Supreme Court of India

B.A.Umesh vs Regr.Gen.High Court Of Karnataka on 1 February, 2011

Author: A Kabir

Bench: Altamas Kabir, A.K. Patnaik

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.285-286 OF 2011

(Arising out of SLP(Crl.)Nos.3131-3132 of 2009)

B.A. UMESH ... APPELLANT

Vs.

REGR.GEN.HIGH COURT OF KARNATAKA ... RESPONDENT

J U D G M E N T

ALTAMAS KABIR, J.

1. Leave granted.

2. These Appeals have been filed by the Appellant questioning the judgment and order dated 4th October, 2007, passed by the Karnataka High Court in Criminal Referred Case No.3 of 2006 and Criminal Appeal No.2408 of 2006 rejecting the Appellant's appeal and confirming the death sentence awarded to him by the Sessions Judge, Fast Track Court VII, Bangalore City, in S.C.No.725 of 1999, by judgment and order dated 26th October, 2006.

3. According to the prosecution, Jayashri, mother of Suresh (P.W.2) and sister of Manjula (P.W.22), was married to one Dr. Maradi Subbaiah who died about two years prior to 28.02.1998 on which date the incident which resulted in S.C.No.725 of 1999 is alleged to have occurred. After the death of her husband, Jayashri and her son Suresh, were staying in premises No.14/8 situated at Dasarahalli, Bhuvaneshwarinagar, Bangalore, as a tenant of one Lalitha Jaya (P.W.8). Suresh was studying in Upper K.G. in Blossom English School. His mother would drop him to school at Bagalkunte at 8.30 a.m. and would bring him back at 1.00 p.m. after classes were over.

4. On 28.2.1998, Jayashri took Suresh to school as usual at 8.30 a.m. and brought him back at 1.00 p.m. and they had lunch together in the house. After lunch, Suresh went out to play with his friends and apart from Jayashri there was no one else in the house. Suresh returned to the house at about 5.00 p.m. and saw the accused, B.A. Umesh, in the hall of the house who introduced himself as "Uncle Venkatesh" and told Suresh that his mother, Jayashri, was possessed by the devil and that he had, therefore, tied her hands and was going to bring a Doctor. The accused then left the house with a bag filled with articles. According to the prosecution, Basvaraju (P.W.10) and Natesh (P.W.11) saw the accused going out of Jayashri's house with the bag on 28.2.1998 at about 4.30 p.m. Suresh then went into the room and saw his mother lying flat on the ground with blood on the floor and her hands tied together with a sari at one end and the other end of the sari was tied to a window. As she did not respond to his voice, Suresh went to Kusuma Shetty (C.W.7), a neighbour, and told her what he had seen. Kusuma Shetty called Geetha Hegde (C.W.6) and Lalitha Jaya (P.W.8) and together they went near Jayashri's house with Suresh and through the window they saw Jayashri lying on the ground. Lalitha Jaya then called Bylappa (P.W.7), a Police Constable, living in the same locality who telephoned Papanna (P.W.9), the Inspecting Officer, who came to the place of occurrence with Police Constable Garudappa (P.W.6). In the meantime, on being informed, A. Kumar (P.W.14) a Police Constable working in the Dogs Squad, Jagannath (P.W.16), a Police Photographer and R. Narayanappa (P.W.13) a Police Inspector and finger-print expert arrived at the place of occurrence. B.N. Nyamaagowda (P.W.29), the Investigating Officer, found that Jayashri was lying dead on the floor with her genitals exposed and blood oozing from her vagina. The doors of an almirah in

the house were open and articles in the house were lying scattered. He prepared a report and sent the same through P.W.6 to the Police Station to register a crime. P.W.6 took the said report to Peenya Police Station and the same was registered as Crime No.108 of 1998. He then prepared a First Information Report and sent the same to Court. A copy of the F.I.R. was also sent to P.W.29, the Investigating Officer. P.W.14 had come from the Dogs Squad with Dhrona, a sniffer dog, who having sniffed the dead body and Jayashri's clothes went towards the pipeline and returned. P.W.16, the Police Photographer, took photographs of the dead body and the scene of offence. P.W.13, the finger-print expert, found finger-prints on a wall clock and also on the handle of the almirah (Exts. P.14 and P.15). P.W.29, thereafter, conducted inquest over the dead body in the presence of Panch witnesses, P.Ws.2, 3 and 4, and sent the dead body for Post- mortem examination to Dr. Somashekar (P.W.26) who after conducting the Post-mortem on Jayashri's dead body opined that death had occurred due to smothering after commission of sexual assault.

5. On 2.3.1998 at about 2.30 p.m., on receipt of an information in the Central Room that the public had apprehended a thief, P.W.18 went to the spot and came to learn that the person who had been apprehended had tried to commit a robbery in the house of Smt. Seeba and had caused bleeding injuries to her person. On enquiry it transpired that the name of the apprehended person was Umesh Reddy and that he had committed many crimes at various places, including the house of the deceased. Umesh Reddy volunteered to show the place where he had kept the robbed articles. He, thereafter, revealed that his name was Venkatesh and that he had taken the premises belonging to P.Ws.5 and 17 on lease. According to the prosecution, the appellant approached Maare Gowda (P.W.4) to get him a place on rent and P.W.4 took him to his relative M.R. Ravi (P.W.5) who along with Jayamma (P.W.17) was the owner of a tenement in which he agreed to rent a premises to the appellant on a monthly rental of Rs.350/-. On the agreed terms the appellant occupied the premises belonging to P.Ws.5 and 17.

