[(1994) 2 BLJR 1231]

(SUPREME COURT)

DR. A. S. ANAND AND N. P. SINGH, JJ.

Dhananjoy Chatterjee @ Dhanna

Versus

State of West Bengal

[Criminal Appeal No. 584 of 1992, decided on January 11, 1994]

(a) Indian Penal Code, 1860, Sections 376, 380 and 302—Evidence Act, 1872, Section 3—Offence of rape, theft and murder—Committed by Security Guard—School going girl of about 18 years was firstly raped and then murdered at her flat when she was alone—Accused lastly fled away after taking her wrist watch—Although there was no eye-witness—And prosecution case entirely was based on circumstantial evidence—But on assessment of circumstantial evidence guilt of accused found proved beyond doubt—Conviction thus, sustained—Rules regarding assessment of circumstantial evidence—Stated—[Rape, murder and theft—Offence of—Circumstantial evidence—Assessment of.]

It is settled law that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis, except the guilt of the accused and

the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the core taken to scrutinise the evidence lest suspicion takes the place of proof. [Para 7]

In the instant case, there is no eye-witness of occurrence. The entire case rests on circumstantial evidence. Hetal Parekh, the unfortunate young school-going girl of about 18 years of age, had been subjected to rape before her death and that the death was homicidal in nature stands amply established by the testimony of Dr. Dipankar Guha P. W. 20, who conducted the post-mortem examination on the deadbody. As many as 21 injuries were noticed by Dr. Dipankar Guha on the deceased and both the trial court and the High Court have reproduced the injuries *in extenso*. The medical witness found that the hymen of the deceased showed fresh tear at 4, 5 and 7 O'clock position with evidence of fresh blood in the margins. He also found presence of blood stains on the vagina and matted pubic hair of the deceased. Blood was also noticed at nostril and face of the deceased. The hair from the scalp were also found matted with blood. There was "fracture and dislocation of hyoid bone on its greater cornu of left side" (Injury No. 21). In the opinion of the doctor, the deceased had been subjected to rape before murder and that the death was due to the fact of smoothering with strangulation and injuries were anti-mortem and homicidal. Injury No. 21, as noticed above, was found sufficient to cause the death of the victim in the ordinary course of nature. According to the report of the Senior Scientific Officer-cum-Assistant Chemical Examiner, Forensic Science Laboratary, Government of West Bengal, Ex. 36 semen was detected on the panty (under garment) and the pubic hair of the deceased. The presence of blood stains, marks of violence on the face of the deceased and the state of her clothes indicated that the victim had offered resistence but was helpless. There thus, remains no doubt that the deceased had been subjected to rape before her murder. [Para 6]

There is ample evidence on the record to show that the appellant had a motive to commit the alleged crime. The deceased was being teased by the appellant when she used to go to or came back from the school. She had brought it to the notice of her mother P.W. 3 on a number of occasions, the latest in the series being on 2-3-1990. Yashmoti P.W. 3 informed her husband Nagardas P.W. 4 about the complaints. From the testimony of Nagardas P.W. 4, it transpires that after he came to know about the misbehaviour of the appellant from his wife P.W. 3 on 2-3-1990, he called some other dwellers of the Apartment to apprise them of the same. Mahendra Chauhatia P.W. 13 and Harish Vakharia P.W. 14 have deposed that they had been called by Nagardas P.W. 4 who reported to them that the appellant had been teasing his daughter and that P.W. 4 had suggested that the appellant should be replaced by another security guard. The testimony of P.W. 13 and P.W. 14 has remained totally unchallenged in cross-examination. It is, therefore, clear that the prosecution has successfully established the existence of motive on the part of the appellant to commit the crime. The prosecution has also conclusively established that at the crucial time, the appellant had gone to flat 3-A, where the deceased was all alone, her mother P.W. 3 having left the flat for the Temple earlier and that the deceased was found raped and murdered shortly thereafter. [Para 10]

From the prosecution evidence it also stands established that during the investigation of the case, when the police searched the room where the

deadbody of Hetal was lying, they recovered a broken chain and a shirt button of cream colour with four holes from the bed room of P.W. 3 and P.W. 4 besides the panty of the deceased from the living room which was torn and had blood stains. The evide ce of the expert witness clearly points out to the conclusion that the button found from the place of occurrence was the third button of the shirt of the appellant, which had fallen off and was found on the scene of crime. This piece of circumstantial evidence is quite specific and is of a crucial nature and undoubtedly connects the appellant with the crime. The discovery of the broken chain from the place of occurrence also connects the appellant with the crime. [Para 10]

There is evidence to establish the fact that the appellant absconded soon after the occurrence. No challenge has been made to the testimony of the investigating officers either when they testified that they unsuccessfully searched for the appellant from 5th to 8th March 1990 at different places or conducted raids at his village to apprehend him. The circumstance of absonding was put to the appellant in his statement under Section 313, Cr.P.C., but instead of giving a satisfactory explanation, be came forward with a plea of *alibi*. He stated that he left Anand Apartment to see a picture in a cinema hall after 2 p.m. and then returned to Manorama School and after collecting his belongings and purchasing some fruits left for his native place participate in the sacred thread ceremony of his brother. No evidence was produced by the appellant in support of this belated plea of *alibi*. There is no material on the record to show that he went to any cinema or participated in any sacred thread ceremony of his brother or that even such a ceremony at all took place at his native village. Though it is not necessary for an accused to render an explanation to prove his innocence and even if he renders a false explanation, it cannot be used to support the prosecution case against him and that the entire case must be proved by the prosecution itself but it is well settled that a plea of *alibi*, if raised, by an accused is required to be proved by him by cogent and satisfactory evidence so as to completely exclude the possibility of the presence of the accused at the place of occurrence at the relevant time. The belated and vague plea of *alibi* of which the court finds no whisper during the cross-examination of any of the prosecution witnesses, and which has not been sought to be established by leading any evidence either is only an after thought and a plea of despair. The abscondence of the appellant is thus a meterial circumstance which has been satisfactorily and conclusively established by the prosecution against the appellant. [Para 10]

That apart, the testimony of the prosecution witnesses relating to the disclosure statement of the appellant and the seizure of the wrist watch pursuant thereto from his house coupled with the testimony of P.W. 18 Fakruddin and the identification of the watch by P.W. 3 conclusively connects the appellant with the theft of the watch on the date of occurrence from the flat where the ghastly occurrence took place. The absence of any explanation, for possession of the wrist watch belonging to P.W. 3, by the appellant is a circumstance which goes against the appellant. [Para 10]

