle of Naveen at about 11.30 a.m. towards

the back side of her house. It is therefore clear that the information given by A-1 and A-2 that Naveen had gone along with her friend on a cycle was false and misleading to cover-up the crime.

32. Coming to the last circumstances, namely, the plea of alibi taken by both the accused. Molai (A 2) has produced a certified copy of the proceeding sheet in CrI. Case No. 764/92, from the court of Shri S.K. Srivastava, 1st Class Magistrate, Reeva. Relying upon this document, Mr. Shukla, learned senior counsel urged that this document clearly indicates that on 20th of February, 1996 (the date of incident) Molai (A 2) had gone and attended the court and if this be so his complicity in the present crime is totally ruled out and at any rate A2 is entitled for benefit of doubt. We see no substance in this contention because the other evidence on record has positively established that Molai (A 2) was working in the house of Somvanshi (PW 6) and he was there till Pratibha (PW 3) came from the school at about 12 noon. The incident in question had occurred between 10 a.m. and 11.30 a.m. The proceeding sheet, Ex. D-9 produced on record does not even remotely suggest at what point of time Molai (A 2) had gone to the Magistrate's court. This document in our opinion does not help Molai (A 2) to show even prima facie his absence from the place of occurrence. The defence witness examined on behalf of the accused also does not take the defence case any further.

33. Thus after taking into account the oral and documentary evidence on record, we are satisfied that the court below have committed no error in convicting both the accused for of fences punishable under Sections 302, 376 and 201 read with 34 I.P.C.

34. Coming to the question of sentence, Mr. Shukla, the learned senior counsel urged that the courts below have committed an error while awarding death sentence to both the accused. He urged that the prosecution has failed to establish that the present case is one of the rarest of rare cases and therefore the capital punishment was uncalled for. He then contended that the courts below have failed to consider the various decisions of this Court on the question of capital sentence in proper perspective and resultantly committed a serious error while awarding the death sentence.

35. Learned Counsel for the State of Madhya Pradesh, however, urged that Molai, A-2 was posted as a Guard at the quarter of Somvanshi (PW 6) and was supposed to protect the person and property. He has totally committed the breach of confidence which was reposed in him by Somvanshi (PW 6). Santosh Kumar (A-1) was then serving a sentence for the of fence of rape. He was working in the garden. Both the accused took the undue advantage of the situation knowingly full well that Naveen was alone in the house and her father Somvanshi (PW 6) would not return before the lunch break as also Pratibha (PW 3), sister, would not come before 11.30 a.m. Both the accused had every opportunity to commit the crime in question and they had done a most brutal, heinous and shameful act by committing rape on Naveen, then strangulated and thereafter caused stab injuries and threw her body into the septic tank with the cycle with an intention to cause disappearance of evidence. Counsel further urged that the courts below have very carefully scrutinised the material on record and after following the decisions of this Court, which were also discussed threadbare in their judgments, awarded capital punishment to both the accused. It is a case where no leniency in the matter of sentence be shown inasmuch as neither of the accused had brought on record any mitigating circumstances which would justify reduction in the sentence.

36. We have very carefully considered the contentions raised on behalf of the parties. We have also gone through various decisions of this Court relied upon by the parties in the courts below as well as before us and in our opinion the present case squarely falls in the category of one of the rarest of rare cases, and if this be so, the courts below have committed no error in awarding capital

punishment to each of the accused. It cannot be overlooked that Naveen, a 16 year old girl, was preparing for her 10th examination at her house and suddenly both the accused took advantage of she being alone in the house and committed a most shameful act of rape. The accused did not stop there but they strangled her by using her under-garment and thereafter took her to the septic tank alongwith the cycle and caused injuries with a sharp edged weapon. The accused did not even stop there but they exhibited the criminality in their conduct by throwing the dead body into the septic tank totally disregarding the respect for a human dead body. Learned Counsel for the accused (appellants) could not point any mitigating circumstances from the record of the case to justify the reduction of sentence of either of the accused. In a case of this nature, in our considered view, the capital punishment to both the accused is the only proper punishment and we see no reason to take a different view than the one taken by the courts below.

37. In the result Criminal Appeal No. 678 of 1999 is dismissed. The conviction of the appellants on all counts as well as the death sentence awarded by the courts below are upheld.