6. It is the further case of the prosecution that the appellant voluntarily led the Police and the Panchas P.Ws.12 and 29 to the premises under his occupation as a tenant under P.Ws.5 and 17 and showed them 191 articles, including 23 items said to have been recovered from the house of the deceased, which were seized under mahazar (Ex.P.11). The remaining articles were seized in connection with other cases registered against the appellant. The body of the deceased was sent for Post-mortem on 3.3.1998 and on the same day the sample finger prints of the appellant was taken by Mallaraja Urs (C.W.25) in the presence of P.W.29. The appellant was sent for medical examination and was examined by P.W.26 who issued the wound certificate regarding the injuries found on the body of the appellant. P.W.22, Manjula, the sister of the deceased, identified the articles (M.Os.1 to

22) seized under mahazar (Ex.P.11) as articles belonging to Jayashri and also stated that Jayashri had been married to Dr. Maradi Subbaiah. Thereafter, on the requisition of P.W.29 the Taluka Executive Magistrate (P.W.24) conducted Test Identification Parade on 30.3.1998 and P.Ws.2, 10, 11 and 17 identified the appellant at the said T.I. Parade. The articles seized in the case were sent by P.W.29 to the Forensic Science Laboratory and after receiving the serology report, P.W.29 completed the investigation

and filed Charge Sheet against the appellant of having committed offences punishable under Sections 376, 302 and 392 I.P.C. The case was committed to the Court of Sessions and charge was framed against the appellant under Sections 376, 302 and 392 I.P.C. The appellant pleaded not guilty to the charges and claimed to be tried.

7. The prosecution examined 29 witnesses who proved Exts. P1 to P48(a). During cross- examination of P.Ws.5, 16, 17 and 18, the defence proved Exts.D1 to D4 through the said witnesses. M.Os. 1 to 32 were marked on behalf of the prosecution. The statement of the appellant under Section 313 Cr.P.C. was recorded. The defence of the appellant was one of denial. No witness was examined on behalf of the appellant. After considering the submissions of the learned Public Prosecutor and the learned counsel for the appellant and after appraising the oral and documentary evidence, the trial Court held that the prosecution had proved beyond all reasonable doubt that the appellant had committed the offences with which he had been charged and found him guilty of the offences punishable under Sections 376, 302 and 392 I.P.C. After hearing the appellant and the learned counsel for the appellant on the question of sentence, the trial Court sentenced the appellant to suffer 7 years rigorous imprisonment and to pay a fine of Rs.25,000/- and in default of payment of the fine to suffer further rigorous imprisonment of 2 years for the offence punishable under Section 376 I.P.C. The appellant was also sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.25,000/- and in default of payment of the fine to suffer further rigorous imprisonment of 2 years for the offence punishable under Section 392 I.P.C. The appellant was lastly sentenced to death by hanging for the offence punishable under Section 302 by the trial Court which also made a reference to the High Court under Section 366 Cr.P.C. for confirmation of the death sentence, and the same was renumbered as Criminal Reference Case No.3 of 2006. Being aggrieved by the judgment of conviction and sentence passed against him by the trial Court, the appellant also preferred Criminal Appeal No.2408 of 2006.

8. The Reference and the Appeal were heard together and upon a fresh look at the evidence on record, and in particular the oral evidence of P.W.2 (son of the deceased), P.W.3 (neighbour), P.W.8 (landlady of the appellant), P.W.9 (Mazahar witness), P.W.26 (doctor who conducted the Post- mortem examination on the body of the deceased), P.W.27 (Forensic Expert) and the Post-Mortem, FSL and Serology Reports, dismissed the Appellant's Criminal Appeal No.2408 of 2006 and confirmed the judgment of conviction dated 26.10.2006 passed by the Sessions Judge, Fast Track Court-VII, Bangalore City, in S.C.No.725 of 1999. Consequently, on the finding that there was no possibility of the appellant's reformation in view of his conduct despite his earlier convictions and punishment in earlier cases of robbery, dacoity and rape, the High Court held the present case to be one of the rarest of rate cases which warranted confirmation of the death penalty awarded by the trial Court, and answered Criminal Reference Case No.3 of 2006 made by the Sessions Judge, Fast Track Court-VII, Bangalore, by confirming the death sentence.

9. Appearing for the appellant, Ms. Kiran Suri, learned advocate submitted that the appellant's conviction was based entirely on circumstantial evidence which was itself based on inference which was of no evidentiary value. Ms. Suri urged that the prosecution had almost entirely relied on the evidence of

P.W.2, Suresh, the son of the deceased, who was a minor of 7 years at the time of the incident, and P.W.s 10 and 11, Basavaraju and Natesh, who claimed to have seen the appellant coming out of the house of the deceased and P.W. 17, Jayamma, the landlady of the appellant who identified the appellant in the Test Identification Parade.

10. Ms. Suri submitted that the other prosecution witnesses were those who had been associated with the investigation in one way or the other, such as P.W. 13, Narayanappa, the finger-print expert who found the finger-print of the appellant on the handle of the almirah in the victim's room, P.W.26, the doctor who conducted the Post-mortem examination on the body of the victim, P.W.27, D. Siddaramaiah, Forensic Expert and P.W. 29, the Investigating Officer in the case.

11. Ms. Suri contended that as far as P.W.2 is concerned, he being a minor of 7 years when the incident had taken place, his testimony would have to be treated with caution. Ms. Suri also contended that from an analysis of the evidence on record it is extremely doubtful as to whether P.W.2 was at all present when the deceased was killed. Ms. Suri urged that had P.W.2 seen the appellant in the house at the time of the incident, as stated in his evidence, he would certainly have reacted in a manner different from what has been indicated. More importantly, if the appellant had been in the house when P.W.2 is said to have seen him at the time of the incident, nothing prevented him from eliminating P.W.2, who was a minor child of seven, in order to remove the only witness who could link him with the murder, in the absence of any other person in the house. Ms. Suri pointed out that not only was P.W.2 7 years old when the incident had occurred, but his evidence was taken 7 years thereafter which raised doubts as to its correctness and accuracy. Ms. Suri urged that even the state in which he found his mother after the appellant is said to have left the house, indicated that he had come on the scene after the other witnesses had come in and covered her body with a sari. Even in respect of identification of the appellant by P.W.2 at the Central Jail, Bangalore, it was submitted that a photograph of the appellant had been published in the newspapers throwing doubt on such identification. Ms. Suri urged that the same reasoning will also hold good as far as identification of the appellant by P.Ws 10 and 11, Basavaraju and Natesh, are concerned, since they were only chance witnesses. While P.W.10 was living in a house opposite to the rented accommodation of the appellant, P.W.11 was a close neighbour of the deceased, and it is only by chance that they claim to have been present at the exact moment when the appellant allegedly came out of the house of the deceased. Ms. Suri submitted that as had been held by this Court in Musheer Khan alias Badshah Khan & Anr. Vs. State of Madhya Pradesh [(2010) 2 SCC 748], the reliability of a Test Identification Parade under Section 9 of the Evidence Act, 1872, becomes doubtful when the same is held much after the incident and when the accused is kept in police custody during the intervening period. Ms. Suri submitted that while the incident is stated to have occurred on 28.2.1998, the T.I. Parade was conducted by the Tehsildar K.S. Ramanjanappa (P.W.24) on 30.3.2005 about seven years after the incident had taken place.

