



2024:CGHC:48449

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1920 of 2023**

Neelkanth @ Neelu Nagesh S/o Gorelal Nagesh, Aged About 22 Years R/o-
Dakbangla Para Police Station Gariyaband, District : Gariyabandh,
Chhattisgarh

---- Appellant**Versus**

State of Chhattisgarh Through The District Magistrate, Gariyaband, District :
Gariyabandh, Chhattisgarh

---- Respondent

For Appellant	:	Mr. Shivendu Pandya, Advocate
For Respondent	:	Mr. Shashank Thakur, Deputy Advocate General
For Objector	:	Mr. Dheeraj K. Wankhede, Advocate.

CRA No. 142 of 2024

Nitin Yadav S/o Anand Ram Yadav, Aged About 23 Years R/o Darrapara P.S.
Gariaband, District : Gariyabandh, Chhattisgarh

----Appellant**Versus**

State Of Chhattisgarh Through Station House Officer P.S. Gariaband, District :
Gariyabandh, Chhattisgarh

---- Respondent

For Appellant	:	Mr. Aman Kesharwani, Advocate
For Respondent	:	Mr. Shashank Thakur, Deputy Advocate General

ACQA No. 215 of 2024

XYZ (Mother Of The Deceased)

----Appellant

Versus

1 - State Of Chhattisgarh Through Police Station, Gariyaband, District
Gariyaband

2 - Neelkanth @ Neelu Nagesh S/o Gorelal Nagesh Aged About 22 Years R/o
Dakbangla, Para Police Station Gariyaband, District Gariyaband (C.G.)

---- Respondents

For Appellant	: Mr. Dheeraj K. Wankhede, Advocate.
For Respondent No. 1	: Mr. Shashank Thakur, Deputy Advocate General
For Respondent No. 2	: Mr. Shivendu Pandya, Advocate
Date of Hearing	: 13.11.2024
Date of Judgment	: 10.12.2024

Hon'ble Mr. Ramesh Sinha, Chief Justice**Hon'ble Mr. Bibhu Datta Guru, Judge****C.A.V. Judgment****Per Ramesh Sinha, Chief Justice**

1. Criminal Appeal No. 1920/2023 has been filed by the convict/appellant- Neelkanth @ Neelu Nagesh and Criminal Appeal No. 142/2024 has been filed by convict/appellant-Nitin Yadav, challenging the judgment dated 07.09.2023 passed in POCSO Case No. 27/2021 by the Additional Sessions Judge Fast Track Special Court (POCSO and Rape Cases) Gariyaband, District Gariyaband, whereby the appellants have been convicted and sentenced as under:

Conviction under Section	Sentence (Rigorous imprisonment)	Fine	In default of payment of fine additional rigorous imprisonment
Appellant-Nitin Yadav			
376(3) of the Indian	Life	Rs. 5000/-	2 months

Penal Code (<i>for short, the IPC</i>)			
363 IPC	2 years	Rs.1000/-	2 months
302 IPC	Life	Rs. 2000/-	2 months
201 IPC	7 years	Rs.1000/-	2 months
3(2)(v) of the SC and ST (Prevention of Atrocities) Act, 1989 (<i>for short, the Act of 1989</i>)	Life	Rs. 1000/-	2 months
Appellant-Neelkanth @ Neelu Nagesh			
201 IPC	7 years	Rs. 5000/-	2 months.

2. ACQA No. 215/2024 has been filed by the mother of the victim challenging the acquittal of the appellant-Neelkanth @ Neelu Nagesh by the learned trial Court of the other offences of the IPC, POCSO Act and the Atrocities Act, 1989.
3. The case of the prosecution, is that the appellant-Nitin Yadav, on 19.10.2018 committed rape upon the victim, who was a minor aged about 9 years and belonging to scheduled caste category, in her own house and thereafter committed her murder by throttling and thereafter, the dead body was taken to a hill with the assistance of co-accused Neelkanth @ Neelu Nagesh and in order to screen the evidence, the dead body was buried in the ground and before burial, the co-accused Neelkanth committed rape upon the dead body of the victim.
4. In the case in hand, PW-1 is the mother of the victim, PW-2 is the maternal uncle of the victim, PW-3 is the maternal grandmother of the victim and PW-4 is the father of the victim. According to the prosecution, the mother of the victim (PW-1) informed at Police Station, Gariaband that on 19.10.2018, she had gone to work in the Forest Colony DFO Bungalow as usual. Her daughter and her mother were at home. Her mother told her that she would go to her brother's house in Ravanbatha

Gariaband for observing some ritual. She told the victim to stay at home and play with the children of her neighbor Jaggan. When she would return from work, they would go to watch Dussehra celebrations. When she returned home at 1:20 p.m. after work, she saw that the victim was not at home. She went to her brother's house in Ravanbhatha to find out if the victim had come. Then she inquired about the victim from the nearby relatives and neighbors and tried to find out the whereabouts of the victim. She suspected that being a minor, some unknown person has lured and kidnapped the victim.

