

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 31ST OF AUGUST, 2026

CRIMINAL REFERENCE CAPITAL No. 1 of 2026

IN REFERENCE

Versus

RAM NARAYAN @ BHANU DHIMAR

.....
Appearance:

Shri Manas Mani Verma - Government Advocate for the State.

Shri Aditya Adhikari - Senior Advocate assisted by Amicus Curiae
Shri Nitin Gupta and Ms. Anannya Shree Adhikari - Advocate for
therespondent.

.....
WITH

CRIMINAL APPEAL No. 1241 of 2026

RAJKUMAR DHIMAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Shri Aditya Adhikari - Senior Advocate assisted by Amicus Curiae
Shri Nitin Gupta and Ms. Anannya Shree Adhikari - Advocate for appellant.

Shri Manas Mani Verma - Government Advocate for the State.
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CRIMINAL APPEAL No. 1430 of 2026*SMT. PINKY DHIMAR**Versus**THE STATE OF MADHYA PRADESH*

Appearance:

Shri Aditya Adhikari - Senior Advocate assisted by Amicus Curiae Shri Nitin Gupta and Ms. Anannya Shree Adhikari - Advocate for appellant.

Shri Manas Mani Verma - Government Advocate for the State.

CRIMINAL APPEAL No. 1449 of 2026*RAM NARAYAN @ BHANU DHIMAR**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

Appearance:

Shri Aditya Adhikari - Senior Advocate assisted by Amicus Curiae Shri Nitin Gupta and Ms. Anannya Shree Adhikari - Advocate for appellant.

Shri Manas Mani Verma - Government Advocate for the State.

JUDGMENT

Per. Justice Vivek Agarwal

These three Criminal Appeals and Criminal Reference arise out of judgment dated 13.01.2026 passed by learned Special Judge, POCSO Act, Budhar, District Shahdol in ST No.121 of 2023 whereby learned trial Judge has convicted and sentenced appellant Ram Narayan @ Bhanu Dhimar under Sections 302, 201, 506 Part-II of IPC and Section 5(m)/6 of POCSO Act

with death penalty whereas two other accused persons, namely, Rajakumar S/o Ramniwas Barman and Pinki Dhimar W/o Ram Narayan Dhimar have been convicted and sentenced under Section 506 Part-II of IPC.

2. As far as Radheshyam @ Bitani Dhimar S/o Banwarilal is concerned, he has been acquitted from the charges under Sections 376, 302, 201, 506 Part-II of IPC and Section 5(m) read with Section 6 of POCSO Act.

3. Convicted accused, namely, Ram Narayan @ Bhanu Dhimar, Rajkumar and Smt. Pinky Dhimar have been sentenced as under :-

4. Convicted appellant Ram Narayan @ Bhanu Dhimar.

<u>Conviction</u>		<u>Sentence</u>		
<u>Section</u>	<u>Act</u>	<u>Imprisonment</u>	<u>Fine</u>	<u>Imprisonment in lieu of fine</u>
302	I.P.C.	Life Imprisonment	Rs.500/-	R.I for 1 year
201	I.P.C.	R.I. for 3 years	Rs.500/-	R.I. for 1 year
506 (Part-II)	I.P.C.	R.I. for 4 years	Rs.500/-	R.I. for 1 year
5(m)/6	POCSO	Death Sentence	Rs.500/-	R.I. for 1 year

5. Appellant Ram Narayan @ Bhanu Dhimar has been acquitted of charges under Section 504 of IPC.

6. Convicted appellant Rajkumar

<u>Conviction</u>		<u>Sentence</u>		
<u>Section</u>	<u>Act</u>	<u>Imprisonment</u>	<u>Fine</u>	<u>Imprisonment in lieu of fine</u>
506 (Part-II)	I.P.C.	R.I. for 4 years	Rs.500/-	R.I. for 1 year

7. Convicted appellant Smt. Pinky Dhimar (Burman)

<u>Conviction</u>		<u>Sentence</u>		
<u>Section</u>	<u>Act</u>	<u>Imprisonment</u>	<u>Fine</u>	<u>Imprisonment in lieu of fine</u>
506 (Part-II)	I.P.C.	R.I. for 4 years	Rs.500/-	R.I. for 1 year

8. Appellants Rajkumar and Smt. Pinkiy Dhimar (Burman) have been acquitted from charges under Section 201 of IPC.

9. Prosecution story, in short, is that on 05.03.2023, FIR (Ex. P-57) registering Case Crime No.68/2023, was recorded at Police Station Khairaha under Section 294, 323, 506 of IPC on the basis of the statements of the mother of the victim (PW-1) against Bhanu Dhimar that on 01.03.2023 at about 10:00 pm Bhanu Barman while residing in the house had assaulted the victim. It is mentioned that, in fact, complainant, mother of the victim made her daughter sleep at about 10:00 pm and had left for attending a marriage ceremony in the colony along with the wife of the accused, namely, Pinky Barman (appellant). When she returned back at about 11:00 pm, then she found that there were injuries on the nose, throat and cheeks of the victim, who was lying unconscious on the floor. When she asked Bhanu Barman, who was drunk, as to what had happened then he stated that he had put to sleep the girl as she was crying he had given her 2-3 slaps. It has also come

on record that Bhanu had threatened them against reporting the matter and stated that if any one asks then tell them that victim had fallen down from the bed. Thereafter, on arrival of Rajkumar Dhimar (appellant), she had taken her daughter to Budhar Hospital along with Pinky Barman from where she was referred to Medical College, Shahdol, where treatment was administered to the victim.

10. Prosecution case is that child was first taken to Community Health Center, Budhar and on being referred from Community Health Center, Budhar to Shahdol Medical College on 02.03.2023, she was shifted to Medical College, Shahdol where she succumbed to her injuries on 07.03.2023 when Marg Intimation (Ex.P-48) was recorded by Dr. Avinash Singh (PW-25).

11. Vide Ex.P-37 and Ex.P-38 after Postmortem Examination conducted by Dr. Amreen Khan (PW-20) and Dr. Pawan A Wankhede (PW-28) in which they recorded a finding of skull fracture together with vaginal and anal injuries indicating forceful penetrative sexual assault and opined cause of death as head injury combined with sexual assault.

12. On 08.03.2023, appellant No.1 Ram Narayan @ Bhanu Dhimar was taken into custody. He gave a memorandum statement (Ex.P-14) as recorded by , Dilip Singh, Sub Inspector, I.O. (PW-33), leading to recovery and seizure of the victim's lower garment and a bedsheet concealed beneath a mattress at his house for which Chhotelal Kol (PW-2) and Shivilal Kol (PW-3) were taken as witnesses, seizure memo is Ex.P-15.

13. It has also come on record that Blood/DNA samples of accused No.1 Ram Narayan and accused No.3 Radheshyam were collected after obtaining due permission and were examined by the Forensic Science Laboratory along with the articles recovered from the body of the victim.

14. Referring to DNA report (Ex.P-90 to Ex.P94) proved by Dr. B.S. Baghel (PW-34) in which it is reported that Article E (victim's lower garment recovered from accused No.1 matched the victim's source swabs Articles A, B & C, whereas the profile from the towel of accused No.3 Radheshyam (Article I) did not match the victim's above articles and no male DNA profile was found in victim's above articles.

