

STATE OF U.P.
v.
MUNESH
(Criminal Appeal No. 180 of 2007)

OCTOBER 12, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Penal Code, 1860 – ss. 302 and 376 – Rape and murder of minor girl – Conviction of respondent-accused by trial court – Set aside by High Court – Justification – Held: Not justified – Two independent witnesses - PWs 2 and 3 actually witnessed the occurrence – High Court committed error in rejecting their evidence – Statement of PW1- the father of the victim corroborated with the statements made by PW2 and PW3 – Delay in lodging FIR was properly explained by PW1 – Statement of PW4(doctor), who conducted post-mortem, fully supported the case of the prosecution that the deceased was raped before strangulation – Prosecution story fully corroborated with the medical evidence on record – Act of respondent repels moral conscience as he chose a 11 year girl to satisfy his lust and subsequently murdered her – Conviction restored – RI for life imposed.

Evidence – Witness – Statement before Investigating Officer and before the Court – Contradictions – Appreciation – Rape and murder of minor girl – Conviction of respondent-accused – Set aside by High Court on the ground that there were some contradictions between the statements made by PWs 2 and 3 before the Investigating Officer u/s.161 CrPC and that made by them before the court – Held: PWs 2 and 3 were independent eye-witnesses who actually witnessed the occurrence – High Court committed error in rejecting their evidence – The contradictions were minor and did not affect the prosecution case – The statement before the Investigating

A *Officer and that before the Court were made at different intervals of time and there was bound to be some variance in the statements – Penal Code, 1860 – ss.302 and 376.*

B *FIR – Delay in lodging of FIR – Whether reasonable and explained – Rape and murder of minor girl – Victim found lying dead in a naked condition – Incident occurred at 4.30 p.m. – Complaint made at 11.05 p.m. on the same day – Distance of 2 Kms. between the place of incident and the police station – Held: PW-1, father of the victim is a villager and on hearing the incident through PWs 2 and 3, he rushed to the spot, made arrangements to cover the body of his daughter, searched for some time to trace the accused, and thereafter, reached the Police Station – Considering the entire incident as a whole, it cannot be said that there was any unreasonable and unexplained delay which went to the root of the prosecution case – The delay was properly explained by PW-1, even otherwise, the same could not be construed as abnormal as erroneously observed by the High Court – Code of Criminal Procedure, 1973 – s.161.*

E *FIR – Nature of – Held: FIR is not an encyclopedia – It is just an intimation of the occurrence of an incident and it need not contain all the facts related to the incident in question.*

F *Crimes against Women – Devastating increase in rape cases and cases relating to crime against women – Primary concern both at national and international level – Although the statutory provisions provide strict penal action against such offenders, it is for the Courts to ultimately decide whether such incident has occurred or not – The Courts should be more cautious in appreciating the evidence and the accused should not be left scot-free merely on flimsy grounds.*

H **According to the prosecution, the 11 year old daughter of PW-1 was raped and murdered by the respondent when she had gone alone from her house to**

prepare cow-dung cakes. It was alleged that PW-2 and PW-3, who were passing through their fields at a short distance, saw the respondent strangulating the victim with a *chunni* ('dupatta') and on seeing them, the respondent ran away. The victim was subsequently found lying dead in a naked condition. PW-2 and 3 informed PW-1 about the said incident whereafter PW-1 lodged FIR. The trial court convicted the respondent under Sections 302 and 376 IPC and sentenced him to death. In appeal, the High Court disbelieved the statements of PW-2 and PW-3 on the ground that there were some contradictions between the statements made under Section 161 CrPC and in their evidence before the court and further holding that there was delay in lodging of the FIR, it acquitted the respondent. Hence the present appeal by the State.

