SUPREME COURT OF INDIA

Lalit Kumar Yadav @ Kuri

Vs.

State of Uttar Pradesh

Crl.A.No.1022 of 2006

(A.K.Patnaik and Sudhansu Jyoti Mukhopadhaya JJ.)

25.04.2014

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. This appeal is directed against the impugned common judgment dated 11th August, 2006 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Capital Sentence Reference No.1 of 2005 with Criminal Appeal No.252 of 2005 from Jail and Criminal Appeal No. 384 of 2005. By the impugned common judgment the High Court while dismissed the appeal preferred by the appellant, answered the reference affirming the death sentence imposed by the Trial Court for the offence committed under Section 302 IPC for having committed murder of Km. x (victim: original name not disclosed). The High Court also affirmed the conviction and sentence passed against the appellant under Section 376 read with Section 511 of Indian Penal Code for having made an attempt to commit rape on Km. x aged about 18 years and sentenced him to undergo five years rigorous imprisonment thereunder.

2. Initially the appeal was heard by the Division Bench of the Allahabad High Court, Lucknow Bench and after conclusion of the arguments the Honble Judges pronounced their judgments but had a divided opinion; one Honble Judge affirmed the order of conviction and sentence recorded by the Trial Court and the other Honble Judge reversed the whole judgment and the order of the Trial Court and out rightly acquitted the accused-appellant on both the counts. Therefore, the case was referred under

Section 392 Cr.PC to a third Judge who after hearing the parties and on appreciation of evidence by the impugned judgment dated 11th August, 2006 dismissed the appeals preferred by the appellant and another on his behalf. The judgment rendered by the Trial Court has been upheld and the reference was answered confirming the penalty of death sentence.

3. Learned counsel appearing for the appellant, inter alia, made following submissions in assailing the judgment under appeal:

(i) `The prosecution has failed to produce any witness to prove the very factum of the registration of the FIR. Irrespective of the same it is ante-timed.

(ii) Ram Chandra Chauarasiya (PW-1) is a highly interested witness and has entered into the witness box only for the purpose of achieving the conviction of the appellant. The statement of PW-1 is not corroborated by any one even though witnesses were available for the same.

(iii) Sriram(PW-9), who was produced to prove recovery memo is not an independent but an interested witness who is the son-in-law of brother of PW-1.

(iv) The polythene bag in which the sickle was wrapped was taken by the Investigating Officer without any seal from the site of recovery.

(v) The alleged recovery of clothes Baniyan and towel do not satisfy the mandate of Section 27 of the Indian Evidence Act. Therefore, the result of chemical examiner is of no value to prove the charge.

(vi) Identification by sniffer dog cannot be taken as evidence for the purpose of establishing guilt of the appellant.

4. Before we proceed to discuss the merits of the above contentions, it is desirable to notice the case of the prosecution and evidence on record as recapitulated below:

5. On 23.2.2004, Ram Chandra Chaurasiya (PW-1) and his wife Vidyawati residents of village Gogulpur, Police Station Satrikh, District Barabanki had gone to their agricultural field. When they returned to their house at 2.30 p.m., they were informed