All the circumstance relied upon by the prosecution have been conclusively established by the prosecution. They are specific and of a clinching nature and all of them irresistibly lead to the conclusion that the appellant alone was guilty of committing rape of Hetal and subsequently murdering her. All the circumstances which have been conclusively established are consistent only with the hypothesis of the guilt of the appellant and are totally inconsistent with his innocence. Not only in the cross-examination of

various prosecution witnesses, but even during the arguments, nothing has been pointed out as to why any of the witness for the prosecution should have falsely implicated the appellant in such a heinous crime. None of the witnesses had any motive to falsely implicate him. None had any enmity with him. The witnesses produced by the prosecution have withstood the test of cross-examination well and their credit-worthiness and reliability has not been demolished in any manner. All the circumstances established by the prosecution, as discussed above, are conclusive in nature and specific in details. They are consistent only with the hypothesis of the guilt of the appellant and totally inconsistent with his innocence. This court is, therefore, in complete agreement with the trial court and the High Court that the prosecution has established the guilt of the appellant beyond a reasonable doubt and therefore upholds his conviction for the offences under Sections 302, 376 and 380, I.P.C. [Para 11]

(b) Criminal Procedure Code, 1973, Section 154—First Information Report—Version or information of incident given to police on phone—Police after receiving that information reaching on spot—Thereafter taking down version of mother of deceased—This version be treated First Information Report and not telephonic massage—[Telephonic information of incident—Not F.I.R.] [Para 9]

(c) Criminal trial—Motive of crime—Presence of—Although relevant—But its absence does not necessarily discredit prosecution case, if other evidence and circumstances establish prosecution case motive—Importance in criminal cases.

In a case based on circumstantial evidence, the existence of motive assumes significance though the absence of motive does not necessrily discredit the prosecution case, if the case stands otherwise established by other conclusive circumstances and the chain of circumstantial evidence is so complete and is consistent only with the hypothesis of the guilt of the accused and inconsistent with the hypothesis of his innocence. [Para 10]

(d) Evidence Act, 1872, Sections 25, 26 and 27—Statement made before Police Officer—Although admissible in evidence in view of Sections 25 and 26—However, statement of accused leading to discovery of articles connected with crime—Admissible under Section 27—[Criminal trial—Statement of accused—Admissibility of, in evidence.]

Though, the entire statement made by the appellant before the police is inadmissible in evidence being hit by Sections 25 and 26 of the Evidence Act but that part of his statement which led to the discovery of the shirt and the pant is clearly admissible under Section 27 of the Evidence Act. [Para 10]

(e) Criminal trial—Abscondence of accused after occurrence—Relevancy—Legal position—[Criminal offence—Accused absconding—Effect.]

It is true that the mere fact of abscondence of accused by itself is not a circumstance which may lead to the only conclusion consistent with the guilt of the accused because it is not unknown that innocent persons on being falsely implicated, may abscond to save themselves but abscondence of an accused after the occurrence is certainly a circumstance which warrants consideration and careful scrutiny. [Para 10]

(f) Criminology—Sentencing policy in heinous crimes—Criminal Procedure Code, 1973, Sections 354 (3) and 235(2)—Indian Penal Code, 1860, Sections 376, 302 and 380—Imposition of sentence for offences—Liberalised sentencing policy—Examined and clarified—Security Guard committing

rape of about 18 years school going girl at her flat when she was all alone and thereafter murdering her and fled away after committing theft also of her wrist watch—Facts and circumstances bringing case within the ambit of 'rare of rarest case'—Sentence of death—Justified—[Criminal offence—Sentencing policy—Details.]

It is true that in view of the legislative policy discernable from Section 235 (2) read with Section 354(3), Cr.P.C., the Court may make the choice of not imposing the extreme penalty of death of the appellant and give him a chance to become a reformed member of the society in keeping with the concern for the dignity of human life. [Para 12]

But in recent years, the rising crime rate particularly violent crime against women has made the criminal sentencing by the courts a subject of concern. Today there are admitted disparties. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished, thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility. Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences, in the absence of specific legislation. Judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration. [Para 14]

In the opinion of this court, therefore, the measure of punishment in a given case must depend upon the atrocity of the crime, the conduct of criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment in the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminals but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment. [Para 15]

Instant case is a sordid episode of a security guard, whose sacred duty was to ensure the protection and welfare of the inhabitants of the flats in the apartments, should have subjected the deceased, a resident of one of the flats, to gratify his lust and murder her in retaliation for his transfer on her complaint, makes the crime even more heinous. Keeping in view the medical evidence and the state in which the body of the deceased was found, it is obvious that a most heinous type of barbaric rape and murder was committed on a helpless and defenceless school-going girl of 18 years. If the security guards behave in this manner, who will guard the guards ? The faith of the society by such a barbaric act of the guard, gets totally shaken and its cry for justice becomes loud and clear. The offence was not only inhuman, and barbaric but it was a totally ruthless crime of rape followed by cold blooded murder and an affront to the human dignity of the society. The savage nature of the crime has shocked our judicial conscious. There are no extinuating or mitigating circumstances whatsoever in the case. [Para 16]

A real and abiding concern for the dignity of human life is required to be kept in mind by the courts while considering the confirmation of the sentence of death but a cold blooded pre-planned brutal murder, without any

provocation, after committing rape on an innocent and defenceless young girl of 18 years, by the security guard certainly makes this case a "rare of the rarest cases" which call for no punishment other than the capital punishment. Thus, this court confirms the sentence of death imposed upon the appellant for the offence under Section 302, I.P.C. The order of sentence imposed on the appellant by the courts below for offences under Sections 376 and 380, I.P.C. are also confirmed along with the directions relating thereto as in the event of the execution of the appellant, those sentences would only remain of academic interest. [Para 16]

Citation.--1980 Cr LJ 639—Considered.

JURISTIC NOTE

RAPE AND MURDER OF HELPLESS SCHOOL GOING GIRL

By a person acting as Guard is a heinous crime and comes within ambit of "rare of the rarest cases" and accused deserves imposition of death sentence.

