



2025:CGHC:22996-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRREF No. 1 of 2025

In Reference Of State Of Chhattisgarh Through- Police Station- Lemru, District Korba, Chhattisgarh.

--- Petitioner

versus

- 1** - Santram Manjhwari S/o Dheersay Manjhwari Aged About 45 Years R/o Satrenga, Police Station- Lemru, District Korba, Chhattisgarh.
- 2** - Anil Kumar Sarthi S/o Bharat Lal Sarthi Aged About 20 Years R/o Satrenga, Police Station- Lemru, District Korba, Chhattisgarh.
- 3** - Pardeshi Das S/o Budhwar Das Aged About 35 Years R/o Satrenga, Police Station- Lemru, District Korba, Chhattisgarh.
- 4** - Anand Das S/o Horidas Panika Aged About 26 Years R/o Satrenga, Police Station- Lemru, District Korba, Chhattisgarh.
- 5** - Abdul Jabbar Urf Vikki S/o Mo. Ikbaal Memon Aged About 21 Years R/o Satrenga, Police Station- Lemru, District Korba, Chhattisgarh.

--- Respondents

For Petitioner/State	: Mr. Shashank Thakur, Deputy Advocate General
For Respondent(s)	: Ms. Sharmila Singhai, Senior Advocate Mr. Dheeraj Wankhede and Mr. Chetan Singh Chauhan, Advocates.

CRA No. 357 of 2025

Abdul Jabbar Alias Vikki S/o Mohd. Iqbal Memon Aged About 24 Years R/o
Satrenga, Police Station Lemru, District Korba, Chhattisgarh

---Appellant

Versus

State Of Chhattisgarh Through The Police Station Lemru, District Korba
Chhattisgarh

-- Respondent

For Appellant	:	Mr. Dheeraj Kumar Wankhede, Advocate
For Respondent(s)	:	Mr. Shashank Thakur, Deputy Advocate General

CRA No. 574 of 2025

1 - Santram Manjhwari S/o Dhirsai Manjhwari Aged About 45 Years R/o
Satrenga, P.S. Lemru, District Korba (C.G.)

2 - Anil Kumar Sarthi S/o Bharat Lal Sarthi Aged About 20 Years R/o
Satrenga, P.S. Lemru, District Korba (C.G.)

3 - Umashankar S/o Fekuram Yadav Aged About 22 Years R/o Satrenga, P.S.
Lemru, District Korba (C.G.)

4 - Pardeshi Das S/o Budhwar Das Aged About 35 Years R/o Satrenga, P.S.
Lemru, District Korba (C.G.)

5 - Anand Das S/o Horidas Panika Aged About 26 Years R/o Satrenga, P.S.
Lemru, District Korba (C.G.)

---Appellant(s)

Versus

State of Chhattisgarh Through Police Station Lemru, Korba (C.G.)

--- Respondent

For Appellant(s)	:	Ms. Sharmila Singhai, Senior Advocate assisted by Mr. Chetan Singh Chauhan, Advocate.
For Respondent(s)	:	Mr. Shashank Thakur, Deputy Advocate General

Hon'ble Mr. Ramesh Sinha, Chief Justice

Hon'ble Mr. Bibhu Datta Guru, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

11/06/2025

1. Criminal Appeal No. 357/2025 and 574/2025 have been preferred by the respective appellants challenging the judgment of conviction and order of sentence dated 15.01.2025 passed by the learned Additional Sessions Judge, F.T.S.C. (POCSO) Korba, District Korba, in Special Case (POCSO) No. 28/2021 awarding the following sentences to the appellants, which were to run concurrently:

Sl.No	Conviction under Section	Sentence	Fine	Default Sentence
Appellants-Santram Manjhwari, Anil Kumar Sarthi, Pardeshi Das, Anand Das and Abdul Jabbar @ Vikki				
1	302/149 of the Indian Penal Code (for short, the IPC) (three counts)	Death sentence	-	-
2	120B of the IPC	Life imprisonment	Rs. 3000/-	3 months Rigorous imprisonment (for short, RI) more.
3	148 of the IPC	3 years RI	Rs. 1000/-	1 month RI more
4	376(DA)/149 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, POCSO Act)	Death Sentence	-	-
5	376(A)/149 IPC and Section 6 of the POCSO Act	Death Sentence	-	-
6	3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short, the Atrocities Act)	Life imprisonment	Rs. 5000/-	6 months RI more.

7	3(1)(w) of the Atrocities Act	5 years R.I	Rs. 5000/-	6 months R.I more.
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Sl.No	Conviction under Section	Sentence	Fine	Default Sentence
Appellant-Umashankar Yadav				
1	302/149 of the IPC (three counts)	Life imprisonment	Rs. 2000/-	3 months RI more.
2	120B of the IPC	Life imprisonment	Rs. 3000/-	3 months RI more.
3	148 of the IPC	3 years RI	Rs. 1000/-	1 month RI more
4	376(DA)/149 IPC and Section 6 of the POCSO Act	Life imprisonment which shall mean imprisonment for remainder of natural life	Rs. 3000/-	3 months RI more
5	376(A)/149 IPC and Section 6 of the POCSO Act	Life imprisonment which shall mean imprisonment for remainder of natural life	Rs. 3000/-	3 months RI more
6	3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (<i>for short, the Atrocities Act</i>)	Life imprisonment	Rs. 5000/-	6 months RI more.
7	3(1)(w) of the Atrocities Act	5 years R.I	Rs. 3000/-	3 months R.I more.

2. The learned Additional Sessions Judge, in exercise of power conferred under Rule 273(b) of the Rules and Orders (Criminal) and Section 366 of the Code of Criminal Procedure, 1973 (*for short, the Cr.P.C.*), after passing the sentence of death in respect of appellant-Santram Manjhwari, Abdul Jabbar @ Vikki, Anil Sarthi, Anand Das and Pardeshi Das, submitted the proceedings to this Court for confirmation and this is how this death reference is before us for consideration alongwith the appeals preferred by the appellants/convicts being Cr.A. No. 357/2025 and 574/2025.

