



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS. 429-430/2020**

WARIS **...APPELLANT(S)**

VERSUS

**THE STATE OF
MADHYA PRADESH** **...RESPONDENT(S)**

J U D G M E N T

VIKRAM NATH, J.

TABLE OF CONTENTS

PART I- INTRODUCTION	3
PART II- THE PROSECUTION CASE	6
PART III - THE TRIAL AND THE FINDINGS OF THE COURTS BELOW	8
PART IV - PROCEEDINGS BEFORE THIS COURT	11
PART V - THE SUBMISSIONS OF THE PARTIES	14
PART VI - THE POINTS FOR DETERMINATION	16
PART VII - ANALYSIS	18
SECTION A - THE CURATIVE FURTHER CROSS- EXAMINATION AND THE RIGHT TO A FAIR TRIAL	18
SECTION B - THE PRINCIPLES OF APPRECIATION	20
SECTION C- THE OBJECTIVE SUBSTRATUM: THE MEDICAL EVIDENCE.....	26
SECTION D - THE OCULAR ACCOUNT OF THE MOTHER OF THE VICTIM	32

SECTION E - THE ASSAULT UPON THE CREDIBILITY OF THE MOTHER OF THE VICTIM.....	40
E.1 The alleged material omissions	40
E.2 The alleged internal contradictions.....	50
E.3 The conduct of the mother of the victim: the entrapped witness.....	56
E.4 The submission founded upon the call detail record	64
E.5 The alleged contradiction with PW-4 and the theory of false implication	68
SECTION F — THE VICTIM’S DYING DECLARATION	73
SECTION G - THE CORROBORATIVE EVIDENCE.....	80
SECTION H- THE SCIENTIFIC EVIDENCE	86
SECTION I- THE DEFENCE CASE	92
SECTION J- THE ALLEGED DEFECTS IN THE INVESTIGATION.....	98
SECTION K - THE OFFENCES ESTABLISHED.....	103
SECTION L- THE COMPLETE PICTURE.....	108
PART VIII- CONCLUSION ON CONVICTION	112
PART IX - THE QUESTION OF SENTENCE	115
SECTION M- THE SENTENCING PROCEEDINGS AND THE MATERIAL NOW BEFORE THE COURT	115
SECTION N- THE LAW GOVERNING THE SENTENCE OF DEATH.....	120
SECTION O - THE AGGRAVATING CIRCUMSTANCES ..	127
SECTION P - THE MITIGATING CIRCUMSTANCES	134
SECTION Q- THE WEIGHING OF THE CIRCUMSTANCES	140
SECTION R - THE COMPARABLE CASES, THE MIDDLE PATH, AND THE ADEQUATE SENTENCE.....	148
PART X – THE CONCLUSION	155

PART I- INTRODUCTION

1. The present criminal appeals arise out of the final judgment and order dated 18.11.2019 passed by the High Court of Madhya Pradesh, Bench at Indore¹ in Criminal Reference No. 1 of 2019 and Criminal Appeal No. 1854 of 2019, whereby the High Court affirmed the conviction of the appellant and confirmed the sentence of death imposed upon him by the judgment dated 17.12.2018 passed by the Second Additional Sessions Judge and Special Judge under the Protection of Children from Sexual Offences Act, 2012, Jaora, District Ratlam² in Special Case No. 3 of 2018.
2. The appellant stands convicted for the offences punishable under Sections 376(2)(f), 376(2)(n), 376AB, 302 and 201 of the Indian Penal Code, 1860³ and Sections 5 and 6 of the Protection of Children from Sexual Offences Act, 2012⁴. For the offences under Section 376AB and Section 302 of the IPC, the Trial Court sentenced the appellant to death, and the High Court confirmed the said sentence while answering the reference in the affirmative and dismissing the appeal preferred by the appellant.

¹ hereinafter referred to as the "High Court"

² hereinafter referred to as the "Trial Court"

³ (hereinafter referred to as the "IPC")

⁴ (hereinafter referred to as the "POCSO Act")

3. The charge against the appellant was that he subjected his own step-daughter, a girl child of about six years of age who is referred to throughout this judgment only as "the victim", to repeated sexual assault within the four walls of the home, and thereafter throttled her to death. The solitary eyewitness to the events was the mother of the victim, who is the wife of the appellant, and who has been examined as the first prosecution witness⁵. In deference to the mandate of Section 33(7) of the POCSO Act and the settled law forbidding disclosure of the identity of a child victim of sexual assault, neither the victim nor her mother is named in this judgment, and the parties and witnesses connected to the family are referred to only in a manner that preserves that anonymity.
4. Although the appeals were laid before this Court against a concurrent conviction, they came to acquire an unusual dimension in the course of their hearing. It emerged that the cross-examination of PW-1, who is the foundation of the entire prosecution edifice, had been conducted at the trial by a legal aid counsel appointed on the very day on which her testimony was recorded. This Court, by its order dated 08.05.2025, therefore directed a further cross-examination of PW-1, which was carried out on

⁵ (hereinafter referred to as "PW-1")

14.06.2025, and the record of that exercise now forms part of the material before us. The appeals consequently require this Court to determine, at the threshold, whether the infirmity which attended the recording of the evidence of PW-1 has been duly remedied pursuant to the directions issued by this Court. If the Court is satisfied that the appellant has now had an effective opportunity to cross-examine the said witness and that no residual prejudice survives so as to vitiate the trial, the Court would thereafter be required to consider the entire material on record, including the additional evidence now recorded, to assess whether the conviction and sentence recorded against the appellant can be sustained in law.

5. At the heart of these appeals lies a question that is at once evidentiary and profoundly human, namely the measure of credence that the law accords to the testimony of a mother who deposes to the sexual violation and killing of her own child within the home in which she herself was confined, and the manner in which a court must weigh the omissions, the improvements, the delay and the seeming inconsistencies that so often accompany the evidence of such a witness. Having regard to the gravity of the charge and the sentence, we have considered the entire record with the care that a matter of this nature demands.

PART II- THE PROSECUTION CASE

6. The case set up by the prosecution may be narrated as follows:
 - 6.1. The mother of the victim was earlier married to one Shakeel, from whom she had four children. After his death, she returned to her parental home at Jaora with the victim, who was then about five years of age. On 04.08.2017, she married the appellant and shifted with the victim to his house at village Kushalgarh.
 - 6.2. The prosecution case is that after an initial period of cordiality, the appellant began ill-treating the victim and thereafter subjected her to sexual abuse within the household. The mother alleged that the appellant threatened her when she objected, controlled her movements and prevented disclosure of what was taking place in the home.
 - 6.3. The immediate events are alleged to have commenced on the night of 21.04.2018, when the appellant sexually assaulted the victim after confining the mother in another room. The child thereafter remained restless, vomited and her condition progressively deteriorated. On 22.04.2018 also, according to the prosecution, the appellant assaulted the child and refused to

take her for medical treatment despite the requests of the mother.

6.4. On 23.04.2018, the mother telephoned the appellant in the morning as the condition of the child worsened. The call detail record shows two calls made to the appellant at 09:20:30 hours and 09:21:24 hours. The appellant returned at about noon. According to the mother, his first enquiry was whether the child had disclosed anything to her. When the mother again pressed for medical treatment, the appellant refused. Shortly thereafter, she heard the child scream and saw the appellant throttling her with both hands. The child died soon thereafter.

6.5. The appellant thereafter took the child to private medical practitioners, who either did not examine her or declared her dead. The body was taken towards Kushalgarh, where the appellant proposed immediate burial, but upon the insistence of the mother it was taken to Jaora. The body was then brought to the Civil Hospital, Jaora. The post-mortem examination conducted on 24.04.2018 opined that the cause of death was asphyxia due to throttling and also recorded a fresh tear at the fourchette with oozing of blood, indicative of sexual assault. The appellant was arrested on 25.04.2018, and after

investigation a charge-sheet was filed for offences under the IPC and the POCSO Act.

PART III - THE TRIAL AND THE FINDINGS OF THE COURTS BELOW

7. On the basis of the material collected during the investigation, the Trial Court framed charges against the appellant on 02.07.2018 for the offences punishable under Sections 376(2)(f), 376(2)(i), 376(2)(n), 376AB, 302 and 201 of the IPC and Sections 5 and 6 of the POCSO Act. The appellant denied his guilt, pleaded not guilty and claimed trial.
8. In support of its case the prosecution examined twenty-four witnesses and exhibited a large number of documents. The material witnesses may be identified at the outset for convenience. PW-1 is the mother of the victim and the solitary eyewitness to the events within the household. PW-2 and PW-5 are residents of the locality who spoke with respect to the antecedent conduct of the appellant and the condition of the victim shortly before her death. PW-3 is the medical practitioner at Hasanpaliya who examined the child and declared her dead. PW-4 is the sister-in-law of the mother of the victim. PW-6 is the autopsy surgeon who conducted the post-mortem examination. PW-7 is the village health worker who was summoned to see the child, and PW-8 is the doctor who conducted the pre-medico-legal

examination at the Civil Hospital, Jaora. PW-24 is the Investigating Officer.

9. The appellant was thereafter examined under Section 313 of the Code of Criminal Procedure, 1973⁶, and the incriminating circumstances appearing in the evidence were put to him. The appellant denied the entirety of the prosecution case and set up a plea of false implication. His defence, in substance, was that he had been falsely roped in at the instance of PW-4, that the mother of the victim had deposed against him under pressure and instigation, that he had been threatened by the police with implication in a case relating to opium husk and had been made to sign blank papers, and that he was in fact absent from the village on the relevant dates, having gone to Khodana near village Kalukheda. In support of the plea, the appellant examined three witnesses in defence, being DW-1, who is the appellant himself, DW-2 and DW-3, the last of whom is the son of the appellant.
10. The Trial Court, upon an appreciation of the evidence, held the mother of the victim to be a natural and truthful witness whose account of the sexual assault and the throttling of the child bore the stamp of truth. The Trial Court found her testimony to be corroborated by the medical evidence of the autopsy surgeon, which established that the death was

⁶ hereinafter referred to as the "CrPC"

homicidal and was occasioned by throttling, and which disclosed an injury indicative of sexual assault, as well as by the forensic evidence, the recoveries and the conduct of the appellant. The Trial Court rejected the plea of alibi and the plea of false implication, convicted the appellant for the offences under Sections 376(2)(f), 376(2)(n), 376AB, 302 and 201 of the IPC and Sections 5 and 6 of the POCSO Act, and by a separate order of the same date, namely 17.12.2018, sentenced him to death for the offences under Section 376AB and Section 302 of the IPC, together with the fines and the substantive sentences set out in the judgment of the Trial Court. The appellant was acquitted of the charge under Section 376(2)(i) of the IPC.

11. In view of the sentence of death, the Trial Court transmitted a reference to the High Court under Section 366 of the CrPC for confirmation, which was registered as Criminal Reference No. 1 of 2019, and the appellant preferred Criminal Appeal No. 1854 of 2019 assailing his conviction and sentence. The reference and the appeal were heard together.
12. Before the High Court, a specific plea was pressed on behalf of the appellant that he had been denied a proper opportunity of defence, inasmuch as the legal aid counsel appointed to represent him at the trial was inexperienced and had cross-examined the mother of the victim without adequate preparation.

The High Court did not find merit in the said objection. Upon a reappreciation of the evidence, the High Court affirmed the finding that the mother of the victim was a reliable witness, held that the prosecution had established the guilt of the appellant beyond reasonable doubt, and concluded that the case fell within the category of the rarest of rare cases warranting the extreme penalty. By its judgment dated 18.11.2019 the High Court accordingly answered the reference in the affirmative, confirmed the sentence of death, and dismissed the appeal preferred by the appellant.

PART IV - PROCEEDINGS BEFORE THIS COURT

13. When the present criminal appeals were being heard, the grievance concerning the denial of effective legal assistance at the trial came to be crystallised before this Court, and on a scrutiny of the record it assumed a significance that could not be ignored. It is necessary to set out the sequence of events at the trial that gave rise to this grievance.
14. The record of the Trial Court discloses that the counsel initially engaged by the appellant appeared on 21.06.2018 and declined to plead on his behalf. On 02.07.2018 one Advocate Mr. Mohd. Ahmad Khan entered appearance for the appellant and filed his vakalatnama, and on the same day charges were

framed. On 06.07.2018 the matter was fixed for the recording of prosecution evidence, and two dates were appointed, the first of which, being 16.07.2018, was fixed for the examination of the mother of the victim as the star prosecution witness. On 16.07.2018, the appellant was produced from custody but the counsel engaged by him was not present. The appellant submitted that he was unable to bear the fees of his counsel and prayed that he be provided the services of a legal aid counsel. The Trial Court acceded to the request and appointed a legal aid counsel to represent the appellant. On that very day, the Trial Court proceeded to record the entire examination-in-chief of the mother of the victim and ensured that her cross-examination was also completed by the newly appointed legal aid counsel.

15. It was this feature of the trial that engaged the attention of this Court. By order dated 08.05.2025, this Court found that the appointment of a legal aid counsel and the recording of the complete deposition of the star prosecution witness on the self-same day, without the counsel being afforded any opportunity to prepare, had occasioned grave prejudice to the appellant in the matter of her cross-examination, while recording that in all other respects the trial had been conducted with remarkable precision. Invoking its powers under Section 391 read with Section 367 of the CrPC, corresponding to Section 432 read with

Section 408 of the Bharatiya Nagarik Suraksha Sanhita, 2023⁷, this Court directed a further examination of the mother of the victim. The operative directions were, in substance, that the matter be remitted to the Trial Court for her further examination as PW-1, that appropriate protection be extended to her under the witness protection scheme and that she be counselled by a Senior or Special Public Prosecutor before entering the witness box in view of the lapse of time and the apprehension of her being won over, that the appellant be at liberty to engage counsel of his own choice or to have the cross-examination conducted through counsel assisting him under Project 39A with the complete record being furnished to such counsel at least fifteen days in advance, and that the prosecution be at liberty to put additional questions by way of re-examination if so required.

16. In compliance with the said order, the further cross-examination of the mother of the victim was conducted on 14.06.2025 before the Special Judge under the POCSO Act, Jaora, District Ratlam, after she was once again put on oath. The further cross-examination was carried out on behalf of the appellant by Advocate Mr. Amit Dubey, and it was conducted over the course of a full working day in two

⁷ hereinafter referred to as the "BNSS"

sessions, the first from about 11.40 AM to 02.00 PM and the second from about 03.20 PM to 4.35 PM. On the conclusion of the further cross-examination, the opportunity of re-examination was made available to the prosecution and was not availed. The record of the further examination, together with the original record, was thereafter transmitted to this Court.

17. It is with the benefit of this augmented record, comprising the original deposition of the mother of the victim recorded on 16.07.2018 and her further cross-examination recorded on 14.06.2025, that these appeals have been heard. By this judgment we take up, in the first instance, the question of conviction, and the effect of the curative exercise so undertaken upon the appreciation of the evidence is a matter to which we shall presently return.

PART V - THE SUBMISSIONS OF THE PARTIES

18. Mr. C.U. Singh, learned Senior Counsel appearing for the appellant, assailed the concurrent findings of the courts below resting on the following primary arguments:

- 18.1. The Senior Counsel for the appellant assailed the conviction principally on the ground that the prosecution case rests upon the testimony of PW-1, the mother of the victim, whose evidence, according to him, is unreliable. It was

submitted that PW-1 introduced material facts for the first time in court, although they did not appear in her statements under Sections 161 and 164 of the CrPC, and that these omissions went to the root of the prosecution case. Her testimony was also attacked on the grounds of internal contradictions, unnatural conduct, delay in disclosure, access to a mobile phone and alleged contradiction with PW-4.

18.2. On sentence, it was submitted that the case did not fall within the rarest of rare category. The appellant relied upon the mitigation material now placed before this Court, including his childhood deprivation, absence of criminal antecedents, satisfactory jail conduct, family ties and the absence of any material from the State establishing that he was beyond reform. It was urged that in any event the intermediate sentence of imprisonment for the remainder of natural life would adequately meet the ends of justice.

19. Per contra, learned counsel appearing for the State supported the judgments of the courts below. It was submitted that the core testimony of PW-1 remained unshaken despite two cross-examinations and stood corroborated by the medical evidence, the victim's disclosure, the call detail record, the extra-judicial confession and the conduct of the appellant. The

State submitted that the omissions relied upon by the appellant were either peripheral or adequately explained, that the defence case was false, and that the defects alleged in the investigation did not vitiate an otherwise proved case. On sentence, the State relied upon the extreme vulnerability of the victim, the appellant's position of trust, the sustained sexual abuse, the denial of medical aid and the killing of the child to suppress disclosure of the offence.

PART VI - THE POINTS FOR DETERMINATION

20. Having heard learned counsel for the parties at length and having perused the entire record, we are of the view that the following points arise for the determination of this Court on the question of conviction.

- i) Whether the infirmity attending the recording of the evidence of the mother of the victim as PW-1 on 16.07.2018 stands cured by the further cross-examination conducted pursuant to the order of this Court dated 08.05.2025, and what is the effect of the said exercise upon the appreciation of her evidence?
- ii) Whether the testimony of the mother of the victim is reliable and is sufficient, read with the corroborative material on record, to sustain the conviction of the appellant, notwithstanding the

omissions, the improvements, the contradictions and the conduct attributed to her?

- iii) Whether the death of the victim is established to be homicidal and is attributable to the appellant?
- iv) Whether the offence of aggravated penetrative sexual assault upon the victim, a child below twelve years of age, is established against the appellant?
- v) Whether the plea of alibi set up by the appellant and the version of events put forth in his defence are established or are shown to be reasonably probable?
- vi) Whether the defects and the alleged mala fides in the investigation are of such a character as to vitiate the prosecution case?
- vii) Whether, on a consideration of the entire evidence, the offences under Sections 302, 376(2)(f), 376(2)(n), 376AB and 201 of the IPC and Sections 5 and 6 of the POCSO Act are established against the appellant?

21. We propose to address these points in the course of the analysis that follows.

PART VII - ANALYSIS

22. Before we embark upon the analysis, it is convenient to indicate the sequence in which we propose to proceed, for the questions are interconnected and the order of their consideration is deliberate. Having answered at the threshold the question concerning the curative exercise, we shall set out the principles governing the appreciation of the evidence, and shall then take up the objective medical evidence, which establishes the substratum of the offence independently of any oral account. It is against that substratum that we shall examine the ocular testimony of the mother of the victim and the attacks mounted upon her credibility, and we shall thereafter consider the disclosure made by the victim, the corroborative evidence, and the scientific evidence, before turning to the defence of the appellant and the alleged infirmities in the investigation, and finally recording our conclusions upon the offences and the complete picture that emerges.

SECTION A - THE CURATIVE FURTHER CROSS-EXAMINATION AND THE RIGHT TO A FAIR TRIAL

23. The first question is whether the infirmity attending the original cross-examination of PW-1 has been remedied by the further cross-examination conducted pursuant to the order of this Court dated 08.05.2025.

The concern arose because PW-1, the principal prosecution witness, had been examined and cross-examined on 16.07.2018 by a legal aid counsel appointed on the very same day, without any real opportunity to prepare. In a capital case, such a course plainly fell short of the standard of effective legal assistance and meaningful cross-examination guaranteed by Article 21.