5. On the basis of the information given by the informant, on the oral information of the mother of the victim (PW-1), a case was lodged regarding missing of the victim under missing person number 25/2018 and on 19.10.2018 a First Information Report bearing crime number 250/2018 under section 363 of the IPC was registered against an unknown person in Gariaband Police Station and the case was taken up for investigation. On 20.10.2018, the spot map of the incident spot and the spot map of the victim's house were prepared and during the search of the victim, on the oral information of the victim's maternal uncle, a *Dehati Merg intimation* was registered at '0' and the dead body was handed over in presence of witnesses and Panchnama proceedings were done and on the same date. A memo was sent to the Tehsildar Gariaband for the body panchnama of the victim and notice was given to the witnesses for the body panchnama and after the body panchnama proceedings, the dead body was handed over to her family and blood stained soil and plain soil were seized from the spot in presence of witnesses and on the presentation of the complainant/victim's mother, the victim's class 2 progress card was seized in presence of witnesses. For obtaining report of the post-mortem of the victim, a memo was sent

to the District Hospital Gariaband and the report was received and on the basis of the death intimation registered at '0' in Police Station Gariaband, a numbered merg intimation was registered. On the said date itself, lady constable Revati Tandon brought from the hospital a vaginal slide belonging to the victim in a sealed packet, a stick swab in a plastic box in a sealed packet and seized in presence of witnesses. After examination of the underwear of the deceased, the report was obtained. On 22.10.2018, memorandum statement of accused Neelkanth @ Neelu Nagesh was recorded in presence of witnesses and as per the statement of accused Neelkanth, one spade, one pair of slippers of the victim were seized in presence of witnesses and as per the statement of accused Neelkanth, one pair of anklets (*paya*) of the victim and pink colour plain full shirt worn by accused Neelkanth at the time of the incident were seized from his Dak Bungalow house and a report regarding the potency of appellant-Neelkanth @ Neelu Nagesh was obtained from the Chief Medical Officer District Hospital Gariaband and the motor cycle used in the incident and the RC book, insurance document of the said vehicle were seized from Dayalu Netam in presence of witnesses. On the same date, the underwear was seized from accused Neelkanth and a report was received from the Chief Medical Officer District Hospital Gariaband with respect to the said underwear. On 22.10.2018, the memorandum statement of accused Nitin Yadav was recorded in presence of witnesses. As per the information provided by him, his underwear was seized from his house and a report was also obtained from the Chief Medical Officer, District Hospital, Gariaband with regard to potency of the accused Nitin and with respect to his underwear. A grey coloured jeans, full pants and slippers worn by accused Nitin at the time of the incident were seized in presence

of witnesses and accused Nitin Yadav was arrested and his family members were duly informed about the arrest. On the same date, accused Neelkanth was also with due information to his relatives. When Constable No. 606 Lekhan Patel brought him from the hospital and presented him at the police station, the tested underwear belonging to accused Neelkanth @ Neelu in a sealed packet and the tested underwear of accused Nitin Yadav in a sealed packet were seized in front of witnesses.

6. On 24.10.2018, Constable number 328 Yogesh Chandrakar brought the underwear of the deceased from the hospital to Gariyaband Police Station which was seized in presence of the witnesses. On 25.10.2018, a communication was sent to the Tehsildar Gariaband for preparing separate spot maps of both the crime scenes by the Patwari and accordingly, a spot map was prepared. On 30.10.2018, request was made to the Additional Sessions Court, Gariaband, for taking blood samples of the accused for DNA testing and as such, permission was obtained. Dayalu Netam (PW-8) was given notice under Section 91 Cr.P.C. The witnesses were given notice under Section 160 Cr.P.C. On 22.11.2018, a memo was sent to the Principal of Government Primary School Keshodar to produce the school's admission and affidavit register related to the victim's date of birth. On the same date, the admission and affidavit register were seized from the teacher of Primary School Keshodar, Ms. Geeta Netam (PW-9), in presence of witnesses. Attested copies of the relevant pages of the admission and affidavit register were obtained and the original admission and affidavit register were returned back. On 26.11.2018 a memo was sent to the Jail Superintendent, Gariaband, for keeping the accused present in District Hospital, Gariaband for taking blood samples of the accused for DNA testing. The