3. The admitted facts are that the victim/deceased 'B' who was a minor aged about 16 years, was the daughter of deceased 'A' and deceased 'C' was a minor child aged about 4 years and grand-daughter of deceased 'A'.
4. The prosecution story, in brief is that deceased persons 'A', 'B' and 'C' along with their entire family used to live at the house of appellant-Santram Manjhar and graze his cattle. In lieu of doing the said work, an agreement was made for Rs.8,000 per year and 10 kg rice per month, but Santram Manjhar did not pay the dues for the entire year and had given only Rs. 600 for grazing the cattle and only 10 kg of rice was given per month. When asked for the remaining money, Santram Manjhar used to evade the question. On 29.01.2021, the complainant/wife of deceased 'A' had gone to appellant Santram to settle the accounts for grazing the cattle and said that they will go back to their own home, then appellant-Santram said okay and gave Rs.600 cash, some pulses, rice and clothes and then they came back saying that they were going to their home. On the date of incident i.e. 29.01.2021, the deceased persons were at the bus stand of village Satrenga to go to their village when appellant - Satram Manjhar conspired with his accomplice and other accused persons and reached the bus stand and told the deceased and their other heirs that we will drop them on a motorcycle and stopped them from boarding the bus and took them away in their motorcycles. He took them along till Korai village, after that he sent the deceased A's wife/complainant ahead on a motorcycle but stopped deceased 'A', 'B' and 'C'. The appellants/accused stopped on the way and drank alcohol and made the deceased drink alcohol and the accused persons executed the common objective under the pre-planned conspiracy and took the victim/deceased 'B' to the incident site and raped her. When deceased 'A' opposed this, he was beaten with sticks and stones and done to death. The victim/deceased 'B' was also assaulted by stones and left her

thinking that she was dead. The deceased 'C' was also killed by slamming her on a stone.

5. When the deceased persons did not reach their home, their whereabouts were searched by the complainant-wife (PW-2) of deceased 'A' along with his son. She also went to the house of accused Santram for enquiry but on not getting any information, she went to the police station and informed the situation. On 02.02.2021, on the information of the complainant/son (PW-1) of the deceased 'A', a missing person case was registered as per Ex.P-59 in respect of the deceased persons and investigation was done. On the said date, when the police team went to the house of appellant-Satram Majhwar, all the accused were found present. On interrogation by the police, Satram Manjhwar and Abdul Jabbar told that they had raped the victim/deceased 'B' and all the accused together had caused hurt and strangulated the deceased 'A', 'B' and 'C' and had thrown them in the forest. On going to the place mentioned by the accused persons along with the police team, deceased 'A' and 'B' were found lying dead, whereas the victim/deceased 'B' was alive but in an unconscious state. On giving the information to this effect, on 02.02.2021 at the Lemru Police Station by the complainant/son (PW-1) of the deceased 'A', an unnumbered merg intimation (Ex.P-1) was registered under Section 174 Cr.P.C. Thereafter, *Dehati Nalishi* was registered under Section 154 Cr.P.C. at 6 p.m. vide Ex.P-2 and the numbered FIR (Ex.P-64) was registered on the same night at 10:30 p.m. at Police Station, Lemru against the appellants. Numbered merg was also recorded on 02.02.2021 at 10 p.m. in respect of deceased 'A' and 'C' vide Ex.P/61 and P/62. On the identification of the accused, the bodies of the deceased 'A' and 'C' were recovered on 02.02.2021 at 13.00 p.m. through recovery *panchanama* Ex.P-33 and Ex.P-34 in presence of witnesses. Inquest with respect to deceased 'A' and 'C' were prepared vide Ex.P-29

and P-30. At that time, the victim/deceased 'B' who was alive, as sent to District Hospital Korba for treatment alongwith the application of Ex.P-49, but on reaching the hospital, the victim/deceased 'B' was found to be dead. Upon the information sent by Ward Boy Ravindra Kumar Rathore of District Hospital Korba, vide Ex.P-48, an unnumbered merg was registered vide Ex.P/69 in respect of victim/deceased 'B' and after preparing the inquest (Ex.P/31), the dead bodies of the deceased 'A' and 'C' was sent for postmortem on 02.02.2021 and the dead body of the victim/deceased 'C' was sent for postmortem on 03.02.2021 and their reports were obtained vide Ex.P-50, P-51 and P-52. After postmortem examination, the clothes of the deceased, under wear of the victim/deceased 'B', vaginal slides, pubic hair were seized vide Ex. P-71 to P-73.

6. Blood stained stone, *gamchha*, blood stained and plain soil, liquor stained plastic and steel glasses, two plastic bottles found near the dead body of the deceased 'A' at the place of incident were seized vide seizure memo Ex.P. 35. Blood stained stone, blood stained and plain mud found near the dead body of the deceased 'C' at the place of incident were seized through seizure form Ex.P. 36. Blood stained stone, blood stained and plain soil found near the body of deceased 'B' at the place of incident were seized through Ex.P. 37. On 03.02.2021 the accused were taken into custody and interrogated and memorandum statements Ex.P-13 to Ex.P-18 were recorded and as per the statement given by the appellants/accused, it was revealed that the accused Santram and Abdul Jabbar @ Vikki had forcefully raped the victim/deceased 'B' one after another and it was also revealed that the accused persons killed deceased 'A' by hitting him with a stick and stone, killed deceased victim 'B' and deceased 'C' by hitting them on their head with stones and strangulating them and hid their bodies in a pit. Accused Abdul Jabbar took the bamboo stick with him, accused Santram

took the bag of the deceased with him, threw the two steel glasses, disposable glass and liquor bottle used for drinking liquor in the forest itself and took the motorcycle used in the incident home and hid the clothes worn by the accused at the time of the incident by taking them home and hid them.