15. Thus, it is submitted that on the basis of the DNA report, as contained in Ex.P-90 to Ex.P-94, trial Court acquitted accused No.3 Radheshyam of all substantive charges giving him benefit of doubt whereas convicted appellant No.2 and 4 i.e. Rajkumar and Pinky only under Section 506 (Part-II) of IPC for criminally intimidating the victim's mother but on the basis of medical evidence and testimony of victims' mother (PW-1) as to last seen, the trial Court convicted accused No.1 Ramnarayan under Section 376, 302, 201 and 506 (Part-II) IPC read with Section 5(m)/6 of POCSO Act and sentenced him to death.

16. It is submitted that learned trial Court based its conviction on the basis of Forensic DNA Evidence, according to which DNA profile generated from the lower garment of the victim (Article E) seized from accused No.1

matched completely with the DNA profile of the victim's source swabs (Articles A, B & C) - Ex.P-90 to P-94 as proved by Dr. D.S. Baghel (PW-34) and mentioned in para 50-51 of the impugned judgment.

17. It is further submitted that the Medical Evidence, which is taken into consideration by the learned trial Court that in the detailed Postmortem Report (Ex.P-37), carried out by Dr. Amreen Khan (PW-20) and Dr. Pavan Wankhede (PW-28), which revealed that there was a skull fracture along with anal/vaginal injuries indicating forceful sexual penetration and concluded death resulted from the combined effect of head injury and sexual assault, as discussed in para 17-19, 27-28 of the impugned judgment.

18. It is further submitted that the last seen theory is in regard to the appellant as per the testimony of the victim's mother (PW-1) that the victim was last seen alive in the exclusive custody of accused No.1, coupled with recovery of her clothing pursuant to his memorandum statement (Ex.P-14) which is considered to be a circumstance in the chain of circumstances, as discussed in para 62-63 of the impugned judgment.

19. It is also submitted that the trial Court invoked presumption under Section 29/30 of POCSO Act against the appellant Ram Narayan @ Bhanu Dhimar and declined to extend it to accused No.3 as it noted that foundational facts were not established against him, as can be seen from para 64-64 of the impugned judgment.

20. It is also submitted that the trial Court held the present case to be

'rarest of rare', relying on the judgment of Supreme Court in the case of **Bachan Singh Vs. State of Punjab, (1980) 2 SCC 684** and **Mukesh and Another Vs. State (NCT of Delhi) and Others, (2017) 6 SCC 1**, as discussed in para 83 - 103 of the judgment to hold that brutality inflicted by a guardian combined with concealment of evidence fell within the 'rarest of rare' category warranting death sentence.

21. It is submitted that prosecution examined as many as 34 witnesses and there are several contradictions in their evidence. DNA report does not point out towards the complicity of the present appellants and even if the theory of last seen and guardian is invoked at best his conviction can be sustained only under Section 506 (Part-II) of IPC read with Section 201 of IPC and not under any other section.

22. Learned Public Prosecutor for the State opposes the prayer and submits that evidence speaks for itself, thus no indulgence is called for.

23. After hearing learned counsel for the parties and going through the record.

24. Reading from the evidence of prosecution witnesses, it is pointed out that it has come on record and not disputed that there is no cogent evidence available on record. In her 164 statements (Ex.P-12), PW-1, mother of the victim, stated that she had performed love marriage with one Bhalla Vishwakarma in the year 2017. From the said wedlock she has a daughter aged about 3 years. Her husband Bhalla Vishwakarma was in jail. On

account of she having performed love marriage with Bhalla her in-laws were not keeping her with them and, therefore, for last one month she was residing with the family of Bhalla's friend Bhanu along with her daughter.

25. On 01.03.2023, at about 8:00 - 9:00 PM, after making her daughter sleep, she had gone to collect coal at Rajendra Colliery along with Pinky, Rajkumar and Bitani, after one hour Bhanu had called his wife, Pinky stating that children were harassing him and, therefore, asked his wife to come back. Thereafter Bitani had left the colliery on his motorcycle for the house of Bhanu and did not return.

26. After sometime, mother of the victim, Rajkumar and Pinky walked to the house of Bhanu and when they found that daughter of the complainant was lying naked on the floor bleeding per mouth with nail marks on her face and cheek. There was bleeding from her private parts. Bitani was lying by the side of the victim wearing a lower, t-shirt and was playing on his mobile. When she raised an alarm, then Bhanu came from outside and stated that she should not shout and he will arrange for treatment of her daughter. Thereafter, complainant, Rajkumar and Pinky had taken the victim to the Hospital at Budhar from where she was referred to Medical College, Shahdol. It is alleged that since victim was admitted, Rajkumar and Pinky were intimidating her mother to not to lodge any report with police. The victim died in the hospital on 06.03.2003, when merg was recorded at Police Station Khairha. She admits that in the beginning she did not say anything about commission of rape under the threat of Bhanu, Pinky,

Rajkumar and Bitani.

27. Thus, it is pointed out that Bitani is the person, who was lying by the side of the victim, and it is also submitted that Bitani was the person who was watching obscene material on his mobile as stated by PW-1, mother of the victim, in para 3 of her examination-in-chief. She has admitted in her examination-in-chief that when she had seen her daughter on return to the house of Bhanu, Bhanu was not present but Bitani was lying by the side of her naked daughter watching obscene videos on mobile phone. Thus, it is submitted that evidence of PW-1, reveals one thing beyond reasonable doubt that Bhanu was not present in the house and he has been impleaded as an accused merely because the scene of crime happens to be the house of Bhanu, whereas circumstances points out towards the guilt of Bitani @ Radheshyam.

28. Mother of the Victim (PW-1) admitted in her cross-examination that when she had reached the place where she had made her daughter sleep Rajkumar was not present. She admitted that she had taken her daughter to the Shahdol Medical College along with Rajkumar. She also admitted that her husband Bhalla is in prison on account of a POCSO case. She admitted that she was travelling with Pinky to different places and had gone to Budhar Hospital along with Pinky. Pinky had also accompanied her to Shahdol Medical College. During treatment she had informed the treating doctor and the nurse all the facts without any fear. She admitted that when police personnel used to visit her in the hospital Pinky used to move out. There

were several other patients admitted in the same ward in which her daughter was being treated.

29. In further cross-examination, she admits that she has good relationship with Bhanu and his family members. She was residing in the house of Bhanu and was helping them in the work of brick construction. She admits that she does not know the nature and extent of relationship between Bhanu and Bitani. She admits in cross-examination para 19 that she had not gone to attend marriage in the house of Neelu Kol along with Bhanu's wife Pinky. She admits that in the Hospital, she had narrated correct facts to the police. She admits that Rajkumar was called subsequently.

30. In para 27 of her cross-examination, she admits that Bhanu had only threatened her to the extent that nobody should be informed that Bhanu had beaten his daughter. Except for that incident of beating she had not suppressed any fact from the police personnel.

31. In para 29, this witness admits that while giving her case diary statement (Ex.D-4) she had not informed police that Bitani was sleeping by the side of her daughter and was watching obscene film on his mobile. She admits that she is stating these facts for the first time before the Court. She admits in cross-examination para 31 that she had not informed police in her case diary statements (Ex.D-1 to Ex.D-3) that she had seen blood on the private parts of the victim.

32. She admits in para 31 of her cross-examination that when she

had seen the daughter for the first time, then she was bleeding per nose and mouth.

33. In para 35, this witness admits that when she was minor she lodged a report against her later to be husband Bhalla @ Sudesh for violation of her privacy.