Allowing the appeal, the Court

HELD: 1.1. Both PWs 2 and 3 were not related to the deceased. On the other hand, they were independent eye-witnesses who actually witnessed the occurrence and their evidence was reliable. The High Court committed an error in rejecting their evidence. The statement before the I.O. and the statement before the Court were made after some interval and there was bound to be some variance in the statements. Nevertheless, the contradictions were not much and did not affect the prosecution story. Further, in the absence of any previous enmity with the accused, the question of falsely implicating the accused did not arise. [Paras 7, 10 and 14] [553-F-G; 555-F-G; 557-D-F]

1.2. It is true that PW-1 is not an eye-witness but his statement corroborates with the statements made by PW-2 and PW-3. There is no reason to disbelieve the version of PW-1 and the trial court rightly relied on him

A along with the statements of eye-witnesses PWs 2 and 3. The High Court rejected his evidence also on flimsy grounds. [Para 11] [555-H; 556-E]

B 2.1. It is not in dispute that the incident occurred at 4.30 p.m. on 05.03.2002 and the complaint was made by PW-1 at 11.05 p.m. on the same day itself. It has also come in evidence that the distance between the place of incident and the police station is 2 kms. Though the High Court commented that there was delay in lodging the complaint, it must be noted that PW-1 - father of the victim C is a villager and on hearing the incident through PWs 2 and 3, he rushed to the spot, made arrangements to cover the body of his daughter, searched for some time to trace the accused, and thereafter, reached the P.S. which is at a distance of 2 kms. at 11.05 p.m. If one considers the D entire incident as narrated by PW-1, it cannot be construed that there was any unreasonable and unexplained delay which went to the root of the prosecution case. On the other hand, considering the materials placed, it is clear that the delay was properly E explained by PW-1, even otherwise, the same cannot be construed as abnormal as erroneously observed by the High Court. [Para 12] [556-F-H; 557-A-B]

F 2.2. Though it is stated that all the details as spoken to by PWs 1, 2 and 3 were not mentioned in the FIR, as rightly observed by the trial Court, FIR is not an encyclopedia. It is just an intimation of the occurrence of an incident and it need not contain all the facts related to the said incident. [Para 13] [557-C]

G 3. PW-4 conducted the *post mortem* on the body of the deceased. In his opinion, the cause of the death of the deceased was due to asphyxia due to strangulation and also due to pre-mordial injuries. For a specific question, PW-4 stated that "prior to her death, the

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deceased was raped and due to that reason only, her hymen has been found to be ruptured". The above conclusion of PW-4 fully supports the case of the prosecution that the deceased was raped before strangulation. He also stated that blood was seen in the vagina of the deceased and her hymen was found to have been ruptured. Notwithstanding the absence of Sperm Detection Test report, the case of the prosecution cannot be doubted about rape, particularly, in the light of categorical findings of the doctor that her hymen was found to have been ruptured. The other prosecution witnesses have also stated injury on her private part and oozing of blood. The medical evidence proved that the victim was raped before her death. The prosecution story is fully corroborated with the medical evidence on record and, the High Court failed to give importance to the said evidence. [Paras 15, 16] [558-F-G-H; 559-A-C]

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4. It is true that the prosecution has not collected the *chunni (dupatta)* allegedly used for pressing the neck of the victim, but, in the light of the material objects, the evidence of prosecution witnesses, statement of the doctor who conducted the *post mortem*, his opinion etc. amply prove the prosecution case. [Para 18] [559-E-F]

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5. The primary concern both at national and international level is about the devastating increase in rape cases and cases relating to crime against women in the world. India is no exception to it. Although the statutory provisions provide strict penal action against such offenders, it is for the Courts to ultimately decide whether such incident has occurred or not. The Courts should be more cautious in appreciating the evidence and the accused should not be left scot-free merely on flimsy grounds. In the instant case, the accused had committed rape, which repels against moral conscience as he chose a girl of 11 years to satisfy his lust and

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A subsequently murdered her. [Para 19] [559-G-H; 560-A-B]

B 6. In the light of the acceptable materials in the form of oral and documentary evidence led in by the prosecution, particularly, the eye-witnesses PWs 2 and 3 who are independent witnesses coupled with the evidence of the doctor (PW-4), this Court accepts the conclusion of the trial court and disagrees with the conclusion of the High Court. It is held that the accused-respondent first committed the offence of rape and then murdered the deceased. The prosecution has established both the charges under Sections 376 and 302 of IPC. Taking note of the fact that the incident occurred in the year 2002, rigorous imprisonment for life would meet the ends of justice. [Paras 20, 21 and 22] [560-B-E]

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 180 of 2007.

E From the Judgment & Order dated 16.10.2003 of the High Court of Judicature at Allahabad in Criminal Appeal No. 737 of 2003.