24. The defect, however, was confined to the cross-examination of one witness, though an important one. It did not infect the entire trial. Sections 391 and 367 of the CrPC empower the appellate court, and the court dealing with a death reference, to take or direct the taking of further evidence where it is necessary for a just decision. The course adopted by this Court, namely directing the further cross-examination of PW-1 with adequate protection to the witness and full access to the record to the defence, was therefore a proportionate cure rather than a retrial.
25. The further cross-examination was conducted on 14.06.2025 before the Special Judge under the POCSO Act. The appellant was represented by counsel of his choice, the complete record had been made available in advance, and the witness was cross-examined at length on every material aspect, including the omissions and contradictions now pressed before us. The prosecution was given an opportunity of re-examination but did not avail it. No

specific line of cross-examination that remained unavailable, nor any concrete residual prejudice, has been demonstrated.

26. We therefore hold that the defect in the original cross-examination has been adequately remedied. The evidence of PW-1 must now be appreciated by reading together her deposition dated 16.07.2018 and her further cross-examination dated 14.06.2025, with due allowance for the passage of time between the occurrence and the further examination.

SECTION B - THE PRINCIPLES OF APPRECIATION

27. Since the prosecution rests its case in large measure upon the testimony of the mother of the victim, and since her evidence has been assailed on the grounds of omissions, improvements, contradictions and conduct, it is necessary to set out the principles by which the evidence of such a witness is to be appreciated, before we apply those principles to the evidence on record.
28. The first principle concerns the sufficiency of a solitary witness. It is not the law that the testimony of a single witness, howsoever reliable, must be discarded for want of a plurality of witnesses. Section 134 of the Indian Evidence Act, 1872⁸ provides in unequivocal terms that no particular number of

⁸ hereinafter referred to as the "Evidence Act"

witnesses shall in any case be required for the proof of any fact. The provision reads as follows:

"134. Number of witnesses.— No particular number of witnesses shall in any case be required for the proof of any fact."

The principle enshrined in the said provision is that evidence is to be weighed and not counted, and that the conviction of an accused may rest upon the testimony of a single witness if that testimony is found to be reliable and inspires confidence. This Court, as early as in ***Vadivelu Thevar v. State of Madras***⁹, held that a court may act upon the testimony of a single witness though uncorroborated, and that if the testimony of a solitary witness is wholly reliable, a conviction may be founded upon it. We are conscious, at the same time, that where the solitary witness is closely related to the deceased and to the accused, and where her evidence has been the subject of a searching attack, the prudent course is to seek corroboration in the material particulars of her account. We do not, therefore, approach the evidence of the mother of the victim on the footing that she is a witness of such flawless quality that her word must be accepted without more. We approach her evidence on the footing that if the

⁹ (1957) 1 SCC 700

core of her account is found to be reliable and is corroborated in its material particulars by the other evidence on record, it may safely be acted upon, and it is by that standard, and no lower one, that we have tested her testimony.

29. The second principle concerns the character of a related witness. It was faintly suggested by the appellant that the mother of the victim, being the wife of the appellant, was an interested witness whose evidence must be viewed with suspicion. The suggestion proceeds upon a confusion between a related witness and an interested witness, which this Court has repeatedly cautioned against. A related witness is one who is connected by blood or by marriage to the victim or to the accused, whereas an interested witness is one who has a motive to see the accused convicted for reasons other than the vindication of the truth, such as a pre-existing enmity or an expectation of gain. The two are not the same, and the evidence of a related witness cannot be discarded merely on the ground of relationship. This Court held in ***Dalip Singh v. State of Punjab***¹⁰, that a witness is normally to be considered independent unless he springs from sources which are likely to be tainted, and that a relation would not conceal the actual culprit and make allegations against an

¹⁰ (1953) 2 SCC 36

innocent person in order to wreak vengeance, but would ordinarily be the last to screen the real offender. The distinction was reaffirmed by this Court in ***State of Rajasthan v. Kalki***¹¹, and in ***Goverdhan v. State of Chhattisgarh***¹², wherein it was explained that the related witness is not necessarily an interested witness, and that the evidence of a related witness, if found to be reliable, requires no corroboration and may be acted upon.

30. These principles acquire a particular force in the present case. The witness who has deposed against the appellant is not a stranger who might harbour some ulterior design against him. She is his wife, and she is the mother of the child who was the victim of the crime. A woman in her position, in deposing to the rape and the murder of her own child, does not merely give evidence against a stranger. She testifies against her own husband, and in doing so she renounces her marriage, forfeits the shelter and the maintenance that the marriage afforded her, exposes herself to the hostility of the family into which she married, and courts the social opprobrium that in the milieu to which she belongs attaches to a woman who breaks her home. That she was willing to endure all of this in order to accuse the appellant powerfully attests to her credibility. A mother is, in the

¹¹ (1981) 2 SCC 752

¹² (2025) 3 SCC 378

considered view of this Court, ordinarily the last person who would shield the murderer of her own child and substitute an innocent man in his place.

31. The third principle concerns the appreciation of evidence in cases of sexual offences and of crimes committed within the privacy of the home. Offences of this nature are seldom committed in the presence of witnesses. The sexual abuse of a child within the household, in particular, is perpetrated in secrecy and in stealth, and the persons ordinarily present are the perpetrator, the child and, if at all, a member of the household who is powerless to prevent it. To insist, in such cases, upon the kind of corroboration that might be available in a crime committed in the open would be to insist upon a standard that the very nature of the offence renders impossible of attainment, and would be to grant to those who prey upon children within the home an immunity founded upon the secrecy in which they cloak their crime. This Court, in ***State of Punjab v. Gurmit Singh***¹³, deprecated the tendency to view the evidence of the prosecutrix in a sexual offence with suspicion, and held that such evidence is to be appreciated with sensitivity and realism, and that minor contradictions or insignificant discrepancies which do not touch the core of the prosecution case ought not to be a ground

¹³ (1996) 2 SCC 384,

for throwing out an otherwise reliable case. The same sensitivity governs the appreciation of the evidence of the mother of a child victim, who is often the only person in a position to speak to what was done to the child behind the closed doors of the home.

32. The fourth principle concerns the treatment of a witness whose evidence is found to be partly acceptable and partly not. The appellant's submission, reduced to its essence, is that because the mother of the victim omitted certain facts from her earliest statements and introduced others for the first time in court, her testimony must be rejected in its entirety. That submission invokes, in substance, the maxim ***falsus in uno, falsus in omnibus***, that is, false in one thing, false in everything. It is well settled that the said maxim is not a rule of law in India, and is at best a rule of caution. The duty of the court is not to reject the whole of a witness's evidence upon finding a part of it to be unacceptable, but to sift the truth from the falsehood, to separate the grain from the chaff, and to act upon that part of the evidence which it finds to be reliable after a careful scrutiny, provided that the acceptable part can be safely separated from the rest and is corroborated by the other evidence on record. This Court, in ***State of U.P. v. M.K. Anthony***¹⁴, held that the evidence of a

¹⁴ (1985) 1 SCC 505

witness must be read as a whole and in the context of the case, that minor discrepancies on trivial matters not touching the core do not corrode the credibility of an otherwise reliable witness, and that a rustic or an illiterate witness cannot be judged by the standards of precision expected of an educated one. These principles have been consistently reiterated, including in the recent decisions of this Court in ***Selvamani v. State of T.N.***¹⁵, and in ***Goverdhan v. State of Chhattisgarh***¹⁶, wherein it has been reaffirmed that even where omissions, contradictions and discrepancies exist, the whole of the evidence is not to be discarded, and the court must sift the reliable from the embellished and determine whether the residue establishes the guilt of the accused.

SECTION C- THE OBJECTIVE SUBSTRATUM: THE MEDICAL EVIDENCE

33. Having set out the principles that govern the appreciation of the evidence, we now turn to the evidence itself, and we begin not with the oral account of the mother of the victim but with the medical evidence, for a deliberate reason. The oral testimony of a solitary witness is best assessed not in a vacuum but against whatever objective and incontrovertible facts the record independently establishes. The medical evidence in this case furnishes precisely such

¹⁵ (2024) 19 SCC 112

¹⁶ (2025) 3 SCC 378

an objective substratum. It is the evidence of a professional witness who had no interest in the outcome, it rests upon physical findings recorded upon the body of the victim, and it stands wholly independent of the account of the mother. If the medical evidence establishes the corpus of the offence, then the oral testimony falls to be tested against an established foundation of fact rather than upon its own strength alone. It is for this reason that we take up the medical evidence first.

34. The post-mortem examination upon the body of the victim was conducted on 24.04.2018 at about 11 a.m. by PW-6, and the post-mortem report was proved as an exhibit on the record. The autopsy surgeon deposed, and the report records, that the cause of death of the victim was asphyxia as a result of throttling, that the death was homicidal in nature, and that the time of death was within about forty-eight hours preceding the examination. The opinion as to the cause of death was founded upon objective signs, including the injuries observable upon the neck of the victim, consistent with the compression of the throat by hand. There is no material on the record to doubt the competence of the autopsy surgeon or the correctness of the opinion, and the finding as to the cause of death was not seriously assailed before us.

35. Two conclusions of the utmost importance follow from this evidence, and they follow independently of the oral testimony of any witness. The first is that the death of the victim was homicidal, and was occasioned by manual strangulation. This is not a case in which the fact of a homicide is itself in doubt, or in which the death is capable of being attributed to natural causes, to accident or to disease. The medical evidence puts it beyond doubt that the child was throttled to death. The second conclusion concerns the time of death. The post-mortem examination having been conducted at about 11:00 AM on 24.04.2018, and the death being opined to have occurred within about forty-eight hours prior thereto, the death is thereby fixed to a period that comfortably includes the afternoon of 23.04.2018, which is the very time at which, on the prosecution case, the appellant is said to have throttled the victim. The medical evidence thus independently corroborates the prosecution case both as to the manner and as to the approximate time of the death.
36. The post-mortem report is significant in a further and distinct respect. It records the presence of a small tear at the fourchette with oozing of blood, and the autopsy surgeon opined that this injury was indicative of sexual assault. The fourchette is the posterior commissure of the labia, and a fresh tear at that site accompanied by bleeding is a finding

consistent with recent penetrative sexual assault upon the child. This finding, it must be emphasised, is an objective physical finding recorded upon the body of the victim at the post-mortem examination, and it is wholly independent of the account of the mother of the victim. The injury constitutes objective medical evidence strongly consistent with recent penetrative sexual assault and materially corroborates the account concerning the sexual violation of the victim. We shall have occasion, when we come to consider the scientific evidence and the defence, to address the submission founded upon the absence of male DNA in the vaginal smear, and it is sufficient at this stage to record that the physical injury to the genitalia of the child stands proved as a fact by the medical evidence.

37. The evidence of PW-8, the doctor who conducted the pre-medico-legal examination at the Civil Hospital, Jaora, on the evening of 23.04.2018, is consistent with and reinforces the conclusion that the death was unnatural, and it was upon the report of PW-8 that the machinery of the criminal law was set in motion by the registration of the report of unnatural death. We shall return to the sequence of the reporting when we deal with the submissions concerning the investigation, and it is sufficient at this stage to note that the medical evidence, taken as a whole, establishes an unnatural and homicidal death by

throttling and a recent sexual assault upon the victim.

38. It is at this point that the setting of the crime assumes a decisive significance, and it is convenient to introduce it here, for it forms the backdrop against which the entirety of the evidence must be read. The offences were committed within the four walls of the matrimonial home at village Kushalgarh. As per the case of both the prosecution and the defence, the only adults who ordinarily resided in that home were the appellant and the mother of the victim. The victim was a child of about six years. It is a settled principle of the law of evidence that where an offence takes place inside the privacy of a house, in which the inmates of the house are in a position to know how the crime was committed, and where the death of a person is shown to have occurred in circumstances within the special knowledge of the accused, a corresponding burden is cast upon the inmate of the house to offer a cogent explanation as to how the crime was committed, and a false or an absent explanation becomes an additional link in the chain of circumstances. This principle finds statutory recognition in Section 106 of the Evidence Act, which provides as follows:

"106. Burden of proving fact especially within knowledge.—When any fact is especially within the knowledge of any

person, the burden of proving that fact is upon him."

39. This Court, in ***Trimukh Maroti Kirkan v. State of Maharashtra***¹⁷, explained the application of the said principle to offences committed within the secrecy of the home. It was held that where an accused is alleged to have committed the murder of a person and the offence is alleged to have taken place inside the four walls of a house in circumstances where the accused had a special knowledge of the events, the accused is under an obligation to give a plausible explanation for the cause of the death in his statement under Section 313 of the CrPC, and the absence of such an explanation, or the giving of a false explanation, would itself be an additional link in the chain of circumstances that completes the chain. We shall carry this principle with us through the analysis that follows, for the appellant was, on his own showing as well as on the prosecution case, an inmate of the home in which the victim met her death, and the burden of accounting for how a child living in that home came to be sexually assaulted and throttled to death is one that rests, in the manner and to the extent explained in ***Trimukh Maroti*** (*Supra*) , upon him.

¹⁷ (2006) 10 SCC 681

40. The medical evidence thus establishes, independently of any oral account, a homicidal death by throttling on or about 23.04.2018 and a recent sexual assault, within a home whose only adult occupants were the appellant and the mother. It is against this substratum that we now examine the ocular testimony of the mother of the victim.

SECTION D - THE OCULAR ACCOUNT OF THE MOTHER OF THE VICTIM

41. Against the substratum established by the medical evidence, we now examine the ocular account of the mother of the victim, who was examined as PW-1 and who is the solitary eyewitness to the events that unfolded within the home. Her evidence comprises her deposition recorded on 16.07.2018 and her further cross-examination recorded on 14.06.2025, and, in conformity with the standard we have already laid down, we read the two together as constituting the whole of her testimony. We propose in this section to set out the substance of her account in her own words on the matters that lie at the heart of the case, and to record our impression of it, reserving for the section that follows our consideration of the several attacks that have been mounted upon her credibility.
42. On the antecedent sexual abuse of the victim, the mother deposed in her examination-in-chief to what she had seen with her own eyes. She described the

sleeping arrangement in which the appellant would place himself between her and the child, and she stated that one night, on lifting the blanket, she saw the appellant with his hand inside the undergarment of the victim. In her own words, recorded on 16.07.2018, she deposed as follows.

"One day I saw in the night, that day, the accused varish turned on my girl's side and put her to sleep sticking to her and then I lifted the blanket and saw the accused moving hands in the underwear of my daughter touching private parts."

She went on to depose that when she objected, the appellant threatened her, and she described the threat in these terms.

"I objected but he threatend me to bury we both. He threatened to put imputation on us for fled away with some one else ."

43. On the events of the night of 21.04.2018, which constitute the immediate occasion of the sexual assault, the mother gave a detailed and graphic account. She described how the appellant confined her to the rear room, how she heard the muffled sobs of her child, how she beat upon the door and adjured him in the name of Allah, and how, upon the door being opened, she found the child in a distressing condition. She then deposed to what the child herself told her, and we shall have occasion in a later section to consider the legal character and effect of that

disclosure. For the present, it is sufficient to set out her description of the condition in which she found the child, recorded in her deposition of 16.07.2018.

"Then I saw that my girl was suffering and my girl was not wearing both leggings and underwear and also kept her black color kurti high."

She deposed that on examining the child she found the private part of the victim to be swollen and red, that the child complained of pain, and that the child was restless and vomited through the night.

44. On the events of 23.04.2018, which constitute the occasion of the murder, the account of the mother lies at the very core of the prosecution case, and it is necessary to set it out with some fullness. She deposed that upon the return of the appellant to the house at about noon, his very first concern was not for the deteriorating condition of the child but was to ascertain whether the child had spoken to her mother. In her words, recorded on 16.07.2018:

"Then the accused came home at 12:00 pm and told me that whether [victim's name] told you something or else, i replied the accused that she did not tell me anything."

She then deposed that when she pressed that the child be taken to hospital, the appellant refused, that she thereafter went to another room to cook, and that

on hearing the child scream she returned to the child. She described what she then saw in these words, recorded on 16.07.2018:

*"Before my cooking, the accused told me that my girl was pretending, then I had gone to the kitchen. After going to another room, I heard my girl screaming, then I came to my girl and saw that **the accused had strangled my girl's throat with both hands and removed her¹⁸ hands immediately after seeing me.** When I saw my baby girl, she had turned her eyes. **I had also seen his fingerprints on [victim's name]'s throat,** at that time the accused was trembling with fear and was sweating and was saying that I did not kill." (emphasis supplied)*

45. The mother did not depose merely that the appellant had killed the child, which would have been the natural assertion of a witness bent upon a bald implication. She described a specific and particular scene, namely the appellant caught in the very act with both hands upon the throat of the child, the instinctive withdrawal of the hands the moment he was seen, the turned eyes of the dying child, the impressions of the fingers left upon the small throat, and the appellant sweating and trembling and unprompted in his denial. The impressions of the fingers upon the throat, spoken to by the mother, are in complete accord with the opinion of the autopsy

¹⁸ *His (Typographical error in translation).

surgeon that the death was caused by throttling, that is, by manual strangulation. The account of the mother and the finding of the medical evidence thus dovetail with one another, and the one authenticates the other. A witness who was inventing a false scene would have been under no compulsion to furnish detail of this order, and the correspondence between the finger impressions she described and the cause of death established by the autopsy is a powerful indication of the truth of her account. Equally telling is the first reaction of the appellant upon his return, which was to enquire not after the health of the gravely ailing child but whether the child had disclosed anything to her mother, a reaction to which we shall return when we consider the conduct of the appellant.

46. The account of the mother did not stand alone in her examination-in-chief. It withstood the test of cross-examination on both occasions on which she was cross-examined, separated as those occasions were by nearly seven years. In her original cross-examination on 16.07.2018 she adhered to her account and repelled the suggestions put to her, affirming in terms that she had witnessed the events with her own eyes, in the following words recorded on that date:

*"The accused strangled my girl. It is wrong to say that the accused never strangled my girl. It is wrong to say that the accused did not do any wrong act with [victim's name]. **I have seen it with my own eyes.** It is wrong to say that I am making false statements in the court today." (emphasis supplied)*

In her further cross-examination on 14.06.2025, conducted at length by counsel of the appellant's choice, she once again withstood a sustained challenge to the core of her account, and, when the suggestions of false implication were put to her, she rejected them in categorical terms, in the following words recorded on that date:

***"It is wrong to say that the accused Waris did not rape my daughter repeatedly. It is wrong to say that the accused Waris never raped my daughter.** It is wrong to say that I have lodged a false case of rape and murder against the accused Waris and recorded statements under pressure from the police. It is wrong to say that I used to beat my daughter, due to which she died. ... It is wrong to say that I am recording false statements in the court today to falsely implicate the accused."*
(emphasis supplied)

47. We are conscious that the mere consistency of a witness is not, by itself, a guarantee of truth, and that a false account may be adhered to as tenaciously as a true one. We do not therefore rest upon consistency

alone. What persuades us of the essential reliability of the core of her account is the conjunction of several features, namely the particularity of her description of the scene of the throttling, the correspondence of that description with the independent medical evidence, the inherent improbability of a mother fabricating such a charge against her own husband concerning her own child, and the further circumstance, to which we now turn, that her account is corroborated upon a verifiable particular by the objective record.

48. That verifiable particular is the telephone record. The mother deposed that on the morning of 23.04.2018, finding the condition of the child worsening, she telephoned the appellant twice on his mobile, and she placed the timing of those calls at between 09:00 AM and 09.30 AM. In her further cross-examination on 14.06.2025 she deposed as follows:

"It is correct to say that on 23.04.2018, I called the accused Waris on his mobile when my daughter was unwell. It is correct to say that I called Waris twice on that morning. I called him between 9:00 am and 9.30 am."