Patwari prepared a site map along with site panchnama of both the places of occurrence and submitted a report. For recording the statement of the mother of the victim, grandmother of the victim and Kaushalya Bai under Section 164 Cr.P.C. a request was made to the Judicial Magistrate First Class, Rajim and the statement was recorded. On 28.11.2018, the Constable number 328 Yogesh Chandrakar brought from the hospital and presented at the Gariaband Police Station the blood samples of the accused Nitin and Neelkanth, which was preserved by the doctor for DNA testing and the same were seized and sealed in separate packets in presence of witnesses. On 06.12.2018, memorandum statement of the accused persons and videography of the was done at the Gariaband Police Station, regarding which the related CD was seized from Ganesh Yadav (PW-11) in presence of witnesses and certificate under Section 65-B of the Indian Evidence Act was given. On 06.12.2018, the father of the victim was given notice under Section 91 Cr.P.C. and the caste certificate of the victim was seized from him. The seized articles were sent to the laboratory for chemical testing along with the FSL alongwith the memo of the Superintendent of Police, Gariaband, along with the item description, and an exhibit receipt was obtained and the report was also obtained after the chemical test, and the CDR and SDR related to the mobile were obtained and the statements of the remaining witnesses were recorded, and after completion of the investigation, the case was transferred to the Court of Additional Sessions Judge, Fast Track Special Court (POCSO and Rape cases) Gariyaband, from the Special Court of Atrocities, Raipur.

7. Charges were framed against the appellant-Nitin Yadav for the offences punishable under Sections 363, 376(3), 302, 201, 34 of IPC and Section 6 of the POCSO Act and Section 3(2)(v) of the Act of 1989 and

against Neelkant @ Neelu Nagesh under Sections 363, 376(3), 201, 34 of the IPC, Section 6 of POCSO Act and Section 3(2)(v) of the Act of 1989. The appellants abjured the guilt and prayed for trial.

- 8.** In order to bring home the offence, the prosecution examined as many as 21 witnesses, namely victim's mother (PW-1), victim's maternal uncle (PW-2), victim's maternal grandmother (PW-3), victim's father (PW-4), Anita Jagat (PW-5), Radheshyam Sharma (PW-6), victim's maternal uncle (PW-7), Dayalu Netam (PW-8), Assistant Teacher Ms. Geeta Netam (PW-9), Head Mistress Mrs. Shyamkumari Ramteke (PW-10), Ganesh Yadav (PW-11), Jagan Dhruv (PW-12), Head Constable Thaneshwar Prasad Verma (PW-13), Teejan (PW-14), Patwari Tikam Singh Nagesh (PW-15), Executive Magistrate Manoj Kumar Gupta (PW-16), Assistant Sub-Inspector Chhabilal Tandekar (PW-17), Medical Officer Dr. B. Bara (PW-18), Deputy Superintendent of Police, Ashish Kunjam (PW-19). D.S.P. Sanjay Dhruv (PW-20), Dr. Jayant Chandrakar (PW-21) and exhibited 68 Exhibits and 4 Articles. The appellants have exhibited the police statement of Smt. Kanti Bai and Anita Jagat, as Exhibit D/1 and D/2.
- 9.** The statement of the convict/appellants was recorded under section 313 CrPC. They have expressed their ignorance about most of the questions, however, some of them were denied as well. They stated that they were innocent and have been falsely implicated.
- 10.** The learned trial Judge, after considering the statement of witnesses and evidence available on record, convicted and sentenced the appellants/convicts as detailed in the opening paragraph of this judgment. Hence, the present appeal by the appellants/convict.

11. Mr. Shivendu Pandya, learned counsel appearing for the appellant-Neelkanth @ Neelu Nagesh submits that the impugned judgment passed by the learned trial court is bad, illegal, perverse and contrary to law applicable to the facts and circumstances and evidence available on record. The trial Court erred in holding that the appellant had committed offence punishable under section 201 of IPC as the same is based on surmises and conjectures. The learned trial Court has utterly failed to appreciate the evidence of prosecution witnesses in its right perspective. There is absolutely no evidence against the appellant. The evidence of PW-1, PW-2, PW-3, PW-4, PW-5, PW-6 and PW-7 as well as other witnesses of the case are not corroborated by other prosecution witnesses. The medical evidence of the case has not been supported to the prosecution case the statement of the doctor Dr. B. Bara (PW-18) has not supported the prosecution case. The Doctor did not state in their evidence the nature of the death caused by the deceased and rape. The appellant has no knowledge to cause any bodily injury to the deceased with or without intention to which it is likely to have caused death. In view of the evidence of prosecution witnesses that who had assaulted the deceased, a serious doubt arises in favour of accused/appellant, hence, where two views are possible, one pointing out of the guilt and other to innocence of accused/appellant, the view in favour of accused/appellant was to be adopted and accordingly he is entitled for benefit of doubt. The learned trial court committed gross error in convicting the accused/appellant under section 201 of IPC because on one hand the learned trial court has completely acquitted the present accused/appellant under section 302 of IPC and other Section and on other hand, the learned trial court convicted the accused/appellant under section 201 of IPC whereas there is no cogent evidence against him under