34. In para 36, she admits that Bhanu had informed her that since daughter of the complainant and his own daughter were fighting, therefore, he had beaten both and made them sleep.

35. In this regard Court statements under Section 164 of Cr.P.C. of the minor daughter of appellant Bhanu Ex. P-65 are important. She stated that mother of the victim i.e. PW-1 is her *Bua*. In front of her, her father had slapped the victim. She corroborated this statement with a gesture. Thereafter, her father had thrown the victim on the floor. Victim was bleeding per head, legs and hand and all these facts were informed by her to her mother. But interestingly, this child eye witness has not been examined before the trial Court. It is pointed out that the best witness has been unfortunately not examined before the trial Court. She could have thrown more light on the manner in which incident took place. There could have been an opportunity to cross-examine this witness to find out the truth.

36. Chhotelal Kol (PW-2) stated that age of the deceased was 3 years. He came to know of the fact that Bhanu Dhimar had committed wrong with the victim. Memorandum of Bhanu, as contained in Ex.P-14, was

recorded in his presence. This witness signed that memorandum from 'A' to 'A' part and seizure memo (Ex.P-15) from 'A' to 'A' part. This witness stated that at Police Station, Khairha, Bhanu had informed the police that his uncle's son Radheshyam had slept with the victim and was watching mobile phone. He stated that he does not know as to violation of the privacy of the victim was made by Radheshyam or not. He stated that when Bhanu had returned back to his home after leaving his daughter to the house of his father that time he had seen Radheshyam lying by the side of the victim and victim was lying naked while Radheshyam was watching mobile.

37. It is pointed out that this is a very important piece of evidence pointing out towards the guilt of Radheshyam who has been given an acquittal and the State has not filed any appeal against the said acquittal nor the complainant has filed any appeal against said acquittal.

38. It has come on record that Chhotelal Kol (PW-2), in para 9, of his cross-examination admitted that while giving statements to the police Bhanu had informed that when he had gone to drop his daughter and when he returned back he found victim to be lying naked and Radheshyam was sleeping by her side. This witness admits that when this paper was read over to him and was signed by him, as Ex.P-14, then this fact was mentioned in the memorandum and was read over to him. He could not give reason for any omission in the memorandum.

39. As far as, recovery of a bedsheet and undergarment of victim is concerned, Chhotelal Kol (PW-2) stated that when they had gone inside the

house of Bhanu there was a bed measuring 6 feet x 5 feet, Bhanu had taken out a bedsheet which was spread over the bed and under the bedsheet, underwear was recovered. This witness stated that the room in which Bhanu had taken them was a open room and people were residing in that room.

40. Shival Kol (PW-3) also deposed on the same lines, stated that he had signed memorandum (Ex.P-14) and Seizure Memo (Ex.P-15) from 'B' to 'B' part. This witness was declared hostile, leading questions were put to him.

41. However, this witness Shival Kol (PW-3) in cross-examination para 5 stated that lower was not seen by him but by his friend. Whereas PW-1, mother of of the victim, categorically stated that colour of the lower was pink with blue stripes and colour of the t-shirt was also pink. He admits that bed cover which was recovered was of which colour cannot be stated by him, then stated on his own it was having dots and squares. He admits that an altercation had taken place between police personnel and the wife of the accused and the place from where articles were seized was in use by the members of the family including the bed.

42. PW-4 is a father of victim's mother. He is a hearsay witness. He admits that he cannot say as to whether when victim had fallen down from bed at that time Ramnarayan @ Bhanu, Pinky Barman and Rajkumar were present or not. He admits that he had visited Shahdol Hospital on three days to nurse the victim.

43. PW-5 is mother of the victim's mother i.e. victim's grandmother. She admits that police had not given her any notice to record her statements. This witness too is a hearsay witness. She admits that intimation in regard to the incident was given by her daughter.

44. Ramaseish Patel (PW-6) is a witness of arrest and seizure. He states that Radheshyam Bitani had informed him that he had gone to keep the vehicle of Bhanu at his house where he saw Bhanu. When he had gone inside the house of Bhanu then he found that victim was lying naked on the bed, on the floor and daughter of Bhanu was sleeping on sofa kept by the side of the almirah. He states that accused stated that while he was watching obscene film, he had violated privacy of the victim and, thereafter, he had wiped his private part and had kept that cloth under the bed.

45. In cross-examination, this witness PW-6 stated that it is question of his bread and butter, which is taken care of by police and, therefore, why should he not speak and he also admitted that he came to the Court with a pre-plan but he denied this statement in cross-examination and said that he was joking. Thus, it is evident that testimony of PW-6 Ramaseish Patel is not reliable. He is not a reliable witness but a planted witness. Even otherwise, testimony of this witness is not material because he admitted that at the time of the incident he was at Pipariya and not in village Khairha.

46. Ajay (PW-7) is uncle of deceased and he too is a hearsay witness. He is not a reliable eye witness. He admits that police had not taken any statement of his and whatever he knows is known to the extent as was

narrated by his sister.

47. Virendra Kumar Patel (PW-8) is a witness of memorandum and seizure. He admits that nobody had called him to give statements by the side of the road where accused was interrogated and when this witness reached there, then SHO took him inside and recorded statements of the accused. He admits that he wrongly stated in his examination-in-chief and cross-examination that police was interrogating accused Bhanu by the side of the road. He admits that the house which was visited by them along with other persons was a open house, 2 - 3 persons were residing there. He could not give the dimensions of the towel. He could not state as to what was the dimension of the bedcover, mattress and blanket and what was their colour. Evidence of this witness is shaky and not very reliable.

48. Ghanshyam Dhimar (PW-9) is a witness of arrest. He states that next day he came to know that victim had fallen down from bed, who was taken to a Hospital at Budhar and thereafter to Shahdol. He pleads that apart from that he has no knowledge as to what was done with the victim. This witness was declared hostile. He admits that Bhanu Dhimar is his son. He has not supported prosecution case.

49. Prem Lal Kol (PW-10) stated that Rajkumar is known to him. Police had caught hold of Raj Kumar Barman and interrogated him. Rajkumar Barman informed that the mobile with which he prepared video of the deceased child has been hidden in his almirah. Memorandum of

Rajkumar Barman is Ex.P-22. Police had taken Rajkumar to his house from where he had given a mobile phone which was seized vide seizure memo (Ex.P-23) which contains his signatures from 'A' to 'A' part. Thereafter, supporting prosecution case on only these two aspect viz., Rajkumar giving a statement in regard to making of a video of the child and its seizure, this witness has turned hostile.

50. Mohd. Gulrej (PW-11) stated that Rajkumar is known to him, other accused persons are not known. He is also witness of seizure of the mobile phone and memorandum of Rajkumar. Other than that, he too has turned hostile and not supported the prosecution case.

51. Shiv Lal Kol (PW-12) stated that he does not know anything about the incident.

52. Chhote Lal Baiga (PW-13) stated that Ramnarayan @ Bhanu Dhimar and Pinky Dhimar are known to him. He does not know other accused persons. Ramnarayan is his neighbourer. This witness too turned hostile and has not supported the prosecution case.

53. Sourabh Pandey (PW-14) stated that he is a Journalist. In examination-in-chief, he stated that some videos were sent to his mobile, which according to him was sponsored. He stated that since one Sourabh Bhaiya was connected with the matter, who is also a Journalist, therefore, he had not visited Medical College, Shahdol because of fear of Sourabh Bhaiya. This witness too was declared hostile. He admitted in cross-examination that

he had no conversation with anybody except having a call from Medical College. He could not give details of the phone number on which he had a conversation. He admitted that he had not seen anybody threatening the accused persons. He admits that he had not seen any of the accused persons threatening anybody.