The call detail record on the file, which was placed on the record by the prosecution, bears out this account, for it records two calls made from the mobile telephone used by the mother to the mobile

telephone of the appellant on 23.04.2018 at 09:20:30 hours and at 09:21:24 hours, that is, two calls in close succession within the very window of time that the mother described. This is corroboration of her account upon a particular that is objectively verifiable and that lay beyond her power to fabricate, for she could not have known, and could not have contrived, that the telephone records of the network would confirm two calls at those precise moments. Where the testimony of a witness is found to be accurate upon a matter that admits of independent and objective verification, the court is justified in extending to that witness a measure of credence upon the matters that do not so admit of verification, unless there be good reason to withhold it. We find in the telephone record a significant assurance of the reliability of the mother of the victim.

49. For these reasons, we are satisfied that the core of the account of the mother of the victim, namely that the appellant subjected the victim to sexual assault and thereafter throttled her to death within the matrimonial home, is reliable and is corroborated by the objective medical evidence and by the telephone record. Her testimony has, however, been assailed on several grounds, to which we now turn.

**SECTION E - THE ASSAULT UPON THE CREDIBILITY
OF THE MOTHER OF THE VICTIM**

50. The reliability of the account of the mother of the victim, which we have found to be established at its core, has been assailed by the appellant from several directions, and it is necessary to address each line of attack, for a finding of reliability cannot rest secure until the challenges to it have been met. The attacks are five in number. The first is that her deposition before the court contains a series of material omissions when compared with her earliest statements to the police and to the Magistrate. The second is that her further cross-examination is riddled with internal contradictions. The third is that her conduct was so unnatural as to belie her account. The fourth is that the call detail record demolishes her case of isolation and fear. The fifth is that her evidence stands contradicted by that of PW-4 and that she was made to depose falsely at the instance of PW-4. We take up these attacks in turn.

E.1 The alleged material omissions

51. The principal and most strenuously pressed attack is founded upon the omissions in the earliest statements of the mother of the victim. It is pointed out that a number of facts to which she deposed before the court found no mention in her statement

recorded under Section 161 of the CrPC on 24.04.2018 or in her statement recorded under Section 164 of the CrPC on 26.04.2018, and that she candidly admitted these omissions in her further cross-examination on 14.06.2025. It is urged that omissions of this magnitude reduce her court testimony to an afterthought. To assess this submission it is necessary first to state the legal framework, and then to apply it to the facts.

52. A statement recorded under Section 161 of the CrPC in the course of investigation is not substantive evidence. It is a previous statement, and the use that may be made of it is strictly circumscribed by Section 162 of the CrPC, which provides that no such statement shall be used for any purpose at the trial, save that it may be used to contradict its maker in the manner provided by Section 145 of the Evidence Act. The Explanation to Section 162 of the CrPC further provides that an omission to state a fact in such a statement may amount to a contradiction only if it appears to be significant and otherwise relevant having regard to the context, and that whether it does so is a question of fact. The substantive evidence in a criminal trial is therefore the testimony given on oath before the court, and it is that testimony, and not the earlier statement to the police, which furnishes the material for decision. The earliest statements of the mother are thus not the benchmark of truth against

which her court testimony is to be measured, and their only legitimate use is to contradict her in the manner the law permits. A statement recorded under Section 164 of the CrPC, though recorded by a Magistrate, is likewise not substantive evidence, and it too may be used only to corroborate or to contradict its maker.

53. The manner of such contradiction is prescribed by Section 145 of the Evidence Act, which provides as follows:

"145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

The language of the provision is explicit. If it is intended to contradict a witness by a previous statement in writing, her attention must, before the writing can be so used, be called to those specific parts of it which are to be used for that purpose. A general assertion that a fact was not stated earlier does not satisfy the provision.

54. Nor does an omission amount to a contradiction as a matter of course. The question was authoritatively settled by the Constitution Bench of this Court in ***Tahsildar Singh v. State of U.P.***¹⁹, wherein it was explained that an omission attains the character of a contradiction only where the omitted fact is irreconcilable with the statement made in the witness box, that is to say, where what was stated in court and what was omitted before the police cannot both be true, or where the omission is of a fact which, had it been true and within the knowledge of the witness, she would in the ordinary course have been expected to state. A mere failure to mention a detail which the narration did not call for, and which is not irreconcilable with the court version, is an omission simpliciter and not a contradiction. This position has been reiterated by this Court in ***Vijayakumar v. State of Tamil Nadu***²⁰, which reaffirms that the writing must be specifically put to the witness if it is to be used for contradiction, and that an omission ripens into a contradiction only when it is significant and otherwise relevant in the context.
55. Consequently, two stages of inquiry follow. The first is whether the omission relied upon is irreconcilable with the court testimony, so as to amount to a contradiction at all. The second, which arises only if

¹⁹ 1959 SCC OnLine SC 17

²⁰ 2026 INSC 525

the first threshold is crossed, is whether the omission, being a contradiction, is material, that is, whether it goes to the root or touches only a peripheral detail. It is only a material contradiction going to the core that can impair the substratum of the testimony. In applying these two stages, it is convenient to classify the omissions relied upon, for they are not of a single kind, and to lump them together is to obscure the analysis. The omissions fall into three distinct categories. The first category comprises facts of a background and explanatory character, namely the prior ill-treatment of the child, the prohibition upon attending the Anganwadi, the earlier threats, the prior incident of strangulation, the episode relating to the function at the house of Tahira Bi, and the burning of the child's leg. The second category comprises facts relating to the core incident, namely the sexual assault upon the child and the throttling of the child by the appellant. The third category comprises the details that emerged for the first time in the further cross-examination conducted in the year 2025. Each category calls for a distinct treatment.

56. As regards the first category, the background and explanatory facts, the nature of the omissions is illustrated by the admissions of the witness herself. Thus, of the prohibition upon the child attending the Anganwadi, she admitted in her further cross-

examination that in her statements under Sections 161 and 164 of the CrPC she had not stated that fact. Of the earlier incident of strangulation, she admitted, in her own words:

"It is correct to say that in my police statement (Section 161 Cr.P.C.) Exhibit D.03 and statement (Section 164 Cr.P.C.) Exhibit D.04, I have not stated that 'Once he killed my daughter by choking her. When I rescued her, he beat me up too.'"

And of the threat held out by the appellant, she admitted that she had not stated in those earlier statements that the appellant had threatened to bury her and the child and to proclaim that she had eloped. These are, every one of them, facts of a background and explanatory character. They establish the atmosphere of the household and the antecedent conduct of the appellant, and they supply the context and the motive, but they are not themselves the ingredients of the offences with which the appellant stands charged. A statement recorded under Section 161 of the CrPC is ordinarily recorded briefly, in the language of the recording officer and not of the witness, in the immediate aftermath of a traumatic event, and it is neither expected nor required to be an exhaustive catalogue of every antecedent circumstance. The mother of the victim was, moreover, an illiterate

woman who affixed her thumb impression to statements that were recorded by others and that she could not herself read to verify. In these circumstances, the omission from her earliest statements of the background facts relating to the antecedent abuse and the atmosphere of the household is readily explicable, and it does not detract from the reliability of her account of the core events. Their omission goes, at the highest, to the weight to be attached to those background facts, and not to the credibility of her account as a whole.

57. As regards the second category, the core incident facts, a stricter scrutiny is warranted, for an omission from the earliest statement of the very facts constituting the offence would be a matter of serious consequence. On such scrutiny, however, we find that the substratum of the prosecution case was not omitted from the earliest statements at all. Of the scene of the throttling, she admitted in her further cross-examination that a particular sentence of her deposition had not found place in her earlier statements, in these words:

"In my police statement (Section 161 Cr.P.C.) Exhibit D.03 and statement (Section 164 Cr.P.C.) Exhibit D.04, I did not

*state that, 'When I came near my daughter,
she removed her hands.²¹'"*

It will be seen at once that what was admitted to have been omitted was not the fact that the appellant throttled the child, but the particular detail that the appellant removed his hands as the mother approached. The core accusation, that the appellant strangled the child, was not the subject of the omission at all. So too, of the appellant's conduct after the death, she admitted that certain of the sentences describing his refusal to take the child to hospital and the summoning of a private doctor who did not touch the child were not contained in her earlier statements, but here again these are details of the appellant's conduct surrounding the killing, and not the fact of the killing itself. The core of the accusation, namely that the appellant subjected the child to sexual assault and that he throttled her to death, was present from the earliest stage, and it is only the elaboration of the detail of that accusation that was added in the sworn deposition. The addition of detail at the trial, upon a foundation that was laid at the earliest stage, is a familiar and an unexceptionable feature of the evidence of a truthful witness, and is to be distinguished from

²¹ *He removed his hands (Typographical error in translation).

the introduction, for the first time at the trial, of a wholly new and previously unstated accusation. A statement recorded under Section 161 of the CrPC is not a dress rehearsal of the evidence, and this is especially so where, as we have found, the core of the deposition is independently corroborated by the medical evidence and by the telephone record.

58. As regards the third category, the details that emerged in the further cross-examination of 2025, we have already indicated the standard by which they are to be assessed. That cross-examination was conducted nearly seven years after the events, and this Court, in directing it, was itself alive to the likelihood that the lapse of time would have taken its toll upon the recollection of the witness. Answers elicited in the course of that exercise are to be read together with, and in the light of, her original deposition, and not as though they displaced it. A witness recalling, after seven years, a detail not earlier articulated, or misremembering a peripheral particular, is exhibiting the ordinary frailty of human memory and not the cunning of a fabricator. We decline to treat the additions and the variations of the 2025 cross-examination as impairing the core of an account that was given much closer to the events and that is corroborated by the objective evidence.

59. It is not without significance that the omissions relied upon by the appellant are known to the record only because the witness herself, in her further cross-examination, candidly admitted them. Confronted with each of the sentences of her deposition, she did not prevaricate or attempt to deny the omission, but acknowledged in each instance that the fact had not found place in her earlier statements. A witness bent upon deceiving the court would have been tempted to assert that she had stated these facts to the police all along and that the recording officer had failed to record them. The candour with which she admitted the omissions is itself a circumstance that speaks to her truthfulness rather than against it.
60. There is a further and overarching answer to the entire submission founded upon the omissions, and it lies in the settled principle that governs the consequence of a proved contradiction. Even where an omission is shown to amount to a contradiction, and even where that contradiction is established in the manner that the law requires, the consequence is not the automatic rejection of the whole of the testimony of the witness. The maxim ***falsus in uno, falsus in omnibus*** is not a rule of law in this country, as we have already observed, and the duty of the court is to sift the truth from the exaggeration and the embellishment, to separate the grain from the chaff, and to act upon that part of the testimony which,

after a careful scrutiny, it finds to be reliable and corroborated. This Court, in ***Selvamani v. State*** (*Supra*) has reiterated that the existence of omissions, contradictions and discrepancies does not entitle a court to discard the entirety of the evidence, and that the court must sift the evidence and determine whether the residue, after the embellishments are set aside, is sufficient to establish the guilt of the accused. Applying that principle, even if every omission relied upon by the appellant were treated as a proved contradiction, the result would not be the effacement of her testimony but the setting aside of the peripheral embellishments, leaving intact the corroborated core, namely that the appellant sexually assaulted the child and throttled her to death, which is the finding upon which the conviction rests.

E.2 The alleged internal contradictions

61. The second attack upon the credibility of the mother of the victim is that her further cross-examination is riddled with internal contradictions, and that these destroy the foundation of isolation and intimidation upon which the prosecution sought to explain her silence. The contradictions relied upon are principally three. The first is that although she asserted that the appellant did not permit her or the child to meet or speak to anyone, she deposed that the child used to

visit the house of one Munni, that the son of the appellant named Golu used to frequent the house, and that the appellant himself used to take her and the child to her parental home. The second is that although she asserted that she could not contact her family, she deposed that her father's number was saved in her mobile telephone and that she used to speak to him. The third is that although she asserted that the appellant had locked her and the child inside the house, she admitted that when the appellant left for the place of worship the house was not locked, and that even then she did not go to her parental home or to the police station.

62. We have considered these alleged contradictions with care, and we are unable to regard them as contradictions at all, for they proceed upon a misreading of what the witness deposed and upon a misconception of the nature of the confinement she described. The confinement to which she deposed was not a case of a woman kept under lock and key in perpetual solitude. It was a case of a woman whose movement, whose contacts and whose access to the outside world were regulated and controlled by the appellant. That much appears from her own words, for even as she described the visits of Munni and of Golu, she prefaced and qualified them by the statement:

"Voluntarily said that the accused Waris did not let me go anywhere, so I do not know the names of the people living in the houses nearby."

The two supposed halves of the contradiction thus sit within the same account, and once the qualifying words are restored, the appearance of contradiction dissolves.

63. So examined, the incidents relied upon are not instances of freedom inconsistent with control. The visits of Munni, who was the wife of a friend of the appellant, and of Golu, who was the son of the appellant, were visits of persons within the circle of the appellant himself, and are in no way inconsistent with a regime in which the appellant regulated with whom his wife and the child might associate. The submission founded upon the visits to her parental home is answered by her own description of how those visits took place, in these words:

"Accused Waris used to take me and my daughter to my maternal home in Jaora on his motorcycle. When Waris went to work, he used to drop us both at my maternal home and take us with him while returning in the evening."

Far from establishing her freedom, this establishes the very opposite, for it shows that her visits to her own parents were undertaken not at her will but

under the escort of the appellant and subject to his control. A woman who can visit her parents only when her husband chooses to take her, and in his company, and who is retrieved by him in the evening, is not a woman at liberty. She is a woman whose liberty is in the keeping of another.

64. The submission founded upon the mobile telephone can be dispelled similarly. It is true that the mother deposed that her father's number was saved in her telephone and that she used to speak to him. But the same passage of her evidence discloses the true nature of that access, for she deposed:

"I did not know how to dial a number from my mobile. I could call only those numbers which were saved by Waris in my mobile. ... Waris had not given my mobile number to my parents."

A woman so placed does not possess a free means of communication. She possesses an instrument that functions only within the limits her husband has set for it, and the circumstance that her father's number was among the few that the appellant had chosen to save does not convert her controlled and dependent access into the freedom of a person able to summon help at will. Her evidence, indeed, was that the appellant had at one stage snatched the telephone from her and deleted

her father's number, which is the very antithesis of free communication, for when asked whether she had telephoned her father for help she answered:

"Accused Waris had snatched my mobile phone from me, then she said that he had deleted my father's mobile number from my mobile phone."

65. The submission founded upon the house not being locked when the appellant went to the place of worship requires a closer word, for it was pressed with some force. The mother did admit, and it is to be noted that she volunteered the admission, drawing the distinction herself in these words:

"It is true that the accused had locked me and my daughter and left, I am telling this for the first time in this court today. ... Voluntarily said that on the day he²² was beaten up, he had locked the place and left. When the accused had gone to the Divine Place, he had not locked the place."

It is precisely because she volunteered this distinction, conceding against her own interest that on the day of the visit to the Deviya Sthan, the house was open when she could as easily have maintained that it was always locked, that her evidence carries the stamp of truth rather than of contrivance. A witness bent upon fabricating a

²² *She (Typographical error in translation).

case of total confinement would not have gone out of her way to concede that on a particular day the house was open. That she did so is the mark of a witness attempting to state the facts as they were. The further question, namely why she did not use the occasion of the unlocked house to flee or to seek help, does not go to the internal consistency of her evidence at all. It goes to the reasonableness of her conduct, and it is answered not by the law of contradictions but by an understanding of the situation of a woman circumstanced as she was, which we address in the section that immediately follows.

66. For these reasons, we hold that the alleged internal contradictions are not contradictions at all. They dissolve upon a correct appreciation of the nature of the confinement described by the mother of the victim, which was a confinement of control and regulation and not of perpetual physical incarceration, and the true character of which appears from her own words once they are read as a whole and not in dismembered fragments. The incidents relied upon by the appellant are consistent with, and in some instances are positive proof of, the very regime of control that she described, and they do not detract from the reliability of her account.

E.3 The conduct of the mother of the victim: the entrapped witness

67. The third and most insistent attack upon the mother of the victim is directed not at what she said but at what she did, and, more pointedly, at what she did not do. It is urged that her conduct was irreconcilable with that of a truthful witness and of a mother, in that she made no complaint to the police or to her own family though the abuse continued over months, that she did not herself take the child for treatment or summon help, that she did not flee or raise an alarm even on the day when the house was left unlocked, and that she washed the body of the child before it was taken away. These circumstances, it is said, are so unnatural that they rob her account of credibility. This submission, which has a superficial appeal, rests upon an assumption that must be examined, namely that there exists a single natural manner in which a woman so placed ought to have behaved, and that a departure from it betrays falsehood. We are unable to accept the assumption, and we consider it necessary to explain why, for the point is of importance well beyond this case.
68. It must be emphasized that human beings do not react to trauma, to terror and to abuse in a uniform or a predictable manner, and that there is no standard or model response against which the conduct of a victim or a witness may be measured

and, if found wanting, condemned as false. This Court has repeatedly cautioned that different people react differently to a given situation, and that the court must not substitute for the actual conduct of the witness its own notion of how a reasonable person ought to have behaved. In ***Rana Partap v. State of Haryana***²³, this Court observed that every person who witnesses a serious crime reacts in his own way, that there is no set rule of natural reaction, and that to discard the evidence of a witness on the ground that he did not react in a particular manner is to appreciate evidence in a wholly unrealistic manner. This Court has, more recently, deprecated in the strongest terms the tendency to judge the conduct of women who are victims of, or witnesses to, sexual crime against stereotyped assumptions of how such a woman ought to comport herself, and in ***XYZ v. State of M.P.***,²⁴ it was emphasised that courts must not resort to notions of the appropriate or expected behaviour of a woman and must guard against assessing her credibility by reference to such stereotypes. The reticence of a victim of a sexual offence, or of a person compelled to witness one, may spring from fear, from shame, from social constraint or from a well-founded apprehension of the consequences of speaking, and delay or silence

²³ (1983) 3 SCC 327,

²⁴ (2021) 16 SCC 179,

attributable to such causes is not a badge of falsehood. This much is settled by the consistent line of authority in ***State of Punjab v. Gurmit Singh***²⁵, and ***Tulshidas Kanolkar v. State of Goa***,²⁶.

69. When the conduct of the mother of the victim is examined in this light, and against the reality of her situation as it emerges from the record, it ceases to appear unnatural at all, and appears instead as the entirely intelligible conduct of a woman held in a condition of entrapment. She was a widow of the first marriage, without means of her own, who had entered upon a second marriage with the appellant and had brought her child into his house. She was illiterate. She was economically wholly dependent upon the appellant. She was the fourth wife of a man whose three previous wives had left him on account of his violence, and she was, on the evidence, subjected to the same violence, being beaten when she attempted to intervene to protect her child. She was threatened, in terms, that if she spoke she and the child would both be buried and that it would be given out that she had run away with another man. Her movements were controlled, her contacts were regulated, and her access to a telephone was confined to the numbers her husband permitted. A woman so placed is not a free agent who may be expected to walk into a police

²⁵ (1996) 2 SCC 384,

²⁶ (2003) 8 SCC 590

station at the first opportunity. She is, in a real and not a merely rhetorical sense, a captive.