12. Ms. Suri then took up the question of recovery of M.Os. 1 to 23 from the house of the appellant in the presence of P.Ws. 4, 5 and 12. It was urged that the evidence of P.W.4, Maare Gowda, the appellant's landlord, in cross-examination, was sufficient to throw doubts over P.W.5 Ravi's role as a panch witness

to the recovery of the articles which were later identified as belonging to the deceased by her elder sister Manjula (P.W.22). Even as far as P.W.12 Manjunath is concerned, Ms. Suri submitted that it was quite evident that he was not an independent witness as he used to serve tea, coffee and food to the people in Peenya Police Station, including those in the lock-up, and was available as a witness whenever called upon by the police.

13. From the Mahazar prepared in the presence of P.Ws 5 and 12, Ms. Suri pointed out item No.186 which was described as a cream-coloured panty with mixed stains which was said to have been removed by the appellant to have sexual intercourse with the deceased and was thereafter worn by him while returning home. Learned counsel submitted that in his evidence P.W.29, the Investigating Officer, had indicated that he had seized an underwear which was white in colour and only subsequently another cream-coloured underwear was shown to him which was marked as M.O.32. Referring to the list of Material Objects marked by the prosecution, Ms. Suri pointed out M.O.28, which was shown as a white underwear, while M.O.32 was shown as a cream- coloured underwear. Ms. Suri submitted that No.23- a design sari, M.O.25-white colour brassiere, M.O.26-Red colour blouse and M.O.27-Red colour cloth like tape, had been recovered from the body of the deceased by P.W.26, Dr. M. Somasekar, who conducted the Post-mortem examination on the body of the deceased and proved the same in his evidence. Ms. Suri submitted that there was no mention of recovery of any panty or underwear from the body of the deceased during the Post-mortem examination. On the other hand, M.O.28, which was a white underwear and certain blood samples (M.Os.29 and 30) had been proved by the forensic expert, D. Siddaramaiah (P.W.27), which established the fact that the white underwear M.O.28 and not M.O.32, the cream-coloured panty which the accused is alleged to have worn after sexually assaulting the deceased, had been sent to the Serologist for examination. Ms. Suri submitted that the cream- coloured panty was subsequently introduced in the investigation by P.W.29, inasmuch as, in his evidence P.W.27 clearly stated that the white underwear (M.O.28) did not contain any trace of semen. Ms. Suri also pointed out that in his evidence P.W.29 had stated that while drawing up the Mahazar he had seized one underwear. On the basis of the evidence led by the prosecution the said underwear could only have been M.O.28 listed in the Mahazar, which was sent to F.S.L. and was proved by P.W.27, on which traces of human blood had been found, but not semen. It was during his examination-in-chief that a cream-coloured panty which had not been sent to the F.S.L., was shown to P.W.29 and was marked M.O.32. Ms. Suri submitted that since the white underwear was shown as M.O.28 in the Mahazar, the same could only be taken into consideration in appraising the evidence.

14. Ms. Suri then addressed the third aspect of the prosecution case relating to lifting of the finger print of the appellant from the handle of the almirah in the room of the deceased. It was contended that the procedure adopted for obtaining the finger print of the appellant by P.W.25, while he was in custody, for the purpose of comparison with the finger print lifted from the handle of the almirah in the room of the deceased, left sufficient room for doubt about the authenticity of the finger print taken from the appellant for the purpose of comparison. It was submitted that rather curiously all the other finger prints in the room, including the one taken from the wall clock, were smudged and were of no use for the purpose of comparison, which also gave rise to doubts as to whether the finger prints alleged to have been taken from

the handle of the almirah in the room of the deceased, had actually been lifted from the said place. Ms. Suri submitted that the finger print of the appellant taken by P.W.25 when the appellant was in custody, should have been taken before a Magistrate to ensure its authenticity. Furthermore, although, the said finger print was taken on 8.3.1998, the same was sent to the F.S.L. only on 15.3.1998.

15. Referring to the provisions of the Identification of Prisoners Act, 1920, Ms. Suri submitted that Section 2(a) defined "measurements" to include finger impressions and Section 2(b) defined "Police Officer" to mean an officer in charge of a police station, a police officer making an investigation or any other police officer not below the rank of Sub-Inspector. Learned counsel also pointed out that Section 4 of the Act provided for the taking of measurements of non-convicted persons, which under Section 5 could be ordered by a Magistrate if he was satisfied that the same was for the purpose of investigation. Ms. Suri, however, also pointed out that in State of Uttar Pradesh Vs. Ram Babu Misra [(1980) 2 SCC 343], this Court while considering the provisions of Section 5 of the above Act and Section 73 of the Indian Evidence Act, 1872, held that Section 73 did not permit a Court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in a proceeding which may later be instituted in the court. Direction under Section 73 to any person present in the court to give specimen writings is to be given for the purpose of enabling the court to compare and not for the purposes of enabling the Investigating or other agency to make any comparison of such handwriting. Ms. Suri also referred to the decision of this Court in Mohd. Aman & Anr. Vs. State of Rajasthan [(1997) 10 SCC 44], where finger prints of the accused found on a brass jug seized from the house of the deceased were kept in the police station for five days without any justifiable reason. Furthermore, the specimen finger prints of the accused had not been taken before or under the order of the Magistrate and, accordingly, the conviction based on the evidence of the finger prints of the accused on the brass jug were held to be not sustainable. Ms. Suri also referred to the decision in Musheer Khan's case (supra), where the question of the evidentiary value of a finger-print expert was considered apart from the question of identification and it was held that such evidence fell within the ambit of Section 45 of the Evidence Act, 1872. In other words, the evidence of a finger print expert is not substantive evidence and can only be used to corroborate some items of substantive evidence which are otherwise on record and could not, therefore, have been one of the main grounds for convicting the appellant of the offences with which he had been charged.