section 201 of IPC that which shows the present accused/appellant committed any rape with dead body of the deceased. The statement of prosecution witnesses are full contradiction and omission and can not be relied upon for convicting the accused/appellant. Hence, he prays that the appellant may be acquitted of the charges.

12. Mr. Aman Kumar Kesharwani, learned counsel appearing for the appellant-Nitin Yadav, submit that the appellants have been falsely implicated in this case only on the basis of suspicion. The seizure of alleged underwear from the appellant has resulted in nothing Incriminating because the said underwear was not subjected to identification as well in the FSL examination also nothing was found on it. The admissibility of the DNA Test has been challenged before the trial Court which has not considered the legal aspects that the samples were drawn in two parts and despite the sample from the deceased taken on 22.10.2018 the same was not sent to the FSL Lab for DNA test till 28.11.2018 giving rise to possibility of disintegration. The samples of the appellants were not taken on the same date and the prosecution has not explained the delay of taking samples on 28.11.2018 after one month and also the delay in issuance of report on 29.04.2019 after 6 months. The DNA Report was not a part of the final report and hence without any application under Section 294 Cr.P.C the same cannot be read in evidence. The right of the appellant-Nitin Yadav to dispute the veracity of the document has been taken away causing prejudice. DNA report is a weak piece of evidence and can only be used for corroboration when the other circumstances are not conclusive regarding the prosecution story then merely on the basis of DNA report conviction cannot be based. In support of his contentions, he places reliance on the decision of the Apex Court in ***Manoj & Others v. State of Madhya Pradesh***

{(2023) 2 SCC 353}, ***Pattu Rajan v. State of Tamil Nadu*** {(2019) 4 SCC 771} and a Division Bench judgment of this Court in ***Ashish Gupta v. State of Chhattisgarh*** {2024 SCC OnLine 4083}.

13. On the other hand, Mr. Shashank Thakur, learned Deputy Advocate General appearing for the State/respondent submits that the learned trial Court was fully justified in convicting and sentencing the convict/appellant as mentioned in the opening paragraph. There is ample evidence on record to hold the appellant guilty of the offence. The order passed by the learned trial Court needs no interference and the appeal filed by the both the appellants be dismissed.
14. Mr. Dheeraj K. Wankhede, learned counsel appearing for the objector/complainant/mother of the victim, supports the submission made by learned State counsel. In addition, he submits that the judgment of conviction passed by the learned trial Court, so far it relates to the appellant-Neelkanth @ Neelu Nagesh is concerned, the same is contrary to law and evidence available on record. The learned trial Court committed gross error by acquitting accused No. 2-Neelkanth from the charges 363, 376 (3) of the IPC, Section 6 of the POCSO Act and Section 3 (2) (v) of the Act of 1989 and only convicted him under section 201 and 34 of the IPC. The learned trial Court failed to appreciate the fact that in the present case, proper chain of circumstances were established by the police during investigation, but only on the basis that, sexual intercourse committed against a dead body of a woman, does not constitute rape and the same is not penalized under IPC, the learned trial Court acquitted the accused person 363, 376 (3) of the IPC, Section 6 of the POCSO Act, 2012 and Section 3 (2) (v) of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 in a heinous