54. Maternal Uncle of the Victim (PW-15) stated that age of the victim was five years. Mother of victim is his sister. He had given birth certificate of the victim vide Ex.P-8. Postmortem was conducted at Medical College, Shahdol for which Panchnama Ex.P-2 and Naksha Panchayatnama Ex.P-3, contains his signatures from 'B' to 'B' part. He admits that Ex.P-3 was recorded as per the statement of his sister. On perusal of file it is seen that, In Ex.P-3, it is mentioned that victim had sustained abrasions on right and left cheek for treatment of which she was admitted where she died. As per the opinion of the police officer, Sub Inspector, Kiran Badkhade who has not been examined in Court but whose signature are identified by Dileep Singh Sub Inspector (PW-33) there were abrasion marks on right and left cheek so also on the throat, as a result of which victim died during treatment.

55. Dr. Ashish Tiwari (PW-16) stated that he was posted as Medical Officer at Civil Hospital Mauganj where he had prepared two semen slide of the accused Ramnarayan Dhimar @ Bhanu S/o Ghanshyam and had sealed his one green colour underwear, pubic hair etc. vide Ex.P-25.

56. Dr. Jagdeesh Kanash (PW-17) stated that he was posted as an Emergency Duty Doctor at Government Medical College, Shahdol. Victim

aged about 3 years was brought by her mother for treatment where mother had informed that victim had fallen from the bed, as a result of which she sustained injuries. Doctor opined that *prima facie* it appeared to him that victim was subjected to *marpeet*. He stated that victim's behaviour was abnormal, there were abrasions on left side of the chest, throat and lips and on the left ankle, there were no complaints of vomiting or bleeding per nose or ear. Doctor clearly stated in Para-3 that from the private parts of the victim there was no evidence of any sexual abuse. Victim was unconscious. She was on ventilator. Hypoxia or injury to the head could have been the cause for putting her on the ventilator. This Doctor categorically stated that nothing can be said about an attempt to murder.

57. In cross-examination, Dr. Jagdeesh Kanash (PW-17) clearly stated that if an adult male tries to violate privacy either per vagina or per anus then there would have been damage to the private parts but this doctor had not seen any such injury on any of the private parts of the victim. He also admitted that if two children fight between themselves then the injury which was found on the body of the victim could have been caused. He also admitted that victim subjected to NCCT and opinion of Pediatrician was taken, in which it was opined that because of insufficiency of oxygen in the brain victim turned unconscious, her Bed Head Ticket is Ex.P-53. This witness accepted that when victim was admitted in the hospital that time she was unconscious. The Pediatric Department gave an opinion that because of lack of oxygen in brain she was unconscious, bed head ticket Ex.P-53 contains her signatures from 'A' to 'A' part.

58. Anugrah Kujur (PW-18), Patwari had prepared spot map (Ex.P-30), Najrinaksha (Ex.P-31) and his report is Ex.P-32.

59. Ramnath Bandhav (PW-19) stated that on 08.03.2023, he was posted as a Head Constable. He had sealed semen slide, pubic hair etc. in regard to accused Ram Narayan @ Bhanu from CHC, Sinhpur, vide Ex.P-33 and similarly that of Radheshyam @ Bitani from CHC, Sinhpur on 09.03.2023 vide Ex.P-34.

60. In cross-examination this witness PW-19 admitted that he was not present at the time of proceedings which were undertaken by the doctor.

61. Dr. Amreen Khan (PW-20) stated that on 07.03.2023 she was posted as Emergency Medical Officer at Medical College, Shahdol, she was asked to conduct postmortem and preserve the viscera etc.. This doctor stated that vagina was red and the corners of the hymen were swollen, anus was ruptured at 12, 3, 6 and 8 O'clock position with redness. She proved postmortem report (Ex.P-36), advance postmortem report (Ex.P-37) and detailed postmortem report (Ex.P-38), containing her signatures.

62. In para 9, this witness PW-20 admitted that the injuries which were found on the vagina and the anus of the victim could have been caused other than by insertion of penis. She admitted that said injuries could have been caused due to fingering or any other round object. Doctor opined that she could not say definitely that the injuries which were found on the body of

the victim were caused within 48 hours. This doctor admitted that when she was examining the victim that time mother of the victim was present and she had not asked anything from the mother of victim. She admitted that the injury caused to the head could have been caused due to fall from the bed. She admitted that as per Ex.P-38, there were no marks of any pressure being exerted with the fingers on the throat. She admits that during the treatment of victim, she had not examined the victim. A suggestion was given to her that on the date of death of the victim 6-7 children had died at Shahdol Hospital, therefore, with a view to save the image of Shahdol Hospital false medical report was prepared but same was rejected.

63. Dr. Ravi Krishna Patel (PW-21) had collected blood sample etc. of the accused Radhyshyam @ Bitani Dhimar.

64. Ram Karan Singh, ASI, (PW-22) had collected sealed envelop containing deceased's anal swab Ex.-A, anal fluid Ex.-B, vaginal swab Ex.-C vide Ex.P-35 after receiving it from Head Constable Jayvendra Singh vide Ex.P-34.

65. Sanjay Uikey, Constable, (PW-23) stated that he had brought vaginal slide from the Medical College, Shahdol and given it to the I.O., who had sealed it, vide Ex.P-35. He further states that video recording of the statements of mother of the victim and witness Rinsu Dhimar were brought by him vide seizure memo Ex.P-34 and were given by him but admits in cross-examination that said CD was not prepared in front of him nor it was ever played in front of him.

66. Satish Kumar (PW-24) is also witness of seizure of CD etc..

67. Dr. Avinash Singh (PW-25) stated that he was working as Medical Officer at CHC, Sinhpur where he examined accused Radheshyam @ Bitani and prepared two semen slides. Accused was capable of intercourse. He had also sealed his undergarment and pubic hair and gave to the constable vide Ex.P-47.

68. Suryabharan (PW-26) stated that he was posted as ASI at Birsamunda Medical College, Police Sahayat Kendra. He had recorded Marg Intimation (Ex.P-48 and Ex.P-49). He has denied a suggestion that the day on which this child, victim, died that day 5-6 other children aged between 1 to 5 years died in the hospital.

69. Jayvendra Singh Head Constable (PW-27) had filed examination form of Radheshyam and had taken him to the hospital.

70. Dr. Pawan A Wankhede (PW-28) stated that on 07.03.2023, he was working as Assistant Professor, Forensic Medicine at Medical College, Shahdol, except on pressure points, there was swelling in the blood vessels of the victim which was dressed by applying *sumag antibiotic*. There were signs of abrasion on the throat of the dead body, both the eyes were fixed dilated. There was a swelling on the right hip with side bleeding, injuries were present in the anus. Ends of labia minora and vagina were swelled.

71. However, in examination-in-chief itself doctor PW-28 stated that

victim died because of head injury. During postmortem only it was revealed that she was victim of unnatural sex as there were injuries on vaginal and anal part. He admitted that head injury was sufficient to cause death. He admits that on external examination of the body he had not found any injury. He admitted that in Ex.P-40, para 6, he has not mentioned that the injuries found on the throat and cheek were caused by an adult. He admitted that before conducting postmortem he had not seen the Bed Head Ticket of the victim for the period when she was admitted in the hospital.

