

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CNR No: PHHC010014722024
2026.PHHC:137281-DB



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MRC-3-2024 (O&M)
CRA-D-824-2024 (O&M)

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Whether only the operative part of the judgment is pronounced or the full judgment is pronounced.	Operative part/full judgment
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1.

STATE OF PUNJAB ... Appellant

Versus

NEELAM ... Respondent

CRA-D-824-2024 (O&&M)

2.

NEELAM ... Appellant

Versus

STATE OF PUNJAB ... Respondent

**CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ
HON'BLE MR. JUSTICE RAVINDER MALIK**

Present: Mr. Mohit Kapoor, Sr. DAG, Punjab.

Mr. A.D.S. Sukhija, Senior Advocate as Amicus Curiae with
Ms. Mehak Sawhney, Advocate,
Mr. Sukhdeep Singh, Advocate,
Ms. Manjot Kaur, Advocate and
Mr. Vivek Chauhan, Advocate.

Mr. Amandeep Singh Rai, Advocate,
Ms. Sunaina Rani, Advocate for appellant in CRA-D-824-2024
and for respondent in MRC-3-2024.

Mr. Atul Goyal, Advocate for the complainant.

VINOD S. BHARDWAJ, J.

1. By way of this common judgment aforesaid, two cases i.e., MRC-3-2024 referred by the District and Sessions Judge, Ludhiana in SC No. 26/2022 as well as CRA-D-824-2024 preferred by the accused against the judgment dated 12.04.2024 passed in case FIR No.166 dated 28.11.2021 registered under Sections 364, 302, 201 of IPC at Police Station Shimlapuri, Ludhiana, whereby respondent-accused has been convicted for commission of offence under Sections 302, 364 and 201 IPC alongwith the order dated 18.04.2024 whereby the trial Court has awarded death sentence to accused-respondent for commission of offence under Section 302 IPC amongst others, are being decided by a common judgment.

2. Whilst the Sessions Court has sent MRC-3-2024 for confirmation of the death sentence awarded vide order dated 18.04.2024, the accused-respondent has preferred the aforesaid appeal against the judgment of conviction as well as the order of sentence awarded.

Brief Facts of the present case

3. The aforesaid FIR has been registered on the statement of Sxxxx (grandfather of the victim Dxxx Kxxx). He stated to the effect that he works in a factory and has two children. His elder son, Hxxxx Sxxx is employed in Punjab Police is married and has two children, i.e., a son aged 6-1/2 years and a daughter Dxxx Kxx, aged 2-3/4 years. It was alleged that on 28.11.2021, his wife Hxxxx Kxxx, was playing in the street with her granddaughter. At around 2:15 PM, she came inside the house to drink water while Dxxxx Kxxx continued playing in the street. After about five minutes, when Hxxxx Kxxx wife of Sxxxx, came back to the street, she did not find her granddaughter Dxxxx Kxxx. She thereafter called the complainant as well as her daughter-in-law, Kxxx wife of Hxxxxx Sxxx and they all started searching for Dxxxx Kxxx. During the search, they came to know that their neighbour Neelam had abducted their granddaughter, with an intention to kill her. The motive behind the aforesaid act was that his son, Hxxxxx Sxxx, had restrained Kxxx (mother of deceased Dxxxx Kxxx) from talking to Neelam, who was perceived as a woman of bad character in the neighbourhood.

4. On the basis of the aforesaid statement, the FIR had been registered against the accused Neelam for the offence under Section 364 IPC. During investigation, one Gurpreet Singh came to the police and informed that accused Neelam had met him outside his house and told him that she had buried Dxxxx Kxxx in a pit. On the above said extra-judicial confession made on 28.11.2021, the accused was apprehended at about 11:30 PM with her Activa bearing registration No.PB-10GT-5402, black colour. During interrogation, she disclosed that Hxxxxx Sxxx, son of the complainant Sxxxx (grandfather of the deceased), works in Punjab Police

and used to bring things for his children. Seeing the same, her own children raised similar demands and as she could not fulfill their demands, she took Dxxxx Kxxx on her Aactiva scooty to a bounded vacant plot situated at GT Road, near Eldeco City. A pit had already been dug there and she buried Dxxxx Kxxx in that pit and threw sand upon her. She further disclosed that no other person was involved in this incident. She was hence taken in custody at about 2:00 P.M. on the intervening night of 28/29.11.2021. Her arrest-cum-intimation memos were prepared and she was taken to the spot where she identified the place where she buried the victim Dxxxx Kxxx. The shoes of the victim were also lying at the spot. The shoes of Dxxxx Kxxx were also recovered from the spot after the complainant identified the same to be of Dxxxx Kxxx. The same were taken into police possession and he prepared a sealed parcel of the same bearing his seal impression 'BS'. Offences under Sections 302 and 201 of the Indian Penal Code were accordingly added.

5. However, independent of the above proceedings, certain developments had already taken place. A ruqa had earlier been received, during the day, on 28.11.2021, about a child having been brought dead to DMC Hospital, Ludhiana by the police, Hence, the dead body of Dxxxx Kxxx had already been taken to the DMC Hospital, where she was declared dead at around 5:41 PM on 28.11.2021. Thereafter, her dead body was taken to Civil Hospital, Ludhiana for post-mortem examination which was conducted on the following day i.e., 29.11.2021. After the post-mortem, the dead body of Dxxxx Kxxx was handed over to her family.

6. On 30.11.2021, PW-8 Mulakh Raj a security guard employed at the adjacent plot identified the accused to be the person who had come on a

black Aactiva, along with a minor child, and entered into the vacant plot and stated that she returned after about 10 minutes but the child was not accompanying her.

7. Police also took possession of the CCTV footage on 02.12.2021, from two different chowks, in which deceased Dxxxx Kxxx was seen going with the accused on her Aactiva. On her return, the accused was seen alone. The said CCTV footage was taken in a pen drive from different servers including the Police Control Room. Certificate under Section 65-B of the Indian Evidence Act, 1872 was also obtained and taken in possession. The footage of the CCTV camera was retrieved and, photographs were got prepared. Statements of witnesses were recorded and after completion of investigation, a final report under Section 173 CR.P.C. was prepared and presented in the Court.

8. The entire copy of the challan along with the documents as well as the statements of witnesses relied by the prosecution were supplied to the accused free of cost in compliance with Section 207 Cr.P.C. The offence being exclusively triable by the Court of Sessions vide order dated 03.01.2022, an order of committal was passed and the case was sent to the Sessions Court.

9. Noticing that *prima facie* offence(s) under Sections 364, 302 and 201 IPC were made out, the charges were framed. The accused pleaded not guilty to the same and claimed trial.

10. To support its case, the prosecution examined the following witnesses:-

PW-1 Sxxxx, complainant/grandfather of the deceased

minor and proved the social media coverage of the murder.

- PW-2 Gurpreet Singh, witness of extrajudicial confession.
- PW-3 Hxxxx Kxx, grandmother of the deceased.
- PW-4 Avtar Singh, neighbour who provided CCTV footage of cameras installed at his home.
- PW-5 Baljinder Singh, a shopkeeper who saw accused Neelam along with Dxxxx Kxxx on the day of the incident, near Jalandhar Bypass.
- PW-6 Kxxx , mother of the deceased minor.
- PW-7 Davinder Singh, for identification of the dead body.
- PW-8 Mulakh Raj, who proved the last seen theory.
- PW-9 Kuldeep Singh, draftsman who prepared the scaled site plan.
- PW-10 Dr. Gurbinder Kaur, who conducted the postmortem.
- PW-11 Dr. Shubham Dutta who sent the information regarding deceased to PS Shimlapuri, Ludhiana.
- PW-12 Jaspreet Kaur, Data Entry Operator, RTA Ludhiana who proved the ownership of Scooter used in offence.
- PW-13 Rajesh Sharma, Manager M/s RIPSS Infrastructure Pvt., Ltd., to prove that Mulakh Raj was appointed as Security Guard in their plot owned.
- PW-14 ASI Jaswinder Singh, Incharge Safe City Project, Ludhiana, to prove the CCTV footage of accused along with deceased, from Shimlapuri to Jalandhar byepass.
- PW-15 SI Ranjit Singh, Incharge PCR Zone-I, who took out deceased Dxxxx from the pit and took her to DMC hospital.
- PW-16 Amandeep Singh, Director, Jagjit Securities, who had deputed Mulakh Raj as Security Guard for the plot owned by M/s RIPS Infrastructure Pvt., Ltd.,
- PW-17 Baljeet Chauhan, Nodal Officer, Reliance Jio

Infocom, who furnished call detail record of M.No.62830-02092 in the name of accused Neelam.

- PW-18 Sh. Palwinder Singh, JMIC who recorded statement under Section 164 Cr.P.C., of Mulakh Raj.
- PW-19 ASI Gurbakshish Singh, Investigating Officer.
- PW-20 Retd. Inspector Balkar Singh, SHO PS Shimlapuri.
- PW-21 ASI Dhani Ram, member of PCR Zone-I, Ludhiana and driver of Govt. vehicle Ertiga which was used by SI Ranjit Singh.
- PW-22 HC Bahadur Singh, with whom case property was deposited.
- PW-23 ASI Rajinder Pal Singh, MHC, PCR Ludhiana to prove the duties of some officials.
- PW-24 ASI Ram Simran to prove the posting of some police officials in PCR Ludhiana.
- PW-25 PHG Manjeet Kaur, member of police team who arrested the accused.
- PW-26 Parminder Singh Ahuja, Legal Correspondent Daily Ajit Newspaper, Jalandhar, who covered the news regarding murder of Dxxxx by burring her alive in a pit.

11. After the conclusion of the prosecution evidence, the entire incriminating evidence appearing against the accused was put to her in her statement recorded under section 313 Cr.P.C. The accused denied the same and pleaded false implication. However, no evidence was led in defence.

12. On consideration of the respective submissions made by the learned counsel for the parties and the evidence brought on record, the trial Court recorded a finding of conviction against the accused vide judgment dated 12.04.2024. The matter was thereafter fixed for hearing the parties on the question of sentence.

13. After hearing the respective parties on the sentence and taking into consideration all the aggravating as well as mitigating circumstances, vide order dated 18.04.2024, the trial Court sentenced the accused to capital punishment for the offence punishable under Section 302 IPC and also sentenced her to life imprisonment for the punishable offence under Section 364 IPC. A table showing the sentence awarded to the accused is reproduced hereinbelow:-

Offence	Quantum of sentence	Fine
U/s 302 of IPC	Death sentence and she be hanged by the neck till she is dead. Death sentence subject to its confirmation by the Hon’ble High Court of Punjab and Haryana, Chandigarh.	In case her death sentence is not confirmed by the Hon’ble High Court, convict to pay a fine of Rs.50,000/-(fifty thousand) and in default of payment of the fine to undergo rigorous imprisonment for one year.
U/s 364 of IPC	Imprisonment for life.	Rs.10,000/- and in default of payment of fine, to undergo rigorous imprisonment for one year.
U/s 201 of IPC	Rigorous imprisonment for seven years.	Rs.2,000/- and in default of payment of fine, to undergo rigorous imprisonment for 6 months.

14. Hence, the reference and the appeal.

ARGUMENTS ON BEHALF OF THE COUNSEL FOR THE APPELLANT-ACCUSED

15. Learned Senior counsel appearing on behalf of the appellant has vehemently contended that this is a case based on circumstantial evidence and there is no eyewitness to the incident in question. He contends that as per the settled position in law, in any case which is based upon circumstantial evidence, the chain of events is to be completed in a manner

as would lead to an inescapable hypothesis of only the accused being involved in the commission of the offence and there should be no possibility of involvement of any other person in the commission of the offence. He contends that in the event of any other hypothesis being possible, benefit thereof has to be extended to the person charged for the commission of the said offence. Counsel contends that in the present case, the evidence on record fails to establish an unbroken chain of events and thus, the judgment of conviction as well as the order of sentence are liable to be set aside.

16. In support of his arguments, the counsel contends as under:-

- (i) As per the case of the prosecution, the statement of Sxxxx (Ex.P1) was recorded at around 7:15 PM; however, much prior thereto, the dead body of the victim had already been recovered by the police and she had been declared dead at 5:41 PM.
- (ii) He also contends that the body had been brought to the hospital at around 3:45 PM and that, as per the medical record available, at around 5:05 PM resuscitation efforts were initiated. The hospital record shows that the child had been brought to the said hospital at that point of time and CPR had been given.
- (iii) The Blue Code Book had been prepared with reference to the CPR proceedings undertaken and revival proceedings undertaken by the hospital. She was eventually declared dead at 5:41 PM by the hospital.
- (iv) He submits that the victim had gone missing at about 2:15 PM. Despite the victim remaining untraced for a period of

nearly five hours, no information was furnished to the police. It was only at 7:15 PM that, when they went to inform the police regarding the occurrence, whereupon the FIR was accordingly registered. There is thus an unexplained delay in reporting the matter to the police.

- (v) It is submitted that the prosecution has also withheld the material information regarding the recovery of the dead body of the child, which had already been effected by the police at about 3:00/4:00 PM from the bounded plot on the GT road.
- (vi) As per the medical record prepared by the hospital, the name and particulars, including the address of Dxxxx Kxxx, has been mentioned even though identity had not been established as the FIR had not yet been registered and child had not been identified. He contends that once the police had not registered the FIR till after 7:15 PM on 28.11.2021, there was no occasion for the particulars as well as the parentage and address of Dxxxx Kxxx since deceased to have found a mention.
- (vii) He further contends that as per the medical record, the name of Gurbakshish Singh, ASI of Police Station, Shimlapuri stands recorded as the official who was informed about the dead body of the child having been recovered. It is contended that the said ASI Gurbakshish Singh is also the Investigating Officer in the present case, hence, he had the information about the dead child even

before the present FIR got registered.

- (viii) It is vehemently argued that notwithstanding that all particulars were already known to the police and that even the witnesses deposed that at the time when the PCR personnel exhumed the body of Dxxxx Kxxx from the plot in question, her shoes were lying at the spot, however, the police yet did not take any steps to take possession of the said shoes. It is contended that no reasons are forthcoming as to why they would not take the shoes in possession. He contends that the aforesaid aspect reflects the Investigating Officer's doctoring in leaving the evidence to be collected later and to create a link to the participation of the accused in the commission of the offence.
- (ix) He contends that the disclosure statement of the accused is recorded at around 11:30 PM; pursuant thereto, she is brought to the spot for discovery of facts and the recovered shoes were later taken into possession. He contends that it is an unnatural conduct on the part of the Investigating Agency and that they deliberately left the evidence at the spot only to create a link.
- (x) Counsel contends with vehemence that there is a contradiction with respect to the timings during which the facts have already been discovered by the police, but yet, the Investigating Officer resorts to the creation of false evidence, including the witness of last scene.

