

**IN THE HIGH COURT OF CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

DEATH REFERENCE NO. 02 OF 2023

THE STATE OF WEST BENGAL

... APPELLANT

Vs.

RADHA KANTA BERA

... RESPONDENT

With

CRIMINAL APPEAL (DB) NO. 169 OF 2023

RADHA KANTA BERA

... APPELLANT

Vs.

STATE OF WEST BENGAL

... RESPONDENT

For the Appellant : Mr. Sourav Chatterjee, Sr. Adv.
Mr. Soumya Nag, Adv.

For the State : Mr. Debasish Roy, Ld. P.P.
Mr. Rudradipta Nandy, Adv.
Ms. Amita Gaur, Adv.

Hearing concluded on : 23.06.2025

Judgment on : 22.07.2025

MD. SHABBAR RASHIDI, J.:-

1. Death reference and the appeal are directed against the impugned judgment of conviction dated May 2, 2023 and consequent order of sentence dated May 3, 2023 passed by Learned Additional Sessions Judge, 1st Court, Jhargram, in connection with Sessions Trial No. 11 (6) of 2018 arising out of Sessions Case No. 01(09) of 2017.

2. By the impugned judgment of conviction the appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code. Consequently the appellant was sentenced to death penalty for such offence. However, on the basis of evidence on record, the other accused persons namely Mihir Bera, Kabita Bera and Nandalal Bera were found not guilty of the charges and were acquitted by the impugned judgment.

3. Learned Advocate for the appellant submits that the material embellishments were made by the prosecution in course of evidence adduced on its behalf. It has been submitted that there are variations in the statements of the prosecution witnesses vis-à-vis the written complaint. It was also submitted on behalf of the learned Advocate for the appellant that the prosecution witnesses, particularly, P.W. 1 and P.W. 3, who claimed to be eye-witnesses to the incident, were highly

doubtful. There are material contradictions in the statement of such witnesses.

4. Learned Advocate for the appellant also submitted that no independent witnesses have been examined on behalf of the prosecution to support its case. P.Ws. 1 and 3 are relatives of the victim and are highly interested witnesses. Their testimonies should not be trusted to secure conviction of the appellant. It was also submitted that non-appearance or non-examination of any of the person from the locality where it had been claimed that the incident occurred in an open space, makes the case of the prosecution highly doubtful.

5. Referring to the medical evidence learned Advocate for the appellant submitted that the date and time of the incident has not been established by the prosecution.

6. It was further submitted on behalf of the learned Advocate for the appellant that the alleged offending weapon was stated to be recovered on the basis of a statement of the appellant leading to recovery. Such fact has not been established at the trial. It was submitted that one of the witnesses to such seizure were not examined by the prosecution and the other witness to such seizure has not supported the case of the prosecution and was also not declared hostile. As such, according to learned Advocate for the appellant, recovery of the alleged offending

weapon at the instance of the appellant in terms of the provision contained under Section 27 of the Indian Evidence Act cannot be said to be proved at the trial. To such proposition, learned advocate for the appellant relied upon **(2024) 3 Supreme Court Cases 481 (Raja Naykar Vs. State of Chhattisgarh)**.

7. Learned Advocate for the appellant also submitted that the recovery of the dead body of the victim at the leading statement of the appellant proved by P.W. 18 was belied by the testimony of P.W. 2. It was submitted that P.W. 2 could see the beheaded body of the victim lying outside a temple wherefrom it was removed by the police.

8. Learned Advocate for the appellant also submitted that although, P.Ws. 11 and 12 did not support the case of the prosecution, nevertheless, they were not declared a hostile witness by the prosecution. The defense was entitled to rely upon the evidence of such witnesses. In support of such contention, learned advocate for the appellant relied upon **(2005) 5 SCC 272 (Raja Ram Vs. State of Rajasthan)**.