crime like rape. The learned trial Court failed to appreciate that present case is based on the articles seized, evidences and statements recorded, memorandum of accused and the other persons, wherein the accused himself has admitted that he was enthralled with the deceased's semi-naked body and so he raped her before disposing off her body in the hills but without considering the same, the learned trial Court acquitted Neelkanth @ Neelu Nagesh of the other charges. Mr. Wankhede submits that this sort of crime also termed as Necrophilia (a rare phenomenon in which an individual receives sexual pleasure by having intercourse with a corpse) is inhumane, morally wrong and abominable. This primarily occurs with female corpses. Such behaviors jolt society's collective consciousness. While there are many laws protecting women's dignity while they are still alive, sadly, there are either none at all or very few that safeguard women's dignity after they pass away. Women are not only the prey of men's passion and sensual pleasures when they are still alive, but also when dead. Such actions. Not only lowers the dignity of the dead, disrespects it but also hurts the feelings of their family and near relative. The learned Trial Court merely relying upon the judgment passed by the Karnataka High Court in ***Rangaraju vs State of Karnataka*** {2023 SCC OnLine Kar 231}, wherein the Court had acquitted the accused under Section 376 of the IPC and held that commission of rape on a woman's dead body cannot be termed as "rape" to attract section 376 of the IPC, 1860, has passed the impugned order without looking onto the gravity of the offence. he learned trial Court had failed to consider that even though the Indian Laws do not consider Sexual Intercourse with a Dead body as "RAPE" and a suitable parameter to convict the accused under Section 376 of the IPC, the Article 21 of the Indian Constitution ensures that the right to

die with dignity which is also applicable to the person's dead body. The Apex Court has also considered the rights of the dead in the case of ***Pt. Parmanand Katara vs Union Of India & Ors*** {(1995) 3 SCC 248}. It held that right to dignity and fair treatment is not only available to a living man but also to his dead body under Article 21 of the Constitution. Furthermore, The Hon'ble Supreme Court in the case of ***Ashray Adhikar Abhiyan V. Union of India*** {(2002) 2 SCC 27}, held that unclaimed bodies or homeless deceased also have the right to a reverent cremation and their dignity must be protected. The Madras High Court in the case of ***Amrutha, S. & Ors. v The Commissioner, Greater Chennai Corporation and Ors*** bearing W.P. No. 33762 of 2017 held, that even dead persons have got a right of privacy and their souls should not be disturbed, as they have immortal life after their death. The Allahabad High Court reiterated the same in the case of ***Ramji Singh and Mujeeb Bhai Vs. State of U.P. & Ors***, {WP (PIL) No. - 38985 of 2004}} in which it said that the definition of "person" in article 21 ensures that the right to die with dignity also applies to the person's dead body. The learned trial Court has erred in law by acknowledging the fundamental truth that necrophilia constitutes a flagrant infringement upon the rights of the deceased, who are entitled to a dignified funeral. And herein, a young girl who was not only sexually assaulted and brutally killed by the accused Nitin Yadav but was also denied a dignified death, as she was raped again by the accused-Neelkanth @Neelu Nagesh after she passed away and later on her body was disposed off Despite the fact that the accused's act was heinous, brutal, shameless, and barbaric that are literally unforgivable, the learned Trial Court simply found the accused not guilty of his demonic actions and instead found him guilty only under sections 201 and 34 of

the Indian Penal Code. The Allahabad High Court in case of ***Surendra Koli v. State of Uttar Pradesh and others***, also called the Nithari Killings case, {2023 SCC OnLine All 2038}, has observed that the depredations committed by the accused upon dead bodies of his victims cannot be turned a blind eye. The Court laid down principles of bodily integrity, consent, and dignity and also observed that in the case of rape upon a dead body, all three of these principles are violated. Even though Indian criminal laws do not recognize 'necrophilia' as a crime in itself, at the same time the human rights of a dead person cannot be discounted. Article 21 of the Indian Constitution provides not only for the right to life with dignity and respect, but it also encompasses within its ambit the right to die in a dignified manner and ancillary rights of treatment after death and burial as had been authoritatively laid down by the Supreme Court in the case of ***Parmanand Kataria v UOI*** (Supra). It is lastly submitted that the prosecution has been able to prove the case against the accused-Neelkanth @ Neelu Nagesh which ought to have been considered by the learned trial Court and the respondent should have been held guilty for all the offences charged.

15. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
16. So far as nature of death of the victim is concerned, there is no doubt that the same was homicidal as is evident from the short postmortem report and the detailed postmortem report as also the statement Dr. B. Bara (PW-18) is the Doctor who conducted the postmortem. In the short postmortem report (Exhibit P/41), he found it to be a case of asphyxia due to throttling, homicidal in nature and the duration of death was within