70. The behavioural sciences have long recognised the phenomenon of which the conduct of the mother of the victim is an instance. **Dr. Lenore E. Walker**²⁷, an American clinical and forensic psychologist and a pioneering authority on the psychology of abused women, in her work **The Battered Woman** published in the year 1979, described the cyclical pattern of violence that characterises abusive intimate relationships, in which phases of tension and acute violence alternate with phases of contrition, and explained, by reference to the concept of learned helplessness, how the repetition of such cycles may erode the capacity of the victim to extricate herself, so that her continued presence in the abusive home is not to be mistaken for acquiescence or for the absence of abuse. **Dr. Judith Lewis Herman**²⁸, an American psychiatrist associated with the Harvard Medical School, in her work *Trauma and Recovery* published in the year 1992, situated domestic abuse alongside other conditions of prolonged captivity and

²⁷ For Walker's cycle of violence and learned helplessness, refer to Lenore E. Walker, *The Battered Woman* (New York, Harper and Row, 1979). A convenient scholarly synopsis confirming the three-phase cycle and the learned-helplessness construct, drawing on Walker (1979) and Seligman (1975), is available at <https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1023&context=edp> and <https://onlinelibrary.wiley.com/doi/abs/10.1002/9781118929803.ewac0083>.

²⁸ For Herman on captivity, coercive control, secrecy and the perpetrator attacking the victim's credibility, refer to Judith Lewis Herman, *Trauma and Recovery: The Aftermath of Violence from Domestic Abuse to Political Terror* (New York, Basic Books, 1992).

coercive control, and observed how the perpetrator of such abuse maintains his dominance through isolation, secrecy and terror, and how, in order to escape accountability, he promotes the forgetting of his acts, so that, in her words, *"If secrecy fails, the perpetrator attacks the credibility of his victim."* We are conscious that the framework of learned helplessness has itself been the subject of scholarly qualification, and we do not adopt it as a diagnosis or apply it as a label to the mother of the victim, whose conduct in fact reveals not passivity but a persistent and courageous resistance, to which we shall come. We refer to this body of learning for the limited but important purpose of dispelling the lay assumption, upon which the appellant's submission rests, that a woman genuinely subjected to abuse would necessarily and promptly report it, and of affirming that silence, endurance and continued cohabitation are, tragically, among the most common features of the experience of abused women, and are not indicia of fabrication.

71. That this is not a matter of theory alone, but of demonstrable social reality in the very society to which the mother of the victim belongs, is borne out by the empirical record. According to the National Family Health Survey (NFHS-5) conducted in the

years 2019 to 2021²⁹, approximately 29.3 per cent of ever-married women in India in the age group of 18 to 49 years reported having experienced physical or sexual violence at the hands of their spouse, and, of the women who had experienced such violence, on the order of three-fourths never sought help from any quarter and never so much as disclosed the violence to any person. These figures, drawn from the largest such survey in the country, establish that the silence of the abused woman is not the exception but the norm, and that the failure to report is the overwhelmingly common response and not an aberration calling for suspicion. The conduct of the mother of the victim, in enduring in silence what was done within the home, is therefore not the singular conduct of a false witness but the tragically representative conduct of the abused woman, and it would be a perverse use of these realities to convert the very silence that the conditions of her captivity imposed upon her into an instrument for the acquittal of the man who imposed them.

72. There is a further and a compelling answer to the submission, which is that the conduct of the mother of the victim, examined in its entirety, was not in

²⁹ For the prevalence figure of 29.3 per cent, refer to National Family Health Survey (NFHS-5), 2019 to 2021, International Institute for Population Sciences and Union Ministry of Health and Family Welfare, Government of India. A peer-reviewed source reporting this exact figure from NFHS-5 is at <https://www.nature.com/articles/s41598-025-05474-3>.

truth the conduct of one who acquiesced, but the conduct of one who resisted to the extent that her circumstances allowed. She intervened to protect the child and was beaten for it. She telephoned the appellant when the condition of the child worsened, as the call records confirm. She pressed the appellant, more than once, to take the child to hospital. When the appellant proposed that the child be buried at Kushalgarh, where the death might have passed unremarked, it was she who insisted that the body be taken to Javra to her own family, and it was there, upon reaching her family, that she at last disclosed what the appellant had done. Her conduct, taken as a whole, is not that of a confederate but that of a woman doing what little she safely could against a man who held every advantage of strength, of means and of liberty over her. To read her enforced silence in the home as complicity, while ignoring her resistance at every point where resistance was possible, would be to misread the record.

73. The specific reliance placed by the appellant upon two circumstances may be separately addressed. The first is that she did not flee or go to the police on the day the appellant went to the Deviya Sthan and the house was left unlocked. But an unlocked door is not an open road to freedom for a woman without means, without money for the journey, without a place of refuge secure from a husband who had threatened to

bury her, and burdened with a gravely injured child whom she could not carry to safety. The absence of a lock upon the door did not remove the manifold other bonds that held her, and her failure to seize that occasion is no mark of falsehood. The second is that she washed the body of the child before it was taken for burial. This was the customary preparation of the body for burial, performed by the family in accordance with its rites, and not the calculated destruction of evidence, and it is to be remembered that notwithstanding the washing of the body the injury to the genitalia of the child survived to be discovered at the post-mortem examination. Neither circumstance detracts from the reliability of her account.

74. At this juncture, we want to make an important observation. It is a recurring feature of cases of this nature that the very conditions of secrecy, isolation and terror by which the abuser secures his dominance and the silence of his victim are afterwards pressed into service, in the courtroom, as arguments to discredit that victim when at last she speaks, so that, as the scholarship we have referred to observes, the perpetrator who cannot maintain secrecy turns instead to attacking the credibility of his victim. The perpetrator who has procured silence through fear then seeks to convert that silence, and the imperfections of a disclosure made late and under

duress, into proof that the abuse never occurred. A court alive to the realities of abuse within the home must be vigilant not to lend itself to this stratagem, and must ensure that the disabilities which the abuser imposed upon his victim are not permitted to enure to his benefit. For the reasons we have given, we hold that the conduct of the mother of the victim, far from impairing her credibility, is consistent with the truth of her account, and that the submission founded upon it must be rejected.

E.4 The submission founded upon the call detail record

75. The fourth attack upon the credibility of the mother of the victim is founded upon the call detail record of the mobile telephone that she used. It is urged that this record demolishes her case of isolation and fear, because it shows that during the very period in which she claimed to have been confined, intimidated and cut off from the world, she was in fact making and receiving several calls of substantial duration to and from a number of telephone numbers. The submission, as it was developed, is that a woman engaged in such telephonic communication cannot have been the isolated captive that the prosecution portrayed.

76. We are unable to accept the submission, and it appears to us to suffer from more than one infirmity. In the first place, the call detail record, so far from undermining the account of the mother of the victim, corroborates it upon the single particular that is of real significance to the events in issue. As already noted in Section D, the call detail record corroborates rather than undermines the account of the mother of the victim. The very document upon which the appellant relies thus confirms the truthfulness of the mother upon a matter that she could neither have anticipated nor contrived, and it is a curious use of a document to found upon it an attack on the credit of a witness whom it corroborates.
77. In the second place, the remaining entries in the call detail record, upon which the appellant lays stress, do not carry the significance attributed to them. The record establishes no more than that calls were made to and received from certain numbers. It does not establish the identity of the persons at those numbers, nor the content of the conversations, nor that any of those conversations was a free and unconstrained communication of the kind that the submission assumes. Under Section 101 of the Evidence Act, the burden of proving a fact lies upon the party who asserts it and who would fail if no evidence were given on either side, and the burden of establishing that these calls were of a character

inconsistent with the condition of control that the mother described therefore lay upon the appellant who asserted that inconsistency. It was for the appellant, if the point was to be made good, to identify the subscribers of those numbers and to demonstrate that the calls were irreconcilable with her account. No such foundation was laid. Nor was it put to the mother in cross-examination that any of those numbers belonged to a source from whom she could freely have sought rescue, and it is a settled rule of fair procedure that a party who intends to impeach the account of a witness upon a particular matter must put that matter to the witness so that she may offer her explanation, failing which he may not afterwards build upon it. The numbers were left unidentified and the suggestion was never made. The mother, indeed, herself volunteered in her evidence that calls used to come to her telephone from other numbers and that she would speak upon them, which is a candid acknowledgment and not a concealment. In the absence of any proof of the identity of the subscribers or of the nature of the calls, the bare fact that calls were made and received proves nothing beyond the unremarkable circumstance that the instrument was in use.

78. In the third place, the submission proceeds upon a false equation between the possession of a telephone and the enjoyment of freedom. We have already had

occasion to notice that the mother was an illiterate woman who did not know how to dial a number, who could call only those numbers that the appellant had himself saved in the instrument, and whose telephone number had not been given by the appellant to her own parents. A woman so circumstanced is not liberated by the mere presence of a telephone in her hand. That the instrument could make and receive calls establishes the capabilities of the instrument, and not the liberty of the person holding it. Freedom from the control of an abuser is not to be measured by the possession of a device, and a woman may hold a telephone in a house from which she is not free to walk out. The call detail record therefore does not bear upon the condition of control and dependence that the mother described, which subsisted notwithstanding her access to a telephone upon the terms her husband permitted.

79. There is, finally, a want of consistency in the position of the appellant with respect to this very record. The appellant assailed the reliability and the proof of the call detail record when it was relied upon by the prosecution, contending that its contents had not been established in the manner required by law, and yet the appellant embraced the same record, and invited this Court to act upon its entries, when it was thought to assist the defence. A document cannot be at once too unreliable to be used against the appellant

and sufficiently reliable to be used in his favour. This inconsistency of approach further diminishes the weight of the submission.

80. For these reasons, we hold that the call detail record does not impair the account of the mother of the victim. Upon the particular that matters, it corroborates her. Upon the entries relied upon by the appellant, it establishes nothing beyond the use of the instrument, the identity and character of the other calls having been left wholly unproved. And the submission mistakes the possession of a telephone for the possession of freedom, which, in the situation of the mother of the victim, it was not.

E.5 The alleged contradiction with PW-4 and the theory of false implication

81. The fifth and final attack upon the credibility of the mother of the victim is that her evidence stands contradicted by that of PW-4, the sister-in-law, upon the question whether she had confided in anyone regarding the treatment of the child, and that she was in truth made to depose falsely against the appellant at the instance of PW-4, with whom the appellant claims to have had a pre-existing animosity. The two limbs of this submission, though presented together, are distinct, and we deal with them in turn.

82. As to the alleged contradiction, the position is that the mother of the victim deposed that the appellant did not permit her to speak of the affairs of the household to others, whereas PW-4 deposed that the mother had confided in her regarding the ill-treatment of the child. We are unable to regard this as a contradiction of a character that touches the reliability of the account of the mother upon the core events. Whether or not the mother, at some point and to a single member of her own family, disclosed something of what was occurring in the household, is a matter that lies at the periphery of the case. It has no bearing upon the questions that lie at its centre, namely whether the appellant sexually assaulted the child and whether he throttled her to death, upon which the evidence of the mother is corroborated by the medical evidence, the telephone record and the other material we have discussed. A discrepancy between two witnesses upon a collateral matter of this kind, one of whom speaks of a confidence and the other of a general regime of secrecy, is not a discrepancy that erodes the substratum of the prosecution case, and it is precisely the kind of minor variance that this Court has repeatedly held ought not to be permitted to defeat an otherwise reliable case. If anything, the evidence of PW-4, that the mother had spoken to her of the ill-treatment of the child, tends to corroborate rather than to contradict the case that the child was

being ill-treated in the household, and the appellant cannot derive assistance from it upon the merits.

83. The second limb, namely the theory that the mother was made to depose falsely at the instance of PW-4, requires that the submission be examined for what it truly asks this Court to accept, for a theory of false implication of this order cannot be tested in the abstract but only by a consideration of what it entails. The theory requires this Court to accept that a mother, whose child of about six years had died a violent death by throttling, chose to shield the true author of that death, whoever he might be, and instead to fasten a false charge of rape and murder upon her own husband. It requires this Court to accept that she was willing, in order to serve the supposed animosity of her sister-in-law against the appellant, to invent the sexual violation of her own dead child, to submit that invented account to the ordeal of investigation and of trial, to repeat it upon oath, and to adhere to it through two cross-examinations separated by seven years, and in doing so to destroy her own marriage, to forfeit her shelter and her security, and to consign the memory of her child to a fabricated history of rape. A hypothesis of this nature does not commend itself to reason. It is not merely improbable, it is very nearly incredible, and it becomes the more incredible when it is recalled that the accusation of the mother is not the

unsupported word of a solitary and interested witness, but an accusation corroborated by the objective finding of a fresh genital injury upon the body of the child at the post-mortem examination and by the medical opinion that the death was homicidal and was caused by throttling. To accept the theory of false implication, this Court would have to believe that these objective injuries upon the body of the child either invented themselves or were procured by the mother to lend colour to her falsehood, a proposition that has only to be stated to be rejected.

84. It is well to remember, in this connection, the settled distinction between what may possibly be true and what is proved to be true, and the corresponding caution that a criminal court does not act upon fanciful or conjectural possibilities conjured up in aid of the defence. This Court, in ***Shivaji Sahabrao Bobade v. State of Maharashtra***³⁰, observed that the dangerous doctrine that a mere possibility in favour of the accused must lead to acquittal is to be guarded against, and that a court must not allow suspicion to take the place of proof, but equally must not allow a reasonable and probable conclusion drawn from proved facts to be displaced by a remote or fanciful hypothesis. The theory of false implication advanced in the present case is a hypothesis of

³⁰ (1973) 2 SCC 793

precisely that fanciful character. It is unsupported by any material on the record beyond the ipse dixit of the appellant in his statement under Section 313 of the CrPC, it is contradicted by the objective medical evidence, and it attributes to a bereaved mother a course of conduct so contrary to nature and to self-interest as to lie beyond the bounds of rational acceptance. We reject it.

85. For these reasons, the alleged contradiction with the evidence of PW-4 is found to be upon a collateral matter that does not impair the account of the mother of the victim upon the core events, and the theory of false implication at the instance of PW-4 is found to be an improbable and unsubstantiated conjecture that is belied by the objective evidence on the record. This disposes of the last of the attacks mounted upon the credibility of the mother of the victim.
86. Having considered each of the five attacks upon the credibility of the mother of the victim, namely the alleged material omissions, the alleged internal contradictions, the alleged unnatural conduct, the call detail record, and the alleged contradiction with PW-4 and the theory of false implication, and having found each of them to be without substance, we hold that the account of the mother of the victim upon the core events, which we have found to be reliable and corroborated, stands unimpaired by the challenges directed against it. We accordingly accept her

evidence that the appellant subjected the victim to sexual assault and thereafter throttled her to death, and we proceed upon that footing in the sections that follow.

SECTION F — THE VICTIM'S DYING DECLARATION

87. Thus far we have found that the account of the mother of the victim, that the appellant sexually assaulted the child and thereafter throttled her to death, is reliable and corroborated, and that it withstands each of the attacks directed against it. The proof of the sexual assault, however, does not rest upon the account of the mother alone, nor even upon that account taken together with the medical evidence. There is upon the record a further and a distinct piece of evidence upon this question, of a solemn and a peculiar character, and it is the voice of the victim herself. Upon the night of 21.04.2018, when the mother found the child in the condition we have described, the child made a disclosure to her mother of what the appellant had done to her. That disclosure was deposed to by the mother in her examination-in-chief, and it is necessary now to consider its legal character and its effect.
88. The disclosure of the child, as deposed to by the mother, was to the following effect, recorded in the deposition of 16.07.2018.

"My girl also told me that the accused had removed her legging and he had taken off her underwear and was also stripped himself naked and slept on her and acted wrong with her. I understood that the accused raped my baby girl."

The question is whether this statement of the child, who did not survive to depose and whose voice can therefore reach the Court only through the mouth of her mother, is admissible in evidence, and if so, with what effect.

89. The statement is, in our view, admissible under Section 32(1) of the Evidence Act. That provision constitutes an exception to the rule against hearsay, and it renders relevant the statement of a person who is dead, in the circumstances there set out. The provision, so far as is material, is in these terms.

"32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.—Statements, written or verbal, of relevant facts made by a person who is dead ... are themselves relevant facts in the following cases:—

(1) When it relates to cause of death.—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and

whatever may be the nature of the proceeding in which the cause of his death comes into question."

90. Two features of the provision, as it has been expounded by this Court, require to be noticed, for upon them the admissibility of the child's disclosure depends. The first is that the statement need not have been made under an expectation of death. The concluding words of the clause make this explicit, and a statement is admissible under Section 32(1) of the Evidence Act, whether or not the maker was, at the time of making it, in expectation of death. The apprehension that a child of six could not have appreciated the imminence of death, which might have been fatal to the admissibility of the statement as a dying declaration in the traditional and narrower sense, is therefore immaterial under the law as it stands in this country. The second feature is that the statement is admissible not only when it relates to the cause of death directly, but also when it relates to any of the circumstances of the transaction which resulted in the death. It is upon this second and wider limb that the disclosure of the child is admissible, and it is necessary to explain why the sexual assault of 21.04.2018 and the death by throttling of 23.04.2018 constitute one transaction within the meaning of the provision.

91. The expression "circumstances of the transaction which resulted in his death" has been the subject of authoritative exposition. In the classical judgement of ***Pakala Narayana Swami v. King-Emperor***³¹, it was explained that the circumstances of the transaction which resulted in the death are not confined to the actual occurrence which caused the death, but extend to the circumstances that have some proximate relation to the actual occurrence and form part of the transaction of which the death is the culmination. This Court, in ***Sharad Birdhichand Sarda v. State of Maharashtra***³², considered the ambit of Section 32(1) of the Evidence Act at length and held that the section is not to be construed narrowly, that the expression "circumstances of the transaction" is wider than the cause of death, and that where the statement relates to circumstances which have a proximate and not a remote or unconnected bearing upon the death, and which form part of the same transaction, it is admissible. It was further recognised that the proximity to be insisted upon is a proximity of relation to the transaction and not necessarily an immediate proximity of time, and that the length of the interval between the statement and the death is a matter that goes to weight and to the question whether the statement truly forms part

³¹ 1939 SCC OnLine PC 1

³² (1984) 4 SCC 116,

of the transaction, and not to an inflexible bar of admissibility. This Court reaffirmed, in ***Rattan Singh v. State of Himachal Pradesh***³³, that the circumstances of the transaction may precede the actual killing and may be separated from it by an interval, provided that they are connected with it as parts of one continuous transaction.

92. Applying these principles, we are satisfied that the disclosure of the child forms part of the very sequence of events which resulted in her death. This is not a case in which the sexual assault and the death were unconnected episodes separated by an interval of chance. The record discloses a single, continuous and escalating course of conduct on the part of the appellant towards the child. The child was sexually assaulted on the night of 21.04.2018. Her condition thereafter deteriorated. She was assaulted again on the morning of 22.04.2018. Her deterioration continued, and she was denied medical assistance. Upon his return on 23.04.2018, the first concern of the appellant was to ascertain whether the child had disclosed anything to her mother, and upon the child screaming he throttled her. The sexual assault and the throttling were not two transactions but successive stages of one transaction, bound together by the identity of the perpetrator, by the continuity of

³³ (1997) 4 SCC 161,

the child's suffering, and, most tellingly, by the motive that the conduct of the appellant itself reveals, for his anxiety to know whether the child had spoken, and his act of silencing her when she screamed, disclose that the killing was the culmination of, and was designed to suppress the disclosure of, the very sexual assault to which the child's statement related. The disclosure of the child as to the sexual assault is therefore a statement as to a circumstance of the transaction which resulted in her death, and it is admissible under Section 32(1) of the Evidence Act. The admissibility of the statement does not depend upon an anterior acceptance of its truth. It arises from the independent circumstances connecting the sexual assault, the subsequent deterioration of the victim, the concern displayed by the appellant as to whether she had spoken, and the killing that followed, which together establish the requisite relationship between the statement and the transaction resulting in her death.