7. On the basis of the aforesaid memorandum of the accused persons, on 03.02.2021, a blue cream colored jeans full pant having blood like stains near the left thigh and near the leg, a bamboo stick on which blood was visible on the torn side and blue underwear worn on the date of incident were seized from accused Abdul Jabbar @ Vikki from beside his house through seizure memo Ex.P-19. A blue colored shirt having a stain near the right shoulder was seized from accused Pardeshi Das on his presenting from inside his house vide seizure memo Ex.P-20. On presenting by the accused Anand Das from inside his house, a light blue colour shirt with a stain on its right front side, a motor cycle and RC book Ex.P.21 were seized through a seizure memo. On the production by the accused Anil Kumar Sarathi, the jeans worn at the time of the incident which had blood near the zip and a black coloured T-shirt which had blood near the left pocket and the photocopy of the RC book of the motor cycle used in the incident were seized vide Ex.P-22. On production by the accused Umashankar Yadav, an old blue colour jeans which had blood like stain near the zip and the photocopy of the motor cycle and its registration certificate were seized vide seizure form Ex.P-23. On the production by the accused Santram, the bag of the deceased which contained clothes of daily use of deceased 'A' and his family members, cash amount of Rs. 580 and Aadhar Card of deceased 'A' and victim/deceased 'B', purple coloured shirt worn by accused Santram at the time of the incident which had blood like stain near the right hand wrist, the motor cycle and RC book, used in the incident were seized as per

Ex.P- 24. Blood samples of the accused persons were obtained as vide Ex.P-92. The accused were arrested on 03.02.2021 vide arrest memo Ex.P-38 to P-43 and the information with regard to their arrest was given to their family members vide Ex.P-80 to P-85. The MLC of the accused persons was conducted vide Ex.P-74 to P-49.

8. During the investigation, on 06.02.2021, documents relating to the victim/deceased 'B' was seized from the concerned school. On 06.02.2021 itself, the children's weight record register of the Anganwadi Centre in relation to the deceased 'C' was presented by the Anganwadi worker and the seizure was made vide Ex.P-06. During the investigation of the merg, the map of the incident site was prepared vide Ex.P-03 and Ex.P-04 dated 02.02.2021. During the investigation of the crime, the Patwari got the map of the incident site prepared vide Ex.P-25. On a notice dated 02.02.2021 being given by the police with regard to production of the caste certificate with relation to the caste of the deceased, the caste certificate of the deceased 'A', 'C' and their son/complainant was seized vide Ex. P-8, P-9 and P-10. On 09.02.2021, query report was obtained with respect to the articles seized from the accused persons and the place of incident, and further, the seized articles were sent to the Regional Forensic Science Laboratory and its report was obtained vide Ex. P-98. The finger print report of the accused was also obtained vide Ex.P-99.
9. After completion of the investigation, when the Police found that offence is made out against the appellants/convicts, charge sheet was filed before the learned learned trial Court. The learned trial Judge, framed charges against the appellants/convicts on 28.11.2024 for the offences punishable under Sections 120-B, 302/149 (three counts), 376-DA/149 and 376(A)/149 IPC and Section 6 of POCSO Act, Section 148, Section 3(2)(v) of the Atrocities Act and Section 3(1)(w) of the Atrocities Act . The appellants/convicts

denied the charges and prayed for trial.

- 10.** In order to bring home the offence, the prosecution examined as many as 23 witnesses namely son of deceased 'A' (PW-1), wife of deceased 'A' (PW-2), Ganesh Singh Paikra (PW-3), Santosh Kumar Armo (PW-4), Tempuram (PW-5), Krishna Kumari (PW-6), Sukwar Sai (PW-7), Jagatram (PW-8), Jairam Das (PW-9), Jaisheela Paikra (PW-10), Rajendra Kumar Yadav (PW-11), Dr. Sumit Gupta (PW-12), Vinod Tiwari (PW-13), Dr. K.B.Sonkar (PW-14), Dr. Madhu Anand Banjare (PW-15), Ajuram Khushram (PW-16), Tankeshwar Yadav (PW-17), Kuldeep Singh Katlam (PW-18), Rajendra Kumar Khuntey (PW-19), Dr. Ravikant Singh Rathore (PW-20), Yogesh Sahu (PW-21), Sanjay Kumar Ratre (PW-22) and Dr. Diksha Roy (PW-23) and exhibited as many as 99 exhibits and four documents vide Ex.C/1 to C/4.
- 11.** The statement of the appellants/convicts under section 313 CrPC were recorded in which they have expressed their ignorance to the most of the questions and some of them were denied as well. They submitted that they were innocent and have been falsely implicated in this case.
- 12.** The learned trial Judge, after considering the evidence on record, convicted the appellant/accused as detailed in the opening paragraph of this judgment. Hence, the present appeals by the appellants/convicts.
- 13.** Ms. Singhai, learned counsel appearing for the appellants-Santram Manjhar, Anil Kumar Sarthi, Umashankar, Pardeshi Das, Anand Das, and Mr. Dheeraj Kumar Wankhede, learned counsel appearing for the appellant-Abdul Jabbar submit that the action taken by the police is not proved by the statements of the prosecution witnesses. The evidence of the memorandum and the witness of the seizure does not support the said action. The dead body was not recovered from the place of incident on the basis of the

information given by the accused persons, rather the police had already come to know about the dead body being found at the place of incident. There is a lot of contradiction in the statements of the mother and brother of the victim/deceased and the remaining witnesses have turned hostile. There is no eye witness to the incident. The chain of circumstantial evidence is not complete. Evidence of the accused being seen with the deceased for the last time just before the bodies were recovered has not been proved. There is no proof of the blood of the deceased being found on the clothes of the accused and the blood of the accused being found on the clothes of the deceased has not been proved. The investigation proceedings are vitiated. No crime has been committed by the appellants and they have been roped in this case on the basis of suspicion. The prosecution has failed to prove its case beyond reasonable doubt.