JUDGMENT

Dr. ANAND, J.—Hetal Parekh, a young 18 years old school going girl was raped and murdered on 5-3-1990 between 5.30 and 5.45 p.m. in her flat No. 3-A on the third floor of the "Anand Apartment". The appellant was challenged and tried for rape and murder and also for offence under Section 380, I. P. C. for committing theft of a wrist watch from the said flat. The learned Additional Sessions Judge found him guilty and convicted the appellant, (i) for an offence under Section 302, I. P. C. and sentenced him to death, (ii) for an offence under Section 376, I. P. C. and sentenced him to imprisonment for life, and (iii) for the offence under Section 380, I. P. C., he was sentenced to undergo rigorous imprisonment for five years. The substantive sentences under Sections 376 and 380, I. P. C. were ordered to run concurrently but were to cease to have any effect, in case the sentence of death for conviction of the appellant under Section 302, I. P. C. was confirmed by the High Court and the appellant was executed. Reference for confirmation of the death sentence was accordingly made to the High Court. The appellant also preferred an appeal against his conviction and sentence in the High Court. The criminal appeal filed by the appellant was dismissed and the sentence of death was confirmed by the High Court. On special leave being granted, the appellant, Dhananjoy Chatterjee @ Dhana, has filed this appeal.

2. According to the prosecution case, the appellant Dhananjoy was one of the security guards deputed to guard the building 'Anand Apartment' by M/s. Security and Investigating Bureau of which Mr. Shyam Karmakar PW 21 was the proprietor. On 2-3-1990, Hetal deceased complained to her mother Yashmoti Parekh PW 3 that the appellant had been teasing her on her way to and back from the school and had proposed to her on that day to accompany him to a cinema hall to watch a movie. She had made complaints about the teasing by the appellant to her mother previously also. Yashmoti PW 3 told her husband Nagardas Parekh PW 4 on 3-3-1990 about the behaviour of the appellant towards their daughter, who in turn complained to Shyam Karmakar PW 21 and requested him to replace the appellant. At the asking of Shyam Karmakar PW 21, who came to meet Nagardas PW 4 in his flat in that connection, PW 4 gave a written complaint also and the appellant was transferred and a transfer order posting the appellant at 'Paras Apartment' was issued by PW 21. Bijoy Thapa, a security guard at Paras Apartment was posted in his place, at Anand Apartment. The transfer was to take effect from 5-3-1990.

3. As per their normal routine. Nagardas Parekh PW 4 and his son Bhawesh Parekh PW 5, father and brother of the deceased respectively, left for their place of business and college in the morning on 5-3-1990. Bhawesh PW 5 returned to the flat at about 11.30 a.m. and after taking his meals, left for his father's place of business as was his routine. The deceased returned to her flat after taking her examination at about 1 p.m. Yashmoti PW 3, the mother of the deceased used to visit Laxmi Narayan Mandir between 5 and 5.30 p.m. daily. As usual, on the date of the occurrence she left for the temple at about 5.20 p.m. Hetal, deceased was all alone in the flat at that time. The appellant, in spite of the order of transfer, did not report at Paras Apartment and instead performed his duties, as a security guard, at Anand Apartment between 6 a.m. and 2 p.m. on 5-3-1990. Shortly after Yashmoti PW 3, the mother of the deceased left for the Temple, the appellant met Dasarath Murmu PW 7 another security guard who was at that time on duty at the building and told him that he was going to at flat 3-A for contacting his office over the telephone. The appellant used the lift to go to the said flat. At about 5.45 p.m., Pratap Chandra Pali PW 6, supervisor of the Security and Investigating Bureau, visited Anand Apartment and enquired from PW 7, whether Bijoy Thapa had performed his duty in place of the appellant in the morning but was told by Dasarath PW 7, that Bijoy Thapa had not come to that building and that the duties had been performed by the appeallant between 6 a.m. and 2 p.m. on that day. On enquiry by the Supervisor as to where the appellant was, PW 7 told the supervisor that at that particular time, the appellant had gone to flat No. 3-A with a view to contact his office over the telephone. The supervisor Pratap Chandra PW 6 asked Dasarath PW 7 to call the appellant and since, he was not able to contact him through the intercom, there being no response from flat No. 3-A, he called out the name of the appellant, who appeared at the balcony of flat No. 3-A and on being told that PW 6, the supervisor had come and wanted to see him, told him that he would come down. The appellant after a little while came down by the stairs and even though the supervisor PW 6 and Dasarath PW 7 were waiting for him, he hurriedly went passed them and on being asked by PW 6 that he wanted to talk to him, told him to come outside the gate and speak to him. Tke appellant on inquiry by PW 6 as to why he had not obeyed the transfer order told him that due to some personal difficulty he could not report for duty at Paras Apartment. He was advised to take charge at Paras Apartment without fail the next day. The appellant thereafter left.

4. At about 6.05 p.m. Yashmoti PW 3 returned from the temple. While going to her flat in the lift, she was told by Ramdhan Yadav PW 8, lift operator, that the appellant and gone to her flat in her absence to make a telephone call to his office. She was annoyed on getting this information because of the complaint which the deceased had made to her earlier. On reaching her flat, she rang the bell repeatedly but there was no response and no body opened the door. She raised alarm which attracted several of her neighbours. They also rang the bell and knocked at the door but there was no response. Eventually, the lock of the door was broken open by the neighbours, their servant and the liftman, and as she entered the flat along with some of her neighbours, she found the door of her bed room open. Hetal deceased was lying on the floor. Her skirt and blouse had been pulled up and her private parts and breasts were visible. There were patches of blood near her head as well as on the floor. There were blood stains on her hands and vagina also. Her wearing apparel was blood stained. There were some marks of violence and blood was found on her face as well. There were blood marks on the *Jhoola'* lying in the room. Her torn panty was found

lying near the entrance of the door and the deceased appeared to be unconscious at that time. Her mother, PW 3, lifted the deceased in her arms and rushed down through the litt with a view to take her to the doctor. In the meantime, a doctor had been summoned by the neighbours who arrived and on examining the deceased in the lift itself, where she was lying in the lap of mother, pronounced her dead. Information of the occurrence, was sent to the father of the deceased at about 7 p.m. Bhawesh PW 5 returned. In the meantime, another doctor, who had also been called, arrived and after examining the deceased certified her as dead. The deadbody of Hetal was taken back to the flat and laid on her bed in her room and was covered by a sheet. At about 8.30 p.m. father of the deceased, Nagards PW 4 returned to the flat and on being told of the murder of Hetal, he informed Bhawanipore Police Station at about 9.15 p.m. on the telephone. On receipt of the telephonic message, Sub-Inspector Gurupada Som PW 28, the acting duty officer, rushed to the place of occurrence along with some other police personnel and recorded the F.I.R. on the statement of Yashmoti Parkeh PW 3, the mother of the deceased and commenced investigation. During the search of the room where the deceased had been allegedly raped and murdered, blood stained earth, a broken chain, a cream colour button, the torn panty of the deceased and some other articles were seized and sealed into a parcel after preparing seizure memos. Statements of some witnesses were also recorded.