72. Dalbeer Singh (PW-29) had collected certain items of the victim from the hospital in an envelop.

73. Amit Dixit, ASI, (PW-30) gave certificate, Ex.P-51, in regard to different mobile numbers but there is no CAF report in regard to these phone numbers available on record.

74. In cross-examination, this witness PW-30 admitted that if tower location of persons residing in the same location is taken out, then their tower location will be same. This witness also admitted in cross-examination that except for a 29 seconds call, on mobile No.8815363501, which is in the name of Pinky Baiga W/o Rakesh Baiga, which was received by the appellant Radheshyam, there is a conversation of 90 seconds at 11:43:26 hours from 19:28 Radheshyam had no conversation with any other accused persons. He admitted that the range of tower in a rural area is about 1-2 kilometers.

75. Ram Kishore Verma, ASI, (PW-31) admitted that, on 02.03.2023, he was working as ASI at Police Sahayata Chowki of Medical College, Shahdol. He had received intimation from Dr. Jagdeesh Kanash through ward boy Ram Suhawan. He had given duly filled examination form to the doctor, as contained in Ex.P-54 which contains his signatures. MLC Ex.P-27 also contains his signatures. He had recorded statements of the mother of the victim, as contained in Ex.D-3, which contains his signatures from 'B' to 'B' part. He admitted that he had filled the injuries detail on Ex.P-54 after seeing the victim, in his own handwriting. In Ex.P-54, it is mentioned that victim had fallen down, there was a bruise on right cheek and there was abrasion on the left ankle with slight abrasions on her throat. Nowhere, it is mentioned that victim had undergone any sexual abuse. He admitted that he had recorded statements of the mother of the victim, as contained in Ex.D-3, she had not stated anything about the presence of Radheshyam @ Bitani at the place of the incident or she travelling with Radheshyam Bitani. This witness has categorically stated that when he had recorded statements Ex.D-3 that time witness was free from any fear or pressure.

76. Varsha Baiga, Sub Inspector, (PW-32), stated that she had recorded statements of the complainant at Police Station Khairha on oral directions of the SDOP. She admitted that before she took statements, as contained in Ex.D-4, police personnel had already recoded her three statements.

77. Dilip Singh, Sub Inspector, (PW-33) admitted that Bhanu Dhimar had beaten the victim and had injured her as a result of which FIR registering Case Crime No.68/2023 was registered under Section 294, 323, 506-B vide Ex.P-57. On the identification of the mother of the victim, map (Ex.P-58) was prepared. Medical query letter Ex.P-28 was given to the doctor on which report was given as contained in Ex.P-29. In Ex.P-29, Dr. Jagdeesh Kanash (PW-17) clearly recorded in answer to question No.2 that no such symptoms were found on the body of the victim to say that she was subjected to sexual abuse. This opinion of Dr. Kanash before death of the victim on 06.03.2023 is very important because there is a consistent suggestion to the team of postmortem doctors though denied that there was death of 5-6 children at Medical College, Shahdol on the same date and therefore, postmortem doctors were forced to concoct a story of sexual abuse.

78. Dr. Pawan A Wankhede (PW-28) has categorically mentioned, in para 9, that since he mentioned that injury to the entrance of the vagina may be caused by a human penis but he had not mentioned that it was caused by penis, therefore, we find that injury could not have been caused by any other mode as he has denied that injury could have been caused on account of insertion of a finger or a round object. When this aspect is taken into consideration, then there is corroborative evidence of violation of privacy of victim.

79. Dr. Jagdeesh Kanash (PW-17) has categorically stated that there

were no signs of violation of privacy of the victim.

80. Dilip Singh, Sub Inspector, (PW-33), in cross-examination, admitted that in the FIR there is no mention of any threat given by the appellant or his wife to the mother of the victim. He also admits that while giving her statements (Ex.D-1 and Ex.D-2), victim's mother admitted that she was deposing without any fear. It is also admitted that both the witnesses of interrogation of the appellant namely Ramaseish Patel (PW-6) and Virendra Patel (PW-8) were present at police station and were given notices at police station. He also admitted that mobile which is mentioned in memorandum (Ex.P-16) was not seized from Radheshyam. It has also come on record that as per the memorandum (Ex.P-16) Radheshyam was watching a blue film but there is no seizure of such blue film from the mobile of Radheshyam.

81. This witness PW-33 also admitted in para 22 that when for the first time he had gone for inspection of the spot, he had not recovered any incriminating material nor prepared any *Panchnama*. Ex.P-44 is the *Recovery Panchnama* of video C.D. between complainant and the witness Rinsu Dhimar. Admittedly, there is no recovery of any porn material at the instance of Ram Narayan. It is admitted that as per the story of the prosecution Pinky and mother of the victim had gone together and they returned together to the place of the incidence. He also admitted that as per MLC, no injury was found on the vaginal part or anal part of the body of the victim. This witness also admitted that as per query report no injuries were found on the private

parts of the victim. This witness also admitted that *dead body Panchayatnama* (Ex.P-3) was prepared by the police and it was prepared after thoroughly examining the body. It is admitted that as per *dead body Panchayatnama* (Ex.P-3) there were no injuries on anus or private parts of the victim. It is admitted that prior to filing of the postmortem report there was no complaint in regard to violation of privacy of the victim. He admitted that after incidence, house of the accused was razed to the ground then stated that as per the report of the revenue and forest department it was treated to be an encroachment. It is also admitted that in the preliminary enquiry it had come on record that injured sustained injuries on account of fall from the bed. He admitted that first arrest was made on 08.03.2023, till than accused persons were residing in the said house.

82. This witness PW-33 also admitted in para 37 that after 3-4 days of the incident, at the instance of mother of the victim case was registered against Bhanu under bailable offences and proceedings were drawn against other accused persons after the death of the victim. It is also admitted that prior to the proceedings of seizure which were made 3-4 days after the incident house-in-question was not sealed and it was open for movement of anybody and everybody.

83. Dr. B.S. Baghel (PW-34) stated that he was working as Scientific Officer/Assistant Chemical Examiner at DNA Fingerprint, Bhopal. He had examined swab fluid, vaginal swab, lower pant of the deceased so also bedsheet seized at the instance of Ramnarayan @ Bhanu Dhimar, pubic hear,

underwear, semen slide recovered at the instance of Ram Narayan so also his blood sample. He had also examined a towel, semen slide, underwear, pubic hair and blood sample of Radheshyam @ Bitani Dhimar. He admitted that from the articles of the victim no Y-Chromosome STR DNA profile was recovered. It is admitted that bed-sheet which was seized at the instance of Ramnarayan @ Bhanu i.e. Article-D did not reveal DNA profile of the deceased. Similarly, lower of the victim did not reveal any DNA profile of Bhanu Dhimar. In fact, no male DNA was recovered from the lower of the victim.

84. It is admitted fact that this High Court in the case of **State of Madhya Pradesh Vs. Parshuram, 2011 SCC OnLine MP 2327**, noted that the postmortem in case of rape with murder of infant female child should be conducted by the panel of doctors and videography of the postmortem should be done. It is also noted that if looking to the severity of the crime and complexity of the matter and if the circumstances so warrant, the Chief Medical and Health Officer should send within the course of three days from the date of postmortem, the videography along with postmortem report to the Senior Forensic Experts appointed in nearest Medical College or Department of State Forensic Science for seeking their opinion and the opinion along with such videography shall be sent back within the course of seven days on priority basis to the concerned Chief Medical and Health Officer of the concerned District. The CMO in his turn shall also forward the copy of the opinion of the Experts to the concerned Investigating Officer and the S.P. of the District so that said videography along with Expert's report can be placed

at the time of submission of charge-sheet in criminal courts for their utilization during trial of such cases.