16. Regarding the charge of rape, Ms. Suri submitted that there was no evidence to connect the appellant with the offence. Not only were there no eye-witnesses, but even the oral evidence relied upon by the prosecution or the Material Objects seized from the scene of the crime or recovered from the body of the victim during Post-mortem examination or from the appellant, established the commission of rape on the deceased by the appellant.

17. Ms. Suri submitted that having regard to the state of the evidence adduced by the prosecution, no case could be said to have been made out against the appellant either under Section 302 or under Sections 392 and 376 I.P.C.

18. Coming to the question of sentencing, Ms. Suri submitted that even if the conviction of the appellant under Sections 302, 392 and 376 I.P.C. was to be accepted, the case did not fall within the category of "rarest of rare cases", which merits imposition of the death penalty. In order that a death sentence be passed on an accused, the court has to keep in mind various factors such as :

(1) that the murder of the deceased was not premeditated;

(2) that the accused did not have any previous criminal record so as to draw a conclusion that the accused was a menace to society;

(3) that the death was caused in a fit of passion;

(4) that the accused was of young age and there was nothing on record to indicate that he would not be capable of reform; and (5) that the death was not as a part of conspiracy or with the intention of causing death.

19. Ms. Suri submitted that the two Hon'ble Judges of the Karnataka High Court hearing the Criminal Appeal differed on the question of awarding death penalty to the appellant. Learned counsel submitted that Justice V.G. Sabhahit confirmed the death sentence imposed by the trial Court upon holding that there was something uncommon about the crime in the present case which renders the sentence of imprisonment for life inadequate. Justice Sabhahit held that the commission of the offence not only of rape but also of murder and theft indicated that the appellant was not only cruel, heartless, unmerciful and savage, but also brutal, pitiless, inhuman, merciless and barbarous, considering the fact that he had taken undue advantage of a helpless woman. However, Justice R.B. Naik, while agreeing with the conviction of the appellant by the trial Court, was of the view that as a rule death sentence should be imposed only in the rarest of rare cases in order to eliminate the criminal from society, but the same object could also be achieved by isolating the criminal from society by awarding life imprisonment for the remaining term of the criminal's natural life. Ms. Suri submitted that on account of the difference of opinion of the two Hon'ble Judges, the question of sentencing was referred to a third judge, the Hon'ble Mr. Justice S.R. Bannurmath, who, in Criminal Reference Case No.3 of 2006, concurred with the view taken by Justice Sabhahit and confirmed the death penalty imposed by the trial Court.

20. Ms. Suri submitted that in order to have a deterrent effect on social crimes, the view taken by Justice Naik was more acceptable as it would have effect not only in removing the accused from society, but would also enable him to realize the gravity of the offence committed by him.

21. In support of her submissions, Ms. Suri firstly relied on the decision of this Court in Ronny alias Ronald James Alwaris & Ors. Vs. State of Maharashtra [(1998) 3 SCC 625], where despite conviction under Sections 302, 449, 347, 394, 376(2)(g), Sections 467, 471 and 201 read with Section 34 I.P.C., this Court while upholding the conviction held that it was not possible to identify the case as being a rarest of rare case and, accordingly, commuted the death sentence imposed on the accused to life imprisonment. Reference was also made to the decision of this Court in Om Prakash Vs. State of Haryana [(1999) 3 SCC 19], where upon conviction under Sections 302 and 307 read with Section 34 I.P.C. and Section 27(3) of

the Arms Act, the accused was sentenced to death for committing the brutal murder of seven persons belonging to one family for the purpose of taking revenge. This Court taking into account the mental condition and age of the accused held that it could not be treated to be one of the rarest of rare cases and accordingly, commuted the death sentence to one of imprisonment for life.

22. In addition to the above, Ms. Suri also referred to (1) Akhtar Vs. State of U.P. [(1999) 6 SCC 60]; (2)Bantu alias Naresh Giri Vs. State of M.P. [(2001) 9 SCC 615]; (3) Surendra Pal Shivbalakpal Vs. State of Gujarat [(2005) 3 SCC 127]; (4) Kulwinder Singh Vs. State of Punjab [(2007) 10 SCC 455]; and (5) Sebastian alias Chevithiyan Vs. State of Kerala [(2010) 1 SCC 58]. In each of the said cases, this Court commuted the death sentence to life imprisonment on account of the circumstances which could not be included within the category of rarest of rare cases which merited the death penalty.

23. Ms. Suri submitted that in the instant case also there is nothing on record to indicate that the appellant had any premeditated design to cause the death of the victim or that the circumstances indicated that the offence had been committed in a manner which brought it within the ambit of "rarest of rare cases", for which anything less than the death penalty would be inadequate. Ms. Suri submitted that taken at its face value all that can be said of the prosecution case is that the appellant committed rape and murder of the deceased while committing theft at the same time, which did not make such offence one of the rarest of rare cases, which merited the death penalty.

24. Appearing for the State, Ms. Anitha Shenoy, learned Advocate, submitted that although the appellant's conviction was based on circumstantial evidence, such evidence had established a conclusive chain which clearly establish that no one other than the appellant could have committed rape on the deceased and, thereafter, cause her death, besides committing theft of various articles from the house of the deceased. Ms. Shenoy submitted that the manner in which the murder had been committed after raping the deceased and his previous history of conviction in both rape and theft cases, as also his subsequent conduct after this incident, did not warrant interference with the death penalty awarded to the appellant.