9. Learned Advocate for the appellant also submitted that the learned Trial Court did not assign any reason in the impugned judgment as to how he was left with no option but to award a capital punishment. It was submitted that the learned Trial Court did not come to a definite conclusion that the case fell within the category of 'rarest of rare cases'

and proceeded to award the punishment of death. There was no finding in the impugned judgment that the appellant was beyond reformation. In support of such contention, learned Advocate for the appellant relied upon **(2023) 2 SCC 353 (Manoj and Ors. Vs. State of Madhya Pradesh)**.

10. On the other hand, learned Advocate for the State referring to the evidence adduced on behalf of the prosecution submitted that the prosecution was sufficiently able to bring home the charge levelled against the appellant with the help of convincing evidence. It was also submitted by the learned Advocate for the appellant that in the case at hand, the victim was dragged out of her residence and taken to some distance near a temple where she was beheaded by the appellant. There are eyewitnesses to the incident. Besides that medical evidence also supports the case of the prosecution so far as the nature and manner of injury is concerned.

11. One Arati Bera lodged a complaint with the Officer-in-Charge, Sankrail Police Station to the effect that on February 9, 2017 at about 6:30 in the evening, the appellant being her grandson in relation dragged her mother Tarubala Bera forcibly from her house due to anger. He further stated that the appellant took the victim near a Shiv temple of her village and chopped off her head with a sharp weapon. The de-facto

complainant further stated in her written complaint that after such incident the appellant returned to his house dancing down the road carrying the head of the victim in one hand and sharp cutting weapon in the other. Thereafter, the de-facto complainant saw the appellant going away with the head and the sharp cutting weapon.

12. On the basis of such written complaint, Sankrail Police Station Case No. 12/2017 dated February 9, 2017 under Section 302/201 of the IPC was started against the appellant.

13. Police took up investigation and on completion of investigation submitted charge-sheet against the appellant and others under the aforesaid sections of the Indian Penal Code. Accordingly, on the basis of materials in the case diary, charges under Section 302/120B of the IPC were framed against the appellant and others on June 29, 2018. The accused persons pleaded not guilty to the charges and claimed to be tried.

14. In order to bring home the charges, prosecution examined 18 witnesses in all. In addition, prosecution also relied upon several documentary as well as material evidences.

15. The de-facto complainant herself deposed as P.W. 1. She identified the appellant and other accused persons in Court. She stated that two years ago in the month of *Magh* on a Thursday at around 5:00 p.m. her

mother had just returned to her house. At that time, when her mother was entering her house, the accused persons, namely, appellant Radhakanta Bera, his father Mihir Bera and his mother Kabita Bera arrived there and forcibly took the mother of P.W. 1 to a Kali temple adjacent to Shiv temple at her village. She further stated that at the Kali temple her mother was asked to bow down before the idol and as soon as she bowed down, the appellant struck her neck with a sharp cutting weapon. The head of the mother of P.W. 1 was severed off from her body. P.W. 1 also stated that such act was done by the appellant and his parents as they believed the mother of P.W. 1 to be a witch and they were offering a sacrifice (*boli*). She further stated that thereafter the appellant took the head of her mother with him to his house. He was followed by his parents. P.W. 1 who stated that she had seen the incident with her own eyes. Subsequently, she lodged a complaint with Sankrail Police Station. P.W. 1 also stated that police arrived at the spot and inspected the body in her presence and prepared a document to which she put her left thumb impression. She further stated that police also inspected the severed head of her mother and prepared a separate document to which also she put her left thumb impression. Police seized blood stained earth from the place of occurrence in her presence under a seizure list. She put

her thumb impression on such seizure list. She also stated that she recorded the statement in Court prior to her deposition.

16. In her cross-examination, P.W. 1 stated that written complaint was scribed by police officer at the police station. She also stated that she had raised alarm when her mother was being dragged by the appellant but nobody came to rescue her. She also stated in her cross-examination that she tried to save her mother from being offered as *boli* but could not succeed. In doing so, she did not receive any stains of her mother's blood.