by their daughter Guddi that their another daughter Km.x had gone to beckon them at 1.30 p.m., as on that day, Govind, the son of Ram Chandra Chaurasiyas sala (brother-in-law) had come to their house, his two daughters thought it proper to inform their parents and it was in this background that Km. x had gone to inform and summon her parents. All the family members had a long wait for Km.x to return but when she did not come back up to 4.00p.m., Ram Chandra Chaurasiya (PW-1) and Vidyawati both being worried left in search of their daughter. When they were going through the agricultural fields, they were shocked to see their daughter Km.x lying dead in pool of blood in the plot of one Vishwanath. Ram Chandra Chaurasiya (PW-1) lodged a written report (Ext. Ka.1) at Satrikh Police Station where upon a case was registered and the then Station House Officer Shri Ashok Kumar Yadav assumed the charge of investigation and immediately swung into action. He visited the site of occurrence and soon sent for the dog squad. An Inspector of the Crime Investigation Department, who was In-charge of a sniffer dog, named Raja arrived at the place of occurrence late in the evening. He instructed Raja to pick up the smell of culprit from the site of occurrence and then find out some clue of the crime and the criminal. Raja who was a very well trained dog of German Shepherd species and who had earlier helped to uncover many crimes, smelt all the important spots around the dead body at the site of occurrence and chasing the trail of the same smell, it walked along with police personnel and villagers behind, and straightaway reached at the house of the accused-appellant. The appellant and his brother wrapped with blankets were sleeping inside their house. Raja barked at the blanket of the accused-appellant, who was immediately grabbed over by the police. On the next day i.e. on 24th February, 2004, the Investigating Officer recovered at the instance of accused-appellant the bloodstained Baniyan (vest) and a Gamchha (towel) of the accused-appellant and also Hansiya (scythe) used in the commission of crime. The chemical examiner on examination of the three recovered articles noticed that there was blood on all the said incriminating articles. The inquest report was also prepared on 24th February, 2004 by the Investigating Officer. As recited in the said report, the throat of the victim of occurrence was found chopped off. Her neck was barely connected with the trunk. The dupatta of the deceased was found embedded in the large wound and all the five fingers of her left hand had cut wounds. Her dead body was packed and sealed in a bundle and sent for post-mortem. Although the scene at the site of occurrence revealed that the Salwar (trouser) of the girl had been untied and taken off down and she was found in the naked state and also there were the signs of violence all around which indicated that a ferocious attempt to commit rape on her was made, yet the Doctor

found that the girl had not been ravished.

6. The Investigating Officer prepared the site plan of the occurrence. He collected ordinary and bloodstained earth from there and packed them in separate boxes. The trampled wheat plants around the dead body revealed a tale of violence. Both the chappals of the deceased were also lying at a distance. After interrogating all the relevant witnesses, collecting the relevant reports including the post- mortem, the Investigating Officer accomplished the investigation and submitted a charge-sheet against the accused appellant.

7. Lalit Kumar Yadav pleaded not guilty before the Trial Court and denied all the incriminating allegations levelled against him. He, however, admitted that he had been arrested by the police at 11.00 p.m. on 23rd February, 2004, i.e. the date of occurrence.

8. The prosecution examined as many as ten witnesses in support of the prosecution story. Ram Chandra Chaurasiya (PW-1) is the father of the deceased. He proved his report and also testified that the accused- appellant had teased the deceased girl a few days before the occurrence and when Km.x complained about the incident of teasing to her cousin Ashok Kumar, the latter had scolded the appellant. Unfortunately, Ashok Kumar died subsequent to the occurrence. He also proved that the police called a dog who after smelling the site of occurrence tracked down to the house of the accused and caught him.

9. Ram Prakash Yadav (PW-2) was the witness to whom the appellant had allegedly confessed about the commission of crime. He was, however, declared hostile and it was suggested that he being a Yadav had helped the accused by retracting his earlier statement. He, however, confirmed the fact of a sniffer dog being brought to the village by the police.

10. Similarly, Ram Prakash (PW-3), S/o Jagannath turned hostile by rejecting the suggestion of the prosecution that the accused-appellant conveyed and confessed to him that he had killed the girl as she was a girl of easy virtue.

11. Abdul Lais Khan (PW-4) is the handler of the German Shepherd Dog known as Raja. The said dog was taken to the village in the late evening on the date of

occurrence. Shri Khan was then the Sub- Inspector in the Crime Research Branch (Dog Squad), District Lucknow. He testified that at about 8 p.m. on February 23, 2004, he was directed by the Senior of Superintendent of Police, Lucknow to go to the site of occurrence. Accordingly, he arrived there at 8.30 p.m. alongwith the German shepherd dog named as Raja. He started the search work at 9 p.m., it being a night with dark all around, a patromax lantern was lightened up near the dead body of the victim. He asked for arrangement of more light which was provided by the Investigating Officer and then he instructed the dog to smell the footprints of the culprit around the dead body and then set the dog scot-free and asked it to move. He alongwith the police personnel and other villagers walked behind the dog. After walking about 1 k.m. the dog reached in the village Gokulpur Aseni. It then traversed through the Khadanja street. After tracking the street in front of 10-12 houses, the dog entered into a thatched house, where two boys were resting on a wooden cot. The dog barked at the accused Lalit Kumar who was identified by Abdul Lais Khan in the Court as the same person, who was smelled by the dog and whom it had attempted to pounce and catch hold. However, in the meantime, the Station House Officer of Police Station Satrikh apprehended Lalit Kumar. In nutshell, according to the evidence of this witness, the accused was the offender whose footprints were there around the dead body.