25. Ms. Shenoy submitted that from the Inquest Report it appears that the body of Jayashri was found in the bedroom lying on her back. Both her hands had been bound with a yellow, green and red- coloured flower designed sari and the other end of the sari had been tied to an inner window bar in the room. The tongue of the deceased was found to be protruding and both the eyes were closed. A designed sari was on the body and a pink-coloured blouse and white brassiere was on her shoulders. A red tape-like cloth was near the head of the deceased and there was bleeding from the deceased's genitals and blood was also found on the floor. In addition, there were injuries on her right breast and abrasions near her right elbow and stomach. Ms. Shenoy also referred to the deposition of P.W.9 who was a Mahazar witness, wherein it was stated that the deceased Jayashri was lying naked, there were abrasions on her body and both of her hands were tied with a red tape lengthy cloth and the other end was tied to a window. There were scratch marks on her breasts and blood oozing out of her genitals. What was also stated was that there were

strangulation marks on her neck. Ms. Shenoy submitted that the Inquest Report and the Mahazar of the scene of occurrence was further corroborated by the evidence of P.W.1 (Police), P.W.2 (son of deceased), P.W.3 (a neighbour), P.W.8 (landlady of the deceased) and P.W.29 (the Investigating Officer). Ms. Shenoy then urged that the Post- mortem report indicated that there was a faint ligature mark present on the front and sides of the neck over the thyroid cartilage in front 2 inches away from the right ear and 2.5 inches from the left ear. The other injuries noted were :

"1. Laceration on the inner aspect of the upper lip meddle 1 c.m. x 0.5 c.m. x- ray 5 c.m.

2. In both lips abrasion on inner aspect present.

3. Abrasion three number present on upper part of right side chest.

4. Laceration over left nostril with adjacent abrasion.

5. Scratch marks present over chest upper and middle region and over right breast and below right breast.

6. Abrasion over right forearm outer back aspect near the elbow and wrist.

7. Abrasion over left elbow outer aspect.

8. Upon dissection patches of contusion seen on chest wall front.

Genital region blood stains seen at the vaginal outlet. Laceration of vagina 1 c.m. in length from vaginal outlet on the posterior wall was present. Semen like material was present in the vagina, which was collected and sent for Micro Biological examination which shows the presence of sperms."

26. Ms. Shenoy also referred to the chemical examiner's report, wherein it was opined that the vaginal smear sent for microbiological examination showed presence of spermatozoa. Ms. Shenoy pointed out that according to the opinion of P.W.26, Dr. M. Somashekar, who conducted the Post-mortem examination on the deceased, death was due to asphyxia as a result of smothering and evidence of violent sexual intercourse and attempted strangulation. Ms. Shenoy further submitted that in his evidence P.W.26 had mentioned the fact that while stating the facts about the incident, the appellant had stated that he pushed the victim and removed her clothes, tied her hands and committed theft.

27. On the question of the extra-judicial confession said to have been made by the appellant before P.W.26, Ms. Shenoy referred to the decision of this Court in M.A. Antony v. State of Kerala [(2009) 6 SCC 220], in which, in a similar situation, the extra-judicial confession made to a doctor was accepted upon rejection of the defence claim that such confession had been made in the presence of police officers. This Court held that there was no evidence at all to suggest that any policeman was present when the appellant made the confessional statement before the doctor, whereupon such confession could have been

kept out of consideration. Ms. Shenoy submitted that even in the instant case there is nothing on record to indicate that the confessional statement said to have been made by the appellant before P.W.26 Dr. Somashekar was made in the presence of any police personnel. There was also no suggestion in cross-examination of P.W.26 that at the time of examination of the appellant for evidence of sexual intercourse either any force was used or any police personnel was present when he is said to have made the confessional statement to P.W.26.

28. Ms. Shenoy then submitted that the question relating to the reliability of an extra-judicial confession also came up for the consideration of this Court in Ram Singh v. Sonia & Ors. [(2007) 3 SCC 1] in which case also the value of an extra- judicial confession made before a stranger came up for consideration and it was held that such a submission could not be accepted since in several decisions this Court had held that an extra- judicial confession made even to a stranger cannot be eschewed from consideration if the Court found it to be truthful and voluntarily made before a person who had no reason to make a false statement. Similar was the view of this Court in Gura Singh v. State of Rajasthan [(2001) 2 SCC 205], wherein it was observed that despite inherent weakness of an extra-judicial confession as an item of evidence, it cannot be ignored that such confession was made before a person who had no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. Several other decisions on this point were referred to by Ms. Shenoy which did not, however, detain us, as they are in the same vein as the decisions already cited.

29. On the question of identification which has been one of the main pillars of the prosecution case in order to weave a chain of circumstantial evidence which in clear terms pointed towards the guilt of the accused, the prosecution examined the minor son of the deceased, Suresh (P.W.2) and P.Ws 4, 5, 11 and 17, who were near the place of occurrence at the relevant point of time. Ms. Shenoy submitted that except for P.W.2, the minor son of the deceased who is stated to have actually seen the accused in the room where the deceased was lying, all the other witnesses had seen the appellant at some time or the other before the commission of the crime. As far as P.W.2 is concerned, Ms. Shenoy submitted that the incident was so graphic that it left an indelible imprint in his mind and that the evidence of all the witnesses who identified the appellant conclusively establishes the presence of the appellant in the house of the deceased at the time of the commission of rape, murder and theft and in further establishing that Umesh Reddy, the appellant is the same person who introduced himself as Venkatesh to P.Ws.2, 4, 5, 11 and 17.

30. Regarding the conducting of the Test Identification Parade by the Tehsildar, P.W.24, it was submitted that no irregularity could be pointed out on behalf of the defence to discredit the same.

31. The fourth question which had been indicated by Ms. Shenoy regarding the identification of the finger-prints taken from the handle of the steel almirah kept in the room of the deceased, where the charged offences had been committed, clearly establishes the presence of the appellant in the said room. Ms. Shenoy submitted that there was no acceptable explanation from the side of the defence to explain the

finger prints of the appellant on the handle of the almirah which was in the room of the deceased. Ms. Shenoy urged that once the presence of the appellant was established in the room when and where the offences were perpetrated, the chain of circumstantial evidence was to a large extent almost complete and was completed with the recovery of the articles stolen from the room of the deceased, in the room rented to the appellant by Jayamma (P.W.17).

32. Ms. Shenoy submitted that apart from the aforesaid circumstances in commission of the offences with which the appellant had been charged, the subsequent incidents leading to the arrest of the appellant could not be discounted. Ms. Shenoy pointed out that while the offences in relation to the instant case were committed on 28.2.1998, on 2.3.1998 the appellant was apprehended by local people living in Officers' Model Colony. From the deposition of P.W.18, A.S.I. Peenya Police Station, it is revealed that on receipt of a communication from the Police Control Room that a thief had been caught by the public in S.M. Road in Officers' Model Colony, he had gone there and was informed that the thief, who was later identified as the appellant, had tried to robe the house of one Seeba by forcibly entering her house and inflicting blood injuries on her. Ms. Shenoy submitted that the evidence of P.W.18 was duly corroborated by the evidence of P.W.20, Head Constable Laxminarasappa, attached to the Vidhan Soudha security who was present when the accused was apprehended.