- (xi) Counsel contends that the extra-judicial confession is allegedly stated to have been suffered by the accused before Gurpreet Singh-PW-2 wherein the accused admitted to her crime of having committed murder. There was no reason for the accused to have suffered the extra-judicial confession before him as he was in no capacity to help.
- (xii) Counsel contends that the aforesaid disclosure is meaningless and has no evidentiary value since the police had already been to the said spot and recovered the dead body and taken the same to the DMC Hospital, Ludhiana for further treatment.
- (xiii) Counsel further contends that the prosecution has not corroborated its case. It being a specific case of the prosecution that the victim was playing outside with other children; however, no other children, have been examined in the present case.

ELABORATING THE ARGUMENTS EXTRACTED ABOVE

17. Learned counsel argues that in order to fill up lacuna in the case of prosecution, they had introduced the testimony of PW-8-Mulakh Raj, who claims that he was a Security Guard at the adjoining place and that he had seen the accused accompanied by a child, at about 2:50 PM. Thus, a last seen witness is introduced. He further stated to the effect that the woman, i.e., the accused, was accompanied by a child and they entered into the bounded plot and after about 10 minutes, the lady came out alone and hurriedly left the spot. He further stated that he got suspicious and that he looked into the plot,

however, he did not find anything further and also did not notice anybody there. After short duration, a PCR vehicle came on patrolling duty. They stopped and on his asking, the PCR personnel entered into the field and they looked around the bounded walls and noticed that there was some fresh filled earth up to the ground level. A digging was carried out by the police officials and after about 2 feet of digging, the body of Dxxxx Kxxx, which was smeared with soil present in her mouth, nostrils, and ears, was recovered. She was immediately taken to the hospital by the PCR. Counsel contends that the evidence is liable to be discarded. It is argued that as per the case of the prosecution, the accused entered into the plot and stayed there for about a period of ten minutes. There is no digging instrument that has been recovered by the police in the present case. Hence, it is highly improbable that she could have dug a pit of the dimensions as discovered, by bare hands and that, in any case, in such an eventuality, her hands and clothes would have been soiled. However, the evidence does not show the same. Thus, the offence could not have been committed in the manner as alleged.

18. He submits that the cause of death was asphyxia, due to choking on account of foreign body, sufficient to cause death. There is no mark of any injury. The accused was undisputedly unarmed and it would be impossible for a single woman to bury a child in such short duration. None of the PW's i.e., PW-8 Mulakh Raj, PW-15 SI Ranjit Singh and Pw-21 ASI Dhani Ram saw any digging article or instrument at the place and the same was alleged to be dug with bare hand even though it was 2/3 feet deep. The narrative does not inspire confidence.

19. It is also argued that PW-8 Mulakh Raj was sitting in the security cabin which is about 25' ft from the road and about 100 ft from the

place of incident. It was very unlikely for him to see the movement from such a long distance. Besides, even though he got suspicious and came all the way but he took no steps to inform the police which such lapse undermines the credibility of the witness. He thus is a planted witness and his deposition as a last seen witness deserves to be discarded.

20. He further argues with vehemence that Pw-11 Dr. Shubham Dutta admitted that the dead body of Dxxxx Kxxx was brought by the police, therefore, her parentage was not known. Yet, name, parentage, address and telephone number of the complainant are all mentioned. Hence, all persons would have reached the police station at the time of CPR. There was thus no reason for investigating Officer ASI Gurbakshish Singh to register FIR of kidnapping only at 7:15 PM when he is a signatory to medical record prepared hours earlier.

21. He contends that deposition of PW-5 Baljinder Singh also cannot be relied upon as he claims to have seen the accused and deceased when he reached near Jalandhar Bypass and during traffic hours. It is contended that it is highly unlikely to take such notice during traffic hours. The evidence is inherently improbable. Similarly, there was no occasion for any extra-judicial confession before PW-2 Gurpreet Singh who was not a public figure and was in no capacity to help. He did not even know where Pooja – the other sister of accused Neelam used to live or as to when did Neelam obtain divorce or where her ex-husband used to work. He was not even aware about the work which father of accused Neelam used to do. Thus, there were no personal or family relations between them. There was thus no occasion to confide.

22. Learned counsel has also vehemently argued that the deposition

of the Investigating Officer as PW-19 is filled with contradictions and shows material improvements and tampering during the investigation of the case. It is submitted that not only did the recovery precede the nomination of the accused, but also that the names and parentage of the victim figured in the documents prepared at the hospital much prior to the registration of the FIR in the matter of missing Dxxxx Kxxx having been reported; however, notwithstanding, it is established on record that the Investigating Officer has not come forth clean with the investigation in the present case and thus resorted to creation of evidence to link the accused in the commission of the offence. Counsel further contends that in the given circumstances, it is well established that the Investigating Officer has not conducted a fair investigation in the matter and has resorted to interpolation of the timing in the investigation reports and has also sought to rely upon the hospital records so to subsequently introduce the names and identity of the accused in the medical records so prepared; hence, the testimony ought to be disregarded by this Court.

23. Learned counsel, while adverting to the evidence relating to the collection of CCTV footage, i.e., one from the house of the neighbour namely Avtar Singh-PW4 as well as the evidence collected from PW-14 ASI Jaswinder Singh pertaining to the CCTV footage, contends that the same is liable to be discarded as requisite certificates so issued are not aligning with the mandate of Section 65-B of the Indian Evidence Act, 1872. It is contended that PW-4 Avtar Singh produced the certificate Ex.P-22/23 and PW-14 ASI Jaswinder Singh produced the certificate Ex.P-46. Only the pen-drive was produced and original DVR was not seized. The certificate also lacks a time stamp or digital chain detailing the linkage between the footage

and the act. Authentication from DVR to pen-drive is not proved. All such things were required to be established before admitting the electronic evidence. It does not give the specific details of the device used in the process and does not state the method adopted or the software deployed for the downloading and storage of the footage. Besides, the witnesses were not established to be in lawful control over the CCTV. Such infirmities thus lead to inadmissibility of the electronic data and in the absence thereof, there is no other evidence to link the accused with the offence. He further contends that the CCTV footage which has been so vehemently relied upon by the accused is unsustainable. The certificate issued under Section 65-B is not valid in the eyes of law and that the mandatory condition as prescribed in the judgment of the Hon'ble Supreme Court in the case of *Anwar P.V Vs. P.K Bashir* has not been satisfied. Referring to the aforesaid circumstances, learned counsel submits that the present case is one where the prosecution evidence has not only been materially tampered with, particularly with regard to the timings reflected therein, but even the relevant documents appear to have been subsequently introduced or altered. It is further contended that the electronic evidence in the form of CCTV footage has not been proved in accordance with the mandatory requirements of Section 65-B of the Indian Evidence Act, 1872. Learned counsel further submits that, apart from the aforesaid deficiencies in the scientific and electronic evidence, the witnesses relied upon by the prosecution have been introduced/created subsequently and are unnatural witnesses to the incident in question. Similar argument is also raised with respect to the admissibility of CDR data Ex.P-50, P-51, P-52 and P-53.

24. He also contends that the Test Identification Parade conducted

by Mulakh Raj is unreliable as the procedural safeguards and statutory provisions have not been followed. Not only was the accused already exposed but Test Identification Parade was not conducted before the Magistrate and no similar persons had been called.

25. Counsel also argues with vehemence that the investigating agency has not been able to establish the motive. He contends that two different motives are attributed by the complainant as well as by the investigating agency. While as per the statement of Sxxxx i.e., PW-1 as per Ex.P-1, the accused who have committed murder of Dxxxx Kxxx was that they used to stop their daughter-in-law Kxxx from interacting with Neelam as she was perceived as a woman of easy virtue, in contrast the reason as developed during the investigation was that accused-Neelam entertained that grudge on account of the fact Hxxxxx Sxxx i.e., son of Sxxxx being a police employee, used to bring goods/articles for his children and that on seeing the same, her own children would demand the same from her, which she could not afford the same to satisfy. Hence, she eliminated the child. He contends that none of the aforesaid motives has been established by the prosecution. In the absence of any motive, there was no occasion for the accused to have indulged in such offence. It is, thus, contended that the prosecution has failed to establish the charge against the accused beyond reasonable doubt and that the judgment of conviction recorded by the learned trial Court, therefore, deserves to be set aside and the accused acquitted of the charge framed against her.

ARGUMENTS ON BEHALF OF THE COUNSEL FOR RESPONDENTS

26. Counsel for the respondent-State as well as the complainant contend that the present case is fully established by the prosecution and that

the judgment of conviction has been rightly passed against the accused. It is submitted with vehemence that in the present case, not only is the commission of the offence fully established, but also there is overwhelming evidence available on record that would show the involvement of the accused in the above offence and of no other person. He contends that PW-4 Avtar Singh had handed over the CCTV footage and also issued the certificate under Section 65-B of the Indian Evidence Act, 1872, which is Ex.P-22, wherein he acknowledged that there were four CCTV cameras installed at his house and that the recordings were stored in the DVR. He copied the same on a pen drive and handed over the same to the police, which was taken into police possession. He also stated that the deceased was taken away by the accused on her Activa bearing registration No. PB-10GT-5402, black in colour. He also stated that the victim as well as the accused were known to him being neighbours. He gave detail of the manner in which the data had been stored and the USB had been prepared for being handed over to the police.

27. He contends that thereafter, when the police submitted a request to the Police Control Room, at that point of time, the CCTV footage of the route from Shimlapuri Police Station till Jalandhar Bypass, where the dead body was recovered, was retrieved by PW-14 ASI Jaswinder Singh. He noticed that black colour Activa scooter with the above registration number and the accused along with the minor child. The photographs of the CCTV recordings were developed and as per the said footage as well as the CCTV record, the identity of the accused as well as the deceased is fully established. The faces are clearly visible in the CCTV as well as the photographs.

28. It is further contended that, in addition to the aforesaid CCTV footage that has been proved by way of evidence not only in the form of the certificate issued under Section 65-B of the Indian Evidence Act, 1872 by PW-4 Avtar Singh but also the certificate issued under Section 65-B by P-14 ASI Jaswinder Singh, the CDR has also been brought on record as Ex. P-51. The CDR clearly establishes her presence, around the time in question, along the route to the place where the dead body was discovered. It is further contended that while she was seen travelling with the child in the CCTV footage when on the way from the area of Shimlapuri Police Station towards Jalandhar bypass road, during her return, she was seen alone.

29. He contends that the time duration between last seen and the discovery of the dead body is so short that no further corroboration of the said element is required and that the said testimony would be sufficient. It is contended with vehemence that PW-8 Mulakh Raj has established that he was employed as a Security Guard and that even his identity card had been proved on record. Although his original appointment letter has not been placed on record, the subsequent documents produced by him established that he was not only employed but was also present on security duty on the date of incident. Hence, he was a natural and probable witness. The incident was seen by him at around 2:50 PM and during that time the visibility is absolutely clear. The distance of nearly 30 metres cannot be said to be too long wherefrom the question of visibility may even be questioned. The fact that he even stopped the PCR and searched with them adds credit to his deposition. Had he not seen the incident, there was no reason why he would have informed the PCR personnel.

30. It is further contended that the deposition by the PCR officials

also corroborates the version as set forth by PW-8 Mulakh Raj and that recovery of the said dead body, after it was exhumed from the plot in question is not disputed.

31. They contend that no suspicion can be cast upon the investigation conducted by the police solely because the shoes were still lying at the spot. It is further contended that on seeing the body of 2 years and 9 months old girl child having been buried alive in sand, the priority of the PCR would be to rush to the Civil Hospital and ensure that adequate medical arrangements are made available to save the child. There would thus be no need to carry out an investigation or take possession of the articles, which is a part required to be done by the investigating agency. Hence, the conduct of the police officials posted on the PCR was only normal. It was not intended to be left at the spot solely to falsely implicate some other person.

32. Counsel further contends that, insofar as the discrepancy pointed out by counsel for the accused regarding the name and particulars having been mentioned in the medical record is concerned, the same lacks merit since the doctors have specifically explained the aforesaid and stated that the names were recorded later on. He further contends that the statements had been generated after the names and details were filled so as to rule out any possibility of any dispute about the identity of the victim/deceased. He contends with vehemence that had the Investigating Officer not been unfair in the investigation. If it would have been so, he would have acted with more shrewdness and not reflected the true timings. He submits that he has not made any attempt to cover up either of the things i.e., either at the time of receiving the information or in any other aspect, and

that the present case shows normal and natural conduct on the part of the Investigating Officer. Hence, his credibility ought not to be doubted and the investigation is a natural account of the incident and investigation as conducted by them.

33. Counsel further argues that PW-14 ASI Jaswinder Singh, who is in charge of the Control Room, issued the certificate under Section 65-B of the Indian Evidence Act, 1872 wherein he specifically stated that the data of the CCTV footage installed in the police station is not stored in the DVR, rather, it is kept in the master command room wherefrom it was retrieved and the USB was prepared. The same was also played in the Court and the identity of the accused was fully established along with the identity of the victim. It is contended that the deceased was last seen along with the accused and as per law, she was required to offer an explanation as to what happened and the circumstances in which the deceased was thereafter found to be dead. He places reliance on Section 106 of the Evidence Act, 1872 to contend that if a fact is in the knowledge of a specific person, the onus lies upon such person to explain the said fact in his exclusive knowledge and in case no such explanations offered, an adverse inference can be drawn against such suspect or such person.

34. It is submitted that the accused was asked to offer an explanation but in her statement recorded under Section 313 of Cr.P.C., she had also not disputed her identity or the footage so recorded, when the same were played in the Court. It is submitted that the witnesses, i.e., PW-4 as well as PW-14, have not only described the mode and manner in which the CCTV footage was transferred and handed over to the police but have also identified the instrument in which they stored the CCTV Footage and the

accused as well, at the time when the CCTV footage was played in the Court. The identification as well as the chain of events thus stood concluded.

