

**State of M.P. Vs. Molai**

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**Court :** Madhya Pradesh

**Decided On :** Feb-09-1998

**Reported in :** 1999CriLJ2698

**Judge :** D.P.S. Chauhan and ;R.P. Gupta, JJ.

**Acts :** [Constitution of India](#) - Articles 14, 19 and 21; Code of Criminal Procedure (CrPC) , 1974 - Sections 161 and 354(3); [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 201, 302, 363, 366 and 376(2)

**Appeal No. :** Criminal Reference No. 3 of 1997

**Appellant :** State of M.P.

**Respondent :** Molai

**Advocate for Def. :** S.C. Dutt and ;Manish Dutt, Adv.

**Advocate for Pet/Ap. :** Dilip Naik, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**R.P. Gupta, J.**

1. This judgment shall also dispose of Cr. Ref. No. 4/97 and Cr. Appeal No. 525/97.

2. The references have been made in judgment dated 18-2-1997 passed by IV Addl. Sessions Judge, Rewa in S.T. No. 130/96. The two accused Santosh and Molai have been found guilty of committing offences of gang rape punishable Under Section 376(2)(g), I.P.C. and for committing murder of the victim Ku. Naveen daughter of R.S. Somvanshi an Asstt. Jailor, in Qr. No. 2 in the colony of Central Jail, Rewa on 20-2-1996. Both have been sentenced to death for the offence of murder Under Section 302, I.P.C. and have been sentenced to life imprisonment and fine of Rs. 500/- each for the offence Under Section 376(2)(g), I.P.C. In default of payment of fine they are to further undergo R.I. for 2 months each. They have been further found guilty of offence Under Section 201, I.P.C. and sentenced to R.I. for 3 years each and fine of Rs. 200/- each and in default of fine further R.I. for 2 months each. Cr. A. 525/97 has been filed by one of the accused-Molai. The other accused has not filed any appeal against the judgment and sentence.

3. The prosecution case, in brief, is that accused-Molai was employed as a guard in Central Jail, Rewa at the time of this incident while accused-Santosh was a convict in S.T. No. 97/87 for offences Under Sections 376, 366 and 363, I.P.C. and was undergoing the sentences in Central Jail, Rewa for those offences for 7 years, 4 years and 3 years R.I. respectively. R. S. Somvanshi (P.W. 6), father of Ku. Naveen, was residing with his family in Qr. No. 2 of the Central Jail colony. A few days before the incident, his wife, with some children, had gone out of station. Shri Somvanshi, along with his daughters Ku. Naveen, aged 16 years and Ku. Pratibha (P.W. 3) aged 12 years, was residing in the quarter. In the adjoining Qr. No. 3 another Asstt. Jailor R.K. Mishra along with his wife and daughter Ku. Ruchi Mishra (P.W. 1) aged 14 years were residing. On the opposite adjoining Qr. No. 1 some guards were residing. Ku. Naveen was student of X class. The two accused used to come to the house of Shri Somvanshi for doing domestic work. Pratibha had gone to her school at 7 a.m. on the date of incident. The two accused came to the house as usual for domestic work after Pratibha had gone to school. Somvanshi was in the house and about 9 a.m. he went to his duty leaving behind Ku. Naveen in the house and both the accused were working in the house. In the neighbourhood R.K. Mishra had also gone to duty and in his house his wife Shobha and daughter Ruchi were present. P.W. 4 Shailendra s/o another Asst.

Jailor Shyamsingh and Krishnakumar son of Pathak, another Asstt. Jailor, were playing cricket in front of their quarters. At about 10 a.m. Smt. Shobha and Ku. Ruchi heard some shrieks from the quarter of Somvanshi. They also heard dogs bark. Even Shailendra and Krishnakumar heard the shrieks. The boys went to the quarter of Somvanshi but could not notice anything special. At about 11 a.m. Ruchi Mishra went to return a cassette to Ku. Naveen. She called Ku. Naveen but got no reply. She noticed that both the accused were standing outside the quarter of Somvanshi. They told Ruchi that Naveen was not in the quarter, she had gone with some girl friend. At that time the ball of Shailendra got rolled towards quarter of Somvanshi. Both the boys went towards that quarter to look for their ball. They noticed both the accused standing in front of the quarter. A short time thereafter Ku. Ruchi again came and noticed accused Santosh taking cycle of Ku. Naveen towards the back of the quarter. At about 12 noon, Ku. Pratibha, sister of Naveen, came to her house and found both the accused in the house but she could not find Naveen in the house. She asked both the accused about Naveen. They told her that Naveen had gone on her cycle to the house of some girl friend. Pratibha noticed that the room in which she had kept her clothes had been locked. She wanted to take bath but could not. Thereafter Santosh went to the jail. At about 12-30 Molai told Pratibha that two Samosas had been kept for her and that Naveen had called for Samosas. Pratibha took one Samosa and cooked the meals. At about 1 p.m. Molai also left the house. At 1-30 p.m. Somvanshi returned home. Pratibha told him that the accused persons had told her that Naveen had gone to her girl friend on her cycle. Shri Somvanshi went away to his duty at 3 p.m. and returned home at 6 p.m. Still Naveen had not returned home. By that time both the accused had come back for domestic work. They told Somvanshi that Naveen had gone to her girl friend. Somvanshi got worried and he and his neighbours searched for Naveen but could not find her. Even Molai joined them in the search. Santosh went to his barrack. The next morning Somvanshi went to the back of the quarter to milk the cow. He noticed that the cover of the septic tank had become slightly displaced. He became suspicious and got the cover removed and peeped in. He noticed the blue colour frock of Naveen floating in the septic tank. Somvanshi went to the police station and lodged report Ex. P-I. The police came to the spot and got out the body of Ku. Naveen from the septic tank. A cloth was tied