33. Responding to the submissions made by Ms. Suri in support of the defence case, Ms. Shenoy submitted that the minor discrepancies in the evidence of P.W.2 and P.W.17 relating to identification of the appellant and recovery of various items belonging to the deceased from the house of the appellant, could not discredit their evidence, on account of the facts that the deposition was recorded seven years after the incident had occurred. Ms. Shenoy submitted that in view of the evidence of other witnesses, minor lapses could not and did not take away from the case as made out by the prosecution and accepted by the Trial Court as well as the High Court. Ms. Shenoy then submitted that in any event two items of jewellery, viz., the gold gundas and leg chain, which were on the body of the deceased and had been recovered from the appellant, had been duly identified by P.W.2, Suresh. Lastly, on the question of sentence, Ms. Shenoy referred to and relied upon the various decisions of this Court beginning with Bachan Singh v. State of Punjab [(1980) 2 SCC 684] and Machhi Singh Vs. State of Punjab [(1983) 2 SCC 470], which were subsequently consistently followed in the other decisions cited by Ms. Shenoy.

34. Ms. Shenoy submitted that the constitutionality of the death penalty for murder provided in Section 302 I.P.C. and the sentencing procedure embodied in Section 354(3) of the Criminal Procedure Code, 1973, had been considered in the case of Bachan Singh Vs. State of Punjab [(1980) 2 SCC 684], on reference by a Constitution Bench of this Court and the constitutional validity of the imposition of death penalty under Section 302 I.P.C. was upheld with Hon'ble Bhagwati J., giving a dissenting judgment. The other challenge to the constitutionality of Section 354(3) Cr.P.C. was also rejected, though certain mitigating factors were suggested as under:

"Dr. Chitale has suggested these

mitigating factors:

Mitigating circumstances.-- In the

exercise of its discretion in the above cases, the court shall take into account the following circumstances:

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated.

The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person. (7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."

The said mitigating circumstances as suggested by learned counsel, Dr. Chitale, were held to be relevant circumstances to which great weight in the determination of sentence was required to be given. It was also observed in the majority decision as follows :

"There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty

must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and Figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency -- a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

35. Ms. Shenoy submitted that the Constitution Bench was fully aware of the concern for the dignity of human life and that taking of a life through law's instrumentality ought not to be resorted to except in the rarest of rare cases, when none of the mitigating circumstances could justify the imposition of a lesser penalty.

36. Ms. Shenoy then referred to the decision of this Court in Machhi Singh Vs. State of Punjab [(1983) 3 SCC 470], wherein a Bench of Three Judges had occasion to apply the decision in Bachan Singh's case (supra) in regard to four of the twelve accused who were sentenced to death. This Court rejected the appeals filed by the said accused and confirmed the death sentence awarded to three of the appellants. While confirming the death sentence awarded to the said three accused, the Court culled out certain propositions from Bachan Singh's case, as extracted hereinbelow :

"In this background the guidelines indicated in Bachan Singh case will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh case:

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the `offender' also require to be taken into consideration along with the circumstances of the `crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A 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 the mitigating circumstances before the option is exercised."

37. This Court then went on to observe that in order to apply the said guidelines the following questions could be asked and answered :

"In order to apply these guidelines inter alia the following questions may be asked and answered:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?"

38. Ms. Shenoy submitted that in the aforesaid case, the Court took into consideration the calculated and cold blooded murders of innocent defenceless women, children, veterans and newly-

married couples in an exceptionally depraved, heinous, horrendous and gruesome manner for reprisal, as a result of family feud, with a view to wipe out the entire family and relatives of the opponent, in which circumstances only death sentence and not life imprisonment would be adequate.

39. Ms. Shenoy submitted that the propositions enunciated in Bachan Singh's case (supra) and Machhi Singh's case (supra) have been consistently followed in subsequent cases involving death sentence with minor variations with regard to the circumstances in which the murders were committed and mitigating factor, if any. For example, in the case of Holiram Bordoloi Vs. State of Assam [(2005) 3 SCC 793], this Court observed that there was nothing on record to show that there was any repentance by him at any point of time nor was any attempt made to give an explanation to the occurrence even while being questioned under Section 235(2) Cr.P.C., the accused had nothing to say at the point of sentence. It was also observed that there was no spark of any kindness or compassion and the mind of the appellant was brutal and the entire incident would have certainly shocked the collective conscience of the community. On the basis of such observation, this Court held that there was no mitigating circumstance to refrain from imposing the death penalty on the appellant. Ms. Shenoy also referred to the decision of this Court in Dilip Premnarayan Tiwari & Anr. Vs. State of Maharashtra [(2010) 1 SCC 775], wherein while considering confirmation of death sentence awarded to some of the accused, this Court had observed that in a death sentence matter, it is not only the nature of crime, but the background of the criminal, his psychology, his social condition and his mind set for committing the offence, were also relevant.

40. Ms. Shenoy submitted that applying the tests indicated in Bachan Singh's case (supra), the facts of the present case were not covered by any of the mitigating circumstances enunciated in the two sets of cases

and all subsequent cases following the same and consequently, there could be no reason for commuting the death sentence awarded to the appellant and the appeal was, therefore, liable to be dismissed.