93. We are further of the view that the disclosure is admissible upon an independent footing, as forming part of the *res gestae* under Section 6 of the Evidence Act. The disclosure was made by the child to her mother in the immediate aftermath of the assault, upon the mother gaining access to the child, while the child was still in the grip of the pain and distress of what had been done to her, and it was so proximate

to the event, and so spontaneous, as to be a part of the event itself and to exclude any possibility of concoction or design. A statement so made is admissible under Section 6 of the Evidence Act as a fact forming part of the same transaction, and it lends further support to the admissibility of the disclosure that we have already found under Section 32(1) of the Evidence Act.

94. As to the weight of the disclosure, we are conscious that a statement admitted under Section 32(1) of the Evidence Act is not tested by cross-examination of its maker, and that the Court must for that reason satisfy itself of its reliability before acting upon it. Applying that caution, we find the disclosure of the child to be reliable. It was made to her own mother, the person to whom a child in pain would naturally turn. It was made spontaneously and at the earliest opportunity. It contains particulars, as to the removal of her clothing, the disrobing of the appellant and the nature of what was done to her, which are consistent with sexual assault and which a child of that age could not have invented. And, decisively, it is corroborated by the objective medical evidence, for the fresh tear at the fourchette with oozing of blood, found upon the body of the child at the post-mortem examination, is the physical confirmation of the very act that the child described to her mother. The

account of the child and the findings of the autopsy speak with one voice.

95. The result is that the sexual assault upon the victim is established not by one route but by two independent evidentiary routes, each corroborated by the medical evidence. It is established by the direct ocular account of the mother of the victim, whose reliability we have upheld. And it is established, independently, by the disclosure of the victim herself, admissible under Section 32(1) and under Section 6 of the Evidence Act, and corroborated by the injury found at the post-mortem examination. The victim, silenced in life, is not silenced in law, and her voice, reaching the Court through her mother and confirmed by the marks upon her body, bears witness to what was done to her.

SECTION G - THE CORROBORATIVE EVIDENCE

96. We have found the core account of the mother of the victim to be reliable, and we have found the sexual assault to be established independently by the disclosure of the victim. We now turn to the further evidence upon the record that corroborates the case of the prosecution, comprising the evidence of the neighbours and the sister-in-law upon the atmosphere of the household, the extra-judicial confession of the appellant, and the conduct of the

appellant. Before doing so, we record one matter in which we are unable to accept a part of the prosecution case, for candour in what is rejected lends assurance to what is accepted.

97. That matter is the allegation that the appellant burnt the leg of the child upon a gas flame. The mother deposed to this allegation, and PW-2 and PW-5 spoke of having seen the child limping. We have, however, no hesitation in observing that this particular allegation does not find corroboration in the medical record. Neither the inquest report nor the post-mortem report records any burn injury upon the body or the leg of the child. In the absence of any such objective confirmation, and mindful that the burn is not an ingredient of any of the offences with which the appellant is charged, we think it right to keep this allegation entirely out of consideration, and we do not rely upon it for any purpose. The setting aside of this allegation, which the prosecution does not need, does not weaken the case in the least, for it rests upon evidence wholly distinct from the burn, and the excision of an unproved detail from the periphery serves only to confirm that what we do accept, we accept after scrutiny and not indiscriminately.

98. Turning to the evidence that we do accept in corroboration, PW-2 and PW-5, who are residents of the locality, and PW-4, the sister-in-law, spoke about the atmosphere of the household and the antecedent

ill-treatment of the child. It was urged that their evidence is worthless because their statements under Section 161 of the CrPC came to be recorded as late as 19.05.2018, some twenty-six days after the incident, and that this delay stamps their evidence as an afterthought. We are unable to accept that the delay in the recording of their statements is, in the circumstances of this case, a ground for discarding their evidence. It is settled that a delay on the part of the Investigating Officer in recording the statement of a witness does not, by itself, render the evidence of the witness unreliable, and that where the delay is attributable to the investigating agency and the witness is not shown to have any reason to depose falsely, the delay is not fatal. This Court has held, in ***State of U.P. v. Satish***³⁴, that delay in the examination of a witness by the Investigating Officer is not, in the absence of any indication of the witness having been won over, a ground to reject the testimony, and that the Investigating Officer must be questioned upon the reason for the delay before an adverse inference can be drawn from it. In the present case, the delay was not put to the Investigating Officer as a matter with which he was confronted for explanation, and the witnesses were residents of a village in which, on the evidence, the appellant was a

³⁴ 2005) 3 SCC 114

man who was feared. The reticence of such witnesses to come forward, and the delay of the investigating agency in reaching them, are readily understandable and do not impair their evidence, which, so far as it speaks to the ill-treatment of the child and the atmosphere of fear surrounding the appellant, corroborates the account of the mother.

99. We come next to the extra-judicial confession of the appellant. The mother of the victim deposed that, upon the body of the child being taken to Javra to her family, the appellant stated to the members of her family that he had throttled the child to death. In her deposition of 16.07.2018 she described this in the following terms.

"My relatives asked accused how [victim's name] died so he told them that he had strangled [victim's name] to death."

An extra-judicial confession is admissible in evidence as an admission of guilt, and although it is a species of evidence that the Court approaches with caution, requiring that it be voluntary and truthful and that it inspire confidence, a voluntary and credible extra-judicial confession may form the basis of, or may lend corroboration to, a conviction. This Court, in ***Sahadevan v. State of Tamil Nadu***³⁵, set

³⁵ (2012) 6 SCC 403

out the principles governing the reception of such a confession, cautioning that it is a weak piece of evidence that must be received with care and that must be corroborated, while recognising that a confession which is voluntary, which is made in circumstances free from suspicion, and which is corroborated by the other evidence, may be acted upon. Tested by these principles, the confession spoken to by the mother carries conviction. It was made not to a person in authority or in circumstances of coercion, but to the family of the deceased child, at the moment when they demanded to know how she had died. It was, in substance, an admission wrung from the appellant by the direct question of the bereaved family, and it is difficult to conceive of any inducement or design that could have prompted a false confession of the killing of the child in such a setting. It is, moreover, corroborated at every point by the evidence we have already accepted, namely the ocular account of the mother, the finger impressions upon the throat of the child, and the medical opinion that the death was homicidal and was caused by throttling. We are satisfied that the extra-judicial confession was made and that it may properly be relied upon in corroboration of the guilt of the appellant.

100. Finally, we come to the conduct of the appellant, which the law treats as a relevant fact. Section 8 of the Evidence Act renders relevant the conduct of a person against whom a proceeding is taken, where such conduct influences or is influenced by any fact in issue or relevant fact. The conduct of the appellant, examined across the whole of the sequence, is the conduct of a man conscious of his guilt. Upon his return home on 23.04.2018, his first concern was not for the gravely ailing child but was to ascertain whether the child had disclosed anything to her mother, an enquiry intelligible only in a man apprehensive that his crime had been revealed. When pressed to take the child to hospital, he refused, and, as the mother deposed, he asserted that the child was pretending and would not die, thereby ensuring that the child received no medical attention that might have exposed her injuries. When at length he fetched a practitioner, it was one who was permitted only to look at the child from the threshold and who did not touch her. Upon being discovered with his hands at the throat of the child, he was seen to tremble and to perspire and to protest, unprompted, that he had not killed her. And when the child was dead, he proposed that she be buried at once at Kushalgarh, where the death might have escaped all scrutiny, a course frustrated only by the insistence of the mother that the body be taken to her family. Each of these items

of conduct, taken singly, might admit of more than one explanation. Taken together, and viewed as a connected course of conduct, they form a pattern that is consistent only with the consciousness of guilt, and that is wholly inconsistent with the conduct of an innocent man confronted with the sudden illness and death of a child in his home. This Court, in **Anant Chintaman Lagu v. State of Bombay**³⁶, recognised that the conduct of an accused, before and after the offence, is a relevant circumstance that may, in a fit case, form a link in the chain of evidence pointing to his guilt. The conduct of the appellant in the present case is such a circumstance, and it points unerringly to his guilt.

101. The evidence considered in this section, namely the corroboration by the neighbours and the sister-in-law of the atmosphere of ill-treatment, the extrajudicial confession made to the family of the deceased, and the incriminating conduct of the appellant, corroborates and reinforces at every point the account of the mother of the victim and the disclosure of the victim, which we have already accepted. We now turn to the scientific evidence.

SECTION H- THE SCIENTIFIC EVIDENCE

102. We now come to the scientific evidence, comprising the report of the DNA analysis, which the

³⁶ AIR 1960 SC 500

appellant assailed upon three grounds, namely that the report was inadmissible because its author was not examined, that the chain of custody of the samples was not established, and that the findings of the report were in any event innocuous. Before addressing these grounds, we consider it necessary to state at the outset the footing upon which we approach this evidence, for it governs the whole of what follows in this section.

103. The footing is this. We have already held, upon the ocular account of the mother of the victim, upon the disclosure of the victim admissible under Section 32(1) of the Evidence Act, upon the medical evidence, upon the extra-judicial confession, and upon the conduct of the appellant, that the prosecution has established that the appellant sexually assaulted the victim and throttled her to death. That conclusion does not depend upon the DNA evidence. The DNA evidence is, in our treatment of the case, corroborative and confirmatory, and not foundational. We say this at the threshold and with deliberation, because it means that even if the whole of the DNA report were to be excluded from consideration, the conviction would remain unshaken upon the evidence we have already accepted. The submissions of the appellant upon the scientific evidence, however forcefully urged, are therefore submissions directed at a limb of the case

that is reinforcing and not load-bearing, and they cannot, whatever their merit, disturb the conclusion we have reached upon the substantive evidence. We nonetheless address them, for completeness.

104. Upon the question of admissibility, the submission was that the expert who authored the report of the DNA analysis was not examined as a witness, and that the contents of the report could not therefore be read in evidence. The submission overlooks the effect of Section 293 of the CrPC. That provision permits the report of certain scientific experts of the Government, upon whom it confers a defined status, to be used in evidence in any inquiry, trial or other proceeding without the author being called as a witness. The provision, so far as is material, is in these terms.

"293. Reports of certain Government scientific experts.—(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

...

(4) This section applies to the following Government scientific experts, namely:—

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;
(b) the Chief Controller of Explosives;
(c) the Director of the Finger Print Bureau;
(d) the Director, Haffkeine Institute, Bombay;
(e) the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;
(f) the Serologist to the Government;
(g) any other Government scientific expert specified, by notification, by the Central Government for this purpose."

105. The report of the DNA analysis in the present case was authored by an officer of the Forensic Science Laboratory of the Government, being an officer within the description contained in sub-section (4) of Section 293 of the CrPC. His report was accordingly one that the Court was entitled to use in evidence under sub-section (1) without his being examined, and the objection to its admissibility on the sole ground that its author was not called is, in law, unsustainable. It was open to the appellant, had he genuinely wished to test the report, to invoke sub-section (2) of Section 293 and to request the Court to summon and examine the expert as to the subject-matter of his report. The appellant made no such request at the trial. A party who forbears from exercising the statutory right to summon the expert cannot afterwards be heard to complain that the report was read without the expert being examined.

The authorities relied upon by the appellant, in which the contents of a scientific report were held not to have been proved, are distinguishable, for they were concerned with situations in which the report did not carry the statutory character that attracts Section 293, or in which the very reliability of the technique or of the underlying data was genuinely and specifically put in issue at the trial, which was not the case here.

106. Upon the question of the chain of custody, the submission was that the movement of the samples from the point of their seizure to the point of their analysis was not established, and that the possibility of tampering could not be excluded. We have examined the record upon this aspect. The articles seized in the course of the investigation were entered in the register maintained at the malkhana, and they were forwarded to the laboratory and were received there in a sealed condition, as the receipt of the laboratory establishes. The submission that the seizure memoranda did not in terms recite the sealing of the articles is a submission that goes, at the highest, to the weight of the scientific evidence and not to its admissibility. Where the sealing of the articles and their deposit at the laboratory in a sealed condition are otherwise borne out by the record, a formal deficiency in the recital of the seizure memoranda does not, by itself, establish that the

samples were tampered with, and no material was placed before the courts below or before us to suggest that any tampering in fact occurred.

107. Upon the question of the findings, the submission was that the results of the DNA analysis were innocuous, in that no male DNA was detected in the vaginal smear of the victim, and that the matches which were found were consistent with the appellant and the victim having resided together in the same household. We are unable to accept that the findings are innocuous. The absence of male DNA in the vaginal smear is not, in the circumstances of this case, a circumstance that exonerates the appellant, for the body of the child was washed before it was taken for the post-mortem examination, and a lapse of time had intervened between the assault and the examination, and the absence of a detectable trace in such circumstances is as consistent with the washing away and the degradation of the material as with its original absence. The finding of the fresh tear at the fourchette, which we have already noticed, establishes the fact of the sexual assault independently of the DNA analysis, and the absence of a DNA trace in the smear cannot displace that physical finding. As to the matches that were found, we do not rest any conclusion upon their innocuous or their incriminating character, since we treat the scientific evidence as no more than corroborative, and

it is sufficient to observe that the findings, so far as they go, are consistent with the guilt of the appellant and are in no manner exculpatory.

108. For these reasons, we hold that the report of the DNA analysis was admissible under Section 293 of the CrPC without the examination of its author, that the objection founded upon the chain of custody goes to weight and not to admissibility and is not made good upon the record, and that the findings are not exculpatory. We hold, above all and as we have held from the outset of this section, that the conviction does not rest upon the scientific evidence, which is corroborative only, and that the entire body of submissions directed against the DNA report, even if it were accepted in its entirety, would leave the conviction, founded as it is upon the ocular account, the disclosure of the victim, the medical evidence, the extra-judicial confession and the conduct of the appellant, wholly unaffected.

SECTION I- THE DEFENCE CASE

109. We now turn to the defence set up by the appellant, which is threefold. The first limb is the plea of alibi, that the appellant was absent from the village on the relevant dates. The second is the counter-narrative, spoken to by DW-3, that it was the mother of the victim who used to beat the child. The third is

the plea of fabrication, that the appellant was coerced by the police through a threat of implication in a case relating to opium husk and was made to sign blank papers. We consider each in turn, bearing in mind that the appellant, having been an inmate of the home in which the child met her death, stands in the position we have described when dealing with Section 106 of the Evidence Act.

110. As to the plea of alibi, the law is settled and it is stringent. The plea of alibi is not a matter of mere assertion. When an accused pleads that he was elsewhere at the time of the offence, the burden of establishing that plea lies upon him, and it is a burden that he must discharge by cogent and satisfactory evidence which renders his presence at the scene of the crime not merely doubtful but impossible. This Court, in ***Dudh Nath Pandey v. State of Uttar Pradesh***³⁷, held that the plea of alibi must be proved with certainty so as to exclude the possibility of the presence of the accused at the place of occurrence, and in ***Binay Kumar Singh v. State of Bihar***³⁸, it was reiterated that the burden of establishing the plea rests wholly upon the accused who sets it up, and that the plea must be established not by a preponderance of probabilities alone but by

³⁷ (1981) 2 SCC 166

³⁸ (1997) 1 SCC 283

evidence of a quality that makes the presence of the accused at the scene impossible.

111. When the plea of alibi in the present case is examined against this standard, it fails at the threshold, for a reason that is decisive and that renders it unnecessary to dwell upon the quality of the evidence adduced in its support. The plea of alibi, even if it were accepted at its very highest, does not extend to the time of the offence of murder. The death of the victim, as the medical evidence establishes and as we have found, occurred on 23.04.2018. The alibi set up by the appellant, and spoken to by himself as DW-1, is that he had left the village on 21.04.2018 and returned on the following day. Upon his own showing, therefore, the appellant was present in the home from the afternoon of 22.04.2018, and he was admittedly present there on 23.04.2018, which is the very day of the throttling. The mother of the victim, indeed, deposed that the appellant returned at about noon on 23.04.2018, a return confirmed by the two calls she made to him that morning which the call records establish, and it was after that return that the child was throttled. The plea of alibi thus does not even engage the charge of murder, for it places the appellant back in the home well before the death, and an alibi that does not cover the time of the offence is no alibi at all.

112. In so far as the plea of alibi was pressed in relation to the offence of sexual assault said to have occurred on the night of 21.04.2018, it does not assist the appellant either. We have found the sexual assault to be established not merely by reference to a particular calendar date but by the disclosure of the victim and by the fresh genital injury found at the post-mortem examination, which fixes a recent sexual assault upon the child irrespective of the precise date. The mother of the victim, who is an illiterate woman, was understandably imprecise as to dates, but she clarified in her further cross-examination that the assault and the beating of the child had preceded the departure of the appellant to the Deviya Sthan, and the sequence of events she described is internally consistent even where her recollection of the calendar was not. The confusion of an unlettered witness over dates, against a clear and consistent account of the sequence of events corroborated by the physical injury upon the body of the child, does not create the reasonable doubt that the appellant seeks to extract from it. The plea of alibi, whether directed at the murder or at the sexual assault, accordingly fails.

113. As to the counter-narrative spoken to by DW-3, who is the son of the appellant, that it was the mother of the victim who used to beat the child, we find it to be false and we reject it. It is falsified, in the first

place, by the medical evidence, for the death of the child was caused by asphyxia due to throttling and her body bore a fresh injury to the genitalia indicative of sexual assault, and neither the throttling of a child nor the sexual violation of a child is explained by the suggestion that her mother used to beat her. The cause of death and the nature of the injuries are wholly irreconcilable with the counter-narrative. It is falsified, in the second place, by the conduct of DW-3 himself, for if he had truly witnessed the mother of the victim beating the child, it is inconceivable that he would have kept silent and reported it to no one at any time, and the emergence of this accusation only in the witness box, from the son of the appellant, stamps it as an afterthought contrived to shield his father. We are unable to place any reliance upon it.

114. The falsity of this defence is not without a further consequence, for a false defence, while it can never supply the deficiency of the prosecution evidence, may in a fit case be pressed into service as an additional link in the chain of circumstances once the prosecution has established its case. Where the prosecution has proved the facts from which the guilt of the accused may be inferred, and the accused responds with a defence that is demonstrably false, the falsity of that defence lends further assurance to the conclusion of guilt. This principle assumes a particular significance in the present case when it is

read with Section 106 of the Evidence Act, to which we have already adverted. For the reasons explained in **Trimukh Maroti Kirkan** (Supra), the appellant, as an inmate of the home in which the child died, was bound to offer a true and plausible explanation of how she came to be sexually assaulted and throttled, and the false explanation he gave, in the counter-narrative of his son, becomes under Section 106 an additional circumstance completing the chain against him.

115. As to the plea of fabrication, that the appellant was threatened by the police with implication in a case relating to opium husk and was made to sign blank papers, we find it to be wholly unsubstantiated. It rests upon nothing beyond the assertion of the appellant in his statement under Section 313 of the CrPC, and it was raised for the first time at that stage, without a foundation having been laid for it in the cross-examination of the Investigating Officer or of any other prosecution witness. It is, moreover, inconsistent with the very defence of alibi that the appellant simultaneously advanced, for a man who says that he was elsewhere and had no part in the events does not ordinarily also say that he was coerced into a fabricated case, and the two defences sit uneasily together. Defences that are mutually destructive, each undermining the premise of the other, do not strengthen the case of an accused but

detract from the credibility of both. We reject the plea of fabrication.