up around her neck. There was a cut wound on her abdomen and her intestines had come out. It appears that she had been murdered and the body had been thrown in the septic tank. Blood stained earth was noticed near the tank. The autopsy on the body disclosed that the girl had been raped before death and then she had been strangulated and stabbed in the stomach and thus murdered. The doctor prepared slides from the vaginal discharge for chemical examination. Her clothes were sealed and seized.

4. Since the circumstances and the clues of investigation pointed the needle of suspicion towards these accused they were interrogated. Santosh made a disclosure statement and led to recovery of one handkerchief and one Chaddi and a piece of Khadi having semen and blood stains, concealed in the Parchhi where the cow fodder were used to be kept. On his further disclosure, a lady cycle was recovered from below the water in the septic tank. Accused Molai also made a disclosure statement and on his disclosure a piece of Pajji, one bed-sheet, one Pajji with semen and blood stains were recovered concealed in the fodder room. On his disclosure a knife stained with blood was recovered from the heap of cow dung cakes. On medical examination of Santosh, nail scrap injuries were noticed below his left eye, neck and below his right ear and also on the right wrist. The piece of cloth which had been found tied to the neck of the deceased was in fact a piece of Chaddi, while the piece of cloth which was recovered at the instance of Molai was also a piece of Chaddi and the report of F.S.L. Sagar is that piece Ex. D-4 recovered from the neck of the deceased and the piece-F recovered at the instance of Molai are part of one Chaddi. The report is Ex. P-29. The expert at F.S.L. Sagar noticed that the knife A, piece of Pajji, F, Chadar-G, recovered at the instance of Molai, cloth piece-E recovered at the instance of Santosh, clothes K-1, K-2 and K-3 of the deceased and slides M-1, M-2 and M-3 of the deceased had blood on them. Further handkerchief-C, Chaddi-D recovered at the instance of Santosh, Pajji piece-F, Chaddi-H recovered at the instance of Molai, frock K-1 recovered from the body of the deceased, slides M-1, M-2 and M-3 had human semen and spermatozoa on them. It was also opined that the blood on F and the semen stains on C, D, F, H and K-1 were not sufficient for analysis.

5. The conviction of the accused has been based on circumstantial evidence disclosed from evidence of R.S. Somvanshi (PW. 6), Pratibha (PW. 3), Ruchi (PW. 1), Shobha Mishra (PW. 2), Shailendra (PW. 4), R. P. Shrivastava (PW. 8). PW. 7 Shyamji Singh, Asstt. Jailor and the neighbour of the deceased, was witness to the recovery of the dead body, the inquest proceedings, disclosure statement (Ex. P. 6) of Santosh on interrogation by police and disclosure statement Ex. P-7 by Molai. Recovery of various pieces of clothes were made. At the instance of the two accused vide seizure memos P-8, P-9 and P-10. A knife was recovered at the instance of Molai. PW. 19 Abhiman Singh S.I. had recorded the FIR Ex. P-2 on the written report Ex. P-I given by Somvanshi. He recovered the dead body of the girl from the septic tank, the body was floating in the tank. A piece of Pajji was found tied around her neck. He prepared the plan of the site. PW. 16 M.L. Pavaiya also reached there and took over the further investigation. He had prepared the site plan and recorded the statements of the witnesses. He interrogated the two accused and made recoveries at their instance in the presence of the witnesses. This happened on 21-2-1996. He got the two accused medically examined.

Abrasions were noticed on the body of accused Santosh by Shri Pavaiya as well as by PW. 8 Dr. Shrivastava who gave the report Ex. P-15. Abrasion was result of clawing with the nails. He sent the recovered articles and sealed parcels to F.S.L. Sagar. PW. 11 Nagendra Patwari had prepared the site plan of the septic tank on 17-4-96. PW. 13 Babulal, head constable, recorded the formal FIR.

6. PW. 10 Dr. Sharma had conducted autopsy along with Dr. Kapoor and Dr. Mishra on the body of the deceased on 21-2-96 at 12-30 p.m. and found the following injuries:--

(i) A bruise with abrasion on the right maxillary and cheek area crescent shape looking to be from deep kissing with intermittent marks of teeth size 2 cm x 2 cm,.