35. Counsel contends that law mandates that the Court has to take a pragmatic view and that there is no prescribed statutory form in which certificate under Section 65-B to be executed by the person in whose's possession the DVR or the computer device is. He contends that the document has to be read pragmatically and in the manner as understood by the person of ordinary prudence. The persons issuing such certificates are not men of law and therefore, they are not expected to go into hyper-technicalities. Hence, the generality of the language used in the Section cannot be dissected microscopically so as to impeach its evidentiary value or its admissibility. He therefore issued certificate Ex.P-22. The same is extracted hereunder.

"I, Avtar Singh S/o Mangal Singh R/o House [no 1448, Street NO 9, Kwaliti Road, Shimlapuri, Ludhiana](#), hereby verify that there are total 04 CCTV cameras have been installed at my residence, which record the view of many directions outside my house in the D.V.R. installed in my house. This D.V.R. records the recording of about 15 days. As per recording made by CCTV camera on 28.11.2021 afternoon at about 2.15 PM Neelam S/o Harbans Lal R/o street number 8-1/2, [Kwaliti Road, Shimlapuri, Ludhiana](#), riding on her black colored active scooter, with her neighbour baby girl Dxxxx Kxxx S/o Hxxxxx Sxxx who was standing on front, took her towards Kwaliti Chownk side from outside my house Street No. 9, which was recorded in my DVR though the CCTV cameras installed outside

my house. I personally knew very well Neelam and Baby girl Dxxxx Kxxx as they were residing near my house. That as per your direction I have copied the clip of that time in a pen drive and handed over that pen drive to you. In this pen drive which is handed over to you contains the recording of the clip of the time of incident, which is completely correct. I or any other person has not tempered with it in any manner.”

(emphasis supplied)

36. Reference is also made to the certificate issued under Section 65-B of the Indian Evidence Act, 1872 by PW-14 ASI Jaswinder Singh which is Ex.P-46. The same reads thus:-

“I, ASI Jaswinder Singh No 1594/LDH, Incharge Safe City Project, Police Line Ludhiana, hereby verify that there are CCTV cameras have been installed at different different chowks under Safe City Project. Their recording is stored in the office of Safe City Project in Police Line Ludhiana. As per your application dated 02.12.2021, I have checked the recording of chowks of Ludhiana done on 28.11.2021, about the accused Neelam, baby girl Dxxxx Kxxx as per their description and Activa scooter no. P.B -10- GT 5402. During this checking, accused Neelam alone and baby girl Dxxxx Kxxx is spotted going at Ittan wala chowk, Gill Chowk & Jagraon Bridge. The clips of CCTV recording of passing through theses chowks, which are of cameras installed in are saved in one pen drive and that pen drive is handed over to you. The clips of recording of CCTV cameras which are saved in this pen drive, which is

presented before you, are completely correct. I or any other person has not tempered with it in any manner.”

37. It is submitted the prerequisites as prescribed under Section 65-B(2) as well as Section 65-B(4) of the Indian Evidence Act, 1872, are fully satisfied. Hence, the footages are admissible in evidence. The admissibility or credibility of the said evidence cannot be impeached solely on the ground that the accused seeks to read into the certificate what may not have been prescribed as a statutory requirement.

38. He further contends that the corroboration of the CCTV footage with the CDRs stands fully established and that the nodal officer deposed in respect of the presence of the accused along with said route. The accused has failed to give any satisfactory explanation as to what she was doing on the said route at around the same time. In the given circumstances, the inference flows against the accused.

39. Counsel contends that insofar as the argument with respect to prosecution having failed to establish the motive is concerned, the evidence on record is sufficient to establish that the parties had rift *inter se* between them as a result whereof the grudge was entertained by the accused. He contends that while reasons assigned by the complainant for not having any communication or dialogue with the accused may be different, the grudge that may be entertained by an accused for committing an offence may be at variance from the suspicion expressed by a party. Hence, merely because the true reason for commission of the crime is disclosed later, it may not have been the suspicion conveyed by the complainant party as to why the offence might have been committed by a person, yet, the offence would yet be made out. He further contends that even otherwise, the issue of motive in this case

would lose its steam, as the CCTV footage as well as the CDR established that soon before her death, Dxxxx Kxxx-deceased was last seen in the company of accused and she had failed to tender any satisfactory explanation as to the whereabouts of the deceased. The necessary inference thus has to be drawn against the accused in the facts of the present case, and judgment of conviction has been rightly passed.

40. He further argued with vehemence that the child was buried alive in the pit, which is well established from the fact that there was sand and wet soil present in her mouth, nostrils, ears, as well as eyes, which was fully established from the bulbar conjunctiva. Such a ghastly act was committed by the accused in a gruesome manner, which is highly horrendous and shocking to the collective conscience of society. The imposition of the capital punishment thus has been rightly awarded by the trial Court. The same needs to be affirmed.

41. In response to the argument by the counsel for the appellant that no other child witness has been examined is concerned, the said argument is bereft of merits. It remains undisputed that the deceased was 2 years and 9 months old child, hence, her friends would be equally small and even they would not be in a situation to comprehend anything, including the gravity of the offence or to depose about the same. A mere absence of the prosecution to have recorded statements of any child witness in this case would thus not be fatal to the case of the prosecution. The argument being an afterthought is accordingly rejected.

CONSIDERATION AND CONCLUSIONS

42. We have heard learned counsel for the respective parties and have gone through the documents available on record as well as their rival

43. The present case is based upon circumstantial evidence. Through a catena of judicial pronouncements, law has laid down the conditions to be satisfied before it can be held that the prosecution has satisfactorily discharged its burden. The test prescribed as per the judgment in the matter of *Sharad Birdhichand Sarda v. State of Maharashtra, reported as 1984(4) SCC 116* held as follows:-

“152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

*It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in **Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793** where the following observations were made :*

"certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

44. We now reflect upon the evidence available on record and also the effect thereof on the arguments advanced by the respective parties.

45. PW-1 Sxxxx is the complainant and his statement Ex.P-1 has been recorded wherein he states about the disappearance of his granddaughter Dxxxx Kxxx. The statement is not being reiterated to avoid repetition. The said witness was associated by the police during investigation. He reached along with the police party at the place of occurrence where the site plan was prepared. The statements of PW-3 Hxxxxx Kxxx and PW-6, his daughter-in-law Kxxx (mother of the deceased Dxxxx Kxxx), were also recorded in his presence. PW-2 Gurpreet Singh also

came to the spot and got his statement recorded to the extent of extra-judicial confession made by the accused before him. The police party thereafter left the spot before 11:30 PM on 28.11.2021. He later received a phone call from the police asking him to reach at the service road near Gill Canal, where he identified the accused, who was apprehended along with her black Acura bearing registration No. No.PB-10GT-5402. He also deposed with respect to the interrogation of the accused and recording of her disclosure statement. There was reiteration of the disclosure as to why the accused committed the offence and the manner by which she took Dxxxx Kxxx towards Ludhiana-Jalandhar G.T. Road near Eldeco City and then took her to a bounded vacant plot which had a pit. She buried Dxxxx Kxxx alive in the said pit and put soil on her and thus murdered her by burying her alive. She also acknowledged in his presence that she knew about the place where the body of Dxxxx Kxxx had been buried and could get the body recovered. The disclosure statement Ex.P-3 was proved by him and he verified his signatures thereon. He is also a witness to the recovery of the Acura, which was taken into police possession vide memo Ex.P-5. His signatures were verified on Ex.P-6. He also proved the arrest-cum-intimation memo Ex.P-7 and Ex. P-8 and, thereafter, the accused was personally searched by the lady police personnel and her personal search memo Ex.P-9, on which he appended his signatures as Ex.P-10. The accused led the police party to the disclosed place near Eldeco City and demarcated the place of occurrence where she had buried Dxxxx Kxxx. A site plan of the place of occurrence was accordingly prepared, and one pair of shoes of colour blue, pink and white having laces with No.7 mentioned on the sole were seen. Upon identification of the shoes to be that of his granddaughter Dxxxx Kxxx, the

same were taken into police possession vide memo Ex.P-11 and his signatures were appended thereupon as Ex.P-12. The said parcel was sealed with a seal bearing the seal impression "BS". He also deposed that before they left for Eldeco City, the police had also got information that the dead body of Dxxxx Kxxx had been recovered by some other police party and had been taken to DMC Hospital, Ludhiana and on 29.11.2021, in the morning, the police prepared 25.35 Form which was signed by him and his brother Davinder Singh. He identified his signature as Ex. P-13 and that of his brother Davinder Singh as Ex.P-14. His statement Ex.P-15 regarding identification of Dxxxx Kxxx was also recorded. The dead body of Dxxxx Kxxx, after post-mortem examination, was handed over to him vide receipt Ex.P-16 and they obtained the transit pass from the DMC Hospital to take the body to Civil Hospital, Ludhiana, which was also signed by him and ASI Gurbakshish Singh, which is Ex.P-17. He identified the accused in the Court, who was produced through video conferencing by the Central Jail (Women), Ludhiana. He also saw the photographs in the Court file in which the accused could be seen while taking away Dxxxx Kxxx on her Aactiva scooter and proved the said photographs as Ex.P-18 to Ex.P-21. Accused Neelam and Dxxxx Kxxx were shown at point-A in each photograph. He also deposed that photographs had been taken from DVR recordings. He identified the parcel of shoes bearing seal impression "BS" to be in an intact condition, when the same was opened in the Court and identified the shoes of his granddaughter Dxxxx Kxxx. The same were proved as Ex.MO/1 and Ex.MO/2.

46. PW-2 Gurpreet Singh deposed that he is runs a Cycle Parts Factory in the name and style of M/s Sardar Enterprises and that Rajesh

Kumar @ Sonu Sharma son of Harbans Lal brother of accused, who used to work as an agent outside the office of Sub-Registrar, was known to him and that they used to visit each other's house. He thus personally knew his father Harbans Lal, mother Kamlesh and his sisters namely Pooja and Neelam(respondent/accused herein). He deposed that Pooja was married at Jamalpur and accused Neelam was a divorcee and she was living with her parents and brother Rajesh Kumar at Shimlapuri. It was also deposed by him that on 28.11.2021 at about 9:00 PM, when he was present in his house, Neelam (respondent/accused herein), sister of Rajesh Kumar, came to his house and disclosed to him about the incident and the reasons why she committed the murder of Dxxxx Kxxx after kidnapping her and solicited help from him. He stated that he went inside his room to change clothes, but when he returned, accused Neelam had already left. In order to confirm the incident, he went to the neighbourhood of Neelam, where he met the police party and he got his statement recorded. He too identified Neelam in the Court when she was produced through video conferencing.

47. The deposition by PW-3 Hxxxx Kxxx was similar to that of PW-1 Sxxxx and is therefore not being extracted to avoid repetition.

48. PW-4 Avtar Singh had installed four security cameras for security purposes at his residence and they covered all directions outside his house. The movement of Neelam with Dxxxx Kxxx had been recorded in the DVR installed inside his residence. He stated that the DVR could store recordings for 15 days and as per the recording in the CCTV cameras, on 28.11.2021 in the afternoon at about 2:15 to 2:17 PM, Neelam daughter of Harbans Lal (accused herein), passed by Street No.9 on her Activa scooter, colour black, taking Dxxxx Kxxx, daughter of Hxxxxx Sxxx, towards

Kwality Chowk side. He further deposed that, as per the CCTV footage, Dxxxx Kxxx was standing in the front space of the Aactiva scooter and the said aspect is duly recorded in the CCTV footage, which he handed over to the police after downloading the same in the pen drive, from the DVR. He further stated that during the said period, all the CCTV cameras and DVR were in working condition and had not been tampered with by anyone and the footage provided in the pen drive to the police had also not been tampered with. He proved the certificate Ex.P-22 regarding the correctness of which he appended signatures as Ex.P-23. He also saw the photographs Ex.P-18 to Ex.P-20 on which at 'point-A' Neelam was found along with Dxxxx Kxxx in her Aactiva scooty. He also saw the pen drive which he had handed over to the police and the same was played in the Court, which carried the footage of the incident in which accused Neelam was clearly seen and was visible along with Dxxxx Kxxx on her Aactiva scooter. The same was identified and he proved the pen drive as Ex.P-24. He further identified the accused.

49. PW-5 Baljinder Singh is a trader and is running a garment shop under the name of Brothers Gallery at Chimni Road, Ludhiana and is known to Hxxxxx Sxxx son of Sxxxx. He claimed that he used to occasionally visit the house of Hxxxxx Sxxx and knew the neighbours in the vicinity and on 28.11.2021, while he was coming back from his work from Ladhuwal side on the GT Road, towards Ludhiana at about 2:30 P.M., and when he reached near Jalandhar bypass, he saw Neelam, daughter of Harbans Lal, going on her black colour Aactiva scooter along with Dxxxx Kxxx, aged about two and a half years. He stated that he personally knew both of them and he thought that, being a Sunday, Neelam had taken Dxxxx Kxxx to Hardy's World for a

ride and it was only on the next day when he came to know that Neelam had taken Dxxxx Kxxx towards Eldeco City and had committed her murder by burying her alive in a vacant plot.

50. PW-6 Kxxx is the mother of deceased Dxxxx Kxxx. Her deposition, being repetitive, is not being extracted for the sake of brevity.

51. Deposition of PW-7 Davinder Singh is only formal and is thus not being referred to, as not much dispute is raised with respect to his deposition.