12. Head Constable Ram Prakash Shailesh (PW-5) had prepared the chik report Ex.Ka.5 on the basis of Ram Chandra Chaurasiyas written report (Ext.Ka.1). He registered the case in the General Case Diary at Sl.No.33 on 23rd February, 2004 and submitted its copy Ext.Ka.6.

13. Dr. Arun Chandra Dwivedi (PW-6) is the Doctor, who conducted the post mortem of the victims corpse and prepared the autopsy report (Ext.Ka.7). He proved the said report before the Trial Court and testified that the neck of the deceased was almost severed from the trunk with a namesake junction of the skin. He confirmed that it was possible for the neck of the victim being severed by the sickle having small teeth.

14. It is significant to note that Dr. Arun Chandra Dwivedi was summoned by the High Court under Sections 367(1) and 391 of the Code of Criminal Procedure with a view to ascertain as to whether the major injury by which there was almost a severance of the neck from the trunk could possibly be caused with the sickle (Mat.-Ex.8). High Court while passing an order on July 13, 2005 expressed that something

lacking so far as the use of sickle was concerned. The doctor deposed in the Court that the major incised wound found on the neck could have been caused by the sharp edged hansia (sickle) but it could not be asked in the Trial Court as to whether this kind of injury could possibly be caused by the aforesaid hansia Mat.-Ext.8, which had teeth on its blade. In common parlance such a hansia curved in design is known as Aaridar " means blade with teeth. Dr. Dwivedi appeared before the High Court. The sealed bundle of the sickle was opened in the Court and shown to Dr. Arun Chandra Dwivedi, who was then posted as Medical Officer, District Hospital, Barabanki. He testified before the High Court that the injuries shown in the post mortem report Ext.Ka.7 could possibly be caused by the sickle Mat.-Ext.8. It was also stated by him that the injuries in the fingers of the deceased could have been sustained by the victim while defending herself.

15. Head-Constable Devtadeen (PW-7) took out on March 16, 2004 the two sealed bundles of this case from malkhana of the Police Station Satrikh at 2.30 p.m. and after making an entry in the G.D. went to the Court of Chief Judicial Magistrate, Barabanki and obtained a letter, a copy addressed to the Chemical Examiner for examination of the incriminating articles. Then on 17th March, 2004, he went to the laboratory and deposited both bundles alognwith the letter in the laboratory.

16. Constable Awadhesh Kumar (PW-8) proved that he carried the dead body of the victim to the mortuary for autopsy.

17. Sriram (PW-9) is a relative of the informant Ram Chandra Chaurasiya. He came to participate in the cremation of the latters daughter. In the evening, the Investigating Officer met him and asked him to accompany him to the accused-appellants house. He went there along with other village men. The accused had taken all of them including the Investigating Officer inside the house and took out the sickle wrapped in a polythene and his clothes namely Baniyan and Gamchha. To depic this discovery, memo Ex.K.12 was prepared by the Investigating Officer. This witness identified his signature on it.