Ratnakar Dash, Abhishth Kumar, T.N. Singh for the Appellant.

F G.S. Mani, S.K. Verma, P.K. Tripathy, K. Rama Koteswara Rao, M.M. Kashyap for the Respondent.

The Judgment of the Court was delivered by

G P. SATHASIVAM, J. 1. This appeal is filed by the State of U.P. against the final judgment and order dated 16.10.2003 passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 737 of 2003 whereby the High Court allowed the appeal filed by the respondent herein and acquitted him of the offences punishable under Sections 302 and 376 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and set

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aside the judgment and order dated 15.02.2003 passed by the Additional Sessions Judge/Special Judge (E.C. Act), Bulandshahar in Sessions Case No. 748 of 2002. A

2. Prosecution case in a nutshell is as follows:

(a) On 05.03.2002, at about 04.30 p.m., Roshni (the deceased), aged about 11 years, had gone alone from her house in Kalander Garhi, PS Khurja Nagar, Bulandshahar, U.P. to prepare cow-dung cakes in the cremation ground of Jatavs' and while she was doing her work, the respondent-accused forcibly took her in the wheat field of one Jalil Khadar with bad intentions. She raised cries and on hearing the same, Madanlal (PW-2) and Suresh Chandra (PW-3), who were passing through at a short distance, came to the said field and saw that the respondent-accused was strangulating her with a Dupatta. On seeing them, the respondent-accused ran away and when they tried to chase him, he could not be caught. When they returned back, Roshni was seen lying dead at the site in naked condition. Both of them informed Kanchhi Lal (PW-1), the father of the deceased-the complainant about the said incident and at 11.05 p.m., PW-1 lodged an F.I.R. being Crime No. 66 of 2002 at Police outpost Khurja Junction, District Bulandshahar and a case under Sections 376, 302 and 511 of IPC was registered against the appellant. B
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(b) After investigation, Kshetrapal Singh, S.I. (PW-7) arrested the accused on 14.03.2002. After filing of the charge sheet, the case was committed to the Court of Sessions and numbered as Sessions Case No. 748 of 2002. F

(c) The Additional Sessions Judge/Special Judge (E.C. Act) Bulandshahar, by judgment dated 15.02.2003, convicted the respondent-accused and sentenced him to death under Section 302 of IPC and to imprisonment for life under Section 376 of IPC. G

(d) Aggrieved by the said judgment, the respondent- H

A accused preferred an appeal being Criminal Appeal No. 737
of 2003 before the High Court. For confirmation of death
sentence of the accused, Capital Sentence Reference No.7 of
2003 was also filed which was heard along with the appeal filed
by the accused. The High Court, by impugned judgment dated
B 16.10.2003, allowed the appeal filed by the respondent-
accused and acquitted him of all the charges and also rejected
the Capital Sentence Reference.

(e) Against the order of acquittal passed by the High Court,
the State has filed this appeal by way of special leave.

C 3. Heard Mr. Ratnakar Dash, learned senior counsel for
the appellant-State and Mr. G.S. Mani, learned counsel for the
respondent-accused.

D 4. Mr. Ratnakar Dash, learned senior counsel appearing
for the State of U.P. submitted as under:-

(a) the High Court has committed an error by disbelieving
the statement of two independent eye-witnesses, namely,
Madanlal (PW-2) and Suresh Chandra (PW-3) merely on the
E ground that there are some contradictions between the
statements made under Section 161 of the Code of Criminal
Procedure, 1973 (hereinafter referred to as "the Code") and in
their evidence before the court;

F (b) the High Court has failed to appreciate the vital facts
that these two statements i.e. statement before the I.O. and the
statement before the Court were made after some interval and
there is bound to be some variance in the statements. However,
the omission in the statement is not fatal to the prosecution
G case;

(c) the High Court was not correct in holding that there is
delay in lodging of the FIR. Even if there is delay, it has been
properly explained by the complainant - PW-1, father of the
deceased; and

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(d) Since the prosecution story is fully corroborated with the medical evidence on record that the victim was raped before her death and she had died on 05.03.2002 at 4.30 p.m. due to injuries, all these aspects have not been properly considered and the High Court committed a grave error in acquitting the accused.