17. Father of the de-facto complainant deposed as P.W. 2. He stated that his wife was murdered by the appellant (son of Mihir Bera). He identified the appellant in Court. He further stated that his wife was declared as a witch by the appellant. She was taken to Kali temple of his village and then asked to bow down before an idol. When his wife bowed down, the appellant struck on the back of her neck by a sword due to which she died instantly. Immediately thereafter, P.W. 2 stated that on hue and cry he rushed to the temple and found severed head of his wife was taken away by the appellant. He saw the beheaded body of his wife lying on the ground outside the temple. There was blood all around the body of the victim. Thereafter, police arrived there and took up the dead

body. P.W. 2 was cross-examined at length by the defense but nothing favourable could be elucidated.

18. The husband of de-facto complainant was examined as P.W. 3. He identified all the accused persons including the appellant in Court. P.W. 3 stated that about two years two months ago on a date when he was in his house, he heard a commotion from Kali temple near his house. He ran out and saw that the appellant had tied the hands of the victim in the said Kali temple. Thereafter, he saw the appellant asking the victim to bow down her head. P.W. 3 also stated that when the victim lowered down her head, the appellant told her it should not be done that way and asked her to fold hands properly before the idol which the victim did. Thereafter, appellant hit the victim with a sharp cutting weapon (*chora*) on the back of her neck due to which the neck was severed off from her body. He also saw the appellant taking away the head of the victim out of the Kali temple. P.W. 3 requested the appellant not to assault the victim, but the appellant told him that he would cut the victim as she was a witch. Thereafter, his wife lodged a written complaint whereupon the police arrived and conducted inquest over the dead body and the beheaded head of the victim. Two separate inquest reports were prepared. P.W. 3 signed on such inquest reports. P.W. 3 identified his signature on the inquest reports. He also proved his signature on the

seizure list. P.W. 3 also stated that police seized blood stained earth from the temple and a separate seizure list to which he signed. He proved such signature at the trial. He claimed to be interrogated by police in connection with this case. In his cross-examination, P.W. 3 stated that when he arrived at the temple, there were about 25 people assembled and all of them were trying to resist the appellant from assaulting the victim.

19. A Sub-Inspector of Police deposed as P.W. 4. He received wearing apparels of the victim from a police constable which was brought from the hospital in connection with an unnatural death case. He handed over the said articles to the investigating officer which was seized under a seizure list. P.W. 4 put his signature on the seizure list dated February 11, 2017. P.W. 4 also identified such wearing apparels produced in Court which were marked as Mat Exhibit.

20. A police constable deposed as P.W. 5. He was a witness to the seizure list through which the wearing apparels of the victim were handed over to the investigating officer by P.W. 4. He proved his signature on such seizure list. He also identified the seized articles in Court.

21. P.W. 6 is a seizure list witness. He stated that on the relevant date he had gone to his neighbouring village by his motorcycle. On the

way he was stopped by police and was asked to sign on a blank piece of paper on which he signed. He proved his signature on the seizure list dated February 12, 2017.

22. P.Ws. 7 and 8 did not add any value to the case of the prosecution.

23. P.W. 9 is a hearsay witness. He had heard that the victim was murdered by the appellant.

24. P.W. 10 is also a hearsay witness. He heard about the incident from his wife but he could not say how the victim died.

25. P.W. 11 also heard that the victim died two years ago. However, he did not see anything as he was not present. He identified three accused persons including the appellant as his co-villagers. P.W. 11 also stated that he was earlier called upon by Sankrail Police Station and was forced to become a witness in the case. He initially refused to become a witness. He recorded statement before learned Magistrate which was tutored by police officer. P.W. 11 proved his signature on the statements recorded under Section 164 of the Code of Criminal Procedure.