(ii) abrasion of right mandibular region 4-cm. right to the medial line size 1/ cm x 1/2 cm./

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

(iv) stab wound present 10 cm. below the xiphoid process, on the upper portion on stomach upto the depth of stomach a cut wound 18 cm. in length on the wall of the stomach. The intestines had been cut. Peritonium had been cut. The intestines were coming out of the wound.

(v) marks of strangulation were present at the neck above and over thyroid cartilage horizontally, length 33 cm. with breadth 2 cm. x 2.5 cm. varying with graved marks, reddish in colour, margins inflamed. The neck tissue below it showed echymosis. Strangulation was ante mortem.

(vi) There were bruise marks on libia majora and libia minora. The hymen was found torn and there was bleeding from the vagina with some blood mixed matter on the vagina of which slides were prepared.

All the injuries were found ante mortem. The stab wound had been caused by some sharp pointed object. The death occurred within 18-36 hours of the post mortem examination. The piece of cloth which was a piece of Chaddi was found tied around the neck one part of this cloth was elastic and the main cloth was synthetic. The cause of death was found to be strangulation and stab injuries. These were sufficient in ordinary course of nature to cause death.

7. The prosecution had also examined two more witnesses i.e. PW. 5 Shatrughan and PW. 9 Pretiraja. These were convicts in jail before whom Santosh confessed having committed a blunder on the night of 20-2-96 while Santosh was lying in the same barrack. However, no reliance has been placed on this part of the testimony as it is too vague.

8. Thus the following circumstances were found established by the trial Court :--

(i) that these two accused were in the house with Ku. Naveen after 9 a.m. after Somvanshi went to his duty,

(ii) about 10 a.m. shrieks had been heard from the side of the house,

(iii) about 11 a.m. these accused falsely told Ku. Ruchi and also to Shailendra that Naveen had gone to some friend,

- (iv) at about 12 noon these accused told Pratibha, the sister of Naveen, that she had gone on cycle to her girl friend.
- (v) accused Santosh was seen by Ku. Mishra around 11-30 a.m. taking cycle of Naveen towards back of her house. Thus the accused had made false statement about the whereabouts of Naveen and her cycle to witnesses,
- (vi) accused Santosh had nail injuries on his neck and other parts of body showing struggle against him by somebody with the fingers.
- (vii) Naveen was strangulated with a piece of Chaddi with elastic attached to it. The other part of this Chaddi was disclosed by Molai as having been concealed in the cattle Parchhi and he led to its recovery. This piece has been found to be part of the Chaddi found on the neck of the deceased,
- (viii) the various pieces of clothes and Chaddi got recovered by these accused on their disclosure had blood stains on them.
- (ix) accused Molai led to recovery of knife, Article A having blood stains on it. He knew it concealed in the cow-dung cakes and produced it. So he was the author of the concealment of the knife. The stab on the dead body could be caused by it.
- (x) Molai led to recovery of Chadar, Article-G which he concealed. This had blood and semen stains.
- (xi) The handkerchief which was produced by Santosh from fodder house had semen stains on it.
- (xii) the girl had been raped before being strangulated and stabbed. This is clear from her medical examination and the teeth mark on her cheek.
- (xiii) The vaginal slides showed blood as well as spermatozoa.
- (xiv) Accused Santosh led to recovery of lady cycle from under the septic tank where the dead body had been found. He disclosed about it and on his pointing out it was recovered on 21-2-1996. It was not visible when the body which was floating had been taken out. The depth of the septic tank was about 10 feet and its

length was about 8 feet as stated by Somvanshi.

9. The trial Court found these circumstances established beyond doubt and the only inference possible was that these accused were the joint perpetrators of the crime. Both of them raped her and murdered her.

10. The defence set up by the accused is that they never worked at the house of Somvanshi on any duties nor on the date of this incident. Santosh said that he was a convict in the jail on a charge of rape undergoing sentence. However, he was working in the garden along with 4 other convicts under surveillance of a guard and did not work in the house of Somvanshi. He had some scratch injuries but they were caused by the police official who arrested him on 21st. He urged that he had been acquitted by the High Court in appeal in the case for which he was undergoing the sentence on the date of this incident.

11. Molai also denied his presence as domestic help at the house of Somvanshi. He urged that he was on duty of cloth godown of the jail from 3 a.m. to 11 a.m. and after closing the godown he went to the Court on duty as he was to appear in the Court of Magistrate, Shri Shrivastava and after attending there at 12-30 p.m. he went to his village Medgaon.

12. The accused examined two witnesses, DW. 1 Rakraj Sondhiya Chief guard at Central Jail, Rewa. Molai was also a guard under him. He asserted that on 20-2-96 Molai was on duty at cloth godown. He admitted in cross-examination by the State counsel that the convicts who go to work in gardens outside the jail or in the gardens of the officers, they work there on the instructions of the officers. There are gardens outside

the houses of 5-6 Asstt. Jailors. During the time of this incident Somvanshi was incharge of the cloth godown and whenever he sent Molai to work at his house, Molai worked at his house. Statement of DW. 2 is not relevant. He had made some allegations against integrity of Somvanshi.