24 hours. He also opined that sexual assault was also present. In the detailed postmortem report (Exhibit P/40), the hymen was found to be ruptured, libia majora minora swelling present, bleeding was present. On opening the neck, he found rupture of hyoid bone and trachea and other bones were also fractured. On external examination, the Doctor found stiffness in both the hands and legs, mud and ants stuck on the body, marks of ants bites on the body, swelling in the cheeks, both eyes bulging out, mouth open and bleeding from the nose, and on internal examination, the hyoid and other bones were found broken, on opening the chest, the middle muscle of the ribs and the lungs were congested, on opening the heart, both the chambers were found empty and no blood was found, the stomach was found empty, half-digested food was found inside the small intestine and large intestine, the intestinal membrane, spleen and kidney were found congested and the uterus was found small and not fully developed and on examining the private parts of the victim, the external part of her private parts were swollen and the private parts were torn and blood was leaking from it and the hymen was completely hollow and torn, two slides were prepared from her vaginal discharge and handed over to the police for chemical examination and an opinion was given that the victim died due to throttling due to obstruction of breathing which was of homicidal in nature and the said death occurred within 24 hours of her examination. According to the opinion of the said medical witness, there was also physical intercourse with the victim. Now the question would be, whether the appellants are the author of the crime?

17. Admittedly, there is no eye witness to the incident and the entire prosecution case rests upon circumstantial evidence.

- 18.** From the postmortem report, it is apparent that apart from throttling and causing injuries on various parts of the body, the victim was also sexually assaulted.
- 19.** According to Section 2(1) (d) of the POCSO Act, a child means any person who is less than 18 years of age. The victim is stated to be a minor below 10 years of age on the date of incident i.e. 19.10.2018. The mother of the victim (P.W.-01) has stated the age of her daughter/victim to be 09 years at the time of the incident but in reality her age was 08 years 05 months and at the time of the incident she has stated that her daughter/victim was studying in class 4. The maternal uncle of the victim (PW-2) has also stated the age of the victim to be 09 years at the time of the incident. The father of the victim (PW-4) has also stated that the victim was studying in class 4 at the time of the incident. The victim's mother's aunt (PW-05) has also stated that the victim's/deceased's age was 9 years at the time of the incident. Assistant Teacher Kumari Geeta Netam (PW-9) in her deposition before the Court has stated that she was posted as Assistant Teacher in the Primary School Kesodar and in the original admission register at entry No. 47, the date of birth of the victim is 12.07.2009 and the date of admission in school is 16.06.2014 in Class 1. As such, there is no manner of doubt that the victim was aged about 9 years {8 years 10 months and 7 days} on the date of incident and was a 'child' in view of Section 2 (d) of the Act of 2012.
- 20.** The mother of the victim (PW-1) has deposed before the learned trial Court that she was acquainted with the accused persons and the accused Nitin was her neighbour and accused Neelkanth was residing 2 KMs away from his house. She has specifically deposed that the accused Nitin used to visit her house on one ground or the other and he

also used to touch various parts of the body of the victim which was objected by her and as such, she had a suspicion on the said accused when the victim went missing. When this witness went in search of the victim, she found a lock in the house of the accused-Nitin. Her neighbour Tijan had informed her that accused Nitin was in her house alongwith the victim. When the police personnel interrogated him, he gave different answers. When on the next day, sniffer dog was brought, the dog ran towards the hill and returned back and scratched the house of the accused where the leggis of the victim was found in the house of Nitin. Thereafter, police personnel informed that her daughter was recovered and she ran towards the hill.

- 21.** Ishwar (PW-2) who is the maternal uncle of the victim knew both the accused persons. He stated that the dead body of the victim was found in the hill and her head was smashed and eyes had popped out. He had signed the Dehati Nalishi (Exhibit P/5), dead body recovery panchnama (Exhibit P/6) and dead body panchnama (Exhibit P/7) and inquest (Exhibit P/9). Radheshyam Sharma (PW-6) has stated that the body of the victim was recovered by the police from behind the hill and the proceedings of the body panchnama were done on which this witness has signed the relevant document. Executive Magistrate Manoj Kumar Gupta (PW-16) has prepared the body panchnama of the victim in front of witnesses on 20.10.2018 at 10:00 am. Ashish Kunjam (PW-19) has stated that before preparing the inquest, he recovered the body of the victim in presence of witnesses and prepared the recovery panchnama Ex.P-06 and signed it.
- 22.** Another important witness in the case, who is a friend of the victim (PW-14), has stated in her evidence at paragraph-01 that she knew the

accused Nitin Yadav and in paragraph-02 has stated that she and the victim had gone to take bath in the morning and after taking bath they had returned to their house. She has stated that the house of the accused Nitin Yadav is on the hill and that on that day she had come to know that the victim was not at home and the body of the victim was lying in a semi-naked state behind the Darra hill. In paragraph-05 of cross-examination, this witness has stated that she had seen the accused Nitin in his house on that day.