14. Ms. Singhai next submits that the son (PW-1) of the deceased 'A', in his deposition before the Court has stated that only appellant-Abdul Jabbar and Santram had committed rape upon the victim/deceased 'B', whereas according to Ganesh Singh Paikra (PW-3), the appellant-Santram Manjhar, Abdul Jabbar @ Vikki, Anand Das and Pardeshi Das and as such there is contradiction. Though the blood has been found on the articles seized by the police, however, blood group could not be conclusively established. Furthermore, as per the report Ex. P-99, finger prints of only Anil Kumar Sarthi was found on the steel glass. The DNA report (Ex.C-4) report is doubtful as Umashankar's DNA was found over the undergarments of the victim/deceased 'B' who was incapable of performing sexual intercourse.
15. In support of the above submission, Ms. Singhai places reliance on the decisions of the Supreme Court in **Manoj & Another v. State of Madhya Pradesh** {(2023) 2 SCC 353}, **Rahul v. State of Delhi** {(2023) 1 SCC 83},

Ravinder Singh v. State of Punjab {(2022) 7 SCC 581}, ***Lochan Shrivastava v. State of Chhattisgarh*** {(2022) 15 SCC 401}, ***Bhagwati v. State of Madhya Pradesh*** {(2022) 13 SCC 365} and ***Bachan Singh v. State of Punjab*** {(1980) 2 SCC 684}.

16. It is further argued by Mr. Wankhede, learned counsel for the appellant-Abdul Jabbar, that the learned trial Court ought to have ensured that each and every chain including the chain of forensic evidence is complete. In the present case admittedly, there is no positive report of articles which were claimed to be seized from the present accused persons, and secondly, in serology report, it was found that no blood was found on the clothes of the accused persons. In present case, as per the case of the police, the appellant alleged confession to the police which is undoubtedly inadmissible under Section 25 and 26 of the Indian Evidence Act, 1872, particularly since it was made while in police custody. Even if such statement had been made that should be corroborated by unimpeachable independent evidence which is clearly missing in present case. Therefore, the conviction and the sentence awarded by learned trial Court is bad in law. A bare perusal of the memorandum statement of the accused persons under Section 27 of the Indian Evidence Act clearly shows that all the memorandum statements recorded by the police are very similar with respect to their contents. The police have seized club and stone from an open area and it is also relevant to mention here that no independent witness credibly deposed that the discovery of the above weapons confirms the clear location of place, therefore, the recovery of weapon is also doubtful in present case and the conviction of the appellant purely made on discovery of weapon that is unsustainable. The learned trial court discussed the recovery of articles from the accused-Abdul Jabbar at paragraph No. 124 and 131 of the impugned judgment. It is pertinent to mention here that the only witness

corroborating the seizure of articles at Ex. P-19 from the accused Abdul Jabbar is Ganesh Singh Painkra (PW-3) who did not state the material facts at the time of his examination-in-chief in the first instance before the learned trial court. He stated about the recovery only after the public prosecutor asked him leading questions under Section 142 of Indian Evidence Act with respect to the recovery. It is humbly submitted that the only chain connecting the independent witness and seizure of evidence by the police before the learned trial court is unreliable because the witness PW-3 could not state the facts on his own. It is further submitted that the learned trial Court ought not to have granted permission to ask leading questions to PW-3 since the statements of PW-3 were neither introductory nor undisputed and had not already been sufficiently proved.

17. Mr. Wankhede further submits that the learned trial court in paragraph No. 76 stated that the PW-2 (wife of deceased) deposed that she witnessed the accused Abdul Jabbar accompanying the victims in a bike. From the initial stage of date of incident, the appellant has consistently maintained that he was not with co-accused persons at the time of incident but the police have recorded a memorandum in police custody alleging that the appellant was one of the members with the co-accused persons at the time of incident. The learned trial court in paragraph No. 76 stated that the PW-2 (wife of deceased) deposed that she witnessed the accused Abdul Jabbar accompanying the victims in a bike before the commission of crime. The learned trial court further stated in paragraph No. 80 that the credibility of PW-2 is not impeached. It is humbly submitted that PW-2 in her examination-in-chief categorically stated that she does not recognize the accused persons. Further, the learned trial court permitted the public prosecutor to put any question to PW-2 which might be put in cross-examination by the opposite party. Essentially, the PW-2 disclosed about

the accused Abdul Jabbar accompanying the victims only after leading questions were put to her by the Public Prosecutor. Hence, the evidence of PW-2 is not independent and credible and cannot be relied upon. Lastly, he would submit that if this Court arrives at a conclusion that the appellant is guilty of the offence, in that case, the penalty of death sentence awarded by the learned trial Court is too harsh and the present case does not fall under the category of rarest of the rare case and as such, this Hon'ble Court may modify the sentence part.

- 18.** The prosecution's case is premised solely on circumstantial evidence and there is no chain of circumstances is far from complete and cannot form the basis for a conviction according to the appellant, the prosecution failed to establish each link of the chain in a manner that unequivocally points to the appellant's guilty and exclude every other hypothesis. In the case of circumstantial evidence, the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the *factum probandum*, the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability, in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits, in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, and if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted. The learned trial Court in paragraph No. 70 has laid down the circumstantial facts on the basis of which the accused persons have been convicted. It is pertinent to mention here that the name of accused Abdul Jabbar is not forthcoming in the circumstance number (i), (iii), (v), (vi), (viii), (xi), (xiv), and (xv). In support of his contentions, Mr. Wankhede place reliance on the

judgment of the Apex Court in **Bachan Singh** (supra) and subsequent decisions, including **Machhi Singh v. State of Punjab** {(1983) 3 SCC 470} and **Manoj** (supra).

19. It is further submitted that the Court below overlooked mitigating factors, such as the appellant's age, lack of criminal antecedents, and possibility of reformation. Death penalty is said to be an exception, not the norm, and must be imposed only when the alternative of life imprisonment is unquestionably foreclosed. It is undisputed that in present case there is no direct or oral evidence linking the appellant to the crime. Lastly, learned counsel appearing for appellants/convicts submit that even if it is assumed that the offence has been committed by the appellants, the present would not fall under the rarest of the rare case and the death penalty awarded to them by the learned trial Court deserves to be interfered with.
20. On the other hand, Mr. Shashank Thakur, learned Deputy Advocate General appearing for the State/respondent submits that the learned trial Court has committed no error by convicting and sentencing the appellants as detailed in the opening paragraph. The appellants have committed murder of three persons deceased 'A', deceased 'B' and deceased 'C' out of which deceased 'B' was a minor aged about 16 years and deceased 'C' was a girl child aged about 4 years. Deceased 'B' was not only murdered, but before her death, she was brutally murdered. The appellants even did not spare the little girl child of 4 years who was slammed on a stone and done to death. The statement of witnesses and the materials available on record clearly proves that it is the appellants who had committed the crime in question and they have rightly been awarded the death penalty. The judgment passed by the learned trial Judge is just and proper warranting no interference, and as such, both the criminal appeals filed by the respective appellants deserve to be dismissed.