5. Search was made for the appellant by police at different places during the night intervening 5th and 6th March, 1990 but in vain. The appellant did not even visit his employers to collect his wages for the past 5 days. He did not report at 'Paras Apartment' either. Though he was also doing night at another place, he did not report for duty there and did not collect his wages for four days service rendered with the other employer either. He was not traceable. Some raids were conducted in the village of the appellant at Kuludihi, within the jurisdiction of Chatna Police Station on different dates but ultimately it was only on 12-5-1990 that the appellant came to be arrested. Pursuant to a disclosure statement made by him under Section 27 of the Evidence Act, a 'Richo' wrist watch was recovered. Appellants also led to the recovery of his shirt and trouser wrapped in a newspaper from his house pursuant to a disclosure statement. At the trial the appellant pleaded innocence and alleged false implication 'due to quarrel with PW 4 over his transfer'. In his statement made at the trial under Section 313, Cr. P. C., the appellant stated that after his duty hours as the security guard at Anand Apartment on the date of the occurrence he had gone to a cinema and then purchased some fruits in connection with the sacred thread ceremony of his younger brother and left for his native place with the fruits to participate in the said ceremony. He denied the recoveries allegedly made from him. He, however, led no defence evidence.

6. There is no eye-witness of this occurrence. There entire case rests on circumstantial evidence. Hetal Parekh, the unfortunate young school-going girl of about 18 years of age, had been subjected to rape before her death and that the death was homicidal in nature stands amply established by the testimony of Dr. Dipankar Guha PW 20, who conducted the post-mortem examination on the deadbody. As many as 21 injuries were noticed by Dr. Dipankar Guha on the deceased and since both the trial court and the High Court have reproduced the injuries *in extenso*, we need not repeat the same. The medical witness found that the hymen of the deceased showed fresh tear at 4, 5, and 7 O' clock position with evidence of fresh blood in the margins. He also found presence of blood stains on the vagina and matted pubic hair of the deceased. Blood was also noticed at nostril and face of the deceased. The hair from the scalp were also found matted with blood.

There was "fracture and dislocation of hyoid bone on its greater cornu of left side" (Injury No. 21). In the opinion of the doctor, the deceased had been subjected to rape before murder and that the death was due to the fact of smothering with strangulation and injuries were anti-mortem and homicidal. Injury No. 21, as noticed above, was found sufficient to cause the death of the victim in the ordinary course of nature. According to the report of the Senior Scientific Officer-cum-Assistant Chemical Examiner, Forensic Science Laboratory, Government of West Bengal, Ex. 36 semen was detected on the panty (under garment) and the pubic hair of the deceased. The presence of blood stains, marks of violence on the face of the deceased and the state of her clothes indicated that the victim had offered resistence but was helpless. There thus, remains no doubt that the deceased had been subjected to rape before her murder. Medical evidence is clear and cogent and Mr. Ganguli, the learned Senior Advocate, appearing for the appellant, did not question the same either. We, therefore, have to address ourselves to determine whether or not the appellant was the assailant who had raped and murdered the defenceless young girl.

7. It is settled law that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis, except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinise the evidence lest suspicion takes the place of proof. Since, the instant case is based on circumstantial evidence and the sentence awarded by the trial Court, and confirmed by the High Court is that of death, we have to consider the circumstances carefully bearing the principles noticed above in mind.

8. Before, we proceed to consider various circumstances, we would like to deal with one finding of the High Court relating to the First Information Report. The High Court found that after the telephonic message had been sent to the Police Station, and the investigating officer after making an entry in the G. D. rushed to the scene of occurrence to record the statement of Yashmoti PW 3, that statement of PW 3 could not be treated as a First Information Report and that the "telephonic message as recorded in the G.D." was the First Information Report and the statement of PW 3 was only a statement recorded during the investigation of the case and not the F.I.R. In the words of the High Court :

> "We are, therefore, of the opinion that the statement of PW 3 recorded by the Police after the investigation had already commenced could not be treated as the First Information Report."

9. We are unable to agree with the opinion of the High Court. The cryptic telephonic message received at the Police Station from Nagardas PW 4 had only made the police agency to rush to the place of occurrence and record the statement of Yashmoti PW 3 *and thereafter commence the investigation* as was admittedly by the investigating officer in his testimony which testimony was not challenged during the cross-examination of the investigating officer. The High Court failed to notice that the *vague* and *indefinite information given on the telephone which* made the investigating agency only to rush to the

scene of occurrence could not be treated as a First Information Report under Section 154 of the Cr. P. C. The unchallenged statement of the investigating officer that he commenced the investigation only after recording the statement of PW 3 Yashmoti unmistakably shows that it was that statement which alone could be treated as the First Information Report. The High Court fell in error in observing that the statement of PW 3 Yashmoti was recorded "after the investigation had already commenced". There is no material on the record for the above opinion of the High Court. The cryptic telephonic message given to the police by Nagardas PW 4 was only with the object of informing the police so that it could reach the spot. The investigation in the case only stated after the statement of PW 3 Yashmoti was recorded. Though initially Mr. Ganguly did try to support the finding of the High Court but in the face of the evidence on the record and more particularly in the absence of any challenge to the testimony of the investigating officer, in fairness to Mr. Ganguly, we must record that he rightly did not pursue that argument any further. We, therefore, find ourselves unable to agree with the opinion of the High Court and hold that the statement of Yashmoti PW 3, recorded by the investigating officer PW 28, was rightly treated as F. I. R, in this case by the prosecution and the trial Court.