5. On the other hand, Mr. G.S. Mani, learned counsel for the respondent-accused submitted that in view of the contradictions in the evidence of prosecution witnesses, particularly, their statements before the I.O. under Section 161 of the Code and their evidence before the Court, the High Court was fully justified in disbelieving their version. He pointed out that non-recovery of chunni (dupatta) is fatal to the prosecution case. He also pointed out that the prosecution failed to prove the motive and it is highly impossible to commit rape and murder at the same time. According to the counsel, there was inordinate delay in lodging the complaint and inquest was not made on the same night. He further pointed out that all these aspects were correctly appreciated by the High Court and ordered acquittal. Finally, Mr. Mani submitted that inasmuch as the High Court, on appreciation of evidence ordered acquittal, the same cannot be lightly interfered by this Court exercising jurisdiction under Article 136 of the Constitution of India.

6. We have carefully considered the rival submissions and gone through the relevant materials as well as the reasoning of the trial Court and the High Court.

7. As to the evidentiary value of eye-witnesses - PWs 2 and 3, it is not in dispute that both of them are not related to the deceased. On the other hand, they are independent eye-witnesses who actually witnessed the occurrence. Madanlal (PW-2), in his evidence has stated that Kanchhi Lal – (PW-1) father of the deceased victim, belongs to his village and his daughter by name Roshni was just 11 years old when the said incident occurred. He also stated that the accused Munesh-respondent herein too belongs to his own village. He narrated

A before the Court that on 05.03.2002, at 4.30 p.m. he was passing through their field leading towards his village Manna along with one more villager Suresh Chandra (PW-2) and, ultimately, when they reached near the tube well fitted in the field of Jalil Khadar in which standing wheat crop was grown, at that time, they heard shrieking sound. On hearing the same, they immediately rushed towards the said direction. On reaching the spot, they saw Roshni lying down there and, at that time, Munesh-the accused tied a noose around her neck and tightened its knot. On seeing his action, both of them asked him "what are you doing". He further stated that after strangulating her, he ran away in the direction of south and they too followed him, but the accused could not be caught. Thereafter, they returned back to the spot and found that Roshini was lying on the ground in a naked state and the noose was around her neck. Her salwar and underwear were lying nearby her body. Immediately, they informed the same to her father PW-1. PW-2 identified Munesh-accused in the Court and asserted that it was he who committed the said act.

8. Though, learned counsel for the accused brought to our notice that certain statements have not been stated by him before the I.O., on verification of his statement under Section 161 of the Code and his evidence before the Court as well as the statement of I.O. (PW-6), we are satisfied that the contradiction, if any, is not much and the same would not affect the credibility of his statement. It is not in dispute that he is not related to the deceased, on the other hand, he is an independent eye-witness belonging to the same village as that of PW-1 and the accused.

9. The next eye-witness relied on by the prosecution is Suresh Chandra - PW-3. In his evidence, he has stated that PW-1 belongs to his own village and at the time of the incident, his daughter was aged about 11 years. He also admitted that even the accused-Munesh belongs to their village. Like PW-2, PW-3 also mentioned that the occurrence took place on 05.03.2002, between 4.30 to 5.00 p.m. He further stated that

he along with PW-2 was passing through their field and when they reached near the tube-well of Jalil Khadar, they heard shrieking sound, due to which, they rushed towards the said direction. They saw Munesh-accused has already got down Roshni, due to which, they shouted at him. In the meanwhile, the accused put around her neck a noose of her chunni (dupatta) and tightened it by pulling. Thereafter, he ran away towards the south. Like PW-2, he also chased him but the accused could not be caught. When they returned back, they saw that she was lying naked on the ground. Her salwar and underwear were lying near her body. Her vaginal area had bleeding and her hands were full of cow-dung. Thereafter, they informed the same to Kanchhi Lal – PW-1, father of the deceased. Like PW-2, he also identified the accused in the Court. Even in the cross-examination, he asserted that when they saw her at the first instance itself, a noose was tied around her neck and the accused was holding both the ends of the said noose and was pulling it to tighten it around her neck. He denied the suggestion that in order to support the family of the deceased, he was making a false statement. Here again, the counsel pointed out certain discrepancies in the statement before the police officer and his evidence before the Court. We have carefully verified the same and we are satisfied that the alleged contradictions are trivial in nature and have not affected the case of the prosecution.