21. It is not in dispute that the death of the deceased 'A', 'B' and 'C' was homicidal in nature as the postmortem report clearly indicates that the death was homicidal. The postmortem report in respect of victim/deceased 'B' states the following injuries:

- *Lacerated wound of size l=5 inch, b=2 ½ inch on upper side and 1 ½ inch on lower side x 0.5 c.m. depth present on left temporal region, upper side of left ear.*
- *Abrasion of size 5 c.m. x 1 c.m. present on right cheek lateral side of right eye, black in colour and abrasion of 1 x 1 c.m. right ear lower side and abrasion of 1 x 0.5 c.m. present just above the lateral part of right eyebrow.*
- *Blackish discoloration was present around both eyes and in left cheek in front of left ear.*
- *Dried blood coming from corner of left side of mouth going till left ear and dry blood coming from left nose.*
- *Multiple abrasion present in front of right arm, elbow of size 1 x 1 c.m., 3 x 1 c.m., 3x2 c.m.*
- *Lacerated wound of size 2x0.5x0.5 c.m. present in right hand palm.*
- *Extensive scalp hematoma present in right parieto temporal occipital region and scalp hematoma of size 8x6 c.m. present on left temporal parietal region. Skull bone intact. Subdural hematoma present on left temporal-parietal region of size 10x8 c.m. and subdural hematoma right parieto-temporal region of size 15x10 c.m. Brain matter pale.*

On examination of the private part of the deceased/victim, labia majora was found separated apart widely, vaginal orifice opened 2.5 c.m.x 2.5 c.m. and hymen was found teared. The Doctor i.e.Dr. K.B.Sonkar (PW-14) who had conducted the postmortem opined that the cause of death was severe head injuries and the time since death was within 24-36 hours prior to postmortem examination. He further observed that signs of sexual assault were present in the genital organs and the nature of death was homicidal.

22. In the postmortem report of deceased 'A', the following injuries were found.

- *Bleeding from nose to ear.*
- *Swelling and lacerated wound at mid part of occipital region. Measurement 5X5 cm fracture skull with rupture brain material and big hematoma present. Caused by hard and blunt object which is fatal in nature.*

Dr. Madhu Anand Banjare (PW-15) opined the cause of death to be shock due to massive hemorrhage from injured part and seemed to be homicidal in nature and the duration of death was approximately within 2-3 days prior to autopsy.

23. On postmortem examination of deceased 'C', Dr. Madhu Anand Banjare (PW015) found lacerated wound on face at right cheek extended from intransit of ear angle of mouth. Some part of injury clotted blood present measurement 11x6 c.m. with fracture present on right maxillary bone caused by hard and blunt object which is fatal in nature. The cause of death was opined to be shock due to massive hemorrhage from injured part and seemed to be homicidal.

24. The learned trial Court, relying upon the statement of Dr. K.B.Sonkar (PW-14) and Dr. Madhu Anand Banjare (PW-15) who had conducted postmortem of the deceased persons have clearly come to the conclusion that death of deceased was homicidal in nature. The said finding recorded by the trial Court is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. Even otherwise, it has not been seriously disputed by the learned counsel for the appellants. We hereby affirm the said finding.

25. So far as the age of the victim/deceased 'B' is concerned, the same has also been found to be proved by the learned trial Court, on the basis of documentary evidence i.e. the Admission/Discharge register (Ex. P-46C)

according to which the date of birth of the victim was 11.04.2005 and she had taken admission in Class 1 of that school. On the basis of the said document, which has not been even otherwise challenged by the appellants, as on the date of incident i.e. 29.01.2021, the age of the victim was 15 years 9 months and 18 days. Hence, the same is also a finding of fact which is neither perverse nor contrary to record. As such, on the date of the incident, the victim was a minor.

- 26.** So far as the caste of the deceased is concerned, it is an admitted position that the deceased belonged to Hill Korwa caste which is Scheduled Tribe category which is apparent from Ex.P-8, P-9 and P-10. This fact has not even been disputed by the learned counsel for the appellants. The appellants and the deceased were well known to each other and as such, there was no occasion to observe that the appellants did not knew the social status/caste of the deceased persons.
- 27.** With regard to commission of rape, in the postmortem report (Ex.P-50), Dr. K.B.Sonkar had clearly opined that the victim was sexually assaulted as the hymen was found ruptured and labia majora was found separated apart widely. The MLC of all the appellants were conducted in which the appellants and the report regarding which is Ex.P-74, 76 to P-79 wherein Dr. R.S.Rathore (PW-20) has found them capable of performing sexual intercourse. The only appellant who was found incapable of performing sexual intercourse was Umashankar Yadav as there was a history of traumatic amputation of penis two years back and only a small opening of site of penis was present and with respect to Umashankar Yadav, the Doctor had opined that he was incapable of performing sexual intercourse.
- 28.** The disclosure made by the appellants in their memorandum (Ex.P-13 to P-18) corroborates with the prosecution story and on the basis of disclosure, incriminating evidence have been found. From appellant Abdul Jabbar, one

Full Pant, Bambook Stick, underwear were seized, from appellant-Pardeshi Das, blue coloured Shirt, from appellant-Anand Das, one light blue coloured shirt, motorcycle, registration certificate of the said byke, from appellant-Anil Kumar Sarthi, one black Jeans, one black T-Shirt and one motorcycle were seized, from appellant Umashankar, one Blue Jeans, one motorcycle, registration certificate were seized, and from the appellant-Santram Manjhwari, a bag containing belongings of the deceased, viz. clothes, Aadhar Card and cash of Rs. 580, were recovered. Further, his own T-shirt, motorcycle, registration certificate were also seized in presence of Rathram Rathore and Ganesh Singh Paikra (PW-3).