116. For these reasons, the whole of the defence case fails. The plea of alibi does not cover the time of the murder and does not answer the sexual assault. The counter-narrative of DW-3 is false, is irreconcilable with the medical evidence, and operates, with Section 106 of the Evidence Act, as an additional link against the appellant. And the plea of fabrication is unsubstantiated and is inconsistent with the alibi. None of the three limbs of the defence raises a reasonable doubt upon the case that the prosecution has established.

SECTION J- THE ALLEGED DEFECTS IN THE INVESTIGATION

117. The appellant mounted a sustained attack upon the investigation, contending that the crime had been foisted upon him as an afterthought. The principal features of this attack were that the First Information Report was registered against an unknown person notwithstanding the statement of the mother of the victim, that the involvement of the appellant rested upon an anonymous telephone call which was unproved and unrecorded, that the appellant was arrested only on 25.04.2018 and at the police station rather than at the scene, that the offences of rape and

the offences under the POCSO Act were added without any section alteration report, and that the disclosure and the consequent recoveries were falsified, the panch witnesses having turned hostile. We address these contentions upon a principle that must first be stated, for it governs the whole of this section.

118. The principle is that a defect in the investigation does not, by itself, entitle the accused to an acquittal where the evidence adduced at the trial is otherwise found to be trustworthy and sufficient to establish guilt. The guilt or the innocence of the accused is to be determined upon the evidence led before the court, and a lapse on the part of the investigating agency cannot be permitted to enure to the benefit of the accused so as to defeat a case that is otherwise proved, for to hold otherwise would place it within the power of an errant investigator to frustrate the course of justice and would visit upon the victim the consequences of the failings of the investigating agency. This Court, in **Karnel Singh v. State of Madhya Pradesh**³⁹, and in **State of Karnataka v. K. Yarappa Reddy**⁴⁰, held that a lapse on the part of the Investigating Officer cannot affect the credibility of the evidence of the witnesses where that evidence is otherwise reliable, and in **C. Muniappan v. State**

³⁹ (1995) 5 SCC 518

⁴⁰ (1999) 8 SCC 715

of Tamil Nadu⁴¹, this Court reaffirmed that a defect in the investigation, by itself, cannot be a ground for acquittal. It is upon this foundation that we examine the defects alleged.

119. As to the registration of the First Information Report against an unknown person, the submission proceeds upon a misapprehension of the office of such a report, which is not an encyclopaedia of the prosecution case but an instrument to set the machinery of the criminal law in motion. The report here was registered upon the information of the unnatural death of the child, at the inception of the investigation and before the culpability of the appellant had been established, and it was natural that it should have been registered against an unknown person. The omission of the name of the appellant from the printed report does not efface the statement that the mother made in the course of the investigation, nor does it detract from the evidence led at the trial. If anything, the registration of the report against an unknown person, and the unhurried manner in which the investigation thereafter fastened guilt upon the appellant, tell against the theory that the police had set out to foist a false case upon him, for an agency bent upon a false implication would have named its target at the earliest.

⁴¹ (2010) 9 SCC 567

120. The anonymous telephone call and the discrepancies concerning it, and the delay in the arrest of the appellant, do not touch the substance of the case. The source of the first suspicion, and the precise point at which the arrest was effected, bear upon the conduct of the investigation and not upon the commission of the offence, which stands established by the evidence we have accepted. We would observe, moreover, that the circumstance that the appellant was not arrested at once but was left at large while the investigation took its course is again difficult to reconcile with the theory of a police force determined to frame him, for the framing of an innocent man is not ordinarily accomplished by leaving him at liberty.

121. As to the addition of the offences of rape and of the offences under the POCSO Act without a section alteration report, we are unable to regard this as a circumstance that vitiates the prosecution. The report was registered upon an unnatural death before the post-mortem examination, and it was that examination of 24.04.2018 that revealed the fresh genital injury indicative of sexual assault, upon which the sexual offences came naturally to be added. It is, in any event, settled that cognizance is taken of an offence and not of a section, and that the mention or the omission of a particular provision is not decisive, for it is the duty of the court to apply the

correct provisions to the facts proved before it. The charges were framed by the Trial Court on 02.07.2018 under all of the relevant provisions after an application of judicial mind, the appellant defended himself against them, and no prejudice has been shown to have been occasioned to him. In the absence of prejudice, an irregularity of this administrative character cannot vitiate the trial.

122. As to the disclosure statement and the recoveries, and the circumstance that the panch witnesses turned hostile, we do not find it necessary to rest anything upon the disclosure or the recoveries at all. The clothes of the victim were produced by the mother herself, as she deposed, and the case upon the sexual assault and the death does not depend upon the disclosure attributed to the appellant or upon the recoveries said to have followed from it. We may therefore leave the disclosure and the recoveries entirely out of consideration, and the case is in no manner weakened by doing so. The submission founded upon the hostility of the panch witnesses is thus rendered academic, for it assails a limb of the prosecution case upon which we place no reliance.

123. For these reasons, the attack upon the investigation fails. Such defects as are alleged are, in part, founded upon a misapprehension of the office of the documents concerned, and are, for the rest, defects that do not touch the substance of the case,

which stands established upon evidence that we have found to be trustworthy. Upon the settled principle that a defective investigation does not enure to the benefit of the accused where the evidence is otherwise reliable, the whole of this attack is rejected.

SECTION K - THE OFFENCES ESTABLISHED

124. Upon the findings we have recorded, it remains to identify how the evidence establishes each of the offences of which the appellant has been convicted. We do so in this section, addressing the offence of murder, the offences of aggravated sexual assault under the IPC and the POCSO Act, and the offence of causing disappearance of evidence.

125. As to the offence of murder punishable under Section 302 of the IPC, the evidence establishes it beyond doubt. The medical evidence proves that the death of the victim was homicidal and was caused by asphyxia resulting from throttling, that is, by the compression of the throat by hand. The ocular account of the mother, whom we have found to be reliable, proves that it was the appellant who throttled the child, and that account is confirmed by the finger impressions upon the throat of the child that she observed, by the medical opinion as to the cause of death, and by the extra-judicial confession of the appellant. The act of throttling a child of about six

years by seizing her throat with both hands, and of persisting in that act until the child ceased to live, is an act from which the intention to cause death is to be inferred as a matter of plain and inescapable inference, for such an act is done with the intention of causing death within the meaning of clause firstly of Section 300 of the IPC, and is, in any event, an act done with the intention of causing bodily injury sufficient in the ordinary course of nature to cause death within the meaning of clause thirdly. No question of any exception to Section 300 arises upon the facts. The offence of murder under Section 302 of the IPC is established.

126. As to the offence of aggravated penetrative sexual assault, it is necessary first to establish the age of the victim, for the age is the fact that determines the character and the gravity of the offence. The age of the victim is proved by the birth certificate that was seized in the course of the investigation, and by the testimony of the mother that the victim was about six years of age at the time of her death, which testimony was not displaced. We find it established that the victim was a child well below twelve years of age. The fact of penetrative sexual assault upon the victim is established by the disclosure of the victim, admissible under Section 32(1) of the Evidence Act, by the account of the mother, and by the fresh tear at the fourchette with

oozing of blood found at the post-mortem examination, which we have held to be the physical confirmation of the assault. The identity of the appellant as the person who committed the assault is established by the same body of evidence.

127. Upon these facts, the offence punishable under Section 376AB of the IPC is established. That provision, which prescribes the punishment for the rape of a woman under twelve years of age, was inserted into the IPC by the Criminal Law (Amendment) Act, 2018, with effect from 21.04.2018, being the date on which the corresponding Criminal Law (Amendment) Ordinance, 2018 had come into force. The penetrative sexual assault upon the victim is established as having occurred on the night of 21.04.2018 and thereafter, that is, on and after the date on which the provision came into force, and the provision is therefore squarely attracted, and no question of any retrospective application of a penal provision, such as would offend Article 20(1) of the Constitution of India, arises. The victim having been a child below twelve years of age, and the appellant having committed penetrative sexual assault upon her, the offence under Section 376AB of the IPC is made out.

128. The same facts establish the offences under Sections 5 and 6 of the POCSO Act. Section 5 enumerates the forms of aggravated penetrative

sexual assault, and Section 6 prescribes the punishment for it. The assault in the present case falls within aggravated penetrative sexual assault upon more than one count. It falls within clause (m) of Section 5, in that it was committed upon a child below twelve years of age. It falls within clause (n) of Section 5, in that it was committed by the appellant, who, being the step-father of the victim and residing in the same household, was a relative of the child. Once the foundational facts are established by the prosecution, the presumption arising under Section 29 of the POCSO Act comes into operation. That provision enacts that where a person is prosecuted for an offence under, among others, Sections 5 and 6 of the POCSO Act, the Special Court shall presume that such person has committed the offence, unless the contrary is proved. The presumption is not a substitute for the proof of the foundational facts, and it operates only after those facts, namely the age of the victim, the fact of penetrative sexual assault, and the identity of the accused as the assailant, have been established by the prosecution. In the present case those foundational facts stand established, as we have found, by evidence independent of the presumption, and the burden thereupon cast upon the appellant to prove the contrary has not been discharged, his defences having been found to be false. We wish to make it clear that we do not rest the

conviction upon the statutory presumption. The conviction rests upon the affirmative evidence we have discussed, and the presumption under Section 29 operates only to reinforce a conclusion that the evidence independently establishes. The offences under Sections 5 and 6 of the POCSO Act are made out.

129. The offences under Sections 376(2)(f) and 376(2)(n) of the IPC are likewise established upon the findings we have recorded. The offence under Section 376(2)(f) is attracted because the appellant, being the step-father and a person in a position of trust and authority in relation to the victim, committed rape upon her. The offence under Section 376(2)(n) is attracted because the appellant committed rape upon the victim repeatedly, as the evidence of the sustained and repeated abuse establishes.

130. As to the offence punishable under Section 201 of the IPC, of causing the disappearance of evidence, it is established by the conduct of the appellant in proposing that the child be buried at once at Kushalgarh, with the knowledge that her death was a homicide and with the intention of screening himself from legal punishment, a design that was frustrated only by the insistence of the mother that the body be taken to her family, where the truth came to light. The ingredients of the offence under Section 201 of the IPC are satisfied.

131. In the result, the offences under Sections 302, 376(2)(f), 376(2)(n), 376AB and 201 of the IPC, and under Sections 5 and 6 of the POCSO Act, are each established against the appellant upon the evidence on the record.

SECTION L- THE COMPLETE PICTURE

132. Before recording our conclusions, we think it right to draw together the several strands of the evidence into a single view, both because the true strength of a case of this nature is revealed only when its parts are seen as a whole, and because it is necessary to address the character of the evidence upon which our conclusion rests.

133. The case against the appellant is, upon its central events, a case of direct evidence. The throttling of the child was witnessed by the mother, who saw the appellant with both hands upon the throat of the child, and the sexual assault was spoken to by the victim herself in the disclosure she made to her mother. To this extent the case does not depend upon inference at all. But the direct evidence does not stand alone. It is embedded within, and is confirmed at every point by, a chain of incriminating circumstances, namely the medical evidence establishing a homicidal death by throttling and a recent sexual assault, the setting of the crime within

a home whose only adult occupants were the appellant and the mother, the telephone record fixing the return of the appellant on the fatal day, his enquiry whether the child had spoken, his refusal of medical aid, his agitation upon discovery, his extra-judicial confession, and his attempt to procure an immediate burial. The case is therefore one of direct evidence powerfully corroborated by a complete chain of circumstances, and it is stronger than a case resting upon either alone.

134. In so far as the case is supported by circumstantial evidence, we have borne in mind the settled conditions that such evidence must satisfy. This Court, in ***Sharad Birdhichand Sarda*** (*Supra*), laid down that the circumstances from which the conclusion of guilt is to be drawn must be fully established, that the facts so established must be consistent only with the hypothesis of the guilt of the accused, that the circumstances must be of a conclusive nature and tendency, that they must exclude every possible hypothesis except the one to be proved, and that there must be a complete chain of evidence so as to leave no reasonable ground for a conclusion consistent with the innocence of the accused. The circumstances in the present case satisfy each of these conditions. Each circumstance we have relied upon is fully established upon the evidence. Taken together they are consistent only

with the guilt of the appellant. And they exclude every reasonable hypothesis of innocence, for no hypothesis consistent with the innocence of the appellant can accommodate the throttling witnessed by the mother, the finger impressions upon the throat of the child, the fresh genital injury, the confession to the family, and the whole of the incriminating conduct, occurring as they did within a home in which the appellant was present and of which he has offered no true account. The chain is complete, and it points unerringly to the guilt of the appellant and to no one else.

135. When the established facts are marshalled and read as a connected whole, the picture that emerges admits of no innocent explanation. A widowed and illiterate woman brought her small daughter into the home of the appellant, a man whose three former wives had left him for his violence. Behind the walls of that home he preyed upon the child, silencing the mother by the threat that both would be buried and branded as having fled. The rape of the night of 21.04.2018, of which the child told her mother and which left the injury later found at the post-mortem, was followed by days in which the appellant denied the child the aid that might have saved her, and on 23.04.2018, his first concern being whether she had spoken, he throttled her with his own hands as the mother entered, and then sought to bury her at once,

until the mother carried the body to her own family, where he confessed. Every piece of the evidence we have accepted falls into its place within this account, and no part of it can be reconciled with the innocence of the appellant.

136. We are conscious that the appellant stands convicted upon the testimony, in the main, of a single witness, and the anxious scrutiny that such a case demands has been present to our minds at every stage. But the mother of the victim is no chance witness of doubtful worth whose word is to be weighed with suspicion. She is a witness whose core account we have found to be true, and truth in her case does not stand alone, for it is confirmed by the injuries upon the body of her child, by the dying voice of the child herself, by the record of the calls with which she summoned the appellant on the fatal morning, by the confession he made to her family, and by his own conduct at every turn. Her account has been assailed from every direction, and it has held. Behind the walls of that home there were but two souls who could have told what was done within it, a child and her mother. The child the appellant silenced forever, with his hands about her throat. The mother he now seeks to silence in another way, by turning against her the very fear, the isolation and the dependence in which he had bound her, and by asking this Court to read the wounds of her captivity

as the marks of a liar. That plea we reject, and we reject it without hesitation. A man may not first reduce a woman to silence and then claim acquittal from the silence he imposed, nor purchase his escape by blackening the one witness whom his own hand left behind to accuse him.

PART VIII- CONCLUSION ON CONVICTION

137. In the light of the analysis that precedes, we record our conclusions upon the points for determination that we framed at the outset.
138. Upon the first point, we hold that the infirmity which attended the recording of the evidence of the mother of the victim as PW-1 on 16.07.2018 stands effectively and completely cured by the further cross-examination conducted pursuant to the order of this Court dated 08.05.2025, the appellant having had a full and fair opportunity, through counsel of his own choice, to test her evidence upon a conjoint reading of her deposition dated 16.07.2018 and her further cross-examination dated 14.06.2025.
139. Upon the second point, we hold that the testimony of the mother of the victim upon the core events is reliable, and that it is corroborated in its material particulars by the medical evidence, by the disclosure of the victim, by the telephone record, by the extra-judicial confession of the appellant and by

his conduct. The attacks upon her credibility have each been found to be without substance.

140. Upon the third point, we hold that the death of the victim is established to have been homicidal and to have been caused by asphyxia resulting from throttling, and that it was the appellant who throttled the victim to death.

141. Upon the fourth point, we hold that the appellant committed penetrative sexual assault upon the victim, a child below twelve years of age, and that the offence of aggravated penetrative sexual assault is established against him.

142. Upon the fifth point, we hold that the plea of alibi set up by the appellant does not cover the time of the offence of murder and does not answer the offence of sexual assault, that the counter-narrative spoken to by DW-3 is false and is irreconcilable with the medical evidence, and that the plea of fabrication is unsubstantiated. The defence, in each of its limbs, fails to raise a reasonable doubt upon the case established by the prosecution.

143. Upon the sixth point, we hold that the defects and the alleged mala fides in the investigation are not of such a character as to vitiate the prosecution case, which stands established upon evidence that we have found to be trustworthy and which does not enure to the benefit of the appellant.

144. Upon the seventh point, we hold that the offences under Sections 302, 376(2)(f), 376(2)(n), 376AB and 201 of the IPC, and under Sections 5 and 6 of the POCSO Act, are each established against the appellant beyond reasonable doubt.
145. In the result, we find no infirmity in the concurrent findings of the Trial Court and the High Court in so far as they hold the appellant guilty of the offences with which he was charged, and we affirm the conviction of the appellant under Sections 302, 376(2)(f), 376(2)(n), 376AB and 201 of the IPC and under Sections 5 and 6 of the POCSO Act. The conviction of the appellant is accordingly upheld.
146. There remains the question of sentence. The Trial Court imposed, and the High Court confirmed, the sentence of death upon the appellant for the offences under Section 376AB and Section 302 of the IPC. The correctness of that sentence, and the question whether, upon a consideration of the aggravating and the mitigating circumstances and of the material now placed before us, the sentence of death ought to be sustained or ought to be commuted, fall to be considered separately. We accordingly proceed to take up the question of sentence.

PART IX - THE QUESTION OF SENTENCE

SECTION M- THE SENTENCING PROCEEDINGS AND THE MATERIAL NOW BEFORE THE COURT

147. Having affirmed the conviction of the appellant, we come to the question upon which these appeals must ultimately turn, namely whether the sentence of death imposed upon the appellant by the Trial Court and confirmed by the High Court ought to be sustained, or whether it ought to be commuted to a sentence of imprisonment. This is the gravest question that a criminal court is ever called upon to decide, and it demands a scrutiny more thorough than any other, for the sentence of death is unique in its severity and in its irrevocability. Before we set out the law that governs the question and proceed to apply it, it is necessary to record the manner in which the question of sentence was dealt with by the courts below and the material that is now available to this Court, for the two are connected.

148. We are constrained to observe, at the outset and with candour, that the manner in which the question of sentence was dealt with by the Trial Court did not conform to the standard that the law requires. The Trial Court convicted the appellant and sentenced him to death by its judgment dated 17.12.2018, that

is, it recorded the conviction and imposed the sentence of death on one and the same day. Section 235(2) of the CrPC requires that after a judgment of conviction is pronounced, the accused shall be heard on the question of sentence before the sentence is passed upon him. This requirement is not an empty formality. In a case in which the sentence of death is a possible outcome, the hearing on sentence contemplated by Section 235(2) of the CrPC is intended to afford a real and meaningful opportunity to the accused to place before the court all the circumstances that bear upon the choice of sentence, including the circumstances personal to him that no one but he is in a position to bring forward. This Court, in **Allaudin Mian v. State of Bihar**⁴², held that where the conviction is for an offence punishable with death, the court ought ordinarily not to impose the sentence on the same day on which the conviction is recorded, but should afford the accused a genuine opportunity, if necessary by adjourning the matter, to adduce material relevant to the question of sentence, and that the observance of this requirement is essential to the just exercise of the sentencing discretion. The recording of the conviction and the imposition of the sentence of death upon the

⁴² (1989) 3 SCC 5

appellant on the same day fell short of this requirement.

149. The consequence of this was that no material relevant to the individualised assessment of the appellant as a person, as distinct from the assessment of the crime, was placed before the Trial Court, and none was placed before the High Court. The courts below were thus called upon to decide the question of sentence without the very material that the law regards as indispensable to that decision, namely material concerning the background, the circumstances, the mental and social history and the prospects of reformation of the offender. The State, for its part, led no evidence directed to the question whether the appellant was beyond the possibility of reform. The High Court, in confirming the sentence, proceeded upon a formulation by which it assessed what it described as the crime test at one hundred per cent and the criminal test at zero per cent, a formulation we address in Section Q.