13. Apparently defence evidence is inconsequential and rather indicates that accused persons used to work at the house of Somvanshi. Santosh used to work

at the garden of Somvanshi while Molai used to work in the house.

14. The contention of the learned counsel for both the prisoners is that all the circumstances relied upon by the trial Court have not been established by irrefutable evidence and there is doubt on various aspects of the circumstances. This it is urged that in the FIR Ex. P. 1 lodged by Somvanshi which is a written complaint sent by him to the S.H.O. Police station Civil Lines, Rewa, there is no mention of any suspicion against any of these accused. The argument is that this is incongruous if his daughter Pratibha (PW. 3) had told him that the accused had informed her that Naveen had gone to her friend on cycle. The argument is that if Pratibha had so informed Raghuvanshi he would have at once suspected the accused persons on seeing the dead body of Naveen.

15. Secondly, it is argued that in the disclosure statement of Molai, in Exs. P-6 and P-7 the place of interrogation is mentioned as Central Jail Rewa colony, whereas according to the investigating officer Shri Pavaiya (PW. 16) he had interrogated both these accused inside the jail in the presence of the witnesses. Even PW. 7 Shyamji Singh who is Asstt. Jailor and neighbour of the deceased and a witness to the disclosure statement asserted that both the accused were interrogated by the investigating officer in the jail office in his presence and they made their disclosure there. So the argument is that the place of interrogation recorded in Exs. P-6 and P-7, is contrary to the testimony of these witnesses. So it should be taken as doubtful as to where the interrogation was made and that the evidence is suspicious that this accused made any disclosure statement leading to the discovery of incriminating material. In the same context it is further argued that if Ruchi Mishra had seen Santosh taking the cycle of the deceased towards the back of the house, she would have disclosed that fact to the police or to the father of the deceased after coming to know the murder of Naveen and if she had told so the police must have searched for the cycle in the gutter and they must have recovered the cycle from there along with the dead body. Thus the alleged disclosure about cycle by Molai is doubtful piece of evidence.

16. It is further argued that both the accused were in the house when Somvanshi returned home from his duty at 6 p.m. If they were guilty, they would not have

come to the house and would have run away. Molai even helped Somvanshi in searching for the girl. So their conduct was innocent.

17. It is further argued that the circumstances which have come on record, even if they be taken on their face value, do not lead to only one inference of guilt of the accused, somebody else could have come to the house and committed this act, even if these accused are presumed to have been working somewhere outside the house as the witness claimed to have seen them only in the compound of the house.

18. Lastly, the argument is that at least it is uncertain as to who raped the girl, who strangulated her and who stabbed her. Even if Santosh be considered the person who raped because of nail injuries on his face and arm, the participation of Molai in the rape and murder is not established and he should be given benefit of doubt or in any case Section 34, IPC is not attracted against him. It is also argued for the same reason, that the accused do not deserve death sentence in the background of such evidence.

19. The learned counsel for the parties have taken us through the entire evidence of witnesses as also the documents on record. We have heard their comments at length on the reliability and weight of the evidence of various witnesses and the documents. It is important to note that both the accused totally denied their presence in the house that day or that they were working in the house of Somvanshi that day while the girl Naveen was in the house. This was a total false stand taken by them. On perusal of the evidence of PW 6 Somvanshi, PW 3 Pratibha, PW 1 Ruchi, PW 2 Shobhna, PW 4 Shailendra and even DW 1 Sondhiya, chief guard of Central Jail, Rewa, the trial Court found it established that these 2 accused had been working in the house of Somvanshi as domestic help. Santosh had been working in the garden of that house. Molai had been working in the house. He was a guard in the workshop which was under charge of Somvanshi and on his asking he had been working in the house. It is not unusual feature. We have perused the evidence and find it established that these 2 accused had been working in the house of Somvanshi when this incident had occurred and even on the date of this incident they were working in the house.

Somvanshi had left them in the house with Naveen alone in the house at 9 a.m. Pratibha had gone to her school that morning at 7-30 a.m. and returned by 12 noon. The accused have falsely denied their presence in the house that day.

20. There is no reason to doubt the testimony of Ruchi Mishra that these accused told her that Naveen had gone to her friend's house. In the cross-examination of this witness no infirmity had been brought out. Ruchi had inquired about Naveen from these accused at about 11 a.m. and a short time thereafter she had seen Santosh taking the cycle of Naveen towards the back of the house. Ruchi was not told by these accused that Naveen had gone on her cycle. It was only told to Pratibha that Naveen had gone on her cycle. Pratibha had informed her father about it. There is no reason to doubt her. These accused, thus gave false explanations to both these girls about the whereabouts of Naveen. They did so deliberately.