52. PW-8 Mulakh Raj is an important witness who has deposed that he was working with Jagjit Manpower and Securities Services near HDFC Bank, Bhattian, Ludhiana and was posted at the plot owned by Rips Company near Eldeco City, G.T. Road, Ludhiana. He deposed that he was on duty from 8:00 AM to 8:00 PM and on 28.11.2021, at about 2:50 PM, when he was sitting in the security cabin, a lady aged 30- 35 years was riding a black Activa scooter bearing registration No. PB-10GT-5402. She came to the spot along with a small child aged about 2/3 years was standing in front of the scooter. He identified the accused in Court as the one who came on the black Activa scooter with the small child. He deposed that she parked the scooter by the wall in the plot adjoining their plot and took the child into the plot and after 10 minutes she came out of the said plot and hurriedly went away on her scooter. He further deposed that he went to the plot to look for the child but could not find the child and after some time a PCR motorcycle, along with one vehicle having four police officials, came to the spot, being on patrolling duty. He supplied the information to the police about the incident and they took him inside the plot and they started searching for the child inside the plot. During search, they found a pair of shoes lying in the

plot and saw fresh sand that covered a pit. They became suspicious, removed the sand and found the child unconscious with her head in downside position. Sand was also filled in the mouth of the child and her entire body was covered with the same. He also deposed that the police officials took out the girl child and tried to give her first aid, but she was unconscious. They immediately took her to the hospital and later on he came to know that the name of the child is Dxxxx Kxxx, daughter of Hxxxxx Sxxx and the lady who brought the child along with her was Neelam, daughter of Harbans Lal. He also came to know that doctors declared the child dead during treatment at DMC Hospital. He deposed that he had seen the entire incident and on 30.11.2021 he visited the police station and he saw the accused in lock-up and identified her as the person who brought the child on the date of the incident. He proved his identification memo as Ex.P-28 and identified his signatures as Ex.P-29. He has also got a recorded statement on 07.12.2021 under Section 164 Cr.P.C., before the Judicial Magistrate Ist Class, Ludhiana, which is proved as Ex.P-30 and his signatures thereupon are Ex.P-31 and that he proved and verified the investigation conducted by the police agencies in his presence.

53. PW-9 Kuldeep Singh is a Surveyor who is a formal witness and thus not being adverted to.

54. The prosecution also examined Dr. Gurbinder Kaur as PW-10, who was the Medical Officer at Civil Hospital, Ludhiana. She had carried out the post-mortem, and she deposed that on 29.11.2021, she along with Dr. Varun Saggar and Dr. Ripudaman conducted post-mortem on the body of Dxxxx Kxxx, daughter of Hxxxxx Sxxx. She deposed that, as per the police information, death was caused due to suffocation or head injury. Inquest

papers were received on 29.11.2021 at 12:14 PM. On examination of the body, the following injuries were recorded vide PMR No.PMR/GBK/192/21:-

“(1) Abrasion 1 CM x 1 CM bruised swelling 1 CM x 1 CM and 1 inch x 1 inch on right side on forehead. On removing scalp clotted blood present;

(2) Abrasion 1 CM x 1 CM on left side on forehead. On removing scalp clotted blood present and

(3) Diffuse swelling on occipital region. On removing scalp clotted blood was present.”

55. She further deposed that cause of death in this case, in their opinion, was asphyxia due to choking due to a foreign body, which was sufficient to cause death in the ordinary course of nature. The time period between the injury and death was within a few minutes and the time between death and postmortem examination was within 24 hours. She brought the original register of PMR in the Court and proved a computerized copy of the PMR as Ex.P-37 on which she identified her signatures as well as those of Dr. Varun Saggar and Dr. Ripudaman.

56. Dr. Shubham Dutta appeared as PW-11. He deposed that on 28.11.2021, he was posted at DMC Hospital, Ludhiana and on that day, he sent information regarding Dxxxx Kxxx, daughter of Hxxxxx Sxxx, to Police Station, Shimlapuri Ludhiana. The patient was brought dead at about 5:41 PM and the mobile number of the grandfather of the deceased was mentioned later on. He proved the police information as Ex. P-38 and deposed that on the same day at about 5:45 PM. Dxxxx Kxxx was brought in the emergency with

no respiratory efforts and cardiac activity and the following observations were recorded.

*“ (1) There was wet sand covering nostrils and mouth with bruise over right forehead,
(2) clothes soiled with sand, external ear covered with sand, bulbar conjunctiva-sand present.”*

57. PW-11 has further proved the MLR as Ex.39 and the pictorial diagrams Ex.P-40 respectively. He also proved that the dead body of Dxxxx Kxxx was handed over to ASI Gurbakshish Singh vide No. MRD1215202 dated 28.11.2021 as EX.P41. He also proved the complete medical record of Dxxxx Kxxx containing 8 pages as Ex.P-42 and identified his signatures on the Code Blue Event Recording form and also identified the certificate of cause of death of deceased Dxxxx Kxxx. He has also proved the death form of Dxxxx Kxxx as Ex.P43.

58. PW-12 Jaspreet Kaur, Data Entry Operator, was examined to prove the summoned record about Acura bearing registration No.PB-10GT-5402.

59. PW-13 Rajesh Sharma is the manager with M/s Rips Infrastructure Private Limited, wherein PW-8 Mulakh Raj was employed. The said deposition, however, is not being referred to.

60. PW-14 ASI Jaswinder Singh, who was posted as In-charge, Safe City Project, Police Lines, Ludhiana, having control of all the CCTV cameras installed under the Safe City Project. He deposed specifically that on 02.12.2021, an application was given to him by the IO for checking the CCTV footage installed under the Safe City Project, Ludhiana. He was also informed about the appearance and features of the deceased Dxxxx Kxxx

and accused Neelam. Accordingly, the CCTV footage of the route from Shimlapuri to Jalandhar Bypass and, during the checking of the cameras, the accused was seen along with the deceased Dxxxx Kxxx and the CCTV cameras of Ittan wala Chowk, Shimlapuri, Gill Chowk and Jagraon Bridge, Ludhiana, on an Activa scooter bearing registration No. PB-10GT-5402. He handed over the CCTV footage of the cameras installed on this route, in a pen drive, to the IO. He proved the pen drive as Ex.P-45 as well as his certificate under Section 65-B of the Indian Evidence Act as Ex.P-46.

61. PW-15 Sub Inspector Ranjit Singh who deposed to the effect that on 28.11.2021, he was posted as Incharge, PCR Zone-I, Ludhiana and on the said day, he along with drive ASI Dhani Ram were on patrolling duty in the said Zone and at about 3:30 PM, when they reached near a plot adjoining to Eldeco City Colony, Jalandhar, Mulakh Raj the Security Guard of the plot met him and told him that at around 2:50 PM one lady of age 30 to 35 years along with a female child of age 2 to 3 years had come on an Activa scooter in the plot and after parking her Activa scooter, went inside the plot along with female child and when she returned after ten minutes, she was alone. Accordingly, he, along with ASI Dhani Ram and other police officials, as well as the security guard, went inside the plot and searched. They found a pair of shoes of a child and also found fresh sand in a pit. On suspicion, the sand was removed from the pit and a small child was found lying unconscious position and her mouth and other parts of the body were covered with the sand, after which they took out the child out of the pit. He deposed that the recovered child was a female and he, along with the police party, took the child to DMC Hospital, Ludhiana, where doctors declared her brought dead. He later came to know the name of the child as Dxxxx Kxxx,

daughter of Hxxxxx Sxxx and the name of the accused as Neelam, daughter of Harbans Lal.

62. PW-16 Amandeep Singh is a formal witness and his deposition need not be adverted to for the purposes of adjoining the present appeal.

63. PW-17 Baljeet Chauhan, Nodal Officer, Reliance-Jio Infocom Limited, deposed that a letter Ex.P-49 was received in their office from Addl. Deputy Commissioner of Police to provide requisite information about mobile No.62830-02092 for the period dated 28.11.2021 i.e., one day. He deposed that the customer application form relating to the abovesaid number was in the name of Neelam daughter of Harbans Lal, which was proved as Ex.P-50. He also proved the CDR of the aforesaid number for the period as specified above, containing two pages as Ex.P-51. Decoded address/tower location as per CDR containing one page as Ex.P-52 and the certificate under Section 65-B of the Indian Evidence Act as Ex.P-53.

64. Prosecution has examined Sh. Palwinder Singh, Ld Judicial Magistrate Ist Class as PW-18 through video conferencing, who deposed that on 07.12.2021, he was posted at Ludhiana and the police moved an application for recording the statement of Mulakh Raj under Section 164 Cr.P.C. Upon recording the same, the statement was read over to Mulakh Raj and he, after admitting the same to be correct, appended his signatures without any pressure, coercion or undue influence and out of his own free will. He also identified the statement of Mulakh Raj in the Court through video conferencing and proved the same as Ex.P-30. He also identified his handwriting and signatures and proved the same as Ex.P-54. Zimni orders were also proved as Ex.P55 and Ex.P56.

65. The Investigating Officer, Inspector Gurbakshish Singh, was

examined as PW-19. He deposed about Sxxxx having met him near Kwaliti Chowk and statement Ex.P-1 was recorded, which was verified by him after appending his signature as Ex.P-2, and the same was attested by Inspector Balkar Singh. A ruqa was sent for registration of the FIR and the police party reached outside the house of the complainant and inquiry was conducted from the persons present there. A site plan was prepared on the demarcation of Hxxxx Kxxx wife of Sxxxx. The said persons of the locality were also joined in the investigation and the statements were recorded. They went in search of the accused and Neelam was arrested at around 11:30 PM on the service road near Gill Canal Bridge on her black colour Aactiva scooter bearing registration No. PB-10GT-5402 on the identification of the complainant. By the time the proceedings were undertaken, the date had changed to 29.11.2021. During interrogation, Neelam made a disclosure statement to the effect that she used to harbour a grudge against Hxxxxx Sxxx, who used to bring gifts and things for his children, which induced her own children to make demands. Since she could not fulfill the demands of her children, she developed harsh feelings for Hxxxxx Sxxx and hence, she kidnapped Dxxxx Kxxx on 28.11.2021 at about 2:15 PM on the pretext of purchasing some things for her. She then took Dxxxx Kxxx on her Aactiva scooter, made her sit in front of her scooter and took her towards Ludhiana-Jalandhar G.T. Road, near Eldeco City. After taking her to a vacant plot, which had four walls and where there was already a pit in the plot, she buried Dxxxx Kxxx alive and put soil on her and murdered her. She further disclosed that no one else was with her and she knew about the place where the body of Dxxxx Kxxx was buried and she could get the body recovered from that place. The disclosure statement Ex.P-3 was proved. The activa,

along with the original RC, was taken into police possession vide recovery memo Ex.P-5, which was attested by the witnesses. Arrest-cum-intimation memo Ex.P-7 was also prepared and the same was attested by the witnesses. The accused was searched by lady police officials. IO Inspector Balkar Singh also received a phone call from Police Station Shimlapuri that a child, Dxxxx Kxxx, had died and her dead body was in DMC Ludhiana. However, the accused led the police party to the disclosed place near Eldeco City and showed the demarcated place of occurrence, where she had buried Dxxxx Kxxx and on her identification, police prepared the site plan of the place of occurrence. Recovery of one pair of shoes having colour blue, pink and white. The same were duly identified by the complainant and the same were handed over to the police. He deposed about the further investigation conducted on 30.11.2021. He also testified that the investigation was conducted by the police and that PW-8 Mulakh Raj identified accused Neelam as the woman who had come to the plot on 28.11.2021 at about 2:50 PM along with a child, Dxxxx Kxxx. The identification as Ex.P-28 was prepared, which was duly witnessed by Mulakh Raj and Lady Constable Sushma Rani. It was further stated by him that the investigation of the case was handed over to him on 01.12.2021 and during investigation, ASI Jaswinder Singh also handed over to him a pen drive containing CCTV footage dated 28.11.2021 of different locations from Shimlapuri to Jalandhar bypass wherein accused Neelam could be seen driving an Activa while taking deceased Dxxxx Kxxx. He also identified the pen drive Ex.P-47 in the Court file containing said footage and the photographs Ex.P-18 to Ex.P-21 in which Neelam could be seen taking away Dxxxx Kxxx on her Activa. The proved the said footage as Ex.P-22, given under Section 65-B of the Indian

Evidence Act by Avtar Singh and the certificate was also proved as Ex.P-46, given by ASI Jaswinder Singh regarding the genuineness of the abovesaid pen drive and photographs. He also collected the call details record, call location, as well as Section 65-B certificate from the concerned telephone company and also got verified the ownership of the abovesaid Aactiva scooter vide request Ex.P-57. Other facts were also verified by him and he proved the investigation conducted by him.

66. Prosecution has examined Inspector Balkar Singh (since retd. Inspector) as PW-20 who deposed about the investigation conducted by him and proved the exhibited documents. He proved the disclosure statement made by Neelam Rani as well as the motive for the commission of the offence, which lay with her. The deposition is not being gone into in detail at this juncture. During the course of arguments, not many arguments have been raised with respect to contradictions and conflict and discrepancies, if any, in the deposition of the official witnesses.

67. ASI Dhani Ram was a member of the patrolling party in PCR Zone-I, stepped into the witness box as PW-21 and reiterated the facts as have already been referred to in the deposition by the other witnesses. The same are thus not being referred to in detail.

68. The deposition of PW-22 Head Constable Bahadur Singh, PW-23 ASI Rajinder Pal Singh, PW-24 ASI Ram Simran, and PW-25 PHG Manjeet Kaur are also, not being reiterated as they are the formal witnesses and no dispute has been raised by the accused person in her defence pertaining to any of the depositions made by them while stepping into the witness box.

69. Needless to mention that PW-1 Sxxxx was examined again for

proving the press report of Daily Ajit about social media outrage on the gruesome nature of the murder.

70. It is in the said background and evidence and arguments that were advanced by the counsel for the accused that are being referred to.

DISCREPANCIES IN THE MEDICAL RECORD AND INVESTIGATION

71. Much emphasis has been made by the counsel on the mentioning of the particulars and names of Dxxxx Kxxx on the medical record. It was contended in reference thereto, that the Investigation Officer did not carry out a fair job and has tampered with the documents relating to the investigation.

72. Having considered the arguments and taking into consideration the evidence of the witnesses, including the doctors, who specifically stated that the name and identity of the deceased as well as the telephone number of the grandparent was written later and on the following day. Thus, an explanation has been offered by the prosecution as to how the details, including the name and identification as well as parentage and address, has figured in the said documents about the MLR as medico-legal examination as well as the post mortem examination of the deceased Dxxxx Kxxx. The abovesaid response cannot be said to be abnormal. Considering that the record is official and is required not only in police case but also for other civil proceedings, hence, the officials may wait for receipt of information, necessary to identify a victim, before a final printout is taken. It cannot be said that any such act should be viewed as falsification of the record. We are thus not inclined to accept the argument advanced on behalf of the appellant.

73. Another projected argument of the counsel is that ASI Gurbakshish Singh, who was the Investigating Officer in the present case,

was informed about the recovery of the dead body at around 3:45 PM, yet, the FIR was registered later on in time i.e., in the evening at around 7:30 PM, when Sxxxx (PW-1) got recorded his statement for offence of kidnapping only.