150. We record these deficiencies not by way of censure of the courts below, which decided the matter upon the material then before them, but because the identification of the deficiency is the first step towards its cure, and because the manner in which the question of sentence now falls to be decided by this Court is shaped by it. Just as the infirmity in the recording of the evidence of the mother of the victim

was cured at the stage of these appeals by the further cross-examination that this Court directed, so too the deficiency in the sentencing exercise below has been cured at this stage by the reception of a full and comprehensive body of material bearing upon the question of sentence, and by a full hearing upon it.

151. This Court permitted the appellant to place upon the record the material relevant to the individualised assessment of sentence that had been absent below, and this Court further directed, by its order dated 17.10.2024, that a psychological evaluation of the appellant be conducted. There is accordingly now before us a Mitigation Investigation Report, prepared by a mitigation investigator who conducted interviews over several days with the appellant, with the members of his family, and with his co-inmates, and which sets out in detail the circumstances of the appellant's childhood, his family history, the adversities of his life, and his conduct and development during his years of incarceration. There is before us an affidavit sworn by the daughter of the appellant. There is before us the record of the conduct of the appellant in custody. And there is before us a comprehensive note on the question of sentence filed on behalf of the appellant, together with a compilation of the decisions of this Court bearing upon the sentence in cases of this nature.

152. In compliance with the order dated 17.10.2024, a medical board of the Mahatma Gandhi Memorial Medical College, Indore examined the appellant at the Central Jail, Ujjain on 09.11.2024, and submitted its report of the same date. There is further before us, obtained pursuant to the same order, the report of the Probation Officer and the certificates of the jail authorities as to the conduct of the appellant in custody. We have heard learned counsel for the appellant and learned counsel for the State at length upon the question of sentence, and the whole of this material, including the report of the medical board and the reports of the jail authorities, has been thoroughly considered by us.

153. The reception and consideration of such material at the stage of the appeal, where it was not placed before the courts below, is a course that this Court has adopted in a series of decisions in order that the sentencing decision may be made upon a complete and not a truncated record. In ***Mohd. Mannan v. State of Bihar***⁴³, and in ***Manoj v. State of Madhya Pradesh***⁴⁴, this Court called for and acted upon material of precisely this character, including reports upon the social and psychological background of the convict and upon his conduct in prison, in order to ensure that the choice between the

⁴³ (2019) 16 SCC 584

⁴⁴ (2023) 2 SCC 353

sentence of death and the sentence of life imprisonment was made after a genuine and individualised consideration of the offender and not of the offence alone. We propose to decide the question of sentence in these appeals upon the same footing, that is, upon a fresh and independent consideration of the whole of the material now before us, giving to the material tendered on behalf of the appellant its full and fair weight, and applying to it the settled principles of law to which we now turn.

SECTION N- THE LAW GOVERNING THE SENTENCE OF DEATH

154. The choice between the sentence of death and the sentence of imprisonment for life, in a case in which the law permits the former, is governed by principles that have been settled by this Court over more than four decades, and it is necessary to set them out before we apply them, for the discipline of the sentencing exercise lies in the faithful application of a declared method rather than in an unstructured intuition.
155. The starting point is statutory. Section 354(3) of the CrPC transformed the sentencing structure for the gravest offences by making life imprisonment the rule and the sentence of death the exception. The provision reads as follows.

"354. Language and contents of judgment.— ... (3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence."

The effect of the provision is that, for an offence for which death is a permissible sentence, the sentence of imprisonment for life is the normal rule, and the sentence of death may be awarded only for special reasons, which must be recorded. The burden of the sentencing exercise is thus to ascertain whether such special reasons exist.

156. The content of those special reasons was thoroughly expounded by the Constitution Bench of this Court in ***Bachan Singh v. State of Punjab***⁴⁵, which remains the governing authority and the lens through which every subsequent decision is to be read. Several propositions established in ***Bachan Singh*** (*Supra*) are of immediate relevance to the present case. The first is that the sentence of death is constitutionally permissible only in the rarest of rare cases, that is, where the alternative of imprisonment

⁴⁵ (1980) 2 SCC 684

for life is unquestionably foreclosed, the expression "rarest of rare" being not a rhetorical flourish but a substantive standard signifying that death is to be reserved for those exceptional cases in which no sentence short of death would meet the ends of justice. The second is that, in making the choice of sentence, the court is required to have regard to the aggravating and the mitigating circumstances both of the crime and of the criminal, so that the focus of the sentencing inquiry is not upon the crime alone but upon the crime and the criminal together, and a sentencing exercise that fixes its gaze upon the enormity of the crime while treating the circumstances of the criminal as immaterial is a departure from the very method that **Bachan Singh** (*Supra*) prescribes. The third is that the mitigating circumstances are to be construed liberally and expansively and full weight is to be given to them, for **Bachan Singh** (*Supra*) set out, by way of illustration and not of exhaustive enumeration, a range of mitigating factors, including the age of the accused, the probability that he can be reformed and rehabilitated, and the conditions under which he committed the offence, and directed that the court accord to these factors a generous and not a grudging consideration. The fourth is that the probability of reformation and rehabilitation is a factor of particular importance, and that the State bears the burden of

leading evidence to establish that the accused is beyond the possibility of reform and is a continuing threat to society, so that where the State leads no such evidence, that circumstance tells in favour of the retention of the alternative of life imprisonment.

157. The principles of Bachan Singh (Supra) were given a practical structure by this Court in ***Machhi Singh v. State of Punjab***⁴⁶, which identified the categories of cases in which the collective conscience of the community may be so shocked that the imposition of the sentence of death may be called for, being cases distinguished by the manner of the commission of the murder, the motive for it, the anti-social or abhorrent nature of the crime, the magnitude of the crime, and the personality of the victim, as for instance where the victim is an innocent child. ***Machhi Singh*** (Supra) directed that a balance sheet of aggravating and mitigating circumstances be drawn up, and that in doing so the mitigating circumstances be accorded full weightage, and it framed two questions to be answered before the sentence of death is imposed, namely whether there is something uncommon about the crime which renders the sentence of life imprisonment inadequate, and whether the circumstances of the crime are such that there is no alternative but to impose the sentence

⁴⁶ (1983) 3 SCC 470

of death even after according maximum weightage to the mitigating circumstances which speak in favour of the offender. We shall answer both questions in due course.

158. This Court, in ***Shankar Kisanrao Khade v. State of Maharashtra***⁴⁷, formulated the inquiry as a set of three tests, namely the crime test, the criminal test and the rarest of rare test. The crime test is satisfied where the aggravating circumstances of the crime are fully established. The criminal test requires that there be no mitigating circumstances favouring the accused, and it is a test directed to the circumstances of the criminal. Only where the crime test is satisfied and the criminal test yields nothing in favour of the accused does the case proceed to the rarest of rare test, which asks whether the case belongs to that exceptional category in which the community would demand the death penalty and in which life imprisonment would be wholly inadequate. It is to be observed that the criminal test is not a test that the crime is grave, but a test that examines what may be said on behalf of the offender, and that it can seldom be answered by a bald assertion that there is nothing to be said, for the circumstances of an offender are rarely wholly barren of mitigation.

⁴⁷ (2013) 5 SCC 546

159. Two further precedents must be noted, for they bear directly upon the present case. The first is that this Court has, in ***Union of India v. V. Sriharan***⁴⁸, affirmed the existence of a sentencing option that lies between the sentence of death and the sentence of life imprisonment as ordinarily understood, namely the sentence of imprisonment for life which is to extend to the whole of the remainder of the natural life of the convict, or for a specified term of years, without the benefit of remission. The availability of this intermediate option is of significance to the sentencing choice, because the sentence of death cannot be said to be unquestionably the only adequate sentence unless the court has considered, and has found wanting, the alternative of imprisonment for the remainder of natural life or for a long fixed term without remission. The existence of the middle path narrows the class of cases in which death is truly unavoidable, and a court considering the sentence of death must ask itself whether this intermediate sentence would not sufficiently meet the ends of justice.

160. The second is the emphasis, in the more recent jurisprudence of this Court, upon the procedural and substantive rigour of the individualised sentencing inquiry. In ***Manoj v. State of Madhya Pradesh***

⁴⁸ (2016) 7 SCC 1

(*Supra*) , this Court, drawing together the threads of the earlier decisions, underscored that the sentencing court must call for and consider material bearing upon the psychological and social profile of the convict and upon his conduct in prison, that the assessment of the mitigating circumstances must be genuine and individualised, and that the probability of reformation must be seriously and not perfunctorily considered. In ***Rajendra Pralhadrao Wasnik v. State of Maharashtra***⁴⁹, this Court held that before imposing the sentence of death the court is obliged to consider the probability of the reformation and rehabilitation of the convict, that this consideration cannot be foreclosed by the mere gravity of the crime, and that material such as the conduct of the convict in jail is relevant to it. These decisions do not dilute the standard of ***Bachan Singh*** (*Supra*). They enforce it, by insisting that the mitigating half of the balance sheet be filled in with real material and weighed in good faith, and not left blank.

161. From this line of precedents, the questions that this Court must answer, in the sequence in which we shall answer them, are these. First, what are the aggravating circumstances of the crime, and are they established. Second, what are the mitigating

⁴⁹ (2019) 12 SCC 460

circumstances of the crime and of the criminal, taken at their fullest and fairest. Third, upon a weighing of the one against the other, and after according to the mitigating circumstances their full weight, is this a case in which the alternative of imprisonment for life, including imprisonment for the remainder of natural life or for a long term without remission, is unquestionably foreclosed, so that the sentence of death is the only sentence that would meet the ends of justice. It is to the first of these questions that we now turn.

SECTION O - THE AGGRAVATING CIRCUMSTANCES

162. We turn first to the aggravating circumstances of the crime. In setting them out, we draw upon the findings that we have already recorded in dealing with the conviction, and we do not restate the evidence, but gather the established facts into the circumstances that bear upon the gravity of the offence. The aggravating circumstances in the present case are neither few nor slight, and they are not, as is sometimes the case, merely different descriptions of a single feature of the crime. They are distinct, and they accumulate, and it is necessary to identify each of them separately, for their number and their variety are themselves a feature of the case.

163. The first and the most compelling aggravating circumstance is the extreme youth and the utter helplessness of the victim. The victim was a girl child of about six years of age. She was incapable of defending herself, incapable of escaping her tormentor, and incapable even of comprehending fully what was being done to her. A crime of sexual violence and murder committed upon a child of such tender years occupies a place among the gravest of offences, for it is directed against a victim who is wholly defenceless and who is entitled to the protection of every adult around her. This Court has repeatedly recognised that the personality of the victim, and in particular the youth and helplessness of a child victim, is a circumstance of great weight in the assessment of the gravity of the crime.

164. The second aggravating circumstance, which is intimately connected with the first and which deepens its gravity, is the relationship of trust and guardianship that the appellant bore to the victim, and his violation of it. The appellant was the step-father of the victim. When the mother of the victim entered upon her marriage with the appellant and brought her child into his home, the child was delivered into his protection, and the appellant stood towards her in the position of a guardian, of a father in the household in which she lived. The home ought to have been the safest place for the child, and the

appellant ought to have been among those charged with her protection. Instead, the appellant made the home the site of her violation and made himself the author of it. The betrayal of the trust reposed in a guardian, and the transformation of the protector into the predator, is an aggravating circumstance of a high order, for it strikes not only at the child but at the security of the familial relation itself, upon which the safety of every child depends.

165. The third aggravating circumstance is that the crime was not a solitary or an isolated act, but the culmination of a sustained course of predation carried on over a period of months. The mother had stated that the ill-treatment and the sexual abuse of the victim by the appellant began within a few months of the marriage and continued thereafter, that the appellant subjected the victim to sexual assault on more than one occasion, and that the abuse escalated over time until it ended in the rape and the killing. This is not, therefore, a case of a single aberrant act committed in a moment of loss of self-control. It is a case of repeated, deliberate and calculated violation of a child, continuing over time and concealed by threats, and the sustained and calculated character of the offence is a circumstance that aggravates it, for it bespeaks not a momentary succumbing to impulse but a settled and continuing course of criminal conduct.

166. The fourth aggravating circumstance concerns the conduct of the appellant during the final days of the life of the victim, which was marked by a peculiar cruelty. After the rape of the night of 21.04.2018, the victim was left to suffer over the days that followed in a deteriorating condition, unable to retain water, vomiting and in evident distress. The appellant, who alone had the means and the authority to obtain medical aid for her, not only withheld it but actively refused it, dismissing the plea of the mother with the assertion that the child was pretending and would not die, and leaving the home while the child suffered. The child was thus kept, over a period of about two days, within the reach of a death that timely medical intervention might have averted, and the callousness of this conduct, prolonging the suffering of a mortally injured child and denying her the aid that might have saved her, is a circumstance that aggravates the crime.

167. The fifth aggravating circumstance, and in our judgment the gravest single feature of the case, concerns the motive and the purpose of the murder. This was not a killing committed in the course of a quarrel, or in sudden anger, or for gain. Upon our findings, the appellant throttled the victim in order to silence her and to suppress the disclosure of the sexual assault he had perpetrated upon her. The

conduct of the appellant reveals this purpose with clarity. His first concern upon returning to the home on 23.04.2018 was not for the health of the gravely ailing child but to ascertain whether she had disclosed anything to her mother, and when the child screamed he throttled her. The murder was thus instrumental to the concealment of the rape. The child was killed because she was the witness to, and the living evidence of, the crime that had been committed upon her, and she was killed to ensure her silence. A murder committed to destroy the victim of an antecedent crime, and to extinguish the evidence of it, is among the most reprehensible of killings, for it treats the life of the child as an obstacle to be removed in the service of the criminal's own impunity.

168. The sixth aggravating circumstance is the manner of the killing. The appellant killed the victim by throttling her, that is, by seizing the throat of a small child in his own hands and compressing it until she died. This is a mode of killing that is intimate and that requires the sustained application of force over the period necessary to extinguish life, during which the killer cannot but be aware of the suffering he is inflicting and has, at every moment, the opportunity to desist. That the appellant persisted in the throttling of a six-year-old child until her eyes turned

and she ceased to live is a circumstance that speaks to the deliberateness and the callousness of the act.

169. The seventh aggravating circumstance is the conduct of the appellant after the death, in seeking to cause the disappearance of the evidence of his crime. Upon the death of the child, the appellant proposed that she be buried at once at Kushalgarh, where, on the findings we have recorded, her death might have passed into silence and escaped all scrutiny, and this design was frustrated only by the insistence of the mother that the body be taken to her own family. The attempt to dispose of the body of the child so as to conceal the manner of her death is a circumstance that aggravates the offence and that is of a piece with the purpose for which she was killed.

170. There is a further matter which, though it is not a circumstance of the crime itself, bears upon the character and the antecedent conduct of the appellant, and which we record because it is established upon the evidence and is relevant to the sentencing inquiry. The appellant was a man with a history of violence within the domestic sphere. It is apparent from the record that the appellant had been married on three previous occasions and that each of his three earlier wives had left him on account of his violent conduct. This was not merely the assertion of

the mother of the victim. It was borne out by the evidence of the other witnesses connected with the family. It emerged, through the very witnesses examined in the case, that one of the daughters of the appellant from a previous marriage had spoken of the appellant beating her mother, and the pattern of violence directed by the appellant against the women and the child within his household was a recurring feature of his life. The appellant, moreover, subjected the mother of the victim herself to violence, beating her when she attempted to intervene to protect her child. This established history of domestic violence, sustained across successive relationships, is relevant to the assessment of the appellant, for it shows that the conduct which culminated in the present crime was not an isolated departure from an otherwise blameless life but was continuous with a settled disposition towards violence against those within his power and his protection.

171. These, then, are the aggravating circumstances, and we have stated them at their full weight, for they are grave and they are many. Taken together, they present a picture of a defenceless child, delivered into the protection of the appellant, subjected by him over months to a sustained course of sexual violation within the home, left to suffer in a deteriorating condition with medical aid deliberately withheld, and

finally throttled to death by his own hands in order to silence her and to conceal his crime, her body then sought to be buried in haste, the whole committed by a man with an established history of violence against the women and children within his household. It is against this array of aggravating circumstances that the mitigating circumstances must now be set, and it is to those that we turn.

SECTION P - THE MITIGATING CIRCUMSTANCES

172. We turn now to the mitigating circumstances, which we are bound to set out fully and to weigh fairly, for the sentencing method that the law prescribes requires that the circumstances of the criminal be considered with the same care as the circumstances of the crime, and that the mitigating circumstances be construed liberally. We have derived these circumstances principally from the Mitigation Investigation Report and the accompanying material now before us, and we state them as they emerge from that material, neither discounting them because the crime is grave nor magnifying them beyond what the material supports.

173. The first body of mitigating circumstances concerns the childhood and the early life of the appellant. According to the Mitigation Investigation Report, the appellant was born into circumstances of

poverty and instability. His mother died when he was about seven years of age, depriving him of his primary caregiver at an early and formative stage. The report states that he was thereafter subjected to neglect and to ill-treatment, and that his childhood was marked by deprivation. It states that he entered upon labour at a very young age, that his schooling ended after Class 5, and that he was married while still a boy of about fifteen years. These circumstances describe a childhood of hardship, of early loss, and of the absence of the care and the education that might have shaped the appellant differently. Childhood deprivation and the early loss of a parent are circumstances that this Court has recognised as relevant to the sentencing inquiry, for they bear upon the formation of the person who later offended.

174. The second body of mitigating circumstances concerns the adversities of the appellant's adult life. The Mitigation Investigation Report describes a life of continued poverty, of economic instability and of displacement, and it records a succession of bereavements within the family, including the violent death of a brother and, during the period of the appellant's incarceration, the death of a son. These are circumstances of genuine misfortune, and we do not doubt the account of hardship that the report presents.

175. The third mitigating circumstance is that the appellant has no criminal antecedents. It is not shown that the appellant was previously convicted of any offence, and the crime of which he stands convicted, grave as it is, is not shown to have been preceded by a record of prior criminality. The absence of criminal antecedents is a circumstance that weighs in favour of an offender in the assessment of sentence, though its weight in the present case must be assessed in the light of what we have already recorded concerning the appellant's established history of violence within the domestic sphere, which, while it did not result in prior convictions, qualifies the picture of a man of previously blameless conduct.

176. The fourth mitigating circumstance concerns the conduct of the appellant during his years in custody. The material before us indicates that the conduct of the appellant in prison has been satisfactory, that he has not been the subject of disciplinary complaint, and that he has applied himself during his incarceration to acquiring the rudiments of literacy in Hindi and in the English alphabet and to religious and spiritual observance. Satisfactory conduct in custody, and efforts at self-improvement during incarceration, are circumstances relevant to the assessment of the probability of reformation, and we take them into account. We shall have occasion, when we come to

the weighing, to consider the extent to which conduct in the controlled environment of a prison bears upon the probability of reformation in the sense that the sentencing inquiry requires, but we record at this stage that the conduct of the appellant in custody has been without blemish.

177. We record, in this connection, the result of the psychological evaluation of the appellant conducted by the medical board pursuant to the order of this Court. The board, upon examining the appellant, was of the unanimous opinion that he was conscious, oriented to time, place and person, and that there was no psychopathology on mental status examination. The significance of this finding, for the purposes of the sentencing inquiry, is twofold and must be stated with precision. On the one hand, it establishes that the appellant does not suffer, and did not suffer, from any mental illness, intellectual disability or psychiatric condition, so that the mitigating consideration of a disordered or impaired mind, which has weighed in favour of convicts in some of the decided cases, is not available to the appellant, whose crime was not the product of any such condition. On the other hand, a finding that the appellant is of sound mind and free of psychopathology is not, and cannot be treated as, a finding that he is beyond the possibility of reform, for the absence of mental illness is not the presence of

incurability, and the report therefore neither supplies mitigation to the appellant upon the ground of mental disorder nor, of its own force, discharges the burden that lies upon the State of establishing that the appellant is beyond reformation. We weigh the finding for what it is, and for no more.