85. It is also held in above judgment that Investigating Officers for just and fair investigation shall adopt all measurements of modern scientific technology such as audio-video electronic means by taking videography of the spot and in recording statements of material witnesses, after complying with mandatory provisions of section 164 Cr.P.C.

86. On consideration, this Court finds that it is true that there are contradictions in the evidence of Dr. Jagdish Kanash (PW-17) Treating Doctor at Shahdol Medical College, and Dr. Amreen Khan (PW-20) Postmortem Doctor, so also Dr. Pawan A Wankhede (PW-28). Dr. Jagdish Kanash (PW-17) on the one hand has stated that victim was admitted in the Hospital with the history of fall from the bed on 01.03.2023. He has categorically stated that there was no evidence of any violation of privacy or sexual assault found on the body of the victim. In cross-examination, this witness admitted that injuries found on the body of the victim could have been cause if two children engage in altercation. He has admitted that when victim was admitted that time she was unconscious. There was no bleeding per nose, ear or throat. NCCT was performed and report revealed that there was Hypoxia. He proved Bed Head Ticket Ex.P-53.

87. Dr. Amreen Khan (PW-20) stated that there was slight hemorrhage on spread of legs, vagina was red from inside, edges of hymen were red and swollen. Labia majora was red. Anus was ruptured at 12, 3, 6

and 8 O'clock position, it was bleeding. This doctor after having said that, admitted that, she had examined the victim that time her mother was also present. It is interesting to note that as per doctor Amreen Khan (PW-20), she had conducted postmortem along with Dr. Pawan A Wankhede (PW-28). Therefore, her contention in para 10 that mother of the victim was present when she had examined the victim appears to be slightly unnatural. She stated that she had examined the victim vide Ex.P-38. In Ex.P-38, it is mentioned that medical history was recorded as per the version of the mother of the victim and the police. However, Ex.P-40 is the query report given by Dr. Amreen Khan and Dr. Pawan A Wankhede jointly in which it is mentioned that death of the deceased resulted due to head injury with evidence of manual throttling and forceful recent vaginal and sexual intercourse.

88. When these facts are taken into consideration and the expert medical opinion, then it is true that Dr. Jagdish Kanash (PW-17) opined that there were no signs of violation of privacy of the victim i.e. there were no signs of sexual assault but Section 106 of the Indian Evidence Act provides that when any fact is especially within the knowledge of any person the burden of proving that fact is upon him. Section 106 is an Exception to Section 101 of the Indian Evidence Act.

89. In the case of Nagendra Sah Vs. State of Bihar (2021) 10 SCC 725, it is held as under -:

"21. Under Section 101 of the Evidence Act, whoever desires any court to give a judgment as to a liability dependent on the existence of facts, he must prove that those facts exist. Therefore, the burden is always on the prosecution to bring home the guilt of the accused beyond a reasonable doubt. Thus, Section 106 constitutes an exception to Section 101. On the issue of applicability of Section 106 of the Evidence Act, there is a classic decision of this Court in *Shambu Nath Mehra v. State of Ajmer* [*Shambu Nath Mehra v. State of Ajmer*, 1956 SCR 199 : AIR 1956 SC 404 : 1956 Cri LJ 794] which has stood the test of time. The relevant part of the said decision reads thus : (AIR p. 406, paras 10-13)

“10. Section 106 is an exception to Section 101. Section 101 lays down the general rule about the burden of proof.

‘101. *Burden of proof*.—Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist’.

Illustration (a) to Section 106 of the Evidence Act says—

‘(a) *A* desires a court to give judgment that *B* shall be punished for a crime which *A* says *B* has committed.

A must prove that B has committed the crime’.

*11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word “especially” stresses that. It means facts that are **pre-eminently** or **exceptionally** within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are **Attygalle vs. R.**, 1936 SCC OnLine PC 20 and **Seneviratne vs. R.**, 1936 SCC OnLine PC 57 : (1936) 3 All ER 36, 49.*

12. Illustration (b) to Section 106 has obvious reference to a very special type of case, namely, to offences under Sections 112

and 113 of the Indian Railways Act for travelling or attempting to travel without a pass or ticket or with an insufficient pass, etc. Now if a passenger is seen in a railway carriage, or at the ticket barrier, and is unable to produce a ticket or explain his presence, it would obviously be impossible in most cases for the railway to prove, or even with due diligence to find out, where he came from and where he is going and whether or not he purchased a ticket. On the other hand, it would be comparatively simple for the passenger either to produce his pass or ticket or, in the case of loss or of some other valid explanation, to set it out; and so far as proof is concerned, it would be easier for him to prove the substance of his explanation than for the State to establish its falsity.

13. We recognise that an illustration does not exhaust the full content of the section which it illustrates but equally it can neither curtail nor expand its ambit; and if knowledge of certain facts is as much available to the prosecution, should it choose to exercise due diligence, as to the accused, the facts cannot be said to be “especially” within the knowledge of the accused. This is a section which must be considered in a commonsense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove them, are all matters that must be taken into consideration. The section cannot be used to

undermine the well-established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts.”

(emphasis supplied)

22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused."

90. Thus, overall facts and circumstances of the case when taken into

consideration, then mother of the victim has categorically stated that she had left her three year old daughter on a bed in the house of Bhanu and had gone to Rajendra Colliery to pick coal. On her return, she found her daughter to be naked that is without clothes and by her side Radheshya @ Bitaani was lying watching obscene videos. When she was interrogating as to how her daughter was lying naked on floor, Bhanu had threatened her and stated that he will get the victim treated. She has though stated that when she had made her daughter sleep and when she reached home Rajkumar Dhimar was not present. In para 22, she admitted that when at about 11 pm she reached the place of the incident then only Bhanu was present, Pinky had accompanied her and later on Rajkumar was called. In Ex.D-2, it is clearly mentioned that when this witness reached home she found that Bitaani was sleeping in the outside room and had got up after seeing them. When she had gone to the inner room, she found her daughter to be lying on the floor. Bhanu was present inside the room and when she asked how this happened then Bhanu stated that victim had fallen down from the bed and when she shouted then Banu had threatened her.

91. This is a very important piece of evidence besides her statement that both the daughters of Bhanu were present in the house.

92. It is true that Dr. Jagdish Kanash (PW-17) has stated that he had not gathered any evidence in regard to sexual abuse of the victim but this is contrary to the pre-MLC report dated 02.03.2023 (Ex.P-27) in which it is mentioned that "A/H/o self fall from bed at house Rajendra Nagar.

P/s - Khaira. at 10:00 pm on 01/03/023.

-C/o - Ab(n), behaviour.

O/E - Abrasion mark out over Lt. side face, neck lips.

Rt leg annal region.

- H/O LOC

- No H/O vomiting/ENT bleeding. "

93. Thus, it is evident that Dr. Jagdish Kanash (PW-17) had seen abrasion on right leg, anal region. Thus, it is evident that letter for query Ex.P-28 dated 06.03.2023 has been wrongly answered by PW-17 because no explanation has been given in regard to abrasion on the right side of the anal region.