74. We are of the view that the argument advanced by the counsel for the accused is bereft of merit. There are two independent events that took place at two different locations, albeit within the territorial jurisdiction of the same Police Station. While it remains undisputed that the child went missing at around 2:15 PM and also that at around 3:45 PM, the police party was stopped by PW-8 Mulakh Raj, who apprised that a woman aged 30-35 years had come along with a child of 2/3 years and they went inside the vacant plot. When the woman came out after about ten minutes, the child was not accompanying her. This led the police party to conduct some sort of scanning of the area and after entering the plot, they noticed that there was fresh sand that had been thrown over the pit. Shoes of the child were also lying around the pit. They thus started digging the same and exhumed the child. The medical record shows that the Code Blue was initiated by the officials and resuscitation efforts were made. She was later declared as brought dead at around 5:41 PM.

75. Even though the police officials had become aware of the recovery of a dead body of a child, however, the linkage of the said child to be Dxxxx Kxxx had not been established. When two facts are brought to the notice, it is not that the same are linked immediately. A ruqa is to be sent immediately on receipt of the information, hence, as the allegations then disclosed an offence under Section 364 of IPC, thus FIR was registered for the said offence. A child being reported buried is not necessarily a

presumption of murder. It is only that appropriate offences get added as and when the investigation unfolds. Thus, it cannot be said that merely because of FIR being registered for offence under Section 364 of IPC would create doubts about the Investigating Officer or cast aspersions on the investigation. A sequential procedural connect of two different reports cannot be approached with suspicion.

76. Besides, when the statement of the complainant Sxxxx Sxxxx was recorded, he specifically mentioned the name of suspect Neelam. Once, the name of the suspect became known to them, the search began for the suspect and the child which then was the most important and urgent thing to do. In the above, under the said circumstances, it would not be assumed that the Investigating Officer ought to have first taken the family to DMC Hospital instead of conducting search. The police acted swiftly and made attempts to apprehend accused Neelam, who was arrested at around 11:30 PM on the same day. Her disclosure statement was also recorded and as per the evidence brought on record, ASI Gurbakshish Singh became aware of the dead child having been brought to the hospital around that time.

77. It must also be kept in mind that once a disclosure statement of the accused is recorded, as per the procedure to be followed, the investigation has to be taken to the place of disclosure statement without any time loss. A delayed recovery from the place where the evidence is concealed could itself impeach the admissibility of the discovery and recovery effected, as there would be sufficient time gap which becomes available to the various persons to tamper with the evidence as well as the investigation. It was under the said compelling circumstances that they went to the place of discovery and recovered the shoes belonging to the child. The conduct of the

Investigating Officer is prioritising investigation and recovery thus cannot be held to be unnatural or unbecoming of an officer. The fate of the child in hospital was already known through the telephonic conversation and the postmortem was to be conducted only on the next date, hence, a visit to the hospital at late night would have served no purpose. The Investigating Officer reached at the hospital on the following day and carried out necessary formalities in furtherance of the investigation. The name of the deceased, as well as the complete address, thus figured in the documents that were prepared in relation to Dxxxx Kxxx. To our mind, it is rather a reflection of a fair investigation conducted by the police officials. The manner in which the name of the deceased has found as a reference on the medical records prepared thus, has been satisfactorily explained. We thus do not accept the argument of the learned Senior Counsel on behalf of the accused that the aforesaid circumstance would raise a suspicious conduct of the Investigating Officer and impeach the investigation conducted by him.

EVIDENCE AS TO LAST SEEN

78. Adverting to the fact of last seen witnesses. Counsel for the appellant has been disputing the presence of Pw-8 Mulakh Raj as the natural witness. He has imputed the conduct of the witness to impress an argument to discard his testimony. The present case is not one of an isolated instance of a last seen, rather, there is an entire chain of witnesses who have deposed before the Court and have seen the deceased in the company of the accused at different places around the time frame.

79. PW-4 Avtar Singh is the person who installed four CCTV cameras at his residence and he deposed that, as per the CCTV footage of 28.11.2021, at around 2:15 PM to 2:17 PM, Neelam, daughter of Harbans

Lal, passed his street on her Aactiva scooter, black in colour, towards Kwality Chowk side. He identified the accused and also deposed that the accused as well as the child were known to him. The certificate under Section 65-B of the Indian Evidence Act was also issued by him. Further, PW-5 Baljinder Singh son of Narinder Singh appeared as PW-5. He is also known to Hxxxxx Sxxx son of Sxxxx Sxxxx being a friend, and that on the date of incident at around 2:30 PM, he was coming from his work from Ladhuwal side to G.T. Road, Ludhiana when he saw Neelam daughter of Harbans Lal along with Dxxxx Kxxx. Thus, he had seen the deceased in the company of the accused at around 2:30 PM. The aforesaid last seen is followed by the deposition of PW-8 Mulakh Raj, who saw her come to the place of occurrence, i.e., the plot near Eldeco City, along with the child and at the plot to come out after ten minutes without the child. The dead body of the child was later recovered from the said plot at 3:50 PM. Thus, the final last seen witness had seen the accused in the company of the deceased in a short while before the body was recovered. Thus, the time lag between the last seen witness and the discovery of the body cannot, in the present case, be said to be long enough so as to discard the evidence of last seen. In the present case, the proximate time gap between the deceased being last seen entering the vacant plot in the company of the accused (deposed by PW-8 at 2:50 PM) and the retrieval of her buried body from the very same plot shortly thereafter leaves no room for any intervening hypothesis. As laid down by the Hon'ble Supreme Court in *Satpal v. State of Haryana (2018) 6 SCC 610*, the Court has held that where the time gap is narrow, the last seen theory provides a robust evidentiary foundation. Consequently, by operation of Section 106 of the Evidence Act, as highlighted in *State of Rajasthan v. Kashi Ram, (2006) 12 SCC 254* and

Nagendra Sah v. State of Bihar (2021) 10 SCC 725, the burden shifted heavily onto the accused to offer a plausible explanation as to when and how she parted company with the minor child. Her complete failure to provide any explanation in her statement under Section 313 Cr.P.C. acts as an indispensable additional link in the chain of guilt." The deposition of PW-8 Mulakh Raj corroborates that the accused was accompanied by the deceased and she came back alone after about ten minutes and that in the said circumstances, the burden lay upon the accused to offer a satisfactory explanation as to where she did leave the child.

80. Needless to mention that Section 106 of the Evidence Act mandates that a person who is assumed to be in knowledge of a specific fact is under an obligation to disclose the same and in the event he fails to disclose the same, an adverse inference shall be drawn against him. The statutory provision reads thus:-

106. Burden of proving fact especially within knowledge.

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling in a railway without a ticket. The burden of proving that he had a ticket is on him.

81. Reliance may be placed on the judgments of the Hon'ble Supreme Court of India on the aspect of Section 106 of the Indian Evidence Act and the effect of non-disclosure of the special fact by the person who is

in knowledge thereof. In ***Ram Gopal S/O Mansharam v. State of M.P.***, SLP (Crl). No. 9221 of 2018, Feb 17, 2023, the Hon'ble Supreme Court held:-

“[6]. It may be noted that once the theory of "last seen together" was established by the prosecution, the accused was expected to offer some explanation as to when and under what circumstances he had parted the company of the deceased. It is true that the burden to prove the guilt of the accused is always on the prosecution, however in view of Section 106 of the Evidence Act, when any fact is within the knowledge of any person, the burden of proving that fact is upon him. Of course, Section 106 is certainly not intended to relieve the prosecution of its duty to prove the guilt of the accused, nonetheless it is also equally settled legal position that if the accused does not throw any light upon the facts which are proved to be within his special knowledge, in view of Section 106 of the Evidence Act, such failure on the part of the accused may be used against the accused as it may provide an additional link in the chain of circumstances required to be proved against him. In the case based on circumstantial evidence, furnishing or non-furnishing of the explanation by the accused would be a very crucial fact, when the theory of "last seen together" as propounded by the prosecution was proved against him.”

82. In ***Dinesh Kumar v. The State of Haryana***, [2023] 4 SCR 220, the Hon'ble Supreme Court held:-

“[12].....Section 106 of the Act is an exception to the rule which

is Section 101 of the Act, and it comes into play only in a limited sense where the evidence is of a nature which is especially within the knowledge of that person and then the burden of proving that fact shifts upon him that person.

The burden of proof is always with the prosecution. It is the prosecution which has to prove its case beyond a reasonable doubt. Section 106 of the Act does not alter that position. It only places burden for disclosure of a fact on the establishment of certain circumstances..."

83. The recovery of the body being from the same spot where the deceased was last seen in the company of the accused is another clinching evidence which nails the guilt of the accused/respondent.

84. The witnesses, i.e., Mulakh Raj, who happens to be the last and most crucial witness, is a natural witness and cannot be said to be an implanted witness. The prosecution has brought on record sufficient evidence which established not only the engagement of Mulakh Raj as Security Guard but also the official of RIPS Infrastructure Private Limited who testified and proved his engagement by them. The said witness not only deposed about a crucial testimony but also stopped the police and informed them about whatever he had seen. It was on account of his vigilant actions that the police had entered into the bounded wall and had exhumed the dead body. Thus, it is reflective of the actions of a prudent person and that he took steps to find the truth by informing the police. Undoubtedly, the company of the said PW-8 Mulakh Raj cannot be said to be unnatural in giving rises any suspicion against his deposition. He has no axe to grind against the accused/respondent and further, there is no reason as to why he falsely

deposed against her. He also came to the police station and identified the accused Neelam as the person who had accompanied the deceased child. The distance between the cabin of the security guard and the place was about 30 metres (100 feet) and it cannot be said that he could not have seen the accused from that distance. The site plan did not show existence of any hindrance in the eve of vision.

Admissibility of Electronic Evidence (CCTV & CDR)

85. The next issue which comes for consideration of this Court is in regard to the evidence of the CCTV footage that has been produced on record. Therefore, two sets of CCTV footage, i.e., one which has been obtained by the prosecution from PW-4 Avtar Singh and the second set of CCTV footage has been supplied by ASI Jaswinder Singh who appeared as PW-14.

86. PW-4 Avtar Singh specifically deposed that there are four CCTV cameras installed in his house and that the DVR facility is installed in his residence. The DVR is capable of securing 15 days of recording and he had seen Dxxxx Kxxx along with accused Neelam on 28.11.2021, as well as the CCTV footage for the time 2:15 to 2:17 PM. The relevant part of his deposition reads thus:-

“I am an agriculturist. I have installed four CCTV cameras for security purpose at my residence. The CCTV cameras are installed outside my house cover all the directions and the said movement is recorded in the DVR installed inside my residence. There is a facility of securing 15 days recordings in the DVR. As per the recording in the CCTV cameras, on 28.11.2021 in the after noon at about 2:15 to 2:17 PM, Neelam daughter of

Harbans Lal passed by my street No.9 on her activa scooty colour black while taking Dxxx Kxxx daughter of Hxxxxx Sxxx towards Kwaliti Chowk side. Dxxx Kxxx was standing in-front of the space meant in the activa scooter. The said fact was duly recorded through CCTV camera in my DVR. I know Neelam and minor Dxxxx Kxxx personally as they live near to my house. I handed over the clip i.e. footage of the abovesaid fact while putting it in the pen-drive from the DVR and handed over the pen-drive to the police. During the abovesaid period, all the abovesaid CCTV cameras and DVR were in the working condition and have not been tampered by anyone. Footage provided in the pen-drive to the police is correct. I also gave a certificate regarding the correctness and certificate is Ex.P22 and it bears my signature Ex.P3. I have seen photographs Ex.P18 to Ex.P20 on which at point-A of all the photographs, Neelam is alongwith Dxxxx Kxxx on her activa scooty while taking her. I have seen the pen-drive which was handed over by me to the police and same is played in the court today which carries the footage of the incident as I described above and in which Neelam is clearly seen alongwith Dxxx Kxxx on her activa scooty while taking Dxxx Kxxx The pen-drive is Ex.P24. I identify the accused Neelam today present in the court produced through video conferencing.

XXXmn

My statement was recorded on 09.12.2021 by the police. It is correct that prior to 09.12.2021, 09.12.221. My statement was

not recorded. I have the bills of CCTV cameras and DVR but however, I have not brought them today in the court. I had prepared the pen-drive from the DVR myself. The police had got my signatures on the certificate u/s 65-B of the Evidence Act and no other document was got signed by police from me. No other document regarding handing over of pen- drive or the certificate u/s 65-B of Evidence Act was got signed by the police from me. The police had prepared the certificate u/s 65-B of Evidence Act in my presence and after reading the contents of the said certificate, I signed the said certificate. It is correct that I had myself transferred the pen-drive from the DVR directly and no other person who installed the CCTV cameras and DVR or any IT expert helped me. My house is a corner house and as such, I had installed the CCTV cameras on both the sides of my house. Three cameras have been installed to capture the incidents outside the house while one camera has been installed inside the house to record the incident. The road towards the Kwaliti Chowk is a bitumen road while on the other side is a cemented road. The police had visited my house before 09.12.2021 and checked the DVR recordings but however the copy of the DVR recordings through pen-drive was handed over to the police only on 09.12.2021. The police did not take into possession the DVR and same is still installed in my residence. It is wrong to suggest that I have deposed falsely.”

87. It is evident from the above that the said witness deposed not only about the recording of the CCTV footage in the CCTV cameras

installed by him in the DVR under his control and command but also stated that the said CCTV cameras and DVR were already in working condition and had not been tampered with by anyone and that the footage provided is correct. He also issued a certificate under Section 65-B of the Indian Evidence Act, which is Ex.P-22 and identified his signatures as Ex.P-3. He also proved Ex.P-18 to Ex.P-22, which were the photographs developed from the said CCTV footage. Further, he saw the pen drive and admitted it to be the same pen drive which was handed over to him by the police and the pen drive was also played in Court, carrying the footage which was again verified by him. During cross-examination, he responded to the queries by the defence counsel that he prepared the pen drive from the DVR himself and that his signatures were later obtained on the certificate prepared under Section 65-B of the Indian Evidence Act. He also stated that he had himself transferred the pen drive from the DVR directly and no other person had been engaged to copy the said footage. The certificate has already been reproduced and extracted earlier.