10. We shall no deal with and consider various circumstances relied upon by the prosecution which have been accepted as conclusively established both by the trial Court and the High Court to connect the appellant with the crime.

(1) Motive.—In a case based on circumstantial evidence, the existence of motive assumes significance though the absence of motive does not necessarily discredit the prosecution case, if the case stands otherwise established by other conclusive circumstances and the chain of circumstantial evidence is so complete and is consistent only with the hypothesis of the guilt of the accused and inconsistent with the hypothesis of his innocence. In this case, there is ample evidence on the record to show that the appellant had a motive to commit the alleged crime and we are unable to agree with Mr. Ganguli that the motive for the appellant to commit the murder of the deceased has not been established.

The deceased was being teased by the appellant when she used to go to or came back from the school. She had brought it to the notice of her mother PW 3 on a number of occasions, the latest in the series being on 2-3-1990. Yashmoti PW 3 informed her husband Nagardas PW 4 about the complaints. From the testimony of Nagardas PW 4, it transpires that after he came to know about the misbehaviour of the appellant from his wife PW 3 on 2-3-1990, he called some other dwellers of the Apartment to apprise them of the same. Mahendra Chauhatia PW 13 and Harish Vakharia PW 14 have deposed that they had been called by Nagardas PW 4 who reported to them that the appellant had been teasing his daughter and that PW 4 had suggested that the appellant should be replaced by another security guard. They (PW 13 and PW 14) both agreed. The testimony of PW 13 and PW 14 has remained totally unchallenged in cross-examination. After consulting PW 13 and PW 14, Nagardas PW 4 asked Shyamal Karmakar PW 21, the employer of the appellant, to meet him and according to the statement of PW 21 Karmakar he came to the flat of Nagardas PW 3 on 3-3-1990, where he was informed about the teasing of the daughter of PW 4 by the appellant. PW 21 deposed that Nagardas PW 4 told him to replace the appellant by another security guard and even handed over a written complaint Ex. 4 to him. The defence has not challenged this part of the testimony of PW 21 during his cross-examination at all. PW 21 after receiving the complaint Ex. 4 against the

appellant from PW 4, made an order of transfer of the appellant from 'Anand Apartment' to 'Paras Apartment' and deputed Bijoy Thapa another security guard in place of the appellant with effect from 5-3-1990. The order of transfer was handed over to Riazul Haq PW 9, who delivered it to the appellant. The copy of the transfer order Ex. 23 was handed over by Riazul Haq PW 9 to the appellant on 4-3-1990 while the appellant was on duty at the 'Anand Apartment'. This part of the testimony of PW 9 has not been assailed during his cross-examination. From the prosecution evidence, the teasing of the deceased by the appellant, his invitation to her to accompany him to watch a movie on 2-3-1990 and the order of his transfer from 'Anand Apartment' made by PW 21 on the complaint of the deceased, through her father PW 4, stand amply established on the record. It is pertinent to note that there has been no challenge worth the name to this part of the case of the prosecution during the cross-examination of various witnesses produced by the prosecution in its support. Mr. Ganguly however, submitted before us that the delay in the seizure of complaint Ex. 4 and the transfer order, on 29-6-1990 were indicative of the fact that both the documents had come into existence subsequently as an after thought. We do not find any force in this submission. PW 4 who gave a written complaint to PW 21 and 9 who delivered the transfer order issued by PW 21 to the appellant were not challenged in the cross-examination about the same. Even the investigation officer was not asked for an explanation as to why the documents had been seized so late. In any event the seizure of the documents on 29-6-1990 after the appellant had been arrested only a couple of weeks earlier would not go to show that the documents were either fabricated or were an after thought. In this connection, it is also relevant to notice that a positive suggestion was made by the defence to PW 4 during his cross-examination that the appellant had quarrelled with him 'over his transfer from 'Anand Apartment' and on account of that quarrel the appellant had been "falsely implicated". Of course, PW 4 denied the suggestion but defence suggestion does not militate against the prosecution case regarding the annoyance of the appellant on that score. We also find corroboration available from the statement of Pratap Chandra Pali PW 6, the supervisor of Security and Investigating Bureau, who had visited 'Anand Apartment' at about 5.45 p.m. on 5-3-1990 and enquired from the guard on duty as to how the appellant had reported for duty at Anand Apartment, when he stood transferred to Paras Apartment. Moreover, when PW 6 demanded an explanation from the appellant on 5-3-1990 as to why he had not reported for duty at Paras Appartment, the appellant is alleged to have told him that it was on account of 'certain personal inconvenience' that he could not so join on that date. PW 6 was not challenged with regard to his testimony as regards the transfer of the appellant. We also find no substance in the submission of Mr. Ganguli that in a private organisation, written transfer orders are not given and that the written transfer order in this case is a created piece of evidence. There is no hard and fast rule regarding giving of oral or written transfer orders in private organisations and in any event neither PW 21 nor PW 9 or PW 6 were questioned on this aspect. Once service of the transfer order by PW 9 is not assailed during the cross-examination of the witness, the above argument of Mr. Ganguli hardly deserves any serious consideration. The evidence on the record has, thus, clearly and cogently established the improper attitude of the appellant towards the young girl, Hetal, and his teasing her often and seeking her company to go to a movie. The appellant, therefore, had certainly improper designs so far as the deceased is concerned. His transfer from 'Anand Apartment' on the allegation that he had teased the deceased, therefore, provided sufficient motive for him not only to satisfy his

lust and teach a lesson to the deceased girl for spunning his offer but also as a measure of retaliation for being reported to his employer and being transferred from Anand Apartment to Paras Apartment on the basis of the said complaint. The transfer of the appellant on grounds of his improper behaviour with the deceased was an aspersion on his character and that appears to have provided him the immediate motive for committing the crime in retaliation and even may be to remove the evidence of committing rape on the deceased. We are, therefore, of the opinion that the prosecution has successfully established the existence of motive on the part of the appellant to commit the crime.