18. Sub-Inspector Ashok Kumar Yadav (PW 10) is the Investigating Officer of this case. According to his evidence, this case was registered in his presence at the Satrikh Police Station. He then reached at the site of occurrence at about 6.30 p.m., inspected the site of occurrence, saw the dead body lying in the agricultural field of Vishwanath,

prepared the site-plan Ext.Ka.13 and then contacted his higher authorities and asked for a Dog Squad. He sent his own police jeep for bringing the dog. The Deputy Superintendent of Police Deena Nath Dubey was also present at the site of occurrence. Abdul Lais Khan, Sub-Inspector, incharge of the Dog arrived at the site of occurrence long after the sunset and examined the site in the light of patromax. Shri Khan instructed the dog to smell the entire site of occurrence as also the dead body and then the said dog with the help of the trail of the smell reached at the house of the accused, who was lying on a takhat, i.e., the wooden cot. The dog barked at him. He then interrogated the accused about his relationship with the deceased. At 7 p.m. on the other day, he prepared the inquest report (Ext.Ka.4) and interrogated other witnesses. The accused was then formally arrested and he led to the recovery of the sickle (Mat.-Ext.8), his Gamchha (Mat.-Ext.9) and Baniyan (Mat.-Ext.10). After completing other formalities of interrogating the witnesses and collecting other material exhibits, the Investigating Officer brought the accused and the sealed bundles and boxes of the incriminating articles to the police station. On having completed the task of investigation, this witness submitted charge-sheet Ext.Ka.28 against the accused.

19. The defence of the appellant was that of denial. The appellant in his statement under Section 313 Cr.P.C. stated the charges had been wrongly framed and also denied all the incriminating allegations levelled against him.

20. The prosecution relied upon four pieces of circumstantial evidence first, Sniffer Dog- tracking evidence, the other is recovery of sickle i.e. the weapon which was used by the appellant to cut the neck of the girl, the third is the recovery of clothes of the appellant and past conduct of the appellant pertaining to eve teasing of the deceased girl.

21. Relying upon the prosecution case and the evidence led in support thereof, the learned trial court held the accused-appellant guilty under Sections 302 and 376 read with Section 511 of the I.P.C. and then sentenced him to death for the offence under Section 302 I.P.C. and 5 years rigorous imprisonment for the offence under Section 376 read with Section 511 of the IPC. The High Court on reference affirmed the death sentence.

22. There is a suspicion on the veracity of the First Information Report (Ext. Ka-1) with reference to its entry in the G.D. Report (Ext.Ka-6). According to recital of the

G.D. report (Ex.Ka.6) Ram Chandra Chaurasiya himself submitted his written report at the police station. The reference was made it to the testimony of Ram Chandra Chaurasiya (PW-1), father of the victim who testified that he dictated the report and got it sent to the police station. He however, could not recollect the name of the villager who carried the said report. This was the ground taken by the counsel for the appellant to raise suspicion on the veracity of the first information report. As a matter of fact, there is nothing inconsistent between the testimony of the PW-1 and G.D. Report. The FIR (Ext.Ka.1) takes few facts. Neither any accused was named in it nor there is any infirmity. A perusal of the said report would reveal that the informant (PW-1) mainly disclosed in it that his daughter Km.x aged about 18 years had gone in search of her parents, was found dead in the agricultural field of Vishwanath on 23rd February, 2004. It was also added that some person incised her neck. A prayer for necessary action was pressed into service. The occurrence came to the notice of informant PW-1 after 4.00 p.m. and the written report was submitted at 6.10 p.m. on the same day at Satrikh Police Station, about 7 kms. from the village. Looking to the gravity of the offence and shock of the family members of the deceased, it cannot be said that there is delay in reporting the matter to the police.

We, therefore, find that there is no inconsistency on the point to act.

23. The second submission of the appellant is that Ram Chandra Chaursiya (PW-1) is highly interested witness and his statement is not corroborated by any other witness though available.

> Ram Chandra Chaursiya (PW-1) disclosed that a few days before the date of occurrence, accused teased his daughter and also threatened her. Her daughter Km.x explained about the accused misconduct to her cousin Ashok Kumar. Later, on having received the complaint about the indecent behaviour of the accused, he scolded him. Unfortunately, Ashok Kumar died subsequently but the evidence of the victims father is quite convincing and worth to believe. In fact in FIR he has not named the accused. Merely because PW-1 is the father of the deceased victim girl, his evidence cannot be doubted on that count in absence of any suspicion.