94. In any case, it is true that videography was not carried out but report of postmortem doctors which consisted of team of at least two doctors namely, Amreen Khan (PW-20) and Dr. Pawan Wankhede (PW-28) when categorically found evidence of violation of privacy, then provisions of Section 106 of the Evidence Act can be invoked because in a case of circumstantial evidence when the witness PW-1 has clearly shown presence of appellant Ram Narayan @ Bhanu Dhimar inside the room in which victim was lying on the floor and then the first MLC (Ex.P-27), clearly makes a mention of the fact that there was abrasion on the right annal part of the

victim, which is corroborated through the postmortem report, though it is true that DNA report is negative but Dr. Amreen Khan (PW-20) has accepted that it could have been caused through insertion of any other hard and round object which completes the offence of penetrative sexual assault, therefore, when examined, then as far as conviction of appellant Ram Narayan @ Bhanu Dhimer under Sections under Sections 302, 201, 506 Part-II of IPC and Section 5(m)/6 of POCSO Act, it cannot be faulted with when read in totality with advance postmortem report (Ex.P-37) and query report given by Dr. Amreen Khan (PW-20) and Dr. Pawan A Wankhede (PW-28), as contained in Ex.P-40.

95. This brings us to the aspect of sentence as to whether under the facts and circumstances of the case, death penalty is justified.

96. As per the law laid down by Hon'ble Supreme Court in the case of **Bachan Singh Vs. State of Punjab (1980) 2 SCC 684** and in the case of **Mukesh Vs. State (NCT of Delhi), (2017) 6 SCC 1**, it is to be examined whether the case will fall under 'rarest of rare' category warranting death sentence. When this aspect is taken into consideration, then penetrative sexual assault is proved qua present appellant Ram Narayan @ Bhanu Dhimer. It was aggravated penetrated sexual assault as defined under Section 5 of POCSO Act is also proved against him. Concealment of evidence is also proved against Ram Narayan and not against other accused persons. Similarly, criminal intimidation of the victim's mother is also proved against Ram Narayan and not against other accused persons.

97. Thus, when summary of 'aggravating' and 'mitigating circumstances' is drawn, then the 'aggravating circumstances' are that victim was only aged two years five months and was left in the custody of Ram Narayan Dhimar when her mother had gone with wife of Ram Narayan. Brutality was inflicted by an adult upon an infant incapable of resistance or articulation. There was aggressive penetrative sexual assault as proved by Dr. Amreem Khan (PW-20) and Dr. Pawan Wankhede (PW-28) besides fracture of a skull. There is also evidence of criminal intimidation of victim's mother. However, 'mitigating circumstances' are, no previous criminal antecedents of the accused, he being a youth of about 32 years of age coming from a rural economically weaker background, there being no abnormal conduct during his custody and also responsibility of the family i.e. wife and two minor children. We have also gone through the report on the Assistant Superintendent, Sub Jail Budhar dated 19.05.2026, which states that during the period of incarceration conduct of Ram Narayan has been normal, he has not committed any act of indiscipline. He was later on transferred to Central Jail, Jabalpur. We have also perused social audit report of the appellant as submitted by the Deputy Director, Social Justice and Differently Abled Empowerment, District Shahdol in which it is mentioned that family condition is poor, financial status is unstable. There were reports of convict being habitually intoxicated person who was working as labourer. It has also come on record that there was social boycott of the appellant on account of him performing marriage outside his caste which also resulted in his social isolation.

98. When these facts are taken into consideration, then law laid down by Hon'ble Supreme Court in the case of in Reference Vs. Ramnath Kewat @ Bhursoo, ILR 2023 MP 353(DB) would be relevant.

A chart is referred to for ready reference where Hon'ble Supreme Court has commuted death sentence to life imprisonment.

Part-I

WHEREIN DEATH PENALTY WAS COMMUTED TO LIFE SENTENCE WITHOUT REMISSION FOR THE REMAINDER OF THE CONVICT'S LIFE

S.No	Case details	JJ.	Brief Facts	Reasons for commuting Sentence
1.	Swamy Shraddana v. State of Karnataka (2008)13 SCC 767	3	Appellant killed wife who was the granddaughter of a Dewan. Subsequently, he sold off her properties and was absconding.	- The manner of committing murder did not cause any mental or physical pain to the victim. - Appellant confessed his guilt before the High Court. @54
2.	Sebastian v. State of Kerala (2010) 1 SCC 58	2	Appellant kidnapped a 2- years-old girl from her house, committed rape on her and then murdered her.	Appellant was 24- years-old at the time of the incident.
3.	B. Kumar v. Inspector of Police (2015) 2 SCC 346	3	Appellant worked as a mason in the house of the victims. He committed rape on a woman, murdered a boy whom he had tied;	Appellant's motive was not to commit murder but to commit rape on the prosecutrix. @18

			being an eyewitness to the act of rape, and further injured an eyewitness to the murder.	• No possibility of him having committed any another offence since he was apprehended 6 years after the incident. @21
4.	'X' v. State of Maharashtra (2019) 7 SCC 1	3	Appellant murdered two minor girls after committing rape on them. The deceased victims were the Appellant's neighbour.	Appellant suffering from severe mental illness since 1994, i.e., post conviction, during his long incarceration as a death row convict, i.e., 17 years. @74
5.	Sudam v. State of Maharashtra (2019) 9 SCC 388	3	Petitioner murdered his wife, his two children and the two children from his wife's extramarital affair.	• Nature of circumstantial evidence is a mitigating factor in the instant case. @21 • No medical evidence to show that Petitioner had crushed the face of deceased to avoid identification. @16
6.	Ravishankar v. State of M.P. (2019) 9 SCC 689	3	Appellant kidnapped a 13- year-old girl. Thereafter, he committed rape on her and murdered her by throttling. Subsequently, he destroyed evidence by throwing her half-naked body in a dry well.	• Key witness made contradictory statement
7.	Vijay Kumar v. State of J&K (2019) 12 SCC 791	3	Appellant murdered 3 minor children and caused injury to the remaining minor child and their father.	• No criminal antecedents. • Not a professional killer. @12
8.	Rajendra Pralhadrao Wasnik v. State of	3	Appellant committed rape and murder of a	• Prosecution failed to produce available

	Maharashtra (2019) 12 SCC 460		3-yearold girl.	DNA evidence and other material evidence before the Trial Court. @57 Possibility of reformation and rehabilitation not considered by lower courts. @79
9.	Mohd. Mannan v. State of Bihar (2019) 16 SCC 584	3	Petitioner-accused was a mason working at the house of an 8-yearold girl. He kidnapped, raped and murdered the child. Case is based on circumstantial evidence and alleged extrajudicial confession made by the Petitioner. @57	• Legal aid provided to him was inadequate. @ 38 • No opportunity given to the Petitioner to illustrate mitigating factors. @ 39 • No evidence showing murder was premeditated. @47 • No DNA analysis of the sperm found on the victim's body conducted by the prosecution. @53 • Psychiatrist report shows possibility of neurological and/or mental health issues. @68 • Post conviction mental health of the Petitioner a relevant consideration. @84
10.	Dattatraya v. State of Maharashtra	2	Appellant is a 50	No evidence to