- 29.** The FSL report (Ex. P-98) states that blood was found on various articles viz. A-stone, B-stone, C-soil, E-stone, F-stone, G-stone, H-soil, J-soil, seized from the place of incident, L1-leggings, L2-frock, L3-chunri, L4-shawl (of the victim/deceased-B), M-jacket, N-T.Shirt, O-Half Pant (of deceased A), P-Shirt (of deceased C), R-shirt of Santram, S-Jeans Pant, T-T.Shirt of appellant-Anil, U-shirt of appellant Pardeshi, V-shirt of appellant Anand, W-Jeans Full Pant, X-Danda seized from appellant-Abdul Jabbar, Z-Jeans pant of appellant-Uma Shankar and क-Gamchha seized from the place of incident, and human blood has been found on the Articles A, B, E, F, G, H, J, L1, L2, L3,L4, M, N, O, P, R, S, T, U, V, W, X, Z and क. Further, as per the opinion of the Finger Print expert, the finger print of the appellant-Anil Sarthi has been found on the steel glass seized from the place of incident. So far as DNA report is concerned, Exhibits G(515/21), H (152/21), I (153/21) and J (154/21), which is in respect of the undergarment, hairs found in the nails, slide and pubic hair of the victim/deceased 'B', mixed DNA profile has been obtained and the DNA of the appellant-Santram Manjhwari has been found in the undergarment of the victim/deceased 'B'

which is a conclusive proof of having committed the rape of the said deceased.

30. From the deposition of the mother (PW-1) of the victim/deceased 'B', it is well established that the appellant-Santram wanted to marry the victim/deceased 'B' but the victim/deceased 'B' never wanted to marry Santram. Hence, the motive for commission of rape and thereafter, murder which stands proved.
31. The learned trial Court has very rightly observed vide paragraph 70 of the judgment and highlighted the circumstances which goes to suggest that it is the appellants who are the author of the crime in question. The deceased were working in the home of the appellant-Santram, when the deceased 'A' and his wife wanted to go to their home, then appellant-Santram and Umashankar came to accompany them and the other co-accused persons also came on two motorcycles and they were lastly seen alongwith the appellants. When the deceased persons went missing, the wife of the deceased 'A' went to the house of the appellant-Santram where his conduct was found to be suspicious. PW-1, wife of the deceased 'A' and mother of deceased 'B' had duly lodged the missing report of deceased 'A', 'B' and 'C'. The doctors have found the death of the three deceased persons to be homicidal in nature, and except for the appellant-Umashankar, all the other appellants were found to be capable of performing sexual intercourse. The dead body of deceased 'A' and 'C' was found at the instance of the appellants and the victim/deceased 'B' was found in an unconscious condition from the place of incident. Further, from the memorandum of the appellants, incriminating materials have been seized from the appellants and the nature of injuries caused was possible from the stones, and *Danda* seized. Human blood has also been found on the seized articles, finger print of the appellant-Anil Sarthi was found on the steel glass used for consuming

alcohol, DNA report also confirms commission of rape by the appellant-Santram Manjhwari.

- 32.** Thus, after appreciating the entire ocular and medical evidence on record, we do not find any illegality in appreciation of oral, medical and circumstantial evidence or arriving at a conclusion as to the guilt of the appellants by the trial Court warranting interference by this Court and we accordingly hereby affirm the conviction of the appellants recorded under Section 302/149 of the IPC (three counts), 120B of the IPC, 148 of the IPC, 376(DA)/149 of the IPC and Section 6 of the POCSO Act, Section 376(A)/149 IPC and Section 6 of the POCSO Act, Section 3(2)(v) of the Atrocities Act and 3(1)(w) of the Atrocities Act.
- 33.** Now, the question is whether the case is covered under the "rarest of the rare case" and the death sentence awarded to the appellants is justified.
- 34.** Death penalty or imprisonment for life for the commission of murder under Section 302 of the IPC has been provided. In case of conviction under Section 302 of the IPC or any conviction for an offence punishable with death or in the alternative imprisonment for life, the Court is required to assign special reasons for awarding such penalty and the special reason for awarding death sentence in accordance with sub-section (3) of Section 354 of the CrPC. Sub-section (3) of Section 354 of the CrPC reads as under:
- “S. 354 (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.”*
- 35.** The language of Section 354(3) of the Cr.P.C demonstrates the legislative concern and the conditions which need to be satisfied prior to imposition of death penalty. The words, 'in the case of sentence of death, the special

reasons for such sentence' unambiguously demonstrate the command of the legislature that such reasons have to be recorded for imposing the punishment of death sentence i.e. the Court is required to hold that it is a case of rarest of rare warranting imposition of only death sentence.

36. In ***Machi Singh v. State of Punjab*** {(1983) 3 SCC 470}, the Apex Court has held that:

"I. Manner of commission of murder.

33. When the murder is committed in an extremely brutal, grotesque diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,

(i) when the house of the victim is set aflame with the end in view to roast him alive in the house,

(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death,

(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II. Motive for commission of murder.

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-à-vis whom the murderer is in a dominating position or in a position of trust. (c) a murder is committed in the course for betrayal of the motherland.

III. Anti-Social or socially abhorrent nature of the crime.

35.(a) When murder of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such

persons and frighten them into fleeing from a place or in order to deprive them or, make them with a view to reverse past injustices and in order to restore the social balance.

(b). In cases of 'bride burning' and what are known as 'dowry-deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. Magnitude of crime.

36. When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V. Personality of victim of murder

37. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder, (b) a helpless woman or a person rendered helpless by old age or infirmity, (c) a person vis-à-vis whom the murderer is in a position of domination or trust, (d) a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similarly reasons other than personal reasons."

37. In ***Ravji v. State of Rajasthan*** {(1996) 2 SCC 175}, where the Apex Court held that it is only characteristics relating to crime, and not to criminal, which are relevant for sentencing. The Apex Court observed as follows :

"24.....The crimes had been committed with utmost cruelty and brutality without any provocation, in a calculated manner. It is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to

be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry to justice against the criminal'."