24. The next argument assails the testimony of Sriram (PW-9) on the ground that he is related to the deceased. He fairly stated that he is son-in-law of Ram Chandras cousin.

He has come from Ibrahimpur village of district Barabanki. He was the person who accompanied the police party to the house of the accused. He has fully corroborated the testimony of the Investigating Officer and testified that the accused leading the police party and a few citizens including himself opened the door of his house and had taken out the sickle lying below the cot. He rejected the defence suggestion that the Investigating Officer had pointed out towards the sickle; rather asserted that it was the accused himself who had picked up the sickle and handed over to the Investigating Officer. The accused unwrapped the sickle from the polythene sheet. The Investigating Officer retained the sickle alongwith polythene. There is slight variance on the point of time of it being prepared. Whereas it is recited in the recovery memo that the police party being led by the accused arrived at the accused house at 6.00 p.m., Sriram (PW-9) disclosed that it was about 7.00-7.30 p.m. when the memo was prepared. It is the common experience that the daylight continues even after sunset upto 20-25 minutes. The villagers give approximate timing generally based on the position of the sun. So, the possibility of the recovery memo being prepared in the daylight at the time of the day meeting with night popularly called as Dusk is absolutely credible. The variance besides being insignificant is justified, as after recovery, it would have taken some time for the Investigating Officer to finish the job after completing all the relevant formalities including examination of the weapon. The whole recovery memo is found written in the handwriting of the Investigating Officer. Therefore, in the time of its preparation has no adverse bearing. Only because Sriram (PW-9) is being related to the deceased there can be no reason to doubt the veracity of his testimony as his presence in the village on 24.02.2004 is justified. On having heard about Ram Chandras daughter death, in ordinary course being a relative he came to express his condolence and participated in the cremation of the girl. He cannot be stated to be chance witness. In fact nothing could be extracted from his cross-examination, which might be given indication of his being not a probable witness of the recovery of sickle and recovery memo (Ext. Ka-12). We, therefore, find that his presence in the village being most natural and probable, his evidence is full of credit and acceptable.

25. The next contention made on behalf of the appellant was that polythene in the Sickle wrapped and taken by Investigating Officer was without any seal at the time of recovery. This contention is untenable on the face of recovery memo itself. In the latter part of this memo (Ext.Ka-12), description of the Sickle is given and then it is recited in clear terms that it was sealed then and there in a packet and recovery memo

prepared.

> The Investigating Officer (PW-10) has also stated that on the statement of the accused, the sickle was recovered from his house in presence of witness Sriram (PW-9) and also got recovered Gamchha (Towel) and Baniyan of the accused. The recovery of the sickle which was kept in the clothes under the Cot was made from the house of the accused. The Investigating Officer has also stated that the sickle was having bloodstains and after taking the sickle and bloodstained Gamchha and Baniyan in custody he sealed the same.

26. The validity of recovery proceeding has been questioned by the learned counsel for the appellant and submitted that the confessional statement is not admissible under Sections 25 and 26 of the Indian Evidence Act. However, Section 27 of the Indian Evidence Act, provides as follows:

> 27. How much of information received from accused may be proved.- Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not as it relates distinctly to the fact thereby discovered, may be proved.
>
> Therefore, in the light of aforesaid provisions, the statement of accused so far as it relates to giving of information regarding the hiding of the sickle and recovery of the same can be taken into account to prove the truth of the incident and to prove the statements of other witnesses which corroborated the same.

27. In Anter Singh v. State of Rajasthan, (2004) 10 SCC 657, this Court noticed the scope and ambit of Section 27 of the Indian Evidence Act and observed:

> 16. The various requirements of the section can be summed up as follows:
>
> (1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by the accuseds own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to. (7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