41. Since the conviction of the appellant is based on circumstantial evidence leading to the awarding of the death sentence to him along with his conviction under Sections 376 and 392 I.P.C., we have carefully looked into the evidence adduced by the prosecution with care and caution. That Jayashri, the mother of P.W.2, was murdered inside her house on 28.2.1998 between 4.30 and 5.00 p.m. is not disputed, nor is it disputed that P.W.2 Suresh, the son of the deceased, came back to the house after playing with his friends at about 5.00 p.m. and discovered the body of his mother lying on the ground stained with blood, with both her hands tied with a sari at one end, while the other end of the sari was tied to a window. It has also been established that after discovering his mother's body in the above manner, Suresh went to Kusuma Shetty, a neighbour and told her what he had seen. On receiving the said information, Kusuma Shetty called Geetha Hegde and Lalitha Jaya and together they went to Jayashri's house with Suresh and through the window they saw Jayashri lying on the ground. Lalitha Jaya who was later examined as P.W.8 by the prosecution has deposed that she called Bylappa (P.W.7), a Police Constable, living in the same locality, who telephoned Papanna (P.W.9), the Inspecting Officer, who then came to the place of occurrence with Police Constable Gurudappa (P.W.6). It also transpires from the evidence that on receiving information, P.W.14, a Police Constable working in the Dogs Squad, P.W.16, a Police Photographer and P.W.13, a Police Inspector and Finger-Prints Expert, arrived at the scene of occurrence. Thereafter, B.N. Nyamaagowda (P.W.29), the Investigating Officer of the case, along with Papanna (P.W.9), who was a Mazahar witness, went inside the room and found the deceased Jayashri lying naked on the ground with abrasions on her body and both her hands tied in the manner indicated hereinbefore. In addition, it was also found, which finding was also indicated in the Inquest Report that the tongue of the deceased protruded a little. There were scratch marks on her breasts and blood oozing out of her genitals. There were also strangulation marks on her neck. That the death of the victim was homicidal has been amply proved by the Post-mortem report of the Doctor (P.W.26), who was of the opinion that the death was due to asphyxia as a result of smothering and evidence of violent sexual intercourse and attempted strangulation. In addition, it may be added that the appellant Umesh was also examined by P.W.26 for evidence of sexual intercourse and during such examination the appellant confessed that he had pushed the victim and removed her cloths, tied her hands and committed theft.

42. The nature of the victim's death having been established to be homicidal in nature, it is now to be seen as to whether the circumstantial evidence on which reliance has been placed by the trial Judge in convicting the appellant and was also accepted by the High Court while confirming the same, makes out a complete chain of events to establish beyond all reasonable doubt that it was the appellant and the appellant alone, who could have committed the offences with which he was charged. In this regard, the evidence of P.W.2, Suresh, the minor son of the deceased, is of great importance, notwithstanding the fact that he was about 7 years old when the incident had occurred. He has very clearly depicted the manner in which after returning from playing with his friends he found the appellant, who described himself as Venkatesh uncle, coming out of the room in which he and his mother lived. He has also narrated, without any ambiguity, the statement made by the appellant that his mother being possessed by the devil, the

appellant had to tie her hands and was going to call a doctor. He also disclosed that while leaving the house the accused was carrying several things in a bag, including a VCR that was in the house. He also identified the accused in a T.I. Parade conducted at the Central Jail by Tehsildar (P.W.24) and also in the Court room while deposing. In addition, P.W.2 also identified a VCR, gold case watch, clock and anklets, saris and other things as belonging to his mother. His evidence has remained unshaken on cross-examination. The evidence of P.W.2 was corroborated by the evidence of Basvaraju (P.W.10) who lived in a rented house almost opposite to the rented house of the deceased Jayashri. He has stated that the deceased being a tenant in the opposite house was familiar to him and that the distance separating the two premises would be about 30 feet. Although, described as a chance witness by the defence, he has explained his presence in his house at 2.00 p.m. on 28th February, 1998, having completed his work in the first shift. His explanation is quite plausible and he has stated without hesitation that he had seen the accused coming out of the house of the deceased with a bag and proceeding towards the pipe line. He also identified the accused in Court as being the person whom he had seen coming out of Jayashri's house on the day of the incident at about 4.30 p.m. The said witness also identified the accused in the T.I. Parade conducted by the Tehsildar (P.W.24).

43. The evidence of Natesh (P.W.11) further corroborated the evidence of P.W.2 regarding the presence of the accused in the house of the deceased at the time of the incident. He too lives in a house opposite to the house of the deceased at a distance of about 50 feet. He too has been described as a chance witness by the defence, but has explained his presence in the premises at the relevant time. In his evidence he has stated that at about 4.30-5.00 p.m. he saw a person coming out of the house of the deceased and proceeding towards the pipe line. He too identified the appellant in Court as being the person who had come out of the house of the deceased on the said date. He was also one of the witnesses, who identified the appellant in the T.I. Parade conducted by P.W.24. The evidence of P.Ws 2, 10 and 11 as to the presence of the appellant at the place of occurrence on 28.2.1998 at the relevant time has been duly accepted by the trial Court as well as the High Court and nothing has been shown to us on behalf of the appellant to disbelieve the same.

44. In fact, the identification of the appellant by P.Ws 2, 10 and 11 is further strengthened by his identification by Jayamma (P.W.17) who has also deposed regarding the seizure of various items from the rented premises of the appellant, such as gold ornaments, suitcases, a television set and clothes.

45. Manjula (P.W.22), the elder sister of the deceased Jayashri also identified some of the articles seized by the Investigating Officer from the house of the appellant, as belonging to her deceased sister Jayashri. Such items included a VCR, a pair of gold beads, 4 gold bangles, one pair of silver anklets and 15 to 20 silk and ordinary saris.

46. Maare Gowda (P.W.4), who had been approached by the appellant for a rented premises and who introduced the appellant to Ravi (P.W.5) identified the accused Umesh Reddy to be the same person who

had approached him for a rented accommodation stating that his name was Venkatesh. He was also one of the witnesses to the seizure of various items by the Investigating Officer. He has stated that after arresting the appellant, the Peenya Police had brought him to the rented accommodation in which he was staying and on the instructions of the police inspector, the appellant opened the door of the house with his own key, and, thereafter, upon entering the house, the police seized various items such as suitcases, saris, panties, VCR, TV and antenna, pants, shirts, ornaments and cash. Much the same statements were made by Ravi (P.W.5), the owner of the house which had been rented out to the appellant. He corroborated the evidence of P.W.4 that the said witness had brought the appellant to him for the purpose of renting a house. P.W.5 was also a witness to the seizure.