21. The contention of the counsel for these accused that in the FIR there is no mention of any suspicion about these accused or what they told to Pratibha, does not create any dent in this part of the case of the prosecution. It is to be kept in mind that Pratibha had told her father at 3 p.m. that the accused had told her that Naveen had gone to her friends' s house. So, the father had no reason to become suspicious about her life. Even on return from duty at 6 p.m. the position remained the same and Naveen had not returned home. Next morning the body of Naveen with frock was noticed in the septic tank. Accused Molai was with Somvanshi at that time and had helped in removal of the cover of the gutter. The body had not been taken out and at that sudden and shocking discovery, the father could hardly connect the accused with the crime. Considering no suspicion against the accused, Pratibha had only told him that the accused had informed her that Naveen had gone to her friend's house. The father could not suddenly reach a conclusion as to how the body of his daughter was in the septic tank. The septic tank, as has come in evidence, was about 8 feet across and 10 feet deep. When the accused had helped him in search of the girl, the reaction of his mind, in taking no suspicion against the accused, was justified and the omission of the fact as to what Pratibha had told him about the information given by these accused, not been recorded in the written report made by him to police, was but natural. At least

this omission cannot raise any doubt about the testimony of Pratibha. This testimony of Pratibha as to what the accused had informed her about Naveen is to be further looked into in the light of testimony of Ku. Ruchi to whom also the accused gave the same information. Somvanshi had no talks with Ruchi before informing the police.

22. Thus we are of the view that the trial Court was justified in concluding that these accused gave false explanation to Pratibha and Ruchi about Naveen having gone to her friend's house while she had been raped and done to death.

23. It is of importance that Ruchi as well as her mother had heard the shriek 'Eeeh' from the side of the house of Somvanshi at 10 a.m. The dog of the Somvanshi had also barked. They had come out but found nothing unusual. So they went back to their home. Even Shailendra (PW 4) heard such a shriek and came to see but noticed nothing. The accused were in the house just outside. This was noticed by Shailendra at about 11 a.m. when his ball rolled towards the garden of Somvanshi. He and his friends picked up the ball and went away. Counsel for the accused suggested to Ruchi that she had not mentioned about hearing the shriek from the house of Somvanshi in her police statement Under Section 161, Cr. P.C. where it is omitted. She only asserted that she does not know why it is omitted from the statement but she had narrated it. No such omission has been brought out in the testimony of Shobha (PW 2) or Shailendra (PW 4) who had asserted about hearing of such shrieks. The factum of such a shriek having been heard is thus established though it does not show whose shriek it was.

24. The accused persons were at the house when Somvanshi had left the house at 9 a.m. with the girl inside. They were noticed outside the house at 10-30 a.m. as well as at 11 a.m. The false explanations given by these accused to Pratibha and Ruchi about Naveen indicates their guilty mind. It is of importance to note that they concocted story that Naveen had gone on her cycle although they had taken the cycle towards back of the house, and threw it in the septic tank.

25. Let us consider whether the disclosure statements were made by these 2 accused. They were interrogated one by one in the office of the Central Jail Rewa. This is narrated by Pavaiya and also by Shyamji Singh. These witnesses have no

reason to depose falsely. If they were creating false evidence about disclosure by accused and recovery of material evidence at their instance, they could have spoken in line with the background of disclosure P-6 and P-7 that the interrogation was made in the colony. They have stated that disclosure was made in the office of the jail. Shri Pavaiya who prepared these 2 documents has stated that word colony' after the words 'Central Jail Rewa' appears to have been recorded by some mistake in these documents. In view of this explanation we have no reason to discard his testimony or that of PW 7 Shyamji Singh. PW 7 has explained that entire jail complex is called jail colony.

26. From evidence of these witnesses we are satisfied that there is no infirmity in prosecution evidence that these accused were interrogated by the investigating officer, and they made disclosure statement which are Exs. P-6 and P-7 respectively. They made disclosures about various incriminating articles. Santosh made disclosure about handkerchief, Chaddi, a piece of khadi cloth and ladies cycle having been kept by him in different places. Molai made disclosure about piece of Pajji i.e. Chaddi, bed-sheet, knife and a Chaddi. These had been concealed in the fodder house and the knife in the cow-dung cake heap. Both these accused respectively led the police party to the spots of concealment of these articles and they got these articles recovered. The cycle was recovered after putting a Kanta in the septic tank.

27. We find that the objection of the counsel for the accused that the cycle should have been found by the police ordinarily when the body was recovered from the septic tank, does not have merit in it. Septic tank was 10 feet deep with 8 feet width. The body was floating above the water. The police had taken out the body. There is nothing on record to suggest that any body had gone into the septic tank. That is not natural also as nobody would lower himself inside the dirty sullage of septic tank and the body would have been taken out with the help of some ropes 'Kantas' and other means. So by that time it could not have come to the notice of police that cycle was lying at the bottom of the septic tank. The size of the cycle is such that in such a big septic tank it could settle in the bottom. Santosh disclosed about it and got the cycle recovered. The fact that Ruchi had seen Santosh taking the cycle to the back of the house could at best lead the investigating agency to

question him regarding the cycle. They did question him and recovered the cycle from the tank. This was recovered on 21-2-96 vide memo Ex. P-9. So we find no infirmity in this evidence of the prosecution.