28. In Pandurang Kalu Patil v. State of Maharashtra, (2002) 2 SCC 490, this Court observed:

5. Even the recent decision in State of Maharashtra v. Damu (2000) 6 SCC 269 this Court followed Pulukuri Kottaya AIR 1947 PC 67 with approval. The fallacy committed by the Division Bench as per the impugned judgment is possibly on account of truncating the word fact in Section 27 of the Evidence Act from the adjoining word discovered. The essence of Section 27 is that it was enacted as a proviso to the two preceding sections (see Sections 25 and 26) which imposed a complete ban on the admissibility of any confession made by an accused either to the police or to anyone while the accused is in police custody. The object of making a provision in Section 27 was to permit a certain portion of the statement made by an accused to a police officer admissible in evidence whether or not such statement is confessional or non-confessional. Nonetheless, the ban against admissibility would stand lifted if the statement distinctly related to a discovery of fact. A fact can be discovered by the police (investigating officer) pursuant to an information elicited from the accused if such disclosure was followed by one or more of a variety of causes. Recovery of an object is only one such cause. Recovery, or even production of object by itself need not necessarily result in discovery of a fact. That is why Sir John Beaumont said in Pulukuri Kottaya AIR 1947 PC 67 (p. 70, para 10) that it is

> fallacious to treat the fact discovered within the section as equivalent to the object produced. The following sentence of the learned Law Lord in the said decision, though terse, is eloquent in conveying the message highlighting the pith of the ratio: (AIR p. 70, para 10) Information supplied by a person in custody that I will produce a knife concealed in the roof of my house does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant.

29. In Bodh Raj alias Bodha and others v. State of Jammu and Kashmir, AIR 2002 SC 3164, it was held that a statement even by way of confession made in police custody which distinctly relates to the facts discovered is admissible in evidence against the accused. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus what is admissible being the information, same has to be proved and not the opinion formed on it by the police officer. The exact information given by the accused while in custody which led to the recovery of the article has to be proved; the exact information must be adduced through evidence.

30. In the present case the recovery of Gamchha and Baniyan at the instance of the accused from the underneath the Takhat (Cot) is an important factor that connects the accused with the crime. According to the report of the chemical examiner and serologist, blood was also found on the said Gamchha and Baniyan belonging to the accused. This leads to the conclusion that at the time of committing murder the accused was wearing the Gamchha and Baniyan and thereafter he concealed them underneath the Takhat.

> Therefore, the aforesaid contention raised on behalf of the appellant that the alleged recovery of clothes i.e. Gamchha and Baniyan do not satisfy the mandate of Section 27 of the Indian Evidence Act cannot be sustained.

31. It was lastly urged on behalf of the appellant that identification of accused by sniffer dog cannot be relied upon as it is not admissible in order to prove the guilt of the appellant.

> Similar contention was raised in Abdul Rajak Murtaja Dafedar v. State of

Maharashtra, (1969) 2 SCC 234, wherein this Court opined that in the present state of scientific knowledge evidence of dog tracking, even if admissible, is not ordinarily of much weight.

32. In Gade Lakshmi Mangaraju alias Ramesh v. State of A.P., (2001) 6 SCC 205, this Court noticed the criticism advanced against the reception of evidence pertaining to sniffer dog. The objection was that the life and liberty of human being should not be made to depend on animals sensibilities and that the possibility of a dog misjudging the smell or mistaking the track cannot be ruled out, for many a time such mistakes have happened. In the said case, this Court relying decision in Abdul Rajak Murtaja Dafedar (supra) case held: 17. We are of the view that criminal courts need not bother much about the evidence based on sniffer dogs due to the inherent frailties adumbrated above, although we cannot disapprove the investigating agency employing such sniffer dogs for helping the investigation to track down criminals.

33. In Dinesh Borthakur v. State of Assam, (2008) 5 SCC 697, while the same question was considered, referring to Gade Lakshmi Mangaraju (supra) case this Court held the law in this behalf, therefore, is settled that while the services of a sniffer dog may be taken for the purpose of investigation, its faculties cannot be taken as evidence for the purpose of establishing the guilt of an accused.