38. In **Swamy Shraddananda (2) v. State of Karnataka** {(2008) 13 SCC 767}, the Apex Court observed:

"The inability of the criminal justice system to deal with all major crimes equally effectively and the want of uniformity in the sentencing process by the Court lead to a marked imbalance in the end results. On the one hand there appears a small band of cases in which the murder convict is sent to the gallows on confirmation of his death penalty by this Court and on the other hand there is a much wider area of cases in which the offender committing murder of a similar or a far more revolting kind is spared his life due to lack of consistency by the Court is giving punishments or worse the offender is allowed to slip away unpunished on account of the deficiencies in the criminal justice system."

39. In **Raj Kumar v. State of Madhya Pradesh** {(2014) 5 SCC 353} a case concerning the rape and murder of a 14 years old girl, the Apex Court directed the appellant therein to serve a minimum of 35 years in jail without remission.

40. In **Selvam v. State** {(2014) 12 SCC 274}, the Apex Court imposed a sentence of 30 years in jail without remission in a case concerning the rape of a 9 year old girl.

41. In **Tattu Lodhi v. State of MP** {(2016) 9 SCC 675}, where the accused was found guilty of committing the murder of a minor girl aged 7 years, the Apex Court imposed the sentence of imprisonment for life with a direction not to release the accused from prison till he completes the period of 25

years of imprisonment.

42. In **Sachin Kumar Singhraha v. State of MP** {(2019) 8 SCC 371} where the accused was sentenced capital punishment for the offence of rape and murder of 5 year girl, the Apex Court converted the sentence into life imprisonment for 25 years without remission and has observed:

"Life imprisonment is the rule to which the death penalty is the exception. The death sentence must be imposed only when life imprisonment appears to be an altogether inappropriate punishment, having regard to the relevant facts and circumstances of the crime."

43. The Apex Court in the case of **Mohd. Firoz v. State of Madhya Pradesh (Criminal Appeal No. 612 of 2019, decided on 19.04.2022)** has commuted the death sentence imposed on man for rape and murder of 4 year old girl to life imprisonment. Para-43 of the aforesaid order dated 19.04.2022 reads as under :

"43. Considering the above, we, while affirming the view taken by the courts below with regard to the conviction of the appellant for the offences charged against him, deem it proper to commute, and accordingly commute the sentence of death for the sentence of imprisonment for life, for the offence punishable under Section 302 IPC. Since, Section 376A IPC is also applicable to the facts of the case, considering the gravity and seriousness of the offence, the sentence of imprisonment for the remainder of appellant's natural life would have been an appropriate sentence, however, we are reminded of what Oscar Wilde has said - "The only difference between the saint and the sinner is that every saint has a past and every sinner has a future". One of the basic principles of restorative justice as developed by this Court over the years, also is to give an opportunity to the offender to repair the damage caused, and to become a socially useful individual, when he is released from the jail. The maximum punishment

prescribed may not always be the determinative factor for repairing the crippled psyche of the offender. Hence, while balancing the scales of retributive justice and restorative justice, we deem it appropriate to impose upon the appellant-accused, the sentence of imprisonment for a period of twenty years instead of imprisonment for the remainder of his natural life for the offence under section 376A, IPC. The conviction and sentence recorded by the courts below for the other offences under IPC and POCSO Act are affirmed. It is needless to say that all the punishments imposed shall run concurrently.”

44. Recently, the Supreme Court in the matter of **Manoj** (supra) reviewing the entire case laws on the point beginning from Bachan Singh (supra) held in paragraph 204 as under:

“237. Mitigating factors in general, rather than excuse or validate the crime committed, seek to explain the surrounding circumstances of the criminal to enable the judge to decide between the death penalty or life imprisonment. An illustrative list of indicators first recognised in Bachan Singh itself:

“206.....Mitigating circumstances.—In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:

(1) That the offence was committed under the influence of extreme mental or emotional disturbance. (2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

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

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

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

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

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.”

These are hardly exhaustive; subsequently, this court in several judgments has recognised, and considered commutation to life imprisonment, on grounds such as young age¹, socio-economic conditions², mental illness³, criminal antecedents⁴, as relevant indicators on the questions of sentence. Many of these factors reflect demonstrable ability or merely the possibility even, of the accused to reform (i.e. (3) and (4) of the Bachan Singh list), which make them important indicators when it comes to sentencing.”

- 45.** Their Lordships further emphasized the need for pre-sentence hearing – opportunity and obligation to provide material on the accused and in paragraphs 246 and 247 held as under: -

“246. However, this too, is too little, too late and only offers a peek into the circumstances of the accused after conviction. The unfortunate reality is that in the absence of well- documented mitigating circumstances at the trial level, the aggravating circumstances seem far more compelling, or overwhelming, rendering the sentencing court prone to imposing the death penalty, on the basis of an incomplete, and hence, incorrect application of the Bachan Singh test.

¹ Mahesh Dhanaji Shinde v. State of Maharashtra (2014) 4 SCC 292, Gurvail Singh v. State of Punjab (2013) 2 SCC 713, etc.

² Mulla and another v. State of U.P. (2010) 3 SCC 508; Kamleshwar Paswan v. U.T. Chandigarh (2011) 11 SCC 564; Sunil Gaikwad v. State of Maharashtra (2014) 1 SCC 129

³ Shatrughan Chauhan v. Union of India (2014) 3 SCC 1

⁴ Dilip Premnarayan Tiwari v. State of Maharashtra, (2010) 1 SCC 77

247. The goal of reformation is ideal, and what society must strive towards – there are many references to it peppered in this court’s jurisprudence across the decades – but what is lacking is a concrete framework that can measure and evaluate it. Unfortunately, this is mirrored by the failure to implement prison reforms of a meaningful kind, which has left the process of incarceration and prisons in general, to be a space of limited potential for systemic reformation. The goal of reformative punishment requires systems that actively enable reformation and rehabilitation, as a result of nuanced policy making. As a small step to correct these skewed results and facilitate better evaluation of whether there is a possibility for the accused to be reformed (beyond vague references to conduct, family background, etc.), this court deems it necessary to frame practical guidelines for the courts to adopt and implement, till the legislature and executive, formulate a coherent framework through legislation. These guidelines may also offer guidance or ideas, that such a legislative framework could benefit from, to systematically collect and evaluate information on mitigating circumstances.”