28. We find that the trial Court has properly appreciated the evidence regarding disclosure statement made by Santosh and Molai respectively. Proper assessment has been made regarding recovery of handkerchief, chaddi and piece of khadi cloth and ladies cycle at the instance of Santosh. The articles other than ladies cycle were recovered from the fodder house of Somvanshi. Santosh had concealed them there. Molai led to recovery of piece of Pajji and chaddi and a complete chaddi and bed-sheet from the fodder house. These were having blood and seminal stains. He also led to the recovery of knife from the cow-dung. It had blood stains. The piece of pajjai recovered was found to be piece of the same pajji with which the girl had been strangulated. The opinion of the expert of F.S.L. Sagar on that aspect are clear and have been rightly accepted and acted upon. We find no infirmity in that evidence. This leads to inference of active involvement of Molai also in this rape and murder.

29. The medical evidence of the autopsy surgeon and result of medical examination of Santosh have important bearing on the result of the case. The result of autopsy clearly suggested that the victim had been raped. Teeth marks on her cheek suggest that biting kiss was made on her face. She was strangulated and also stabbed with a knife to put her life to an end, after the rape. The fact that there are nail scrap marks on the neck, face, below the ear and right wrist of Santosh suggests that the girl had resisted but the accused with their brutal force had over powered her and after misusing her, snuffed out life from her.

30. From the close scrutiny of the entire evidence, we find that all the circumstances enumerated by the trial Court which we have noticed in the earlier part of the judgment have been established beyond any reasonable doubt. The participation of the 2 accused is inferable not only from the fact that they were with this girl in the house but also they gave false explanation to Pratibha and Ruchi and also further by the fact that the piece of Pajji which was used to strangulate her was part of same Pajji the other part of which had been concealed by Molai in

the fodder house and which too had blood stains and semen stains on it. So his involvement in the crime is also apparent and so active.

31. The involvement of Santosh being also 'very active' in this entire transaction is established by the further facts that he had thrown down the cycle of the girl in the septic tank, he raped her as is clear from the nail marks on his neck, face and wrist for which he has no explanation to give. Both these accused are coming out with false explanations and false denials.

32. The assertion of appellant's counsel that their conduct in helping Molai joining in the search for the victim, shows their innocence, is misplaced. None but them was in house from 9 a.m. to 12 noon when Pratibha came. It has been mischievously suggested in cross examination of Shailendra that he and his friend are the culprit. This suggestion is to be seen in the light of total false denial by these accused about their having come to the house or working there. After the crime of rape and murder the only option left with them was to feign total ignorance after concealing evidence. So Molai's joining in search of girl does not reflect his innocence but his utter cunningness.

33. The entire transaction of rape and murder was a single one committed by both these accused. They both participated actively. It appears that while one strangulated her the other knifed her. They both raped her. At any rate they helped each other in the entire process of rape and murder. It is a case of gang rape and murder thereafter. We do not know which one of them had strangulated her and which one had stabbed. But they both participated fully. Both of them thus committed offence punishable Under Section 376(2)(g) and Section 302, IPC, in the alternative Section 302/34, IPC. We find that the trial Court has rightly convicted them for the offence.

34. The evidence on record fully established that these accused concealed and took steps to destroy vital pieces of evidence of rape and murder. They threw body as well as cycle in the septic tank. They removed the blood stains and concealed clothings having blood marks and semen marks in the fodder room and also the knife in the cow dung heap. So they caused the evidence of commission of offence to disappear with intention to screen themselves from punishment. Thus

they have been rightly convicted for the offence punishable u/Section 201, IPC. They knew that this offence which they committed was punishable with death. So they could be punished u/Section 201, Part II, IPC with imprisonment up to 7 years. They have been sentenced to R. I. for 7 years each under this provision.

35. The only other question is whether they deserve the sentences of death or not. We have noticed from evidence, all the circumstances of rape and murder. The accused persons at the relevant time were expected to look after the girl. Her father had left her under their care. They were expected to look after her, as their father. Instead, they raped and killed her and threw her body in the septic tank. She tried to protect herself but as a weak female how much could she resist. Molai was a guard at the workshop where Somvanshi was incharge. He had the faith of Somvanshi. This is how he took advantage of that faith. Santosh was undergoing imprisonment on charge of earlier rape. He says that he had been acquitted by the High Court of that charge. It is immaterial. But that shows what type of character he is. Somvanshi put faith in him but he raped and murdered his daughter. This rape and murder is extremely abhorring and shocking to the conscience and to society. It has been committed in cold blood. There was no cause for provocation against the family or against the girl. Their action was abhorring demonic, brutal, beastly cruel and depicts abysmal depravity and murder in cold blood.