(2) **Evidence relating to the appellant's visit to Flat 3-A.**—According to the prosecution case PW 3 Yashmoti, the mother of the unfortunate deceased left for the Temple on 5-3-1990 at about 5.20 p.m. This was her daily routine and the appellant, who was a security guard at the apartment must be deemed to be aware of this routine practice of the mother and since the deceased had returned to her flat at about 1.00 p.m. after taking the examination, when the appellant on his own admission, besides the testimony of PW 7, was on duty, he knew that after the departure of PW 3, the deceased would be alone in her flat, her father and brother having left earlier. He, therefore, utilised that opportunity to go to Flat No. 3-A, during the absence of PW 3 to commit the crime. The liftman Ramdhan Yadav PW 8 and Dasarath PW 7, the other security guard on duty have testified about Yashmoti PW 3 leaving the apartment at about 5.20 p.m. on 5-3-1990 for the Temple. Further, according to the testimony of PW 17, after the departure of PW 3, the appellant went to Flat No. 3-A and had told Dasarath PW 7 that he was going to the flat for contacting his office over the telephone and thereafter the appellant went upstairs by the lift. At about 5.45 p.m. PW 6 the supervisor on reaching 'Anand Apartment' was told by PW 7, on his enquiry, that the appellant had gone to Flat No. 3-A to contact the office over the telephone and that he had not obeyed the transfer order. At the direction of PW 6, the guard on duty PW 7 tried to contact the appellant through the intercom but since there was no response from Flat 3-A, he called out the name of the appellant, who appeared at the balcony in front of Flat 3-A and on being informed that PW 6 wanted to meet him, told PW 7 that he was coming down. He then came down through the stairs. On reaching the ground floor he attempted to side track both PW 6 and PW 7 and hurriedly went past them. When PW 6 the supervisor, demanded an explanation from the appellant as to why he had not joined duty at Paras Apartment and why he was still at Anand Apartment, the appellant told him that on account of some personal inconvenience he had not been able to comply with the transfer order. Though, Ramdhan PW 8 who took the appellant to the third floor by the lift, turned hostile at the trial, we find that he did not go back on the entire version as earlier given by him. The testimony of PW 8 need not, therefore, be ignored totally and the court can scrutinise his testimony and accept that portion of the same which receives corroboration from other evidence on record. The testimony of a hostile witness is not liable to be rejected without even scrutinising it, although great care and caution is required to analyse the same before accepting any part of it as is otherwise found reliable and consistent with the prosecution case. We have carefully considered the statement of PW 8 and find that he does afford corroboration regarding the presence of the appellant at the time of visit of PW 6 to Anand Apartment and his coming down the stairs from the third floor on being called by PW 7, the security guard on duty. On the return of Yashmoti PW 3, from the Temple, PW 8 the liftman told her that, the appellant had gone to flat to make a telephone call. Despite lengthy cross-examination, the testimony of PW 6 the supervisor and PW 7 on this aspect of the case has remained unshattered. Their credibility has not been impeached at

all. The submission of Mr. Ganguli that there was no need for the appellant to have disclosed to PW 7 that he was going to flat 3-A, if the appellant was going to commit a crime, has not impressed us because in the face of the order of transfer of the appellant from Anand Apartment to Paras Apartment, he had to give some explanation to the guard on duty for going to the third floor of the building. He could not have gone to the third floor unnoticed. Even if it be assumed that PW 7 was not aware of the transfer order, the appellant's duty was already over and without giving some explanation to PW 7 the guard on duty, he could not have gone to flat 3-A of Anand Apartment. There was, therefore, nothing improbable for the appellant to have told the guard on duty that he was going to flat 3-A and to have coined a false excuse that he was going to do so with a view to contact the office ont elephone. Moreover we cannot lose sight of the fact that human conduct varies from person to person and different people may react to a situation differently. Mr. Ganguli also argued that since there were no visible sign of perturbedness on the appellant when he came down from the third floor and met PW 6, it would show that in all probabilities the appellant had nothing to do with the crime. The argument is a mere surmise. Not only no question was asked of any witness as to what was the state of mind or facial expression or behaviour of the appellant when he came down from the third floor, the appellant would have in any case taken pains to conceal his real expressions lest any suspicion should arise that the appellant had done something wrong because none at that point of time, had the knowledge about the commission of crime. The behaviour of the appellant on coming down from the third floor was not normal because when PW 6, the supervisor wanted to talk to the appellant, he side-tracked him and hurriedly went out of the main gate of the apartment asking the supervisor to come outside to talk to him. This behavior, to say the least is not normal because a supervisor would not normally be treated in this manner by a subordinate security guard. The testimony of PW 6 and PW 7 on this aspect of the case has again not been discredited in any way and both of them are independent witnesses, who had no reason to falsely depose against the appellant and we find it safe to rely upon their testimony. The prosecution has, thus, conclusively established that at the crucial time, the appellant had gone to flat 3-A, where the deceased was all alone, her mother PW 3 having left the flat for the Temple earlier and that the deceased was found raped and murdered shortly thereafter.

(3) **Recovery of a cream colour button and chain from Flat 3-A on 5-3-1990 and shirt and pant of the appellant from his house on 12-5-1990.**— From the prosecution evidence it stands established that during the investigation of the case, when the police searched the room where the deadbody of Hetal was lying, they recovered a broken chain and a shirt button of cream colour with four holes from the bed room of PW 3 and PW 4 besides the panty of the deceased from the living room which was torn and had blood stains. PW 28, the investigating officer besides Bhawesh Parekh PW 5 and Rajiv Bokharia PW 10 have deposed to the seizure of these articles from the place of occurrence on 5-3-1990. All the articles were secured in a parcel and sealed. According to PW 7, the appellant was wearing a cream coloured shirt and grey trousers when he went to flat No. 3-A on the date of occurrence. The appellant, as already noticed was arrested on 12-5-1990. Pursuant to a disclosure statement made by him, he brought out a packet, wrapped in a newspaper, containing one shirt and a pant which were seized vide seizure list Ex. 16. The recovery of the wearing apparel on the disclosure statement of the appellant has been established by the testimony of Pranab Chatterjee and Debulal Mukherjee, who have corroborated the evidence of the investigating officer fully. Though, the entire statement made by the appellant before the

police is inadmissible in evidence being hit by Sections 25 and 26 of the Evidence Act but that part of his statement which led to the discovery of the shirt and the pant is clearly admissible under Section 27 of the Evidence Act. We disregard the inadmissible part of the statement and take note only of that part of his statement which distinctly relates to the discovery of the articles pursuant to the disclosure statement made by the appellant as it is only so much of the statement made by a person accused of an offence while in custody of a police officer, whether it is confessional or not, as relates distinctly to the fact discovered which is capable of being proved and admitted into evidence. The discovery of the fact in this connection includes the discovery of an object found, the place from which it is produced and the knowledge of the accused as to its existence.