34. In the present case, the services of a sniffer dog was taken for investigation. The said dog traced the accused and he was formally arrested in the evening of the next day. The Investigating Officer, Ashok Kumar Yadav (PW-10) corroborated the evidence of Abdul Lais Khan (PW-4) to the effect that Raja sniffer dog after picking up scent from the place of occurrence tracked down the house of the accused. What is relevant to note is that the accused has not been convicted on the ground that the sniffer dog tracked down the house of the accused and barked at him. The evidence of dog tracking only shows how the accused was arrested. The Trial Court and the Appellate Court noticed the motive of the accused. Ram Chandra Chaurasiya (PW-1) disclosed in his evidence that a few days before the date of occurrence, the accused has teased his daughter and also threatened her. Her daughter Km.x complained about the misconduct of the accused to her cousin Ashok Kumar and the latter admonished the accused for the same. Ashok Kumar died subsequently but the evidence of the girls father is quite convincing and worthy of credit. The aforesaid incident clearly reflects upon the motive of the accused.

The prosecution has brought on record evidence as to string of her trouser was found untied and the trouser had been taken down. She was lying naked when found dead. The scene at the site of occurrence indicates that the trouser of the deceased had been taken down with a view to outrage her modesty. A portion of her dupatta were found thrust in her mouth so as to gag her. The other part of the dupatta was found in the incised wound on the neck so as to soak blood. The pair of the chappals of the deceased was lying at a distance. The wheat plants were noticed to be trampled which indicates violence and a scuffle between the victim and the assailant. The episode of eve teasing of the girl indicates that the accused wanted sex with her and it was in this background that he made a forcible attempt to rape her. It appears that the girl was bold and brave and she resisted the accused forceful attempt which enraged and provoked the accused to eventually commit the heinous act.

Since there is no direct evidence to prove the guilt of the accused the Trial Court and the Appellate Court considered the circumstances which led towards the accused. Admittedly, nobody was named in the FIR but referring to the incident that Km.x was murdered the FIR was lodged. Since nobody was named in the FIR the Investigating Officer took the help of the dog squad and the dog handler Abdul Lais Khan (PW-4) came with the dog. Dog tracking proceeding was done and the dog tracked the accused. The said fact is not disputed. The accused who was then taken into custody gave statement regarding commission of crime. Though the statement is not admissible, at his instance the sickle as well as blood stained cloths were recovered. The report proved that the sickle was blood stained. The Doctor has given statement that the injury caused upon the victim could have been caused by the weapon so recovered which establish that the said weapon was used in committing the murder. Ram Chandra Chaurasiya (PW-1) father of the victim had given statement that earlier also the accused eve-teased his daughter Km.x for which his nephew Ashok Kumar scolded accused. Ram Prakash (PW-3) although turned hostile had made statement that accused had confessed to him that since the girl has refused sexual relationship with him he had murdered her. Though such statement cannot be relied upon independently to hold the accused guilty, other chain of evidence reaches to only one conclusion i.e. against the accused. Recovery of handkerchief from the place of murder, with the mark of Heart and inscription

of the words I Love You, establishes that some person were closed to her. The position of her cloth of the lower body salwar establish that the person tried to have sex with the girl and the injuries on the fingers of the girl also established that she protested somehow. These circumstances also lead to the conclusion that the person who could not succeed in outrage the modesty of the girl, murdered her. There is no other evidence contrary to it. Further, there is no evidence to suggest that the father of the deceased had any enmity or grudge with anyone who may be suspected to have committed the murder. All these circumstances proved that it is nobody else but the accused who attempted to commit rape and murdered the deceased Km.x.

35. On the point of awarding death sentence, a Constitution Bench of this Court in Bachan Singh v. State of Punjab (1980), 2 SCC 684 observed: 206. 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.

207. We will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence.....

36. In Machhi Singh v. State of Punjab, (1983) 3 SCC 470, this Court discussed the circumstances in which the death sentence can be awarded and summarised the guidelines indicated in Bachan Singh(Supra) as under 38. 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. The nature, motive, impact of a crime, culpability, quality of evidence, socio-economic circumstances, impossibility of rehabilitation are the factors which the court may take into consideration while dealing with such cases as was spelt out in Santosh

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

38. In Dhananjoy Chatterjee v. State of West Bengal, (1994) 4 SCC 220, while affirming award of death sentence by the High Court, this Court noticed the rising crime rate in recent years particularly violent crime against women. In the said case, this Court reiterated the principle that it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that crime does not go unpunished and the victim of the crime, as also the society, has the satisfaction that justice has been done. The said case concerned with the rape and murder of an 18 year old girl by a security guard of the flat where she lived. The Court found it to be a fit case for imposition of capital punishment.