36. Both of them were aged about 35 years at the time of the offence. We find no condoning or mitigating factors in favour of these accused. Their personal character is revealed by the style of this offence.

37. The Supreme Court interpreted the sentencing policy regarding death sentence as revealed from the provisions of Section 302 IPC, 354(3) Cr. P.C. and Articles 14,19 and 21 of the [Constitution of India](#), in the famous case of Bachan Singh v. State of Punjab cited at 1980 (2) SCC 684 : 1980 Cri LJ 636. The judgment still holds the field and has been followed in large number of cases, of course, with slightly varying hues, depending on the facts and circumstances, of each case. The Court said that life imprisonment is the general rule in all murder cases, the death penalty is an exception. The death penalty should be awarded in rarest of the rare cases. Which case would be the rarest of the rare, would depend

upon the facts and circumstances of the case. Their Lordships said that, in awarding such punishment, the Courts have not to be harsh on the accused and may give benefit of circumstances even in sentencing procedure (apart from finding of guilt). The Courts must pay regard to both the crime and criminal and these two aspects are inter-twined and cannot be given separate treatments as 'the style is the man'. The Court has to give weight both to the mitigating as well as aggravating circumstances in the light of entire circumstances of offence. Their Lordships said that in many cases the extremely cruel or beastly manner of the commission of murder is itself demonstrated index of the depressed character of the perpetrator. That is why it is not desirable to consider the circumstances of the crime and circumstances of the criminal in two separate water tight compartments. The Court enumerated certain examples of aggravating circumstances such as previous planning and extreme brutality in commission of murder or exceptional depravity in the commission of crime. Several other aggravating circumstances were also noticed regarding the victims while discharging their public duties, such as public servants or members of police force or highly placed constitutional authorities being murdered deliberately. Some mitigating factors were also noticed by the Court as under:--

- (i) That the offence was committed under the influence of extreme mental or emotional disturbance.
- (ii) If the accused is young or old, he shall not be sentenced to death.
- (iii) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to the society.
- (iv) The probability that the accused can be reformed and rehabilitated.
- (v) That in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.
- (vi) That the accused acted under duress or domination of another person.
- (vii) That the conditions of the accused shows that he was mentally defective and the said defect impaired his capacity to appreciate the criminal act or his conduct.

All these instances of aggravating and mitigating factors were stated to be only broad indicators or guide to the judicial discretion. Their Lordships stated that it is not preferable to fetter judicial discretion by attempting to make excessive enumeration one way or the other. Their Lordships said that post murder penitence was also a relevant factor in some cases. They also said that judges should never be blood thirsty and that the scope of concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the Courts in accordance with the sentencing policy writ large in Section 354(3) Cr. P.C.

38. In most of the later cases, decided by the Supreme Court, which may be considered as instances where death penalty was not awarded and lesser penalty was confirmed, the Supreme Court has applied these guidelines, of course, depending upon and varying with facts and circumstances of each case. It would be instructive to note how in some cases which came before the Apex Court, the judicial discretion was exercised for a severer or lesser penalty on murder charges in the light of guidelines in the case of Bachansingh (1980 Cri LJ 636) (supra).

Recently a number of cases have arisen before the Supreme Court necessitating exercise of judicial discretion about capital punishment, on murder charges. These may be noted as under:--

(a) 1996 (2) SCC 175 : AIR 1996 SC 787 titled Ravji v. State of Rajasthan: In this case the appellant had axed to death his wife and 3 minor sons while they were asleep. The wife was in advanced stage of pregnancy. The accused attempted to murder his own mother and also wife of neighbour. No motive of the murder was brought out, but the offence had been committed in a conscious state of mind and in a calculated manner without any provocation. There was no remorse shown by the appellant even after the incident. His plea of temporary psychic disorder was found unacceptable. The Apex Court applied retributive and deterrent theories of punishment and observed that it is the nature and gravity of the crime and not the criminal that were relevant for appropriate punishment. The court held that in the circumstances of the case, the death sentence was justified. It was observed that the brutality and cruelty with which the crime had been perpetrated, cannot but

shock the conscience of the society. It was observed : 'the punishment to be awarded for a crime must not be irrelevant, but it should confirm to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorance and it should 'respond to the society's cry for justice against the criminal'. If for such heinous crimes, the deterrent punishment for wanton and brutal murders is not-given, the case of deterrent punishment will lose its relevance. So there was no justification to commute the death penalty to imprisonment for life.

(b) In this case the Court put reliance on its own observations in an earlier case : 'Jashubha Bharat Singh Gohil v. State of Gujarat cited at (1994) 4 SCC 353 : 1994 AIR SCW 2360 where it was observed that the protection of society and deterring the criminals is avowed object of law and that is required to be achieved by imposing appropriate sentence. The change in legislative intendment relating to award of capital punishment, notwithstanding the opposition by the protagonist of abolition of capital punishment, shows that it is expected of the Courts to so operate the sentencing system as to impose such sentence which reflects the social conscience of the society. The sentencing process has to be stern where it should be.