- 23.** The IO (PW-19) on 22.10.2018 itself at 11:45 AM, at the instance of the accused Neelkanth, had seized one piece of spade, one pair of slippers of the victim from Darripara behind the hill in presence of witnesses and signed the seizure memo Exhibit P-19. On the same date of investigation at 12:15 p.m., at the instance of the accused Neelkanth, a pair of anklets of the victim and a pink colour shirt worn by the accused at the time of the incident were seized as per seizure memo Exhibit P-18 and on the same date one black colour HF Deluxe and the registration certificate of the said vehicle were recovered from Ravanbatha from Dayalu Ram (PW-8). It has been stated that the R.C. Book and insurance certificate were seized in the presence of witnesses as per Exhibit P-25 and on the same date, the underwear worn by accused Neelkanth was seized in Gariaband police station in front of witnesses as per seizure memo Exhibit P-23 and a seizure memo was prepared. The IO has also deposed that on the said date itself, in village Darrapara, the memorandum statement of accused Nitin Yadav was recorded as per his statement in front of witnesses and Exhibit P-20 was prepared and on the information given by the said accused, at 11 a.m., on the indication of accused Nitin Yadav, the underwear of the victim was seized from his house in Darrapara in front of witnesses and seizure

memo of Exhibit P-21 was prepared and on the said date itself, full pants and a pair of long sandals worn by accused Nitin Yadav at the time of the incident were seized from his house in Darrapara in front of witnesses as per seizure memo of Exhibit P-22. On the said date itself the underwear worn by accused Nitin Yadav at the time of the incident was seized before witnesses as per seizure memo Exhibit P-24. However, on the said date Lakhan Patel (PW-06) brought it from the hospital and presented it at Gariaband Police station, and then the tested underwear of accused Neelkanth @ Neelu in a sealed packet and the tested underwear of accused Nitin Yadav in another sealed packet were seized before witnesses as per seizure memo Exhibit P-47. Similarly, on 24.10.18, when constable Yogesh Chandrakar number 328 brought the underwear of the deceased from District Hospital Gariaband and presented it at Gariaband Police Station, the tested underwear of the deceased was seized in a sealed packet in presence of witnesses vide Exhibit P/48.

- 24.** In the memorandum statement of Neelkanth @ Neelu (Exhibit P/17), the accused stated that he used to do the work of whitewashing and was the friend of Nitin Yadav who was residing in Darrapara and he used to visit his house. On 19.10.2018, he went to Matli for consuming liquor and took the motorcycle of Dayalu Netam bearing No. CG 04 LH 2513 and he met accused Nitin Yadav at Rawanbhata who informed him that he had committed a mistake. He further informed him that he had forcefully raped the victim and as she was screaming, he throttled her neck and caused her murder and had hidden her body in his own house and the same was required to be hidden somewhere else. On stating this, both these accused went on motorcycle and took the dead body of the victim towards the forest situated on the hill . Nitin had taken a spade from his

house when the body of the victim, which was fully naked, was put on the ground, the accused-Neelkanth couldn't control his emotions and established physical relation with the dead body. Thereafter, after digging a pit under the Kosam tree, they buried the body. The accused-Neelkanth also took off the anklets of the victim. He informed the police as to at which place he had hidden the anklets. This memorandum statement was given in presence of Radheshyam Sharma (PW-6) and Ashok Nagesh (PW-7), respectively.

- 25.** Similarly, in the memorandum statement (Exhibit P/20) of accused-Nitin Yadav, this accused has stated that he resided near the house of the victim and used to graze the cattle. He used to visit the house of the victim for watching the TV and he had an evil eye on the victim. He used to touch her for which he was being scolded by the mother of the victim and as such, he was having a grudge against the mother of the victim. On the date of Dusshera, when the mother of the victim was not present in the house, he came to the house of the victim and asked her that he wanted to watch the TV and thereafter, he slammed the victim on the floor and committed forceful sexual intercourse with her. When she started screaming, he throttled her neck because of which she died. Thereafter, he carried the dead body alongwith the undergarment and slippers of the victim to his house and hid the body inside the house. Thereafter, he went to the house of Dular Yadav and ate food and near Dak Bunglapara, he met the accused Neelkanth and informed him about the incident and also asked him for help to cause disappearance of the body. They both took the body on a motorcycle towards a hill where they dug a pit. He further states that the accused-Neelkanth raped the dead body of the victim. Thereafter, both of them buried the dead body under a Kosam tree. This accused had hidden the underwear of the victim in

his house which was later recovered by the police at the instance of this accused.