10. The High Court, taking note of minor discrepancies, particularly, their statements recorded by the I.O. and their evidence before the Court, disbelieved their version. We are satisfied that the High Court has committed an error in rejecting their evidence. We have already stated that they are independent witnesses and witnessed the occurrence at a short distance and there is no reason to disbelieve their version.

11. Now, let us see the evidence of PW-1, father of the victim. It is true that he is not an eye-witness but his statement corroborates with the statements made by PW-2 and PW-3. It

A is his evidence that the deceased-Roshni was his daughter and she was aged about 11 years at the time of occurrence. He further deposed that on 05.03.2002, at about 4.30 p.m., she went alone to the place of cremation ground of Jatavs' for preparing cow-dung cakes. At that time, Munesh-the accused
B who also belongs to his village forcibly dragged her with bad intentions to the wheat field of Jalil Khadar. He also stated that on hearing the cries of her daughter, Madanlal (PW-2) and Suresh Chandra (PW-3), who were passing through nearby the field, shouted at him and tried to catch hold of him. He also
C explained how PWs 2 and 3 chased the accused and informed about the incident to him. Thereafter, according to him, he rushed to the spot along with the villagers and saw that his daughter was not only lying in naked condition but her chunni was also lying around her neck as a noose. After searching for
D the accused in his village and after finding that he was not traceable, he submitted the written complaint to the P.S. Khurja Junction which is Exh. A-1. He also identified the accused who was present in the dock. He denied the allegation that he falsely implicated the accused due to some election dispute. There is no reason to disbelieve the version of PW-1 and the trial
E court has rightly relied on him along with the statements of eye-witnesses PWs 2 and 3. Unfortunately, the High Court has rejected his evidence also on flimsy ground.

12. Coming to the next contention about the delay in
F lodging of the FIR, it is not in dispute that the incident occurred at 4.30 p.m. on 05.03.2002 and the complaint was made by PW-1 at 11.05 p.m. on the same day itself. It has also come in evidence that the distance between the place of incident and the police station is 2 kms. Though the High Court has
G commented that there was delay in lodging the complaint, it must be noted that PW-1 - father of the victim is a villager and on hearing the incident through PWs 2 and 3, he rushed to the spot, made arrangements to cover the body of his daughter, searched for some time to trace the accused, and thereafter,
H reached the P.S. which is at a distance of 2 kms. at 11.05 p.m.

If we consider the entire incident as narrated by PW-1, it cannot be construed that there was any unreasonable and unexplained delay which goes to the root of the prosecution case. On the other hand, considering the materials placed, we hold that the delay has been properly explained by PW-1, even otherwise, the same cannot be construed as abnormal as erroneously observed by the High Court.

13. Though it is stated that all the details as spoken to by PWs 1, 2 and 3 were not mentioned in the FIR, as rightly observed by the trial Court, FIR is not an encyclopedia. It is just an intimation of the occurrence of an incident and it need not contain all the facts related to the said incident.

14. Coming to the contention about variance in the statement recorded by I.O. under Section 161 of the Code and the evidence before the Court, we have already expressed that the contradictions are not much and the same have not affected the prosecution story. It is to be noted that the statement before the I.O. and the statement before the Court were made after some interval and there is bound to be some variance in the statements. After verification of both the statements, we are satisfied that the omission is not much and not fatal to the prosecution case and it should not prejudice prosecution evidence. Accordingly, we reject the stand taken by the counsel for the accused. We have already concluded that the evidence of both the eye-witnesses, viz., PWs 2 and 3 are not only reliable but they are independent witnesses. Further, in the absence of any previous enmity with the accused, the question of falsely implicating the accused does not arise.

15. Finally, let us consider the evidence of the doctor who conducted the post mortem on the body of the deceased. Dr. Awdesh Kumar (PW-4) attached to District Hospital, Bulandshahar, in his evidence has stated that on 06.03.2002 Constables Jagat Singh and Usman brought the dead body of Kum. Roshni, daughter of Kanchhi Lal along with the relevant papers, specimen seal impression etc., for conducting post

A mortem examination of the dead body. Both of them also identified the said dead body before him. He compared the seal stamped on the dead body package and found it to be correct and packing too was found to be in tact. He further deposed that at 3.30 p.m. on 06.03.2002, he conducted the post mortem on the dead body. The age of the deceased Roshini was about 11 years and she was of average physical built-up by appearance. He noted the following ante-mortem injuries on the dead body of the victim-Roshni.