(c) In the case of 'Dhananjay Chatterjee v. State of W.B. (1994) 2 SCC 220' the Supreme Court had held that the sentencing should be such that it does not weaken the judicial system's credibility.

(d) In the case of Major R.S. Budhwar v. Union of India decided along with 2 other connected appeals, cited at (1996) 9 SCC 502 : 1996 Cri LJ 2862 the Apex Court considered the justifiability of death sentence in a case where two appellants had committed the murders of 4 army officers, under threat, command and influence of their superior who instigated and influenced them to commit the murders by exploiting their religious feelings. The abettor was awarded only life imprisonment. There was evidence of post murder repentance of the appellants. It was held that in these facts and circumstances, although two of the murders were diabolically planned and committed in cold blood, the appellants did not deserve extreme penalty of death.

(e) AIR 1983 SC 594:(1983 Cri LJ 960) Javed Ahmad Abdul Ahmad Pawala v. State of Maharashtra. It was a case of cruel feindish murder of sister-in-law and 3 little children and robbery of ornaments by accused who was 22 years of age. The case rested on circumstantial evidence. It was held to be rarest of rare case and the accused was sentenced to death.

(f) AIR 1987 SC 1721 : 1987 Cri LJ 1885 titled Asrafilal & Sons v. State of U.P. It was a case of reprehensible and gruesome murder of 2 innocent girls to wreak personal vengeance over property dispute with their mother. The Supreme Court upheld the sentence of death imposed on the accused.

(g) Kamta Tiwari v. State of M.P. cited 1996 (6) SCC 250 : 1996 Cri LJ 4158. It was a case of rape and murder of 7 year old girl. The appellant had kidnapped the deceased, committed rape on her and strangulated her to death and threw the body in a well. It was held that in the circumstances of the case, the accused deserves death sentence. Again deterrent and retributive aspects of punishment were applied. It was held that this case was a rarest of rare cases where sentence of death was eminently desirable, not only to deter others from committing such atrocious crimes, but also to give emphatical expression to society's abhorance of such crimes.

39. We need not go into all the cases which have come up before the Supreme Court for considerations of propriety of death sentence when the murder charges are proved. The above cases are indicators for concluding what murders can be called cruel, diabolical, cold blooded, abhorring and revolting to conscience and showing depravity of mind of the accused. The Supreme Court has looked into the circumstances and methodology of crime adopted by the accused to find out what sort of criminal he is. No independent evidence need be gone into for that purpose, unless there are some indications showing that he was not as ruthless as the crime shows. In all these cases the guidelines laid down in the case of Bachansingh were followed and death sentences were approved.

40. The case before us is para materia to case of Kamta Tiwari v. State of M.P. 1996 Cri LJ 4158. We are also reminded of abduction, rape and murder of Chopra children in Delhi by 2 accused persons i.e. Billa and Ranga after kidnapping them

while they were on way to participating in some radio programme and made the mistake of seeking lift from the two accused who were going in a car. In spite of resistance, both were over powered and girl was raped and both the children were done to death in a cruel manner in a sprawling garden of Delhi. The Supreme Court confirmed the death sentence in that case on both the accused. That case is cited as Kuljeet Singh v. Union of India AIR 1981 SC 1572 : 1981 Cri LJ 1045. The present is no less heinous cruel. The accused have not been able to show any mitigating circumstance whatsoever.

41. The facts established in this case clearly show that'--

(i) These accused were present in the house as domestic help.

(ii) Ku. Naveen was minor aged less than 16 years.

(iii) The accused were expected to take care of Ku. Naveen.

(iv) Somvanshi the father of the girl had put faith on these accused as they had been working in the house for last one year.

(v) There was no cause for these accused to rape the girl except a depraved lust.

(vi) The accused persons not only committed gang-rape on her but also murdered her by strangulating and by stabbing her.

(vii) They put the dead body in the septic tank and concealed the clothes which had tell-tale marks of blood and semen.

(viii) They spoke lie to conceal their crime.

(ix) The entire offence was extremely brutal in character and carried out in a demonic manner suggesting extreme depravity of character on their part.

The present is a case which falls in the category of rarest of rare cases.

42. We are of the clear view that they deserve nothing less than the extreme penalty of death. There will be not only injustice to the society but sentencing will lose its relevance, if lesser penalty is given. The society may, in case of lesser

option, lose faith in the efficacy of justice system. The ends of justice in this case cry for extreme penalty of death to both the accused and nothing short.

43. We confirm the conviction on all the counts i.e. Under Section 376(2)(g) as well as Under Section 302, IPC, as well as Under Section 302/34, IPC and also Under Section 201, IPC. We confirm the death sentence of both the accused for the offence Under Section 302 as well as Under Section 302/34, IPC. Both the references Nos. 3 and 4 are accepted accordingly. We also confirm the sentences passed against them for offences Under Section 376 and 201, IPC. The appeal No. 525/97 is dismissed. Certified copy of this judgment shall be supplied to the convicts free of charge, immediately.

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