88. An argument has been raised that the witness Avtar Singh admitted that the certificate was written by the police official and he appended his signatures on the same. We are however, of the opinion that the argument does not sound convincing. Ordinarily, the person of ordinary prudence having no legal acumen or background would be wary of issuing any certificate, more so when there are certain statutory requirements to be mentioned in the said certificate. Thus, the person would rather ask the police officials to write down the language of the certificate so that the same is compliant with the legal mandate. The said event, i.e., writing of the certificate by the police personnel, hence, cannot be said to be circumstantial

as would discredit the admissibility of the certificate issued.

89. An objection has also raised by the defense regarding the validity of the Section 65-B certificate issued by PW-14 on the ground that the recording was stored in a central Data Centre rather than a local DVR is legally unsustainable. The Constitution Bench in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* (2020) 7 SCC 1 explicitly held that the requirement of a certificate under Section 65-B(4) is satisfied if it is executed by a person occupying a responsible official position in relation to the operation of the relevant device or management of the system. PW-14, being the official In-charge of the Safe City Project having administrative and operational control over the network of cameras and data servers, was fully competent to issue Ex.P-46. Furthermore, as settled in *Anvar P.V. v. P.K. Bashir* (2014) 10 SCC 473, once electronic evidence is accompanied by a valid Section 65-B certificate, it is admissible without requiring production of the physical server infrastructure."

90. PW-14 ASI Jaswinder Singh is the person who prepared the CCTV footage and handed over the same to the Investigating Officer. He was also the In-charge of Smart City Project and, on the request submitted by the police, he had retrieved the CCTV footage and thereafter, handed over the same to the police officials. His deposition reads thus:-

"On 28.11.2021, I was posted as Incharge Safe City Project, Police Lines, Ludhiana. I am having the control of all the CCTV cameras installed under the Safe City Project. On 02.12.2021, one application was given by the IO to me for checking the CCTV footage installed under Safe City Project, Ludhiana as IO had told me about the appearance and features of deceased

Dxxxx Kxxx and accused Neelam. Accordingly, I checked the CCTV footage of the route from Shimlapuri to Jalandhar bye pass. During the checking of the cameras, the accused was seen alongwith deceased Dxxxx Kxxx in the CCTV cameras of Ittan Wala Chowk, Shimlapuri, Gill Chowk and Jagraon Bridge, Ludhiana on Aactiva scooter bearing registration No. PB-10-GT-5402. I handed over the CCTV footage of those routes in pen-drive to the IO. The pen-drive is Ex. P45 and my certificate u/s 65- B of Indian Evidence Act is Ex.P46. My statement in this regard was recorded by the IO.

XXXmn by Sh. V.J.S. Randhawa, Advocate for the accused Neelam.

There is no DVR in the system of CCTV footage regarding the recording and storing the same in our office as we have a control room which have hard-disk in the data center. The pen-drive have been recorded with the footage taken from the said data center and two copies of the pen-drive was supplied, one for judicial purpose and second one is for police purpose. It is correct that the time frame has not been mentioned in Ex. P46. It is wrong to suggest that I have not prepared any pen-drive. It is wrong to suggest that I have deposed falsely.”

91. He also proved the pen drive as well as the certificate Ex. P-46.

The certificate issued by him has already been extracted earlier.

92. Counsel for the accused has raised a submission that as per the deposition of PW-14 ASI Jaswinder Singh, he was in charge of Safe City Project, Police Line, Ludhiana and that there is no DVR in the system of

CCTV footage regarding the recording and storage in his office and the same is in the hard disk in the Data Centre in the Control Room. The pen drive having been recorded with the footage from the said Data Centre, in the absence of the certificate issued by the In-charge of the Control Room, where the Data Centre has been established, the certificate under Section 65-B of the Indian Evidence Act is inadmissible in evidence. It is further submitted that since time is not mentioned in the CCTV footage, it fails to link the aforesaid CCTV footage to the date of the incident or to the involvement of the accused in the commission of the offence.

93. On hearing counsel for the accused, we find that the aforesaid arguments advanced herein are bereft of merit since the certificate specifically mentions the recording of Chowks of Ludhiana on 28.11.2021 when the deceased was seen in the company of the accused herein. Even though the specific time has not been mentioned, the date has been specifically mentioned by the ASI Jaswinder Singh, who issued the certificate Ex.P-46 under Section 65-B of the Indian Evidence Act. The said witness also identified the pen drive which is played in Court as being the one that was prepared by him and handed over to the police.

94. The timeline in the present case also stand corroborated by the CDR that has been proved on record. The Nodal Officer of Reliance Jio Infocom, Mr. Baljeet Chauhan, who appeared as PW-17 proved the telephone number, customer application form as well as the CDRs including the decoded address tower locations as per the CDR as Ex.P-50, Ex. P-51, Ex.P-52 and Ex.P-53 respectively. The relevant part of the cross-examination of PW-17 Baljeet Chauhan reads thus:-

“XXXmn by Sh. V.J.S. Randhawa. Advocate for the accused

Neelam.

It is correct that Ex. P49, the timings of the call details so asked for has not been mentioned. However, in Ex.P51 the timings of call details are from 00:00:00 hours to 23:59:59 hours of dated 28.11.2021. The location ascertained as and when there is activity done on mobile by the user for which record can be generated. It is correct that on the second page of Ex. P51. the last call was made from 16:13:36 hours to 16:15:21 hours, which has been received from mobile No. 9814084518. At the time of receiving the call from mobile No.9814084518, the mobile of the accused i.e. 6283002092 was latched with nearest cell ID 4058670042124. Address of the said ID is Shiva Polymers. St.[No. 10, Kwaliti Road](#), Opposite Dussehra Ground. Shimlapuri, Ludhiana. I do not have any personal knowledge about the present case.”

95. It is evident from perusal of the above that as per the CDR, a call had been made by accused Neelam *from 16:13:36 hours to 16:15:21 hours* which is received from mobile number 98140-84518 and at the time of receiving the above said call, the latest cell ID 4058670042124 was *latched* to the mobile number of the accused and address of the said ID is *Shiva Polymers* near Dusshera ground, Shimlapuri, Ludhiana. The route chart matched the CCTV footage; hence, there is an entire road plan as well as the route chart established by the prosecution.

96. Now, it would be relevant to refer as to whether the certificates issued by PW-4 Avtar Singh and PW-14 Jaswinder Singh under Section 65-B of the Evidence Act are admissible in evidence or not. It would be relevant to

make reference to the statutory provision. The same reads thus:-

65B. Admissibility of electronic records.

(1) Notwithstanding anything contained in this Act, any records. information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:-

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived

was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of

one or more computers and one or more combinations of computers.

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,-

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to

be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,-

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. - For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

97. It is apparent from a perusal of the aforesaid provision that Section 65-B deals with the admissibility of electronic records. Section 65-B provides that, notwithstanding anything contained in the Evidence Act and electronic record, which is printed or copied in any optical or magnetic media produced by a computer, shall be deemed a document and would be admissible if the conditions mentioned in the Section are satisfied in relation to the information and the computer in question, without further proof of production of the original, as primary evidence. Hence, Section 65-B(1) of the Indian Evidence Act requires conditions to be satisfied, i.e., firstly in relation to the information and secondly in relation to the computer in question. Sub-section 2 of Section 65-B of the Indian Evidence Act relates the conditions to be satisfied in respect of computer output, i.e., the document prepared/copied from the electronic record. The said condition mandates that the computer output is produced by the computer during the period over which the computer was used to store or process information for any activities regularly carried on over that period, by the person having lawful control over the use of the computer. Besides, it also prescribed that the information derived was regularly fed into the computer in the ordinary course of activity and that during the said period, the computer was operative properly.

98. In the present case, the output, which is the USB as well as the photographs developed from the CCTV footages have been produced from the source which was regularly used to store and process the information by the person having lawful control over the use of the same. It has come on record that so far as PW-4 Avtar Singh is concerned, the CCTV cameras had been installed by him at his house and he specifically deposed that the CCTV

cameras were in his possession, including the DVR and that he exercised supervision and control over the same. The certificate Ex.P-22 exhibited by him specifically makes a mention that the DVR has a recording of 15 days and the same is inside his house and that he had copied the CCTV footage from the DVR is possession onto the pen drive and handed the same to the authorities. He also stated that no person has tampered with the footage in any manner and the same is 'completely correct'. Hence, the certificate gives description of the mode in which the evidence is generated in the regular course i.e., through the CCTV cameras installed. He proves that the storage was done in the DVR in his house and it had a capacity to contain record of 15 days. It thus established safe custody, control and possession of the storage device as well as the nature of the storage device. He further testified that he copied the same in the pen-drive (which was identified by him alongwith the content). Thus he certified about how and where the 'computer output' was generated. Besides he also used an expression that it was 'completely correct'. The expression 'completely correct' brings not only the 'pen-drive but also the DVR' within its folds else it would not be completely correct. An isolated and restricted meaning is not be construed at this juncture since Court does not resort to technical jargon in relation to understanding by a common man. The expression has to be read in the manner in which a man on the street is likely to understand or convey. He identified the pen-drive later in Court. He thus certified about all aspects of the case. Law does not expect technical detailing and micro-disclosures and the Court would not prescribe the same either, as a mandatory disclosure before a certificate is held admissible. Hence, the aspect as regards the computer output, i.e., the copied material and the information content

therein, stands satisfied as under possession in this regard has been made by the person having lawful control over the use of the computer as also the storage device where the information was stored by describing the manner in which such information was produced. There is no suggestion by the accused/respondent that the said CCTV footage of the storage device/DVR were inaccurate or not operating properly. The information stored was fed into the system in the ordinary course of activity to be performed by the CCTV cameras; hence, the conditions as prescribed under Section 65-B of the Indian Evidence Act are fully satisfied.

99. While adverting to the deposition of PW-14 ASI Jaswinder Singh along with his certificate Ex. P-46, the said witness specifically stated that he had copied the CCTV footage into the pen drive and handed over the same to the police authorities. The deposition was sought to be impeached on the ground that the information was not stored in the DVR and instead it was stored in a Data Centre under the Central Command and hence, a certificate under Section 65-B of the Indian Evidence Act has been issued only by such officer.

100. The said argument is being rejected for the following reasons:-

Firstly, ASI Jaswinder Singh has specifically deposed that he is in charge of the Safe City Project. The suggestion put forth to the said witness is only to the extent that there is no DVR in the system and the footage recorded is stored on a hard disk in the Data Centre at the Control Room. The projected argument of the accused/respondent is that there would be a separate In-charge of the Control Room or of the Data Centre; however, the said aspect cannot be assumed. The said witness is 'In-charge of the Safe

City Project' and has control of all the CCTV cameras installed under the Safe City Project. In view thereof, merely because the Data Centre is in a separate place, it does not mean it is not within his command and control as the In-charge of the entire project and that he was in charge only of the installation of CCTV cameras. There is no such suggestion that the Control Room or the Data Centre was under the charge of any other person. The hyper-reading into the evidence to raise an argument of some other person being probably in charge of the Control Room is not based upon any case set up by the accused/respondent. Invariably, the Control Room would have the display of all CCTV images even when they are retrieved. A mere absence of any DVR does not mean that the data could not be retrieved from the Data Centre. As an In-charge, he would be in charge of everything in relation to the operation and storage of the CCTV footage. Besides, the existence of a DVR is not a prerequisite. It is evident that as per Section 65-B (3) of the Indian Evidence Act, where the function of storage or processing information is regularly performed by computers through a combination or through different computers operating in succession over that period or by different combinations of computers operating and succession or in any other manner, all the computers for Section 65-B of Indian Evidence Act shall be treated as constituting a single computer for references under this Section and that in the present case the CCTV cameras as well as the Data Centre taking live recording and storage as well as processing of the CCTV footage are part of combination of computers operating in succession and carrying out the function of storing and processing of information regularly over a period of time, hence, they are all deemed to be one computer and would thus satisfied the test of Section 65-B of the Indian Evidence Act. A Command Centre or

the Control Room are merely certain centres under 'the project'. The officer being incharge of the project, would be deemed to have supervisory and managerial control of everything that falls under the project. The law does not mandate that certificate should be issued only by the immediate handler of the device. Acceptance of the argument of the counsel for the accused would bring rigidity to the statutory mandate notwithstanding legislative flexibility. It shall amount to restricting the applicability of the provision. The language of the certificate Ex.P-46 being similar to Ex.P-22; it need not be discussed any further as regards the compliance.

101. Thus, the admissibility of the CCTV footage and the photographs produced therefrom stand fully established and the said CCTV footage has rightly been held admissible by the trial Court. We find no reason to differ from the same.

102. Even otherwise, examining the case from an alternative angle and assuming the argument as regards validity of the certificate issued under Section 65B (4) of the Indian Evidence Act, 1872, to be correct and the same not being compliant of the law declared by the Supreme Court in the matter of Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal, reported as (2020) 7 SCC 1. It is observed that while the Supreme Court did mandate that all the conditions as specified under Section 65B (4) of the Indian Evidence Act, 1872, are required to be fulfilled, it would be significant to make a reference to the aforesaid legal position, as has been applied in precedent and subsequent judgments.

103. In the above judgment, the Supreme Court dealt with the earlier judicial pronouncements in the matter of State (NCT of Delhi) Vs. Navjot Sandhu (2005) 11 SCC 600, Tomaso Bruno and another Vs. State of U.P.

(2015) 7 SCC 178, as well as Shafhi Mohammad Vs. State of Himachal Pradesh (2018) 2 SCC 801. While the judgment in the matter of **Tomaso Bruno** (supra) was held to be per incuriam, the judgment in the matter of **Navjot Sandhu and Shafhi Mohammad** (supra) have been specifically overruled.

104. The Bench although took judicial notice of the judgment in the matter of **Sonu @ Amar Vs. State of Haryana, (2017) 8 SCC 570**, but did not overrule the position in law as expounded in the aforesaid judgment.

105. While dealing with the issue of admissibility of electronic record under Section 65B of the Indian Evidence Act, 1872, in the matter of **Sonu @ Amar** (supra), the Supreme Court referred to the judgment in the matter of **Anvar P.V. Vs. P.K. Basheer and others, (2014) 10 SCC 473**, and held that notwithstanding the aforesaid requirement, in case no objection with respect to the mode and manner of proof is raised at the time when the document is exhibited, such an objection cannot be taken at an appellate Stage. The relevant extract of the judgment reads thus: -

“24. Mr. Luthra contended that the CDRs are not admissible under Section 65B of the Indian Evidence Act, 1872 as admittedly they were not certified in accordance with sub-section (4) thereof. He placed reliance upon the judgment of this Court in Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 by which the judgment of this Court in State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 was overruled. In Navjot Sandhu (supra) this court held as follows:

“Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to

adducing secondary evidence under the other provisions of the [Evidence Act](#), namely, [Sections 63](#) and [65](#). It may be that the certificate containing the details in sub-section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, [Sections 63](#) and [65](#)".