178. The fifth mitigating circumstance concerns the family of the appellant and his ties to them. The material before us, including the affidavit of the daughter of the appellant, indicates that the appellant retains ties with the members of his family, that his children have suffered in consequence of his incarceration, and that the family looks to his eventual return. The continued existence of family ties, and the impact of the sentence upon the family and in particular upon the children of the convict, are matters that the sentencing inquiry may take into account, though we observe that the impact of a sentence upon the family of a convict, while it is a consideration of humanity, is a circumstance that attends every sentence of imprisonment and every sentence of death, and its weight in the individual case must be assessed accordingly.

179. The sixth and final matter to be weighed on the side of the appellant concerns his age and the period he has already spent in custody. The appellant is now about fifty-six years of age, and he has been in

custody for about eight years, of which about seven have been spent under the sentence of death. The age of the convict is a factor that ***Bachan Singh*** (*Supra*) recognised as relevant to the sentence, and the period already undergone, together with the period spent under the shadow of the sentence of death, is a circumstance that we take into account.

180. We have set out these mitigating circumstances fully and we accept them as genuine. We do not approach them in the grudging spirit that the law forbids, and we record that the account of childhood deprivation, of adult misfortune, of the absence of prior convictions, of satisfactory conduct in custody, and of continuing family ties is a body of mitigation that is real and that must be weighed. At the same time, and in fairness to the exercise we are required to perform, we must observe that the existence of mitigating circumstances is the beginning and not the end of the sentencing inquiry, for the question is not merely whether mitigating circumstances exist, but what weight they carry when set against the aggravating circumstances, and, in particular, what bearing they have upon the two matters that lie at the heart of the choice of sentence, namely the culpability of the appellant for the crime he committed and the probability of his reformation. It is to that weighing that we now turn.

SECTION Q- THE WEIGHING OF THE CIRCUMSTANCES

181. We now undertake the weighing of the aggravating circumstances against the mitigating circumstances, which is the central task of the sentencing exercise. We approach it upon the method that the law prescribes, according to the mitigating circumstances their full and liberal weight, examining the circumstances of the criminal with the same seriousness as the circumstances of the crime, and bearing in mind throughout that the sentence of death may be sustained only if the alternative of imprisonment for life is unquestionably foreclosed.

182. It is necessary to begin by correcting the approach upon which the High Court proceeded. The High Court, in confirming the sentence of death, assessed what it described as the crime test at one hundred per cent and the criminal test at zero per cent. With respect, a criminal test assessed at zero is a proposition that can seldom be sustained, and it cannot be sustained in the present case. To assess the criminal test at zero is to assert that there is nothing whatever to be said on the side of the offender, that the balance sheet on his side is wholly blank. That is almost never true of any human being, and it is not true of the appellant, whose childhood deprivation, absence of prior convictions, satisfactory conduct in custody and other circumstances we have

set out and accepted as genuine mitigation. A sentencing court that reduces the criminal test to zero has, in truth, declined to perform the weighing at all, for it has treated the gravity of the crime as though it discharged the court from the duty of considering the criminal. The error is not a mere infelicity of expression. It is the very error against which the whole of the sentencing jurisprudence of this Court has set its face, for the essential command of **Bachan Singh** (*Supra*) is that the criminal be weighed together with the crime, and a court that assigns the criminal a weight of zero has disobeyed that command. We therefore do not adopt the approach of the High Court, and we proceed to weigh the mitigation that genuinely exists against the aggravation that we have found.

183. Upon the crime test, there can be no doubt. The aggravating circumstances of the crime, which we set out in detail, are established to the fullest degree. The crime test is satisfied at the extreme end of the scale, and the crime is one that must fill any conscience with revulsion.

184. But the satisfaction of the crime test, however emphatic, does not conclude the sentencing inquiry, and it is at this point that the discipline of the law is most easily lost and most important to observe. The gravity of a crime, taken alone, has never been sufficient under the law of this country to warrant the

sentence of death, for if it were, the rarest of rare doctrine would collapse into a simple measurement of the enormity of the offence, and the mandate to weigh the criminal would be rendered nugatory. The sentence of death is reserved not for the gravest crimes as a class, but for those cases within the gravest class in which, after the circumstances of the criminal have been weighed, the alternative of life imprisonment is found to be unquestionably foreclosed. We must therefore turn to the circumstances of the criminal, and to the probability of his reformation, and we must do so not as a formality to be discharged on the way to a conclusion already reached, but as the decisive stage of the inquiry.

185. The mitigating circumstances in the present case, which we have set out and accepted as genuine, are neither slight nor few. It is a substantial body of mitigation, and it is imperative that it be given not a grudging but a generous weight.

186. It was urged on behalf of the State that the mitigation report relied upon by the appellant is robbed of its force and that the material on record affirmatively negatives the probability of his reformation. The submission was rested upon four grounds. The first was that the mitigation bears no explanatory relation to the crime, the appellant's hardships not accounting for his sexual violation and

killing of a child. The second was the antecedent conduct of the appellant, and in particular the history of violence towards the women within his household across his successive marriages, said to show that the present crime was not an aberration but the culmination of a settled disposition. The third was the conduct of the appellant in relation to the crime and thereafter, namely his attempt to conceal the offence and his continued denial of it and advancement of false defences, said to betray an absence of any remorse from which a hope of reformation might be drawn. The fourth was the report of the medical board, which found the appellant to be free of any psychopathology, and which, it was submitted, excludes the possibility that the crime was the product of any mental condition and leaves it as the expression of his own settled character.

187. We consider the first of these grounds first, for it raises a question of principle. There is a measure of truth in the observation that a mitigating circumstance connected with the offence may weigh more heavily than one disconnected from it. But we must be cautious not to press that observation so far as to defeat the very purpose for which the law requires mitigation to be considered. The direction of ***Bachan Singh*** (*Supra*) that the mitigating circumstances of the criminal be weighed is not confined to circumstances that explain or excuse the

crime. It extends to the whole of what may be said, in humanity and in justice, on behalf of the person who is to be sentenced, including the circumstances of a life shaped by deprivation and loss, for these bear upon the culpability of the offender as a moral agent and upon the question whether the community must exact his life or may instead exact a lesser retribution. To hold that childhood deprivation counts for nothing unless it can be shown to have caused the crime would be to narrow the mitigating inquiry to a search for excuses, and to deny the generous consideration that **Bachan Singh** (*Supra*) commands. We therefore give to the appellant's history of deprivation and misfortune a real and not a merely nominal weight, and we do not accept that a want of a causal nexus to the crime deprives it of its weight.

188. We come to the question upon which the recent jurisprudence of this Court has laid the greatest emphasis, and which is in our judgment is decisive of the present case, namely the probability of the reformation of the appellant, to which the remaining three grounds of the State's submission are directed. Here the state of the record is of the first importance. The burden of establishing that the appellant is beyond the possibility of reform, and is a continuing threat to society such that his life must be taken, lay upon the State, as **Bachan Singh** (*Supra*) holds. The State led no evidence whatever directed to that

question. It placed nothing before the courts below, and nothing before us, to show that the appellant is incapable of reformation. On the other side, the material that is before us tells in favour of the possibility of reform, for the conduct of the appellant across eight years in custody has been satisfactory, he has been guilty of no institutional misconduct, and he has turned, so far as the confines of a prison permit, to self-improvement and to religious observance.

189. The three remaining grounds of the State's submission do not, upon examination, discharge the burden that lay upon it. As to the antecedent history of domestic violence, we have found it established that the three earlier wives of the appellant left him and that he subjected the mother of the victim to violence when she intervened to protect her child, and this disposition is a circumstance that tells against the appellant. But a disposition to violence, established upon the record, is not the same as a demonstration that the offender is beyond the reach of reformation, which is a distinct finding requiring its own foundation, and the State led no material to carry the one to the other. As to the appellant's denial of the crime and his false defences, we are conscious of a limit upon the use that may be made of them. We do not treat the appellant's denial of his guilt, or his pursuit of his defences, as an aggravating

circumstance or as a matter to be held against him, for an accused is entitled to deny his guilt and to defend himself, and the drawing of an adverse inference from the mere assertion of innocence would be impermissible. His denial furnishes no positive indication of remorse, but the absence of a mitigating indication is not the presence of an aggravating one, and it does not establish incorrigibility. As to the report of the medical board, its significance has already been explained: it removes any mitigation founded on a disordered mind, but it does not discharge the State's burden of showing incorrigibility.

190. We are conscious that conduct in the controlled environment of a prison is not a complete measure of reformation, and that it must be assessed with that limitation in mind. But the question is not whether the material proves reformation to a certainty. The question, upon the settled law, is whether the possibility of reformation can be excluded, for it is only where that possibility is excluded that the sentence of death becomes permissible. Upon a record in which the State has led no evidence of incorrigibility, in which the conduct of the convict has been without blemish, and in which the psychological evaluation discloses no condition from which incorrigibility might be inferred, the possibility of reformation cannot be said to be excluded. It remains

open, and while it remains open the alternative of life imprisonment is not foreclosed.

191. We have given the most thorough consideration to the aggravating circumstance which we identified as the gravest feature of this case, namely that the murder of the victim was committed in order to silence her and to extinguish the evidence of the rape, a feature which we have designated as instrumental silencing, and which we do not cease to regard as an aggravating circumstance of the highest order. It compounds the murder of the child with an assault upon the administration of justice, and it lends the crime an exceptional character. We have weighed it fully. But an aggravating circumstance, however grave, operates within the structure of the sentencing inquiry and does not stand outside it. Even the gravest aggravating feature must be weighed against the mitigating circumstances and, in particular, against the unexcluded possibility of reformation, and it cannot by its mere presence foreclose the alternative of life imprisonment where that possibility remains open and where the State has led no evidence to close it. The aggravating circumstance of instrumental silencing establishes, beyond doubt, that the crime belongs to the gravest class. It does not, by itself, establish that the criminal is beyond redemption, which is the further and distinct finding

that the sentence of death requires and which, on this record, cannot be made.

192. Drawing the weighing together, we find as follows. The crime test is satisfied at the extreme, and the crime is marked by the exceptional aggravating feature of instrumental silencing. But the mitigating circumstances are genuine and substantial and are entitled to a generous weight, and, decisively, the possibility of the reformation of the appellant has not been excluded, the State having led no evidence of his incorrigibility, the psychological evaluation disclosing no condition from which incorrigibility might be inferred, and the material as to his conduct in custody telling the other way. In these circumstances, and giving to the gravity of the crime its full and terrible weight, we are unable to hold that this is a case in which the alternative of imprisonment for life is unquestionably foreclosed. Whether that conclusion is confirmed when the present case is measured against the decisions of this Court in comparable cases, and when the intermediate sentencing options are considered, is the subject of the section that follows

SECTION R - THE COMPARABLE CASES, THE MIDDLE PATH, AND THE ADEQUATE SENTENCE

193. A weighing of aggravating and mitigating circumstances is not complete until it has been tested

against the decisions of this Court in comparable cases, so that like cases are treated alike, and until the court has considered the sentencing options that lie between the sentence of death and the ordinary sentence of life imprisonment. We address each in turn.

194. The appellant placed before us a substantial body of decisions of this Court in which the sentence of death, imposed for the rape and murder of a young child, was commuted, and these decisions are of direct relevance, for they concern the very class of crime that is before us. Among them are ***Lochan Shrivastava v. State of Chhattisgarh***⁵⁰, in which the death sentence for the rape and murder of a child was commuted upon a consideration of the youth and the family background of the offender and the absence of material excluding reformation, and ***Irappa Siddappa Murgannavar v. State of Karnataka***⁵¹, in which the death sentence for the rape and murder of a girl child, whose body had been disposed of in a manner designed to conceal the crime, was commuted to imprisonment for thirty years without remission upon a consideration of the absence of criminal antecedents, the absence of premeditation and the possibility of reformation. To these must be

⁵⁰ (2022) 15 SCC 401

⁵¹ (2022) 2 SCC 801

added the decision of this Court in ***Vasanta Sampat Dupare v. Union of India***⁵², in which this Court set aside a sentence of death that had earlier been confirmed, including upon review, in a case of the rape and murder of a child of four years, upon the ground that the sentencing had not been preceded by the individualised mitigation inquiry that ***Manoj (Supra)*** requires. ***Dupare (Supra)*** is a decision of the highest relevance, for it demonstrates the insistence of this Court, in the most recent phase of its jurisprudence, that the sentence of death shall not stand unless the mitigating circumstances of the offender have been genuinely gathered and weighed, and that the gravity of such a crime does not dispense with that requirement.

195. These decisions establish a discernible and principled current in the jurisprudence of this Court. It is that this Court has increasingly declined to impose or to sustain the sentence of death where the offender is without criminal antecedents, where his conduct in custody has been satisfactory, and where the State has led no material to exclude the possibility of his reformation, and has instead turned to the severe but non-lethal alternative of a long sentence of imprisonment without remission. The present case shares each of the features that has driven that

⁵² 2025 INSC 1043

result. The appellant is without criminal antecedents. His conduct in custody has been without blemish. The State has led no evidence of his incorrigibility. We are unable to identify a principled basis upon which the appellant could be sent to the gallows while the offenders in **Lochan Shrivasa** (*Supra*) and **Irappa** (*Supra*), and the offender whose sentence was reopened in **Dupare** (*Supra*), were held entitled to the consideration of the lesser sentence. The principle of the equal treatment of like cases, which is itself a component of the guarantee of equality before the law, weighs heavily against a sentence of death in the present case.

196. We are conscious that the present case is marked by the aggravating circumstance of instrumental silencing, which was not a found feature of each of the cases relied upon, and we have considered whether that feature so distinguishes the present case as to place it beyond the reach of the jurisprudence we have described. We have concluded that it does not. The feature of instrumental silencing renders the crime exceptionally grave, and we have said so. But it does not bear upon the circumstances of the criminal, and in particular it does not exclude the possibility of the reformation of the appellant, which is the consideration that has proved decisive in the commutation cases. A crime may be exceptionally

grave and its perpetrator may yet not be shown to be beyond reform, and where that is so the law, as it has recently been applied, does not exact his life. The aggravating feature distinguishes the crime, but it does not distinguish the criminal in the respect that matters to the choice of sentence.

197. It is at this point that the intermediate sentencing option assumes its decisive importance. Since the decision of this Court in ***Union of India v. V. Sriharan*** (*Supra*), the court has not been confined, in a case of this nature, to the stark choice between the sentence of death and a sentence of life imprisonment carrying the ordinary prospect of remission after fourteen years. There lies between them the option of imprisonment for the whole of the remainder of the convict's natural life, or for a fixed term of years extending well beyond fourteen, without the benefit of remission. The significance of this intermediate option can hardly be overstated, for it enables the court to answer the gravity of the crime with a sentence of the utmost severity, one that may confine the offender for the whole of his remaining life, without the court being compelled to choose between the taking of the offender's life and a sentence that may see him released after fourteen years. The existence of this option narrows very greatly the class of cases in which the sentence of

death can be said to be the only adequate sentence, for the sentence of death is not the only adequate sentence wherever a sentence of imprisonment for the remainder of natural life would meet the ends of justice.

198. We have asked ourselves whether, in the present case, a sentence of imprisonment for the remainder of the natural life of the appellant, without the benefit of remission, would adequately answer the gravity of the crime, including its exceptional aggravating feature. After thorough consideration, we have concluded that it would. Such a sentence would confine the appellant, now a man of about fifty-six years, for the whole of the remainder of his days, without the prospect of release. It would exact from him a retribution of the utmost severity, proportionate to the gravity of what he did. It would protect society from him for the whole of his life. And it would do these things while preserving, as the sentence of death by its irrevocable nature cannot, the possibility of reform. Where a sentence of this severity is available and would meet the ends of justice, the sentence of death cannot be said to be the only adequate sentence, and the alternative to death is therefore not foreclosed.

199. We are conscious of the gravity of the aggravating circumstances, and in particular of the instrumental silencing of a violated child, and we have not reached our conclusion by understating them. We have reached it because the law of this country reserves the sentence of death for the case in which, the circumstances of the criminal having been weighed, the possibility of reformation excluded, and the intermediate sentence found inadequate, no punishment short of death would meet the ends of justice, and because the present case, grave as it is, does not satisfy that exacting standard. The State has not excluded the possibility of the appellant's reformation. The intermediate sentence of imprisonment for the remainder of his natural life is available and is adequate to the crime. In these circumstances, to impose the sentence of death would be to exact the life of a man whose incorrigibility has not been shown, in a case in which a severe and sufficient alternative lies to hand, and that the law does not permit.

200. There remains the matter of the period the appellant has already spent in custody and under the sentence of death. Having concluded that the sentence of death ought not to be sustained, we need not rest anything upon that consideration, and we record only that the eight years of the appellant's

incarceration, seven of them under the shadow of the sentence of death, form part of the circumstances that uphold our conclusion that the ends of justice will be met by the sentence we propose to substitute.

PART X – THE CONCLUSION

201. For the reasons we have recorded, we are of the view that this is not a case in which the sentence of death ought to be sustained. The crime is of the utmost gravity, and it is marked by an exceptional aggravating feature, but the mitigating circumstances of the appellant are genuine and substantial, the possibility of his reformation has not been excluded by the State upon whom the burden lay, and the intermediate sentence of imprisonment for the remainder of his natural life, without remission, is available and is adequate to answer the gravity of the crime. In these circumstances the alternative of imprisonment for life is not unquestionably foreclosed, and the sentence of death cannot be sustained.

202. At the same time, the gravity of the crime, and in particular the sustained sexual violation of a child by her guardian and her killing to conceal that violation, is such that a sentence of imprisonment for life carrying the ordinary prospect of remission after

fourteen years would be wholly inadequate to the ends of justice. This is pre-eminently a case for the exercise of the intermediate sentencing power recognised ***in Union of India v. V. Sriharan*** (*Supra*).

203. We accordingly commute the sentence of death imposed upon the appellant for the offences under Section 302 and Section 376AB of the IPC to a sentence of imprisonment for the remainder of his natural life, that is, imprisonment for life which shall extend to the whole of the remainder of his natural life and upon which no remission shall be granted. We affirm the sentences of imprisonment and fine imposed upon the appellant for the remaining offences under Sections 376(2)(f), 376(2)(n) and 201 of the IPC and Sections 5 and 6 of the POCSO Act. Having regard to Section 42 of the POCSO Act, the appellant shall be liable to punishment under that Act or under the corresponding provisions of the IPC, whichever is the greater in degree, and all the substantive sentences shall run concurrently.

204. We record that the sentence we have imposed is a sentence of the utmost severity, second only to the sentence of death, and that it will confine the appellant within the walls of a prison for the whole of the remainder of his life, without the prospect of release by way of remission. It is a sentence

proportionate to the gravity of his crime, and it reflects the abhorrence with which the law regards what he did, while stopping short of the taking of his life in a case in which the possibility of his reformation has not been foreclosed.

205. The appeals are disposed of in the above terms.

.....J.
[VIKRAM NATH]

.....J.
[SANDEEP MEHTA]

.....J.
[VIJAY BISHNOI]

**NEW DELHI;
SEPTEMBER 24, 2026**