26. P.W. 12 is another co-villager. He stated that the victim died two years ago. He identified the three accused persons including the appellant as his co-villagers. He also stated that on the date of incident he had gone to work. He had returned in the evening and heard that

victim was murdered. He, however, did not hear who murdered her. P.W. 12 also stated that earlier he was called by Sankrail Police Station and was forced to become a witness in the case by the police officer which he initially refused but he was compelled to be a witness. Accordingly, he recorded statement before learned Magistrate. He narrated the incident before learned Magistrate as tutored by the police. He proved his signature on such statement. In his cross-examination, P.W. 12 stated that the appellant used to behave like a lunatic and used to be kept tied in his house frequently.

27. The autopsy surgeon deposed as P.W. 13. He stated that on February 11, 2017 he conducted post mortem examination over the severed head and the remaining part of the dead body of one Tarubala Bera, a female aged about 65 years. He further stated that at first, he conducted post mortem over the severed head of the victim. According to him, the death of the subject appeared to be due to decapitation on head as noted in the said report. The injury was ante mortem in nature. He proved the post mortem report prepared in his pen and signature. P.W. 13 further stated that he also conducted post mortem over the body part of the victim. The death of the subject appeared to be due to decapitation of head which was ante mortem in nature. He proved the post mortem report. P.W. 13 also stated that after conducting post mortem over the

severed head and body part, he came to the conclusion that the head and the body part was of the same individual. On proof, the post mortem reports were marked as Exhibits 19 and 20.

28. A police constable was examined as P.W. 14. He stated that on February 9, 2017, he accompanied S.I. Prasanta Kumar Shit on a mobile duty. During such duty, a motorcycle belonging to Mihir Bera was seized. P.W. 14 proved his signature on a seizure list dated April 24, 2017 (Exhibit 9).

29. Another police constable deposed as P.W. 15. He is also a seizure list witness. He stated that on April 24, 2017 he accompanied S.I. Prasanta Kumar Shit and P.W. 14 on a mobile duty. They received a news that a bike was lying at Dahirchak. After giving information to the Officer-in-Charge, they were directed to proceed to the place. Accordingly, they went to the spot and they found one black Honda bike lying on the road. A copy of RC book was recovered from the dicky of the said motorcycle which was standing in the name of Mihir Bera. Accordingly, the motorcycle was seized. P.W. 15 proved his signature on the seizure list dated April 24, 2017.

30. The recording officer was examined as P.W. 16. He stated that on February 9, 2017 he was on duty at Sankrail Police Station and in such capacity, he received a written complaint from one Arati Bera. P.W.

16 proved his endorsement of receipt on the written complaint. Upon receipt of the written complaint he started Sankrail Police Station Case No. 12/2017 dated February 9, 2017 under Section 302/201 of the IPC. He also filled up the formal FIR. He proved the formal FIR filled up in his pen (Exhibit P/11). He also stated that after the case was registered the Inspector-in-Charge of Sankrail Police Station entrusted the case to S.I. Prasanta Kumar Shit for investigation. In his cross-examination, P.W. 16 admitted that after filling up the formal FIR he obtained left thumb impression of the complainant Arati Bera upon the formal FIR.

31. Another police constable deposed as P.W. 17. He stated that on February 9, 2017, as per the instruction of S.I. Prasanta Kumar Shit of Sankrail Police Station, he carried the beheaded dead body and chopped head of one Tarubala Bera to Jhargram Hospital under dead body challans. P.W. 17 proved his signature on such challans (Exhibits P/12 and P/13). He carried the dead body and the severed head to hospital and handed over the same to the authorities of the hospital. Later on he was handed over with the wearing apparels of the deceased victim which was seized by the investigating officer from the possession of P.W. 17. P.W. 17 proved his signature on such seizure list dated February 11, 2017 [Exhibit P/5(2)].