- 26.** The anklet of the victim and the undergarment of the victim has been recovered at the instance of the accused themselves from their respective houses.
- 27.** When accused Nitin Yadav brought the victim's underwear which had blood and semen stains on it, was seized by the police. In this regard, in the FSL report Ex.P-61, it is mentioned that human blood was found on victim's slide exhibit "A", swab exhibit "B", and woman exhibit "C" and human sperm was found in exhibits marked "A" and "B". Similarly, in the FSL report Ex.P-62, although it is mentioned that semen stains and human sperm were not found in victim's underwear exhibit "A", whereas semen stains and human sperm were found in accused Neelkanth's underwear exhibit "B" and accused Nitin Yadav's underwear exhibit "C", although it is mentioned that the said stains were not sufficient for serological test, but in the case, from the observation of the FSL report Ex.P-63, the soil from the incident spot is found in Exhibits marked "A" and "B", the shovel seized from accused Neelkanth alias Neelu Nagesh, Exhibit marked "C" and the jeans full pant seized from accused Nitin Yadav, the lower portion of which was found to be smeared with mud, Exhibit marked "D" and a pair of slippers produced by accused Nitin Yadav, Exhibit marked "E", as per the opinion in the report of the soil in Exhibit "A" and "B", the soil stuck in the shovel in Exhibit "C", the soil stuck in the clothes in Exhibit "D" and the soil stuck in the slippers in Exhibit "E" are found to have the same physical properties.
- 28.** Both the accused have been medically examined by Dr. Jayant Chandrakar (PW-21) who has found them to be sexually potent and

capable of performing sexual intercourse. On the left arm upper side of the accused Nitin Yadav, this witness had found multiple linear abrasions. The accused-Neelkanth was also found to be sexually potent vide Exhibit P/65 and P/66.

29. For DNA report, the samples i.e. slides and swab of the victim was marked as 803 and 804 and the blood samples of the accused Nitin Yadav and accused Neelkanth has been marked as 805 and 806. After examination, from the swab and slides, mixed DNA profile was obtained and the DNA of both the accused have been found in the slides and swab of the victim which proves the commission of rape by these two accused itself.
30. Thus, the prosecution has succeeded in proving beyond doubt that it was the appellants who are the author of the crime in question. We concur with the reasoning and findings arrived at by the learned trial Court in convicting and sentencing the appellants for the offences in question, and as such, both the criminal appeals stand **dismissed**.
31. So far as Acquittal Appeal No. 215/2024 filed by the mother of the victim is concerned, there is no doubt that the offence committed by the accused-Neelkanth @ Neelu Nagesh i.e. raping a dead body is one of the most horrendous crimes one can think of but the fact of the matter is that as on date, the said accused cannot be convicted for the offence punishable under Sections 363, 376 (3) of the IPC, Section 6 of the POCSO Act, 2012 and Section 3(2)(v) of the Act of 1989 as the offence of rape was committed with a dead body and for convicting an offence under the aforementioned Sections, the victim should be alive. Heavy reliance has been placed by Mr. Wankhede on the decision of the Karnataka High Court in **Rangaraju** (*supra*) wherein at paragraph 69,

various recommendations have been made to the Central Government. Against the said judgment, the State of Karnataka has filed a Special Leave Petition (Criminal) Diary No(s). 13372/2024 which is pending consideration before the Apex Court. As such, reliance placed on the decision of **Rangaraju** (supra) is of no assistance to the learned counsel for the complainant. There can be no disagreement on the issue that dignity and fair treatment is not only available to a living man but also to his dead body and every dead body is entitled for a respectful treatment but the law as on date has to be applied to the facts of the case and none of the offences as prayed by the learned counsel for the objector can be imposed upon the appellant-Neelkanth @ Neelu Nagesh. Since we have already concurred with the reasons and findings arrived at by the learned trial Court, we are not inclined to allow the acquittal appeal filed by the mother of the victim and as such, the same also stands **dismissed**.

- 32.** The appellant-Nitin Yadav is stated to be in jail. He shall serve out the remaining part of the sentence as has been awarded to him by the learned trial Court. The appellant-Neelkanth @ Neelu Nagesh was granted bail by this Court vide order dated 21.02.2024. His bail bonds are cancelled and sureties discharged. He is directed to surrender within a period of 15 days from today failing which he shall be taken into custody for serving out the remaining part of the sentence as has been ordered by the learned trial Court.
- 33.** Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing their respective jail sentences 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.

- 34.** Let a certified copy of this judgment alongwith the original record be transmitted to trial Court concerned forthwith for necessary information and action, if any.

Sd/-
(Bibhu Datta Guru)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Amit

AMIT
KUMAR
DUBEY
Digitally signed by
AMIT KUMAR
DUBEY
Date: 2024.12.10
20:08:56 +0530