25. *In **Anvar**'s case, this Court held as under:*

*"22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under [Section 63](#) read with [Section 65](#) of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of [Sections 59](#) and 65-A dealing with the admissibility of electronic record. [Sections 63](#) and [65](#) have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in *Navjot Sandhu*, does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.*

23. The appellant admittedly has not produced any certificate in terms of Section 65-B in respect of the CDs,

Exts. P-4, P-8, P-9, P-10, P-12, P-13, P-15, P-20 and P-22. Therefore, the same cannot be admitted in evidence. Thus, the whole case set up regarding the corrupt practice using songs, announcements and speeches fall to the ground.”

In view of the law [laid down in](#) the case of Anvar, Mr. Luthra submitted that the CDRs are liable to be eschewed from consideration.

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27 *Refuting the contentions of the learned senior counsel for the State, Mr. Luthra submitted that the objection raised by him pertains to inadmissibility of the document and not the mode of proof. He urged that the CDRs are inadmissible without the certificate which is clear from the judgment of this Court in Anvar’s case. He refers to the judgment of [RVE Venkatachala Gounder v. Arulmigu Visweswaraswami](#), (2003) 8 SCC 752 relied upon by the prosecution to contend that an objection relating to admissibility can be raised even at the appellate stage. Mr. Luthra also argued that proof required in a criminal case cannot be waived by the accused. He relied upon a judgment of the Privy Council in [Chainchal Singh v. King Emperor](#), AIR 1946 PC 1 in which it was held as under:*

“In a civil case, a party can, if he chooses, waive the proof, but in a criminal case strict proof ought to be given that the witness is incapable of giving evidence”

28. *He further relied upon the judgment of a Full Bench of the Bombay High Court in [Shaikh Farid v. State of Maharashtra](#), 1983 CrLJ 487. He also submitted that Section 294 Cr. P.C. which is an exception to the rule as to mode of proof has no application to the facts of the present case.*

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32. It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the Trial Court without a certificate as required by Section 65B (4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies. The learned Senior Counsel for the State referred to statements under [Section 161](#) of the Cr. P.C. 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65 B (4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof."

106. The said issue came up before the Supreme Court yet again in the matter of **State by Karnataka Lokayukta Police Station, Bengaluru, Vs.**

M.R. Hiremath, (2019) 7 SCC 515. The relevant extract of the said judgment reads thus:

“16 The same view has been reiterated by a two judge Bench of this Court in [Union of India and Others v CDR Ravindra V Desai](#) (2018) 16 SCC 272. The Court emphasised that non-production of a certificate under Section 65B on an earlier occasion is a curable defect. The Court relied upon the earlier decision in Sonu alias [Amar v State of Haryana](#), in which it was held:-

“32. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency.”
(emphasis supplied)

17. Having regard to the above principle of law, the High Court erred in coming to the conclusion that the failure to produce a certificate under [Section 65B\(4\)](#) of the Evidence Act at the stage when the charge-sheet was filed was fatal to the prosecution. The need for production of such a certificate would arise when the electronic record is sought to be produced in evidence at the trial. It is at that stage that the necessity of the production of the certificate would arise.”

107. Significantly, the judgment of **M.R. Hiremath** (supra) was also noticed by the Supreme Court in the matter of **Arjun Panditrao Khotkar** (supra) in para No.53 thereof and at no point of time, the said judgments have been over ruled or distinguished or held *per incuriam*. A reference with respect to the judgment in the matter of **M.R. Hiremath** (supra) by the Supreme Court in the matter of **Arjun Panditrao Khotkar** (supra) in paras

No.53 and 54 thereof, which reads as under: -

“53. In a recent judgment, a Division Bench of this Court in State of Karnataka v. M.R. Hiremath (2019) 7 SCC 515, after referring to Anvar P.V. (supra) held:

“16. The same view has been reiterated by a two- Judge Bench of this Court in Union of India v. Ravindra V. Desai.

54. It is pertinent to recollect that the stage of admitting documentary evidence in a criminal trial is the filing of the charge-sheet. When a criminal court summons the accused to stand trial, copies of all documents which are entered in the charge-sheet/final report have to be given to the accused. Section 207 of the CrPC, which reads as follows, is mandatory. Therefore, the electronic evidence, i.e. the computer output, has to be furnished at the latest before the trial begins. The reason is not far to seek; this gives the accused a fair chance to prepare and defend the charges levelled against him during the trial. The general principle in criminal proceedings, therefore, is to supply to the accused all documents that the prosecution seeks to rely upon before the commencement of the trial. The requirement of such full disclosure is an extremely valuable right and an essential feature of the right to a fair trial as it enables the accused to prepare for the trial before its commencement.”

108. Still further, after the aforesaid judicial declaration of law in the judgment of **Arjun Panditrao Khotkar** (supra), the issue was under consideration by the Supreme Court in the matter of **Sundar @ Sundarrajan Vs. State by Inspector of Police, (2024) 12 SCC 764**. The relevant extract thereof reads thus: -

“43. While the Court in Arjun Panditrao Khotkar did not directly deal with the issue of allowing objections against CDRs,

due to a violation of the procedure under Section 65B, being raised at a belated stage, it kept it open for trial courts, in exceptional cases, to allow the prosecution to provide such certificate at a later stage. It held that:

54. Therefore, in terms of general procedure, the prosecution "is obligated to supply all documents upon which reliance may be placed to an Accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the Accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution Under [Sections 91](#) or 311 of the [Code of Criminal Procedure](#) or [Section 165](#) of the Evidence Act. Depending on the facts of each case, and the Court exercising discretion after seeing that the Accused is not prejudiced by want of a fair trial, the Court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the Accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case-discretion to be exercised by the Court in accordance with law."

(emphasis supplied)

109. It is thus apparent from the perusal of the above that the ratio and legal principle in the matter of **Sonu @ Amar (supra)** was reiterated by the Supreme Court in the above said judgment.

110. Still further, in the matter of **Rahil Vs. State (Govt. of NCT of Delhi), 2025 SCC OnLine SC 1481**, the legal principles, as above were relied upon yet again. The relevant extract thereof reads thus: -

“32. Section 65-B(4) requires issuance of a certificate by a person-in-charge or responsible officer in relation to operations of the relevant computer network in question stating as per his knowledge or belief that during the relevant period:-

(a) computer(s) were carrying out regular activities, and were working properly; and

(b) the relevant information was regularly fed into the computer in ordinary course of business, as proof of the facts stated therein.

*33. In [State \(NCT of Delhi\) v. Navjot Sandhu](#) this Court held computer printouts are secondary evidence and may be admitted on mere production. Production of certificate under section 65-B(4) was not mandatory for admission of such secondary evidence. However, in *Anvar PV v. PK Basheer* this Court took a different view and held Section 65-B laid down a special procedure for admissibility of electronic records which mandatorily requires production of certificate under 65-B(4) for admissibility of secondary evidence i.e. computer printouts. This view was doubted in [Shafhi Mohammad v. State of Himachal Pradesh](#). In *Sonu v. State of Haryana*, another bench of this Court, held the ratio in *Anvar PV* (supra) shall apply prospectively unless the defence during trial raised objection to admission of computer printouts. Finally, the issue was settled by a three-judge bench in [Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal](#), wherein the bench overruling [Navjot Sandhu](#) (supra) and [Shafhi Mohd.](#) (supra) upheld the ratio in *Anvar PV* (supra) and held issuance of certificate under section 65-B(4) is a condition precedent for admissibility of computer-generated secondary evidence. It cannot be supplemented through oral evidence.*

34. It would be argued that [Navjot Sandhu](#) (supra) which did not insist on production of certificate for admissibility of computer-generated printouts was prevailing at the time when the case was decided by the Trial Court and the Appellate Court.

The judgement in Anvar PV (supra) was delivered subsequently and cannot be a ground to render the CDRs inadmissible. It is also brought to our notice that issue of retrospective application of the ratio in PV Anvar (supra) is pending for consideration before this Court.

35. Be that as it may, it is relevant to note the larger bench in Khotkar (supra) while reiterating PV Anvar (supra) did not hold that its ratio shall apply prospectively. Furthermore, in Mohd. Arif @ Ashfaq v. State (NCT of Delhi), this Court while hearing a review petition in a death penalty case retrospectively applied the ratio in Anvar PV to cases decided earlier and eschewed secondary electronic evidence dehors certificate under section 65-B(4).

36. Though the present case does not involve death penalty, it is undeniable that appellants were facing a criminal trial and the prosecutor was required to prove a fact beyond reasonable doubt strictly in accordance with law. Appellants during trial raised objections to admissibility of the secondary electronic evidence relating to Rahil which was marked as exhibit PW23/B-D. Thereby the prosecutor was put on due notice and had opportunity to fill the lacuna by producing the requisite certificate under Section 65-B(4) but did not do so.

In Sonu (supra), this court held if an objection is taken to CDRs being marked without a certificate and the same was not cured by the prosecutor at relevant stage the document shall be inadmissible in law. In these circumstances we are inclined to apply the ratio in PV Anvar and Khotkar to the case and hold that the exhibits are inadmissible in law being secondary evidence without certification.

(emphasis supplied)

111. It has thus been reiterated as a legal position that when an

objection is not taken, at the stage of producing the electronic document, with respect to the mode or manner in which it has been exhibited, the same being a curable defect, such an objection cannot be taken at the appellate stage.

112. From the perusal of the depositions of PW-4 Avtar Singh, PW-14 ASI Jaswinder Singh and PW-17 Baljit Chauhan, the respective witnesses who proved the certificate issued under Section 65B of the Indian Evidence Act, 1872, it is evident that no suggestion or objection with respect to the mode or manner of proof had been taken by the defence at any stage. The argument is being taken now at the appellate stage only.

113. Besides, it is also evident from the perusal of the said CCTV footage as well as the photographs Ex.P-18 to Ex.P-2 developed therefrom, which were also followed by a certificate under Section 65-B of the Indian Evidence Act, that the footage clearly shows the faces of the accused as well as the deceased Dxxxx Kxxx. On a zoom, even the registration number is fully visible. Having considered the entire case as well as evidence brought on record, we are of the opinion that the certificate under Section 65-B of the Indian Evidence Act have been issued by the person occupying responsible position, dominion control over the device, wherefrom the CCTV footage had been drawn and that the tests prescribed under Section 65(B)(4) of the Evidence Act have been fully established. The evidence on record satisfies the conditions prescribed thereunder. There is no specific set out form at under the Evidence Act and the said form is not required to be drawn. The Evidence Act provides for the existence of the prescribed information in the said Act. We are of the opinion that the information required under Section 65-B of the Indian Evidence Act is available on reading and considering the

certificate issued under Section 65-B of the Indian Evidence Act by PW-4 Avtar Singh and PW-14 ASI Jaswinder Singh. The reference to the judgment in the matter of *Anwar PB Vs. P.K. Bashir* on the ground that the certificate is mandatory unless the original device is produced. The said judgment, in our opinion, does not advance the case of the accused inasmuch as the certificate was actually produced and proved before the Court. Reference to the judgment in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors.* is also misplaced, since we have held that the certificate satisfies the prescribed norms under Section 65-B of the Indian Evidence Act.

EVIDENCE IN RELATION TO DIGGING OF PIT

114. Next to the argument advanced by counsel for the appellant that it was physically impossible for accused Neelam to dig the pit and bury the child in the same within ten minutes without any weapon or tool. We find that the aforesaid submission is not well proved. The witnesses of the prosecution, including PW-8 Mulakh Raj, have specified that the abandoned plot had pits. The disclosure suffered by the accused also does not show that any pit had been dug by her, rather, the case is that the pit already existing in the said plot and that the child was thrown into the same and the nearby mud was thrown upon her to bury her alive in the same. Hence, the activity of burying the child within a period of ten minutes could have been done under the said circumstances considering the fact that the child was aged less than three years, hence, she was in no capacity to offer any resistance or to work an escape for herself. The pit was only 2.3 feet deep and it could be filled in sand.

DISCOVERY UNDER SECTION 27 OF THE INDIAN EVIDENCE ACT

115. Adverting next to the argument of the counsel for the accused that the disclosure is inadmissible in evidence as no discovery has been effected therefrom. Counsel for the accused/respondent contends that as the shoes of the child were seen by the police officials of the PCR as well as PW-8 Mulakh Raj, there was no occasion that the said shoes would be left at the place of occurrence. It has been suggested that ordinarily the case property should have been seized by the officials of the PCR. Hence, it is a case of delayed recovery and not that of discovery of a fact on a disclosure of accused/respondent under Section 27 of the Evidence Act.

116. We are of the view that such objectivity may not be necessary or prescribed in all cases. It is a case where the police officials noticed a child buried in sand when her nostrils and her mouth and eyes were filled with sand and they suspected the child to be alive. Hence, their immediate attention would be to take the appropriate steps to safeguard the child and they would not be carrying out the aspect of first combing the area for the entire evidence and selecting the same. The police officials would even otherwise be deemed to be aware that such activity was to be undertaken by the agency that would investigate the matter. In these said circumstances, there is every likelihood that the official of the PCR would have focused more on taking the child immediately to the hospital for providing first aid rather than waste time in collecting evidence or combing the area or securing the area. The conduct of the officials cannot thus be said to be suspicious or unnatural. The discovery of this cannot thus be said to be fallacious. The PCR officials do not have power to investigate and they are only a response team. They did their prescribed activity and Investigating Officer was required to do the rest.

117. Even otherwise, there is already an overwhelming clinching evidence which completes the chain of circumstantial evidence of the deceased being in the company of the accused soon before or even the last seen with her.

118. We have no reason to doubt that the witnesses were natural witnesses and had no axe to grind against the accused/respondent. There is no suggestion put forth by the defence counsel to any of the witnesses that they had any grudge or reasons to falsely implicate or to depose against her. They cannot be held unreliable solely for deposing against the accused merely because they testified certain facts. A corroboration of the disclosed facts from the evidence collected by the investigating agency only further crystallizes the truthfulness of the account given by them.