32. The investigating officer of the case was examined as P.W. 18. He stated that on February 9, 2017 he was endorsed by the Officer-in-Charge, Sankrail Police Station with the investigation of Sankrail Police Station Case No. 12/2017 dated February 9, 2017 under Section 302/201 of the IPC. In the course of investigation, he collected the blood stained earth under a seizure list. He proved the seizure list. He also searched for surrounding places but could not find the beheaded chopped body. He took photographs of the surrounding places and proved the photographs. Thereafter, Arati Bera lodged a complaint which was sent by P.W. 18 to the police station. P.W. 18 also visited the place of occurrence and prepared rough sketch map with index thereof (Exhibits P/15 and P/16). He arrested the appellant and recorded his statement which he proved (Exhibit P/17). On the basis of such statement the beheaded body was found. P.W. 18 also stated in the course of investigation he conducted inquest over the dead body, seized the wearing apparels of the accused persons. He also examined available witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure. He arranged for post mortem examination of the dead body and collected the post mortem report. He also seized the wearing apparels of the victim under a seizure list which he proved [Exhibit P/5(3)]. He also took the appellant on police remand and during

the remand period he recovered the offending weapon as per the leading statement of the appellant. He proved such statement of the appellant (Exhibit P/18) and the seizure list under which such weapon was seized. He also sent samples for chemical examination to the Forensic Science Laboratory. On completion of investigation, he submitted charge-sheet under Sections 301/201/34/120B of the IPC.

33. On conclusion of the evidence on behalf of the prosecution, the appellant and the other accused persons were examined under Section 313 of the Code of Criminal Procedure where the appellant pleaded not guilty. He however declined to adduce any defense witness.

34. It is the case of prosecution that the victim lady was murdered by the appellant by a sharp cutting weapon. He severed the head of the victim lady resulting in her death and thereafter fled away. The matter was immediately reported to the police. Police arrived at the spot and found the severed head as well as beheaded body of the victim from the place of occurrence which was near a temple in the village. Police conducted inquest over the dead body as well as the detached head of the victim. Later the two parts of the dead body was sent for post mortem examination. PW13 conducted post mortem over the dead body as well as the severed head of the victim. In his examination, PW13 stated that the death of the subject appeared to be due to decapitation on head as

noted in the said report. He also noted several injuries over the dead body. PW13 prepared reports after conducting post mortem over the dead body and the detached head of victim. He also opined that the two parts belonged to one and the same person. He proved the post mortem reports which were admitted in evidence and marked as exhibits 19 and 20.

35. Therefore, in consideration of the case of the prosecution together with the evidence of PW1, PW2 and PW3 and also taking into account the testimony of PW13 coupled with that of exhibit 19 and exhibit 20, it is explicit that the victim suffered an unnatural death and that such death was caused by beheading with some sharp cutting weapon.

36. So far as the person responsible for causing the death of victim is concerned, the written complaint discloses that the victim was dragged by the appellant from her house, while she was entering into her house. She was taken to a nearby Shib temple, within the vicinity where she was beheaded by the appellant with a sharp cutting weapon.

37. The de facto complainant deposed as PW1. She claimed to be an eyewitness to the incident. She testified that when her mother i.e. the victim had just returned from the village market and was entering into the house, the appellant accompanied by the other accused persons forcibly took her to a Kali temple situated beside a Shib temple at some

distance from her house. The victim was asked to bow down before the idol and when she bent down, the appellant struck her with a sharp cutting weapon resulting in severing off the head of the victim from rest of her body. The victim died of such injury. She also stated that she witnessed the entire incident with her own eyes. The de facto complainant happened to be the daughter of the victim.

38. The statement of PW1 was corroborated by PW2 i.e. the husband of the victim. Although, in his testimony he stated that hearing hue and cry he rushed to the temple to find the severed head of his wife being taken by the appellant. He found the beheaded body of his wife lying near the temple and there were blood all around.

39. The husband of the de facto complainant i.e. PW1 also corroborated the testimony of PW1. He also claimed to be an eyewitness to the occurrence. According to his testimony, he heard a commotion near Kali temple. He came out of his house and found that the appellant was tying the hands of his mother-in-law in the temple. Thereafter, the appellant asked the victim to bow down. Thereafter, PW3 saw the appellant striking on the back side of the neck of the victim with a sharp cutting weapon. As a consequence, the head of the victim was severed off from her body resulting in her death.

40. From the evidence of the aforesaid witnesses, it is quite convincingly established that the victim was forcibly dragged out of her house and taken to Kali temple. She was made to bow down and the appellant struck on the back of her neck by a sharp cutting weapon resulting in unnatural death of the victim. There may be certain minor contradictions in the testimony of the aforesaid witnesses but such contradictions do not tell upon the trustworthiness of the prosecution case. The defense has not been able to dislodge the evidence of aforesaid witnesses in so far as it refers to forcibly taking the victim to the temple and striking her with a sharp cutting weapon that severed her head resulting in her death.

41. The medical evidence i.e. the autopsy surgeon, PW13, has narrated the nature of injuries found on the person of the victim which conforms to the narration of incident testified by PW1, PW2 and PW3. The nature of injuries is quite consistent with the nature of incident narrated by such witnesses. He opined that the death was caused due to decapitation of head. He also opined that such injury might be caused by a heavy sharp cutting weapon. The nature of weapon used in the incident, as narrated by PW1, PW2 and PW3 was sharp cutting weapon (Chhora) which is corroborated by the opinion of PW13.

42. PW11 and PW12 although, recorded statements under Section 164 of the Code of Criminal Procedure implicating the appellant but later, at the time of deposition, they have stated that what they stated before learned Magistrate was tutored by police as the police forced them to become a witness to the incident. However, the circumstances of the case suggest that the victim was murdered on the plea of her being a witch.

43. There is ample evidence on record that the dead body and the severed head was removed by the police in presence of witnesses and was sent for post mortem examination. The defense has not been able to imprint any dent in the testimony of the witnesses that the dead body of the victim removed from the place of occurrence, shortly after the incident, was sent for post mortem examination over which, PW13 conducted the post mortem and submitted his report exhibit 19 and exhibit 20.

44. Moreover, it is the case of the prosecution that the appellant, after committing the crime left the place of occurrence with the detached head and the offending weapon. He fled the locality. PW14 and PW15 have testified that they were informed of an abandoned motorcycle in the vicinity of the place of occurrence. The said motorbike was seized and was found to be registered in the name of the father of the present

appellant, who was initially an accused in the case. No explanation, whatsoever, has been advanced on behalf of defense as to under what circumstances, the motorcycle belonging to the father of the appellant was found abandoned in the locality of the place of occurrence.

45. Therefore, on the basis of the evidence discussed hereinbefore, especially the ocular testimony of PW1, PW2 and PW3 coupled with that of PW13, there remains no iota of doubt that the appellant committed murder of the victim with a sharp cutting weapon. Although, a sharp cutting weapon was recovered by the investigating officer which is said to be the offending weapon. It has been stated that such recovery was made as per the leading statement of the appellant. However, since no statement leading to recovery, was proved at the trial to bring such recovery under the provisions of Section 27 of Indian Evidence Act, 1872.

46. In ***Raja Naykar*** (supra), the Hon'ble Supreme Court laid down that,

“23. The aforesaid story is narrated in the memorandum of the appellant under Section 27 of the Evidence Act. However, as held by the Privy Council in the locus classicus case of Pulukuri Kotayya v. King Emperor [Pulukuri Kotayya v. King Emperor, 1946 SCC OnLine PC 47 : (1946-47) 74 IA 65 : AIR 1947 PC 67] , only such statement which leads to recovery of incriminating material from a place solely and exclusively within the knowledge of the maker thereof would be admissible in evidence.

24. Undisputedly, the dead body was found much prior to the recording of the memorandum of the appellant under Section 27 of the Evidence Act. Therefore, only that part of the statement which leads to recovery of the dagger and the rickshaw would be relevant.”

47. Nonetheless, the ocular testimony of PW1, PW2 and PW3 together with that of PW13 sufficiently establishes that it was the appellant who dealt the fatal blow upon the victim causing her death. In such view of the facts, we find no reason to interfere with the impugned judgment in so far as it relates to conviction of the appellant for the offence punishable under Section 302 of the Indian Penal Code.

48. In **Raja Ram** (supra), it was observed by the Supreme Court that,

“9. But the testimony of PW 8 Dr. Sukhdev Singh, who is another neighbour, cannot easily be surmounted by the prosecution. He has testified in very clear terms that he saw PW 5 making the deceased believe that unless she puts the blame on the appellant and his parents she would have to face the consequences like prosecution proceedings. It did not occur to the Public Prosecutor in the trial court to seek permission of the court to heard (sic declare) PW 8 as a hostile witness for reasons only known to him. Now, as it is, the evidence of PW 8 is binding on the prosecution. Absolutely no reason, much less any good reason, has been stated by the Division Bench of the High Court as to how PW 8's testimony can be sidelined.”

49. In the case at hand, applying the principles laid down by the Hon'ble Supreme Court in **Raja Ram** (supra) although entitles the defense to rely upon the testimony of PW11 and PW12 who were not declared hostile by the prosecution but PW1 and PW3 have claimed to be eyewitnesses and the defense has not been able to dislodge the testimony of such witnesses.

50. As regards the imposition of death sentence upon the appellant, it is well settled principle of law that death penalty may be imposed if the court awarding the sentence comes to definite finding that the option of imposing of any punishment other than death penalty is unquestionably foreclosed and would be insufficient in the facts and circumstances of the case. The court imposing the death sentence must also return a finding that the convict is beyond reformation and would be a menace to the society if allowed to return after a specific period of time.

51. In **Manoj** (supra), the Hon'ble Supreme Court noted that,

“237. Mitigating factors in general, rather than excuse or validate the crime committed, seek to explain the surrounding circumstances of the criminal to enable the Judge to decide between the death penalty or life imprisonment. An illustrative list of indicators first recognised in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684, para 206 : 1980 SCC (Cri) 580] itself : (SCC p. 750, para 206)

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

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

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

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

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

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

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

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

These are hardly exhaustive; subsequently, this Court in several judgments has recognised, and considered commutation to life imprisonment, on grounds such as young age [Mahesh Dhanaji Shinde v. State of Maharashtra, (2014) 4 SCC 292 : (2014) 2 SCC (Cri) 321; Gurvail Singh v. State of Punjab, (2013) 2 SCC 713 : (2013) 2 SCC (Cri) 864] , socio-economic conditions [Mulla v. State of U.P., (2010) 3 SCC 508

: (2010) 2 SCC (Cri) 1150; *Kamleshwar Paswan v. State (UT of Chandigarh)*, (2011) 11 SCC 564 : (2011) 3 SCC (Cri) 409; *Sunil Damodar Gaikwad v. State of Maharashtra*, (2014) 1 SCC 129 : (2013) 4 SCC (Cri) 83], mental illness [*Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1 : (2014) 2 SCC (Cri) 1], criminal antecedents [*Dilip Premnarayan Tiwari v. State of Maharashtra*, (2010) 1 SCC 775 : (2010) 1 SCC (Cri) 925], as relevant indicators on the questions of sentence. Many of these factors reflect demonstrable ability or merely the possibility even, of the accused to reform [i.e. (3) and (4) of the *Bachan Singh* [*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] list], which make them important indicators when it comes to sentencing.”

52. The Hon’ble Supreme Court further held in the case of **Manoj** (supra) that,

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

(a) Age

(b) Early family background (siblings, protection of parents, any history of violence or neglect)

(c) Present family background (surviving family members, whether married, has children, etc.)

(d) Type and level of education

(e) Socio-economic background (including conditions of poverty or deprivation, if any)

(f) Criminal antecedents (details of offence and whether convicted, sentence served, if any)

(g) *Income and the kind of employment (whether none, or temporary or permanent, etc.);*

(h) *Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc.*

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

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

53. In the result, the Hon'ble Supreme Court observed to the following, that's to say:

"262. The reports received from the Superintendent of Jail reflect that each of the three accused, have a record of overall good conduct in prison and display inclination to reform. It is

evident that they have already, while in prison, taken steps towards bettering their lives and of those around them, which coupled with their young age [Gurvail Singh v. State of Punjab, (2013) 2 SCC 713, paras 13, 19 : (2013) 2 SCC (Cri) 864; Amit v. State of U.P., (2012) 4 SCC 107, para 22 : (2012) 2 SCC (Cri) 590; Shyam Singh v. State of M.P., (2017) 11 SCC 265, para 8 : (2017) 4 SCC (Cri) 302 and Ramnaresh v. State of Chhattisgarh, (2012) 4 SCC 257, para 88 : (2012) 2 SCC (Cri) 382] unequivocally demonstrates that there is in fact, a probability of reform. On consideration of all the circumstances overall, we find that the option of life imprisonment is certainly not foreclosed.”

54. The learned trial court although, took into consideration the fact that the appellant was repentant and had a good conduct in the correctional home. He has family behind to be looked after and that he was the only bread earner of his family. Nevertheless, in order to strike balance between the crime and punishment and that, punishment will send a signal to the prospective offenders, learned trial court proceeded to hold that the case fell under the ‘rarest of rare category’ and awarded death sentence to the appellant.

55. In course of hearing of the present appeal and the death reference, we also called for psychological evaluation report, medical report as well as socio-economic report in respect of the appellant. Such report suggests that the appellant is 28 years of age and is unmarried.

He is the only son of his parents and has no sister. He studied up to class V and thereafter has worked as an agricultural laborer and helper of a mason. The report also discloses that the appellant once fell from the roof of a bus and since then he developed mental illness. He often went violent due to such illness. He used to be kept tied and was under medical treatment. According to socio-economic report, the condition of the family is socially not very sound. Educational status of the family is also not very well off. The family is poor and uneducated and is not in position to understand the consequences. Report also indicated that the appellant has no criminal antecedent and his conduct in the correctional home was normal. He was found physically fit but mentally depressed. The medical report of the victim showed no apparent gross psychopathology or psychotic symptom could be detected for the present when he was examined on June 13, 2025.

56. Thus, in consideration of such reports and in view of the observations laid down in the case of **Manoj** (supra), we are not in a position to return a definite finding that the appellant/convict is beyond reformation. His overall conduct in the correctional home was found to be good. His age is also of consideration. Moreover, he had suffered a fall from the roof of bus resulting in his mental illness which often turns violent for which the family had to keep him detained. Taking all the

aforesaid factors coupled with the conduct of the appellant in the correctional home and that he had no criminal antecedent behind, we are of the view that the option of any punishment other than death penalty is not foreclosed. Apart from that, the facts and circumstances of the case under which, the offence was committed, cannot be said to bring the case in the category of 'rarest of rare case'.

57. In the light of discussions hereinbefore, we are of the opinion that in the facts and circumstances of the present case, imprisonment for life would be sufficient punishment instead of death penalty. We are not minded to confirm the death sentence awarded by the learned trial court. We accordingly commute the death sentence, imposed upon the appellant, into one of life imprisonment.

58. Consequently, Death Reference No. 2 of 2023 along with the appeal being C.R.A. (DB) 169 of 2023, are disposed of accordingly.

59. A copy of this judgment along with the Trial Court records be remitted to the appropriate Trial Court forthwith. In view of the commutation of the death penalty of Radahkanta Bera, any warrant issued by the appropriate Court with regard thereto in respect of Radahkanta Bera stands modified in terms of this judgment and order. Department will inform the Correctional Home, where the appellant is lodged, as to this judgment and order. The Correctional Home will record

the fact of commutation of death penalty to the sentence awarded by this judgment and order in respect of Radahkanta Bera, in their records.

60. Period of detention already undergone by the appellant shall be set off against the substantive punishment in terms of the provisions contained in Section 428 of the Code of Criminal Procedure.

61. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

62. I agree.

[DEBANGSU BASAK, J.]