47. Lalitha Jaya (P.W.8) who was the landlady of the deceased, corroborated the prosecution story that Suresh (P.W.2) on seeing the body of his mother lying on the ground in the room rushed to Kusuma Shetty (C.W.8), who has not, however, been examined by the prosecution, who rushed to P.W.8 and told her of the incident. All of them went to the house of the deceased and saw Jayashri lying on the ground on her back through the window and thereafter they went to the house of Bylappa (P.W.7) and informed him about the incident.

48. All the witnesses who claimed to be present at or near the place of occurrence remained unshaken in cross-examination, thereby completing the chain of circumstantial evidence in a manner that clearly indicates that no one other than the appellant committed the offences with which he was charged. The trial Court has also relied upon the extra- judicial confession made by the appellant to Dr. Somashekar (P.W.26), who examined him as to his sexual capacity, to the effect that he had pushed down the victim, removed her clothes, tied her hands and committed theft in the house.

49. The aforesaid position is further strengthened by the Forensic Report and that of the Finger-Print Expert to establish that the finger prints which had been lifted by P.W.13 from the handle of the steel almirah in the room, matched the finger print of the appellant which clearly established his presence inside the house of the deceased. The explanation attempted to be given for the presence of the finger prints on the handle of the almirah situated inside the room of the deceased does not inspire any confidence whatsoever. In a way, it is the said evidence which scientifically establishes beyond doubt that the appellant was present in the room in which the deceased was found after her death and had been identified as such not only by P.W.2, who actually saw him in the house immediately after Jayashri was murdered, but also by P.Ws 10 and 11, who saw him coming out of the house at the relevant point of time with the bag in his hand. The finger print of the appellant found on the handle of the almirah in the room of the deceased proves his presence in the house of the deceased and that he and no other caused Jayashri's death after having violent sexual intercourse with her against her will.

50. Apart from causing the death of the victim, the evidence also points to the commission of rape of the deceased by the appellant. That the deceased was lying naked with blood oozing out of her genitals and

both her hands tied by a sari at one end clearly indicates violent sexual intercourse with the deceased. The presence of semen-like material in her vagina, which was found during the Post-mortem examination, was collected and sent for micro-biological examination and showed the presence of sperms. The presence of spermatozoa in the vaginal smear which was sent for micro- biological examination and the presence of blood stains at the vaginal outlet together with laceration of the vagina from the vaginal outlet on the posterior wall establishes and confirms the charge of violent sexual intercourse, viz., rape. In addition to the above, the examination of the accused by P.W.26, the doctor, who conducted the Post-mortem examination, discloses laceration on the inner aspect of the upper lip and inner abrasions in both lips, scratch abrasions over the right side of the face. Abrasions over the front of right shoulder and over the right side at the back of the neck of the appellant indicated that the same could have been caused due to resistance and strengthens the case of the prosecution of forced sexual intercourse with the victim against her wishes.

51. Even after committing the above-mentioned offences, the appellant robed various articles, including jewellery and a VCR set from the house of the deceased, and even made up a suitable story about his presence in the house in order to impress a young child who happened to notice him as he was leaving the house. The remorseless attitude of the appellant is further evident from the fact that after having committed such heinous offences on 28.2.1998, within two days on 2.3.1998 he attempted a similar crime in the house of one Seeba and was caught by the public while trying to escape, as evidenced by P.Ws 18 and 20.

52. Ms. Suri has raised certain questions relating to the identification of the appellant by P.Ws 2, 10, 11 and 17. It has been submitted that the picture of the appellant had been published in the newspapers after the incident. There may have been some substance in the aforesaid submission had it not been for the fact that being the immediate neighbours of the appellant, P.Ws 10 and 11 had occasion to see the appellant earlier. As far as P.W.17 is concerned, she was the appellant's landlady at the relevant point of time. The decision in Musheer Khan's case (supra) cited by Ms. Suri is not, therefore, of any help to the appellant's case.

53. On the question of recovery of M.Os.2 to 23 from the rented premises of the appellant, though an attempt has been made to discredit the role of P.W.5 Ravi as a panch witness, we see no reason to disbelieve the same since such recovery was also witnessed by P.W.22, Manjula, the sister of the deceased, who also identified the recovered articles.

54. As to the procedure adopted by the Investigating Officer for obtaining the finger- print of the appellant through P.W. 25 who was serving as Constable in Peenya Police Station at the relevant time, the same has been considered and dealt with by the High Court in its impugned judgment. It has been stated that such a procedure was available under the Karnataka Police Manual read with Section 5 of the Identification of Prisoners Act, 1920, and that it had been duly proved that the finger-print recovered from

the handle of the almirah in the room of the deceased matched the right finger print of the appellant. In that view of the matter, the submission of Ms. Suri on this point must also be rejected.

55. We, therefore, have no hesitation in confirming the conviction of the Appellant under Sections 376, 392 and 302 IPC.

56. On the question of sentence we are satisfied that the extreme depravity with which the offences were committed and the merciless manner in which death was inflicted on the victim, brings it within the category of rarest of rare cases which merits the death penalty, as awarded by the Trial Court and confirmed by the High Court. None of the mitigating factors as were indicated by this Court in Bachan Singh's case (supra) or in Machhi Singh's case (supra) are present in the facts of the instant case. The appellant even made up a story as to his presence in the house on seeing P.W.2 Suresh, who had come there in the meantime. Apart from the above, it is clear from the recoveries made from his house that this was not the first time that he had committed crimes in other premises also, before he was finally caught by the public two days after the present incident, while trying to escape from the house of one Seeba where he made a similar attempt to rob and assault her and in the process causing injuries to her. As has been indicated by the Courts below, the antecedents of the appellant and his subsequent conduct indicates that he is a menace to society and is incapable of rehabilitation. The offences committed by the appellant were neither under duress nor on provocation and an innocent life was snuffed out by him after committing violent rape on the victim. He did not feel any remorse in regard to his actions, inasmuch as, within two days of the incident he was caught by the local public while committing an offence of a similar type in the house of one Seeba.

57. In such circumstances, we do not think that this is a fit case which merits any interference. The Appeals are, accordingly, dismissed and the death sentence awarded to the Appellant is also confirmed. Steps may, therefore, be taken to carry out the sentence.

....J.

(ALTAMAS KABIR) ....J.

(A.K. PATNAIK) New Delhi Dated:01.02.2011