Thereafter, their Lordships issued practical guidelines to collect mitigating circumstances and observed in paragraphs 248 to 252 as under:

“248. There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.

249. To do this, the trial court must elicit information from the accused and the state, both. The state, must – for an offence carrying capital punishment – at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person’s frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in

Bachan Singh. Even for the other factors of (3) and (4) – an onus placed squarely on the state – conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison, i.e., to evaluate the progress of the accused towards reformation, achieved during the incarceration period.

250. Next, the State, must in a time-bound manner, collect additional information pertaining to the accused. An illustrative, but not exhaustive list is as follows:

- a) Age*
- b) Early family background (siblings, protection of parents, any history of violence or neglect)*
- c) Present family background (surviving family members, whether married, has children, etc.)*
- d) Type and level of education*
- e) Socio-economic background (including conditions of poverty or deprivation, if any)*
- f) Criminal antecedents (details of offence and whether convicted, sentence served, if any)*
- g) Income and the kind of employment (whether none, or temporary or permanent etc);*
- h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any) etc.*

This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.

251. Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e., probation and welfare officer, superintendent of jail, etc.). If the appeal is heard after a long hiatus from the trial court's conviction, or High Court's confirmation, as the case may be – a fresh report (rather than the one used by the previous court) from the jail authorities is recommended, for an more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will further evidence the reformatory progress, and reveal post-conviction mental illness, if any.

252. *It is pertinent to point out that this court, in Anil v. State of Maharashtra⁵ has in fact directed criminal courts, to call for additional material:*

“33....Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. We, therefore, direct that the criminal courts, while dealing with the offences like Section 302 IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case.”

We hereby fully endorse and direct that this should be implemented uniformly, as further elaborated above, for conviction of offences that carry the possibility of death sentence.”

46. Reverting to the facts of the case in the light of the aforesaid practical guidelines issued by the Supreme Court in **Manoj** (supra), it is quite vivid that the learned trial Court has convicted the convict/appellants and sentenced them to death. The learned trial Court has not taken into consideration the probability of the convict/appellants to be reformed and rehabilitated and has only taken into consideration the crime and the manner in which it was committed and has not given effective opportunity of hearing on the question of sentence to the appellants. No evidence was brought on record on behalf of the prosecution to prove to the Court that the convict/appellants cannot be reformed or rehabilitated, by producing material about their conduct in jail and no opportunity of hearing was given to the convict/appellants to produce evidence in that respect. No jail offences(s) has been said to have been committed by the accused/

5 (2014) 4 SCC 69

appellants, though the appellants have committed the offence of murder of three innocent persons out of which one was a minor girl of about 16 years and other was a minor girl of about 4 years. The minor girl aged 16 years was brutally raped before she was done to death which is barbaric, inhuman, heinous and extremely brutal. The murder has been done in a brutal manner by smashing the heads with stones. These are the incriminating circumstances, but there is no evidence on record that the convict/appellants cannot be reformed or rehabilitated. No criminal antecedents have been shown against them.

47. Though it shocks the conscious of the society at large, but, yet, in the facts and circumstances of the case, considering the age of the appellants and upon thoughtful consideration, we are of the view that extreme sentence of death penalty is not warranted in the facts and circumstances of the case. We are of the opinion that this is not the '*rarest of rare case*' in which major penalty of sentence of death awarded has to be confirmed. In our view, imprisonment for life would be completely adequate and would meet the ends of justice. Accordingly, we direct commutation of death sentence into imprisonment for life. We further direct that the life sentence must extend to the imprisonment for remainder of natural life of the appellants.
48. Consequently, Criminal Reference No. 01 of 2025 made by the Additional Sessions Judge FTSC (POCSO) Korba, to the extent of confirmation of imposition of death sentence to appellants-Santram Manjhwari, Anil Kumar Sarthi, Pardeshi Das, Anand Das and Abdul Jabbar @ Vikki, is **rejected**.
49. Criminal Appeal No. 357/2025, filed by appellant-Abul Jabbar @ Vikki and Cr.A. No. 574/2025, filed by appellants-Santram Manjhwari, Anil Kumar Sarthi, Pardeshi Das and Anand Das, are **partly allowed**. The conviction of the appellants -Santram Manjhwari, Anil Kumar Sarthi, Pardeshi Das, Anand Das and Abdul Jabbar recorded under Section 302/149 of the IPC (three

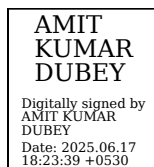
counts), 120B of the IPC, 148 of the IPC, 376(DA)/149 of the IPC and Section 6 of the POCSO Act, Section 376(A)/149 IPC and Section 6 of the POCSO Act, Section 3(2)(v) of the Atrocities Act and 3(1)(w) of the Atrocities Act, are maintained, however, the death sentence for the offence punishable under Section 302/149 (three counts), 376(DA)/149 IPC and Section 6 of the POCSO Act, Section 376(A)/149 IPC and Section 6 of the POCSO Act, is commuted to life imprisonment. It is further directed that life sentence must extend to the imprisonment for remainder of natural life of the appellants herein.

50. The conviction and sentence awarded to the appellant Umashankar Yadav by the learned trial Court is affirmed. As such, Cr.A. No. 574/2025, so far it relates to the appellant-Umashankar Yadav, stands **dismissed**
51. The Registrar (Judicial) is directed to send a duly attested copy of this judgment to the concerned Court of Session as mandated under Section 371 of the Cr.P.C for needful. He is also directed to send a copy of this judgment to the concerned Superintendent of Jail, where the appellants are undergoing their respective jail term, to serve the same on the appellants informing them that they are at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-
(Bibhu Datta Guru)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Amit



Head Note

Rather than applying strict classification of the type of offence that warrant death sentence, the Court must focus on considering the aggravating and mitigating circumstances and arrive at individualised sentencing outcome on case to case basis.