39. This Court in many cases such as Atbir v. Govt. of NCT of Delhi, (2010) 9 SCC 1, case confirmed the death sentence awarded by the trial Court as affirmed by the High Court for different reasons after applying the principles enunciated in the judgments referred to above.

40. In Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546, this Court noticed aggravating circumstances (crime test) " mitigating circumstances- (criminal test) and rarest of rare case " (R-R test) and observed:

> 52. Aggravating circumstances as pointed out above, of course, are not exhaustive so also the mitigating circumstances. In my considered view, the tests that we have to apply, while awarding death sentence are crime test, criminal test and the R-R test and not the balancing test. To award death sentence, the crime test has to be fully satisfied, that is, 100% and criminal test 0%, that is, no mitigating circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc. the criminal test may favour the accused to avoid the capital punishment. Even if both the tests are satisfied, that is, the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the rarest of the rare case test (R-R test). R-R test depends upon the perception of the society that is society- centric and not Judge-centric, that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying

that test, the court has to look into variety of factors like societys abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of intellectually challenged minor girls, suffering from physical disability, old and infirm women with those disabilities, etc. Examples are only illustrative and not exhaustive. The courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the Judges.

41. This Court in Ramnaresh and others v. State of Chhattisgarh, (2012) 4 SCC 257, applying the various principles to the facts of the said case and taking into consideration the age of the accused, possibility of the death of the deceased occurring accidently and the possibility of the accused reforming themselves held that the accused cannot be termed as social menace and commuted the sentence of death to that of life imprisonment (21 years).

42. In the present case, on the question of quantum of sentence the argument raised on behalf of the appellant is that the accused was young at the time of commission of offence i.e. 21 years of age, that he had no intention to kill the deceased and there is no past criminal antecedent.

43. On the other hand, learned counsel for the state contended that it was a heinous crime and the case of the appellant is similar like the case of Dhananjoy Chatterjee (supra).

44. We have noticed the case of Dhananjoy Chatterjee (supra). In the said case accused was a security guard and was responsible for providing security to the residents of the flats. Instead of that he used to tease a young girl child of one of the lady residents. On the complaint of the lady resident, he was transferred. To avenge the same he went up to the flat of the lady and committed rape on her daughter and then murdered her brutally. That was a case where the protector of residents becomes the offender.

45. The case of the appellant is not similar. The Trial Court and the High Court wrongly held that the case of the appellant is similar to that of Dhananjoy Chatterjee.

46. In the present case, the circumstantial evidence comes to only one conclusion that

appellant attempted to commit rape and because of resistance he committed the murder of the deceased. The appellant was aged about 21 years at the time of offence. Initially when the matter for confirmation of death sentence was heard by the two learned Judges of the High Court there was a divided opinion, one Judge confirmed the death sentence while the other acquitted the appellant. It is the other Bench which affirmed the death sentence. It is not the case of the Prosecution that the appellant cannot be reformed. In fact the possibility of his reformation cannot be ruled out. There is no criminal antecedent of the appellant. The Court has to consider different parameters as laid down in Bachan Singh (supra) followed by Machhi Singh (supra) and balance the mitigating circumstances against the need for imposition of capital punishment.

47. While we apply the various principles to the facts of the present case, we are of the opinion that considering the age of the accused, the possibility of reforming him cannot be ruled out. He cannot be termed as social menace. Further, the case does not fall under the rarest of rare category. We, therefore, are unable to uphold the death sentence.

48. For the reasons aforesaid we are commuting the death sentence of accused-Lalit Kumar Yadav alias Kuri to that of life imprisonment but affirm the rest part of the conviction and sentence. The appeal is partly allowed only with regard to the quantum of sentence.