EVIDENCE IN RELATION TO MOTIVE

119. Adverting to the argument by the defence that the motive has not been clearly established and that while PW-1 Sxxxx stated that accused Neelam, being a woman of easy virtue, they used to stop Kxxx i.e., mother of the deceased Dxxxx Kxxx from talking to her which led her to nurture a grudge is falsified by the motive disclosed by the accused of her nurturing a grudge on account of Hxxxxx Sxxx getting goods/things for his children which she could not afford for her own children.

120. We find that the argument is not a sufficient ground to dislodge the prosecution case. PW-1 Sxxxx expressed his reasons as to why the accused Neelam Rani could have nurtured her grudge against the family; however, the trigger motive would be available only with the accused as to why she did what she has done. Thus, while one person may believe a specific reason to exist in the mind of the other for committing an offence,

there may be different reasons for the accused to commit the crime. The same would not mean that the case of the prosecution would get dislodged merely because the accused assigned a separate reason for having done the offence. Motive for each person may vary in cases of circumstantial evidence, as opposed to directed injury cases – where motive surfaces as the trigger point for the offence. No hard and fast rule can be laid in this regard. The PW's merely gave their reasons for suspicion and motive against the accused and said statement is to be read nothing beyond the same.

121. Adverting next to the argument by the counsel that there was no reason for the accused to make up for an extra-judicial confession to PW-2 Gupreet Singh. We are of the opinion that the said reason need not be gone into at this stage as it would have no bearing on the *inter se* merits of the case considering the overwhelming evidence which is proved on record.

122. The reference to alleged non-mentioning of timings etc. is consequential as there is material evidence which co-relates and corroborates not only timings but also presence of the accused in and around the said timings at the place of occurrence.

123. Reliance by the counsel for the appellant on the judgment in the matter of *Vishwajeet Kerba Masalkar Vs. State of Maharashtra reported as 2024 INSC 788*, is misplaced as the said judgment is not applicable to the facts of the present case. Reference to other judgments which propagate a similar position in law is thus not being referred to as the same would not be applicable in the facts and circumstances of the present case.

124. Now reading of the entire evidence, it is evident that the prosecution has been able to successfully prove its case beyond reasonable doubt through the evidence produced before this Court. The entire chain of

events, as well as the link evidence, has been fully established, which needs to be only one hypothesis, i.e., about the involvement of the accused in the commission of the offence, i.e., murder of deceased Dxxxx Kxxx aged 2/3 years by burying her alive in a pit. Hence, the judgment of conviction dated 12.04.2024 passed by the learned Sessions Judge, Ludhiana, in Sessions Case bearing No.SC/26/2022 in case FIR No.166 dated 28.11.2021 convicting the accused Neelam for offences under Sections 364, 302, 201 of IPC at Police Station Shimlapuri, Ludhiana is accordingly upheld and the appeal bearing No.CRA-D-824-2024 preferred by the accused Neelam is found bereft of merits and is consequently dismissed.

125. The same leads to the next issue of quantum of sentence to be imposed.

126. Counsel for the accused/respondent has contended that there are numerous mitigating circumstances that exist in the present case in which imposition of the capital punishment of the accused would be unwarranted. It is contended that it is not a rarest of the rare case. The medical report has been submitted by the Medical Officer as per which the accused has shown no signs of any depravity or deformity. She has not reflected any strange social behaviour as would render a threat to society or to the safety of people. It was on account of the grudge nurtured by her that she indulged in an offence of this nature. He contends that there is no hallucinatory behaviour reflected or established from the record; hence, it would be improper to conceal that the accused is incapable of being rehabilitated in the main frame of society and she was beyond reform. He further contends that there is no evidence of neurotic or psychotic disorder and that the assessment revealed no psychopathology, disordered behaviour, delusional tendencies or

personality traits which make her dangerous. She has also not indulged in any act of indiscipline, violence, misconduct or behaviour prejudicial to the security and discipline of the prison or causing any danger to the other prison inmates, including the prison staff. She has regularly participated in the daily routine of the prison and has carried out the duties and responsibilities assigned to her by the jail administration with sincerity and has shown willingness to engage in vocational work and educational programmes. She maintained cordial relations with her inmates and has not involved herself in any dispute or incident disrupting the harmony in prison. The behaviour of the accused has been found satisfactory and there is nothing adverse reported against her. It is thus submitted that in the given circumstances, the capital punishment upon the accused be modified and the sentence be commuted. It has also been reported that, as per the sociological report, the accused belongs to a Socially Disadvantaged Group. Her father, Harbans Lal, had passed away and earlier they used to carry out some trading in iron and thereafter they started plying an autorickshaw. Thus, they were living in extreme penury and there is a possibility of some hard feelings being developed when the children of the accused would demand things which the accused could not afford to provide.

127. Counsel for the complainant on the other side contended that the act of the accused cannot be condoned or ignored. She buried a minor child of 2/3 years of age alive in a pit of sand, which shows depravity of mind and that she has no emotions. Besides, she also does not have any sympathy and she could commit an extreme atrocity against a helpless child. They, however, did not dispute the other reports that were submitted by the other accused.

128. In this regard, it would be relevant to make a reference to certain precedent judgments of the Hon'ble Supreme Court of India where the capital punishment has been commuted. The details thereof are extracted as under:-

A) In *Ediga Anamma v. State of Andhra Pradesh, [1974] 3*

S.C.R.329, the Hon'ble Supreme Court holds,

[336G–A]. “354(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.” The unmistakable shift in legislative emphasis is that life imprisonment for murder is the rule and capital sentence the exception to be resorted to for reasons to be stated.

[338C]. While deterrence through threat of death may still be a promising strategy in some frightful areas of murderous crime, to espouse a monolithic theory of its deterrent efficacy is unscientific and so we think it right to shift the emphasis, to accept composite factors of penal strategy and not to put all the punitive eggs in the 'hanging' basket but hopefully to try the humane mix.

[338D–E]. We assume that a better world is one without legal knifing of life, given propitious social changes. Even so, to sublimate savagery in individual or society is a long experiment in spiritual chemistry where moral values, socio-economic conditions and legislative judgment have a

role. Judicial activism can only be a signpost, a weather vane, no more. We think the penal direction in this jurisprudential journey points to life prison normally, as against guillotine, gas chamber, electric chair, firing squad or hangmen's rope. 'Thou shalt not kill' is a slow commandment in law as in life, addressed to citizens as well as to States, in peace as in war. We make this survey to justify our general preference where s.302 keeps two options open and the question is of great moment.

[338E–A]. Let us crystallise the positive indicators against death sentence under Indian Law currently. Where the murderer is too young or too old, the clemency of penal justice helps him. Where the offender suffers from socio-economic, psychic or penal compulsions insufficient to attract a legal exception or to downgrade the crime into a lesser one, judicial commutation is permissible. Other general social pressures, warranting judicial notice, with an extenuating impact may, in special cases, induce the lesser penalty. Extraordinary features in the judicial process, such as that the death sentence has hung over the head of the culprit excruciatingly long, may persuade the court to be compassionate. Likewise, if others involved in the crime and similarly situated have received the benefit of life imprisonment or if the offence is only constructive, being under s. 302 read with s. 149, or again the accused has acted suddenly under another's instigation, without premeditation,

perhaps the court may humanely opt for life, even like where a just cause or real suspicion of wifely infidelity pushed the criminal into the crime. On the other hand, the weapons used and the manner of their use, the borrandous features of the crime and hapless, helpless state of the victim, and the like, steal the heart of the law for a sterner sentence. We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society. A legal policy on life or death cannot be left for ad hoc mood or individual predilection and so we have sought to objectify to the extent possible, abandoning Retributive ruthlessness, amending the deterrent creed and accenting the trend against the extreme and irrevocable penalty of putting out life.

B) In Bachan Singh etc. etc. v. State of Punjab, etc. [1983] 1SCR 145, the Constitutional Bench of the Hon'ble Supreme Court while upholding the Constitutional validity of the Capital Sentence, in a reference to the Constitution Bench regarding the constitutional validity of death penalty for murder provided in § 302, Penal Code, and the sentencing procedure embodied in sub-§ (3) of § 354 of the Code of Criminal Procedure, 1973, holds,

[A-C]. Section 354(3) of the Code of Criminal Procedure, 1973, marks a significant shift in the legislative policy underlying the Code of 1898, as in force immediately before Apr. 1, 1974, according to which both the

alternative sentences of death or imprisonment for life provided for murder and for certain other capital offences under the Penal Code, were normal sentences. Now, according to this changed legislative policy which is patent on the face of Section 354(3), the normal punishment for murder and six other capital offences under the Penal Code, is imprisonment for life (or imprisonment for a term of years) and death penalty is an exception.

[F]. In the context, we may also notice Section 235(2) of the Code of 1973, because it makes not only explicit, what according to the decision in Jagmohan's case was implicit in the scheme of the Code, but also bifurcates the trial by providing for two hearings, one at the pre conviction stage and another at the pre-sentence stage.

[C-E]. Now, Section 235(2) provides for a bifurcated trial and specifically gives the accused person a right of pre-sentence hearing, at which stage, he can bring on record material or evidence, which may not be strictly relevant to or connected with the particular crime under inquiry, but nevertheless, have, consistently with the policy underlined in Section 354(3), a bearing on the choice of sentence. The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under

Section 302, Penal Code, the Court should not confine its consideration "principally" or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal.

C) In Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, CrA No. 14782005, \ the Hon'ble Supreme Court holds,

Rarest of rare dictum, as discussed above, hints at this difference between death punishment and the alternative punishment of life imprisonment. The relevant question here would be to determine whether life imprisonment as a punishment will be pointless and completely devoid of reason in the facts and circumstances of the case? As discussed above, life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second exception to the rarest of rare doctrine, the court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigor when the court focuses on the circumstances relating to the criminal, along with other circumstances. This is not an easy conclusion to be deciphered, but Bachan Singh (supra) {[1983] 1SCR 145} sets the bar very high by introduction of Rarest of rare doctrine.

D) In Machhi Singh and others v. State of Punjab, [1983] 3

SCR 413, a three-Judge Bench of the Hon'ble Supreme Court holds,

[H-D]. The reasons why the community as a whole does not endorse the humanistic approach reflected in "death sentence in no case" doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of "reverence for life" principle. When a member of the community violates this very principle by killing another member, the society may not feel itself, bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by 'Killing' a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of selfpreservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so (in rarest of rare cases)

when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict the death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining the death penalty...

E) In **Mohinder Singh v. State of Punjab, [2013] 3 SCR 90,** the Hon'ble Supreme Court holds,

[20E-F]. It is well settled law that awarding of life sentence is a rule and death is an exception. The application of the "rarest of rare" case principle is dependent upon and differs from case to case. However, the principles laid down and reiterated in various decisions of this Court show that in a deliberately planned crime, executed meticulously in a diabolic manner, exhibiting inhuman conduct in a ghastly manner, touching the conscience of everyone and thereby disturbing the moral fiber of the society, would call for imposition of capital punishment in order to ensure that it acts as a deterrent.

F). In **Shankar Kisanrao Khade v. State of Maharashtra, [2013] 6 SCR 949,** the Hon'ble Supreme Court, while commuting the death sentence of a middle-aged man to life [End of Natural Life under S. 376AB], awarded on the conviction for continuous rape and murder of a girl child aged 11, with moderate intellectual disability, holds,

[28]. Aggravating Circumstances as pointed out above, of

course, are not exhaustive so also the Mitigating Circumstances. In my considered view that the tests that we have to apply, while awarding death sentence, are "crime test", "criminal test" and the R-R Test and not "balancing test". To award death sentence, the "crime test" has to be fully satisfied, that is 100% and "criminal test" 0%, that is no Mitigating Circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society no previous track record etc., the "criminal test" may favour the accused to avoid the capital punishment. Even, if both the tests are satisfied that is the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the Rarest of Rare Case test (R-R Test). R-R Test depends upon the perception of the society that is "society centric" and not "Judge centric" that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the Court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of minor girls intellectually challenged, suffering from physical disability, old and infirm women with those

disabilities etc. Examples are only illustrative and not exhaustive. Courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the judges.

129. The Hon'ble Supreme Court commuted the death sentence for kidnapping and murder of a 7-year-old child to life imprisonment for not less than twenty years without remission of sentence-the 'rarest of rare' doctrine requires that the death sentence not be imposed only by taking into account the grave nature of the crime, but only if there is no possibility of reformation in a criminal. In case of '*Sundar v. State*', (2024) 12 SCC 764 held as follows:-

"79. The law laid down in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] requires meeting the standard of "rarest of rare" for award of the death penalty which requires the courts to conclude that the convict is not fit for any kind of reformatory and rehabilitation scheme. As noted in Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra [Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150], this requires looking beyond the crime at the criminal as well: (Santosh Kumar case [Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150], SCC p. 530, para 66).

"66. The rarest of rare dictum, as discussed above, hints at this difference between death punishment and the alternative punishment of life imprisonment. The relevant

*question here would be to determine whether life imprisonment as a punishment will be pointless and completely devoid of reason in the facts and circumstances of the case? As discussed above, life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second exception to the rarest of rare doctrine, the court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigour when the court focuses on the circumstances relating to the criminal, along with other circumstances. This is not an easy conclusion to be deciphered, but **Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580]** sets the bar very high by introduction of the rarest of rare doctrine.”*

(emphasis in original and supplied)

80. A similar point was underlined by this Court in **Anil v. State of Maharashtra [Anil v. State of Maharashtra, (2014) 4 SCC 69 : (2014) 2 SCC (Cri) 266]** where the Court noted that: (SCC p. 86, para 33)

“33. In **Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580]** this Court has categorically stated, ‘the probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to the society’, is a relevant

*circumstance, that must be given great weight in the determination of sentence. This was further expressed in **Santosh Kumar Satishbhushan Bariyar [Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150]**. Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. We, therefore, direct that the criminal courts, while dealing with the offences like Section 302IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case.”*

(emphasis supplied)

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82. In Mofil Khan [Mofil Khan v. State of Jharkhand, (2021) 20 SCC 162], a three-Judge Bench of this Court was also dealing with a review petition which was reopened in view of the decision in **Mohd. Arif v. Supreme Court of India [Mohd.**

Arif v. Supreme Court of India, (2014) 9 SCC 737 : (2014) 5 SCC (Cri) 408]. While commuting the death sentence to life imprisonment, the Court reiterated the importance of looking at the possibility of reformation and rehabilitation. Notably, it pointed out that it was the Court's