10.	Dattaraya v. State of Maharashtra (2020) 14 SCC 290	3	Appellant is a 50-year-old man who committed rape on a 5-year-old girl which resulted in her death.	• No evidence to show that Appellant took victim to his residence. @114 • No evidence to show that murder was intended or premeditated. Appellant did not carry any weapon. • Possibility of the Appellant being unaware that sexual assault would result in death cannot be ruled out. @123 • Legal assistance to the Appellant ineffective. @129 • Question of reform not considered by the Trial Court. @130
11.	Jagdish v. State of M.P. (2020) 14 SCC 156	3	Petitioner murdered his wife and five children.	• Petitioner in custody since 14 years. • Unexplained delay of 4 years in forwarding the mercy petition by State. @12
12.	Rabbu v. State of M.P. 2024 SCC OnLine SC 2933	3	Appellant committed rape on a minor girl and set her on fire, thereby killing her.	• Appellant brought up by single father, comes from a backward socioeconomic stratum of society, was 22-yearold at the time of incident,

				has no criminal antecedents and possibility of reform cannot be ruled out.
13.	Deen Dayal Tiwari v. State of U.P. 2025 SCC OnLine SC 237	3	Appellant murdered his wife and four minor daughters with an axe. • Absence of previous criminal antecedents.	@15-16 Appellant's behavior in custody has been “satisfactory” and “normal,” noting that he has been performing assigned duties without any adverse conduct. • Nothing on record suggests that the appellant is incapable of rehabilitation. @20

PART – II

**CASES WHEREIN LIFE SENTENCE HAS BEEN IMPOSED TILL THE
END OF THE CONVICT’S NATURAL LIFE SUBJECT TO REMISSION**

S.No	Case details	JJ.	Brief Facts	Reasons for commuting Sentence
1.	Mulla v. State of U.P. (2010) 3 SCC 508	2	Appellants abducted and murdered five persons.	• One of the Appellants is 65-years-old and in custody since 14 years. @79 • Appellants belong to an extremely poor background. • Possibility of

				reformation not ruled out. @81
2.	Rameshbhai Chandubhai Rathod (2) v. State of Gujarat (2011) 2 SCC 764	3	Appellant murdered and committed rape on a minor girl who belonged to the apartment of which he was a watchman.	• Appellant was 27-years-old at the time of the incident. • Possibility of reformation not ruled out. • Appellant not granted adequate opportunity to plead on the question of sentence. @7
3.	Sandesh v. State of Maharashtra (2013) 2 SCC 479	2	Appellant committed robbery during which he fatally injured a pregnant woman and her mother-in-law. Subsequently, he murdered another relative of the victims during the commission of the robbery.	• Appellant was 23-years-old at the time of incident. • Murder not premeditated. • Appellant not a hardened criminal. • Good conduct in jail.
4.	Mohinder Singh v. State of Punjab (2013) 3 SCC 294	2	Appellant murdered his wife and daughter because of a previous case filed by his wife against the Appellant for committing rape on his minor daughter.	• Appellant did not harm his other daughter while committing the crime. • Appellant is a poor man unable to sustain himself. • Probability of reformation not foreclosed. @28
5.	Deepak Rai v. State of Bihar (2013) 10 SCC 421	3	3 accused committed murder of informant's wife and	• Death sentence commuted only in respect of A-3,

			five children.	i.e., Bacha Babu Rai. • No overt act attributed to A3.
6.	Vyas Ram v. State of Bihar (2013) 12 SCC 349	2	Appellants killed 35 persons and injured 7 belonging to the a particular community.	• Only 1 witness has attributed the role of slitting throats to the Appellant. • Incident took place in 1992 – charges framed in 2004.
7.	Sunil Damodar Gaikwad v. State of Maharashtra (2014) 1 SCC 129	2	Appellant murdered his wife and two sons. He attempted to murder his daughter but she survived.	• Appellant suffered from economic and psychic compulsions. • Possibility of reformation cannot be ruled out. • No criminal antecedents. • Appellant was living in abject poverty.
8.	Mahesh Dhanaji Shinde v. State of Maharashtra (2014) 4 SCC 292	3	Appellants murdered two minors and seven persons after which the Appellants robbed them	• Appellants were 23-29-years-old at the time of incident. • Appellants lived in acute poverty. • Appellants have pursued further education and meaningful endeavours during custody. @38
9.	Sushil Sharma v. State (NCT of Delhi) (2014) 4 SCC 317	3	Appellant murdered his wife with a firearm and burnt the body in a tandoor.	• No criminal antecedents. • No evidence to show absence of

				possibility of reformation. • Appellant has spent 10 years in death cell. • Appellant is the only son of his parents who are old and infirm. @105
10.	Mohd. Jamiludin Nasir v. State of West Bengal (2014) 7 SCC 443	2	The incident pertains to attack on police personnel wherein 5 police officials were killed and 13 others were injured along with other civilians. Death penalty of accused Aftab commuted to life imprisonment till the end of his life.	. • The acts committed were not directed against the sovereignty of the State. Hence, it could not be equated with precedents such as Navjot Sandhu, Ajmal Kasab or Mohd. Arif. • Aftab was the mastermind behind the entire operation – did not commit the act himself. He made the other accused commit the murders through.
11.	Arvind Singh v. State of Maharashtra (2021) 11 SCC 1	3	Appellant kidnapped an 8- years-old boy to demand ransom. Subsequently, he murdered the boy.	Appellants were 19-yearsold at the time of the incident. • No criminal antecedents. A-1 surrendered at the first opportunity @98

99. When taking this fact into consideration that there is no criminal history of the appellant Ram Narayan @ Bhanu Dhimer, he is already treated as an out caste in the society only on account of performing marriage in another caste and he being not a continuous threat to society, there being no evidence of he being a professional or habitual offender, age of the accused and the fact that there is possibility of reformation or/and rehabilitation at the age of 32 years cannot be ruled out, post incarceration conduct and possibility of reform, then appellant cannot be treated to be a menace to the society requiring 'rarest of rare' punishment in the matter. We are also conscious that human life is a precious gift of God therefore in the facts and circumstances of this case and law laid by Hon'ble Supreme Court we find that life should not be taken away lightly from appellant Ram Narayan @ Bhanu Dhimar. Thus, partly allowing the appeal, we commute sentence of Ram Narayan @ Bhanu Dhimar from death to one of life imprisonment for at least 25 years without any remission.

100. As far as complicity of other accused person is concerned, Dilip Singh, (PW-33) has admitted that, in the FIR, there is no mention of any threat given by any of the accused persons to the mother of the victim. He also admitted that proceedings were drawn against other accused persons after the death of the victim, that is, there was no complaint against other accused persons, till the victim died.

101. Similarly, it has come on record that in Ex.D-2, appellant had not taken names of any other accused persons to the guilty of intimidation.

Concealment of evidence and threat is also against Ram Narayan and not against other co-accused persons, namely, Rajkumar Dhimar and Smt. Pinky Dhimar, therefore, the conviction of Rajkumar Dhimar and Smt. Pinky Dhimar under Section 506 (Part-II) of IPC cannot be sustained and is hereby set aside.

102. Accordingly, Appeals and Reference are answered by commuting sentence of Ram Narayan @ Bhanu Dhimar from death to one of life imprisonment for at least 25 years without any remission. Appellants Rajkumar Dhimar and Smt. Pinky Dhimar are acquitted of the charges.

(VIVEK AGARWAL)
JUDGE

(AVANINDRA KUMAR SINGH)
JUDGE

MTK