The cream colour button recovered from the place of occurrence along with the shirt seized on the discloure statement of the appellant and seized from his house on 12-5-1990 alongwith the other seized articles were sent by the investigating agency to the Forensic Science Laboratory. From the testimony of Pratha Sinha PW 27, the senior Scientific Officer, attached to the Physics Division of the Forensic Science Laboratory, Government of West Bengal, it transpires that the cream colour button, recovered from the place of occurrence, was from the shirt which had been recovered at the instance of the appellant from his house after his arrest. PW 27 deposed that all the buttons stitched on the shirt, except the third button from the top of the front verticle plate, were of light cream colour and stitched in the similar pattern with off-white thread of three ply and Z type twist, whereas the third button was of white colour and stitched in a different pattern with milky white thread of two ply and X type twist. The appellant appears to have stitched the *third button* in lieu of the one which had fallen off probably during scuffle, at the site of occurrence. From the unchallenged testimony of PW 27, it is crystal clear that the *third button* stitched on the shirt examined by him was different, distinct and separate from the other *three buttons* found on the shirt and that the *third button* had been replaced and stitched in a different manner. His examination also established that the button, recovered from the place of occurrence and sent to him for examination, tallied whith and was identical to the remaining *three buttons* on the shirt of the appellant. The evidence of the expert witness, therefore, clearly points out to the conclusion that the button found from the place of occurrence was the *third button* of the shirt of the appellant, which had fallen off and was found on the scene of crime. This piece of circumstantial evidence is quite specific and is of a crucial nature and undoubtedly connects the appellant with the crime.

The discovery of the broken chain from the place of occurrence also connects the appellant with the crime. From the testimony of Gauranga Chandra PW 11, it appears that the broken chain, recovered from the place of occurrence, had been given by the witness to the appellant about a month prior to the date of the incident. There was no cross-examination of this witness to challenge this part of his testimony. Of course, the defence did suggest during the cross-examination that such like chains are available in the market but that suggestion cannot detract from the reliability of the prosecution evidence. We agree with the finding of the High Court that the prosecution has successfully established that Gauranga PW 11 had given the neck chain, recovered from the place of occurrence on 5-3-1990, to the appellant about a month before the occurrence. This piece of evidence establishes the presence of the appellant in flat 3-A on 5-3-1990.

(4) Absconding.—We are conscious of the fact that abscondence by itself not a circumstance which may lead to the only conclusion consistent

with the guilt of accused because it is not unknown that innocent persons on being falsely implicated, may abscond to save themselves but abscondence of an accused after the occurrence is certainly a circumstance which warrants consideration and careful scrutiny. The evidence of PW 6, the supervisor, and of the security guard PW 7 establishes beyond a reasonable doubt that the appellant had left Anand Apartment at about 6 p.m. and was not seen thereafter. The evidence on the record shows (see the evidence of PWs 3, 4, 6 and 7) that the appellant used to live in the generator room at 'Anand Apartment'. In the transfer order, he had been asked to remove his belongings from the generator room. The investigating officer PW 28 has clearly deposed that he searched for the appellant but could not trace him during the night of 5-3-1990 and 6-3-1990. From the testimony of PW 21, the employer of the appellant it transpires that the appellant did not report for duty at 'Paras Apartment' or at 'Anand Apartment' after he left the 'Anand Apartment' at about 6 p.m. on 5-3-1990. The appellant did not apply for any leave nor did he send any letter of resignation. Anil Kumar Sub-Inspector PW 25, had made search for the appellant under orders of the Assistant Commissioner of the Detective Department but could not trace him. Raids were even made in the village of the appellant to apprehend the appellant but in vain till 12-5-1990. The evidence of PW 25, PW 28 and PW 29 has not been assailed during the cross-examination. Their testimony is corroborated by documentary evidence including Ex. 29 and we have no hesitation in relying upon their testimony. The appellant absconded soon after the occurrence. No body had admittedly by named him as an accused at 6 p.m on 5-3-1990, because even the F.I.R. came to be recorded must latter at about 9.15 p.m. Why did the appellant disappear? The appellant has offered no explanation. No challenge has been made to the testimony of the investigating officers either when they testified that they unsccessfully searched for the appellant from 5th to 8th March 1990 at different places or conducted raids at his village to apprehend him. The circumstance of absconding was put to the appellant in his statement under Section 313, Cr.P.C., but instead of giving a satisfactory explanation, he came forward with a plea *of alibi*. He stated that he left Anand Apartment to see a picture in a cinema hall after 2 p.m. and then returned to Manorama School and after collecting his belongings and purchasing some fruits left for his native place to participate in the sacred thread ceremony of his brother. No evidence was produced by the appellant in support of this belated plea of *alibi*. There is no material on the record to show that he went to any cinema or participated in any sacred thread ceremony of his brother or that even such a ceremony at all took place at his native village. Though it is not necessary for an accused to render an explanation to prove his innocence and even if he renders a false explanation, it cannot be used to support the prosecution case against him and that the entire case must be proved by the prosecution itself but it is well settled that a plea of *alibi*, if raised, by an accused is required to be proved by him by cogent and satisfactory evidence so as to completely exclude the possibility of the presence of the accused at the place of occurrence at the relevant time. The belated and vague plea of alibi of which we find no whisper during the cross-examination of any of the prosecution witnesses, and which has not been sought to be established by eading any evidence either is only an after thought and a plea of despair. The abscondence of the appellent is thus a material circumstance which has been satisfactorily and conclusively established by the prosecution against the appellant.