C “1. Ligature marks 20 cm x 2.5 cm all around neck and also on that part of lower neck below thyroid cartilage.

D 2. Multiple linear abrasions on the back of left leg wholly, in its back side of sizes varying in between 10 cm to 3 cm. The face was congested and on her private part, blood was visible.

E In her internal examination, it was found that brain and membranes of the brain, both long sacks, trachea, liver tissues, kidney were found to be congested. Hyoid of neck was found to have been fractured. Her hymen has been ruptured. Its smear slide was prepared. It was then sent for pathological examination.”

F In his opinion, the cause of the death of the deceased was due to asphyxia due to strangulation and also due to pre-mordial injuries. The post mortem report was marked as Exh. A-2. For a specific question, PW-4 has stated that “prior to her death, the deceased was raped and due to that reason only, her hymen has been found to be ruptured”. The above conclusion of PW-4 fully supports the case of the prosecution that the deceased was raped before strangulation. He also stated that blood was seen in the vagina of the deceased and her hymen was found to have been ruptured.

H 16. Mr. Mani has pointed out that in the absence of the report of Sperm Detection Test, the conclusion regarding rape

cannot be accepted. It is true that PW-4 has stated that the slide containing sperms which had been sent for examination has not returned so far along with the examination report. In the absence of such a report, the case of the prosecution cannot be doubted about rape, particularly, in the light of categorical findings of the doctor that her hymen was found to have been ruptured. The other prosecution witnesses have also stated injury on her private part and oozing of blood. The medical evidence proved that the victim was raped before her death and she died on 05.03.2002. In other words, the prosecution story is fully corroborated with the medical evidence on record and, unfortunately, the High Court failed to give importance to the said evidence.

17. The I.Os PWs 6 and 7 prepared panchnama Exh. No. A-5 and related papers which are Exh. Nos. A-6 to A-9. Exh. No. A-10 contains the list of articles confiscated by the I.O. viz., Salwar, panty and Hawai slippers which are marked as material object Nos. 1 to 3. PW-6 has prepared a spot map which is Exh. A-11.

18. Finally, learned counsel for the respondent submitted that failure to recover chunni (dupatta) which was alleged to have been used for pressing the neck goes against the prosecution case. It is true that the prosecution has not collected the same but, in the light of the material objects, the evidence of prosecution witnesses, statement of the doctor who conducted the post mortem, his opinion etc. amply prove the prosecution case and we reject the claim of the counsel for the respondent.

19. The primary concern both at national and international level is about the devastating increase in rape cases and cases relating to crime against women in the world. India is no exception to it. Although the statutory provisions provide strict penal action against such offenders, it is for the Courts to ultimately decide whether such incident has occurred or not. The Courts should be more cautious in appreciating the

A evidence and the accused should not be left scot-free merely on flimsy grounds. In the instant case, the accused had committed rape, which repels against moral conscience as he chose a girl of 11 years to satisfy his lust and subsequently murdered her.

B 20. In the light of the acceptable materials in the form of oral and documentary evidence led in by the prosecution, particularly, the eye-witnesses PWs 2 and 3 who are independent witnesses coupled with the evidence of the doctor (PW-4), we accept the conclusion of the trial court and disagree with the conclusion of the High Court. The analysis and the ultimate conclusion of the High Court is contrary to the acceptable and reliable material placed by the prosecution and we hold that the accused has first committed the offence of rape and then murdered the deceased. We are satisfied that the prosecution has established both the charges under Sections 376 and 302 of IPC.

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E 21. In view of the same, the conclusion arrived by the High Court is set aside. Taking note of the fact that the incident occurred in the year 2002, we feel that rigorous imprisonment for life would meet the ends of justice.

F 22. In view of the same, the respondent-accused is directed to surrender before the concerned authority/Court within a period of two weeks failing which the trial Judge is directed to take necessary effective steps for sending him to prison. The appeal preferred by the State is allowed.

B.B.B.

Appeal allowed.