(5) Recovery of the wrist watch Ex. 18 from the house of the appellant.— According to the prosecution case, the appellant led to the recovery of a 'Richo' wrist watch pursuant to a disclosure statement made by him under

Section 27 of the Evidence Act soon after he was arrested on 12-5-1990 during his interrogation in presence of the witnesses. Wrist watch recovered from the house of the appellant pursuant to his disclosure statement, according to the prosecution had been stolen from flat 3-A on the date of the occurrence and belonged to PW 3, the mother of the deceased. The recovery of the wrist watch has been established by the prosecution, though the evidence of PW 29, PW 24 and PW 19. They have given a consistent version and have deposed that after the appellant was found hiding behind a stock of straw in uncle's house and was arrested, he made a disclosure statement, during interrogation, and led to the recovery of a ladies 'Richo' wrist watch, with a golden metal band from arck in his house. The said watch, marked material Ex. 18, was seized by the police vide seizure memo Ex. 16 in presence of the witnesses who have testified to the seizure and the sealing of the wrist watch after its recovery at the spot. The prosecution has led evidence to show that the recovered watch Ex. 18 had been sold to PW 3 by H. M. Watch Company on 21-2-1990 for Rs. 350/-. Mohd. Fakruddin PW 18, the sales man of the watch company proved the guarantee card Ex. 15 relating to the said wrist watch and stated that the wrist watch Ex. 18 had been sold from their shop. The factum of the theft of the watch from the almirah had come to the notice of PW 3 during search on 6-3-1990 after the occurrence and the police was immediately apprised of the same in writing. Even though the communication to the police may be inadmissible in evidence, being hit by Section 162, Cr.P.C., there was no challenge to the testimony of PW 3 that her 'Richo' wrist watch had been stolen on the date of the occurrence and that material object Ex. 18 was the same stolen wrist watch which had been recovered at the instance of the appellant from his house. We do not find any substance in the criticism levelled by Mr. Ganguli to the effect that the absence of a cash memo or the cash register rendered the evidence of Fakruddin PW 18 or PW 3 doubtful. We have carefully perused the testimony of PW 18 and do not find any blemish in the same. The non-seizure of the cash memo by the investigating agency cannot discredit the testimony of PW 18 or PW 3 and nothing has been brought to our notice from which any doubt can be cast on the testimony of PW 18 regarding the sale of the watch to PW 3. The testimony of the prosecution witnesses relating to the disclosure statement of the appellant and the seizure of the wrist watch pursuant thereto from his house coupled with the testimony of PW 18 Fakruddin and the identification of the watch by PW 3 conclusively connects the apppellant with the theft of the watch on the date of occurrence from the flat where the ghastly occurrence took place. The absence of any explanation, for possession of the wrist watch belonging to PW 3, by the appellant is a circumstance which goes against the appellant.

11. All the circumstance referred to above and relied upon by the prosecution have been conclusively established by the prosecution. They are specific and of a clinching nature and all of them irresistibly lead to the conclusion that the appellant alone was guilty of committing rape of Hetal and subsequently murdering her. All the circumstances which have been conclusively established are consistent only with the hypothesis of the guilt of the appellant and are totally inconsistent with his innocence. Not only in the cross-examination of various prosecution witnesses, but even during the arguments, nothing has been pointed out as to why any of the witness for the prosecution should have falsely implicated the appellant in such a heinous crime. None of the witnesses had any motive to falsely implicate him. None had any enmity with him. The witnesses produced by the prosecution have withstood the test of cross-examination well and their creditworthiness and reliability has not been demolished in any manner. All the circumstances established by the prosecution, as discussed above, are conclusive in nature

and specific in details. They are consistent only with the hypothesis of the guilt of the appellant and totally inconsistent with his innocence. We are, therefore, in complete agreement with the trial court and the High Court that the prosecution has established the guilt of the appellant beyond a reasonable doubt and we, therefore, uphold his conviction for the offences under Sections 302, 376 and 380, I.P.C.

12. This now brings us to the question of sentence. The trial court awarded the sentence of death and the High Court confirmed the imposition of capital punishment for the offence under Section 302, I.P.C. for the murder of Hetal Parekh. Learned counsel submitted that appellant was a married man of 27 years of age and there were no special reasons to award the sentence of death on him. Learned counsel submitted that keeping in view the legislative policy discernable from Section 235 (2) read with Section 354(3), Cr.P.C., the Court may make the choice of not imposing the extreme penalty of death of the appellant and give him a chance to become a reformed member of the society in keeping with the concern for the dignity of human life. Learned counsel for the State has on the other hand canvassed for confirmation of the sentence of death so that it serves as a deterrent to similar depraved minds. According to the learned State counsel, there were no mitigating circumstances, and the case was undoubtedly 'rarest of the rare cases' where the sentence of death alone would meet the ends of justice.

13. We have given our anxious consideration in the question of sentence, keeping in view the changed legislative policy which is patent from Section 354 (3), Cr. P.C. We have also considered the observations of this Court in *Bachan Singh's* case, 1980 CrLJ 636.

14. In recent years, the rising crime rate-particularly violent crime against women has made the criminal sentencing by the courts a subject of concern. Today there are admitted disparties. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished, thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility. Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences, in the absence of specific legislation. Judges must consider variety of factors and after considering all those factors and taking an over-all view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.

15. In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime, the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment in the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim and the society at large while considering imposition of appropriate punishment.

16. The sordid episode of the security guard, whose sacred duty was to ensure the protection and welfare of the inhabitants of the flats in the

apartments, should have subjected the deceased, a resident of one of the flats, to gratify his lust and murder her in retaliation for his transfer on her complaint, makes the crime even more heinous. Keeping in view the medical evidence and the state in which the body of the deceased was found, it is obvious that a most heinous type of barbaric rape and murder was committed on a helpless and defenceless school-going girl of 18 years. If the security guards behave in this manner, who will guard the guards ? The faith of the society by such a barbaric act of the guard, gets totally shaken and its cry for justice becomes loud and clear. The offence was not only inhuman, and barbaric but it was a totally ruthless crime of rape followed by cold blooded murder and an affront to the human dignity of the society. The savage nature of the crime has shocked our judicial conscious. There are no extinuating or mitigating circumstances whatsoever in the case. We agree that a real and abiding concern for the dignity of human life is required to be kept in mind by the courts while considering the confirmation of the sentence of death but a cold-blooded pre-planned brutal murder, without any provocation, after committing rape on an innocent and defenceless young girl of 18 years, by the security guard certainly makes this case a "rare of the rarest cases" which call for no punishment other than the capital punishment and we accordingly confirm the sentence of death imposed upon the appellant for the offence under Section 302, I.P.C. The order of sentence imposed on the appellant by the courts below for offences under Sections 376 and 380, I.P.C. are also confirmed alongwith the directions relating thereto as in the event of the execution of the appellant, those sentences would only remain of academic interest. This appeal fails and is hereby dimissed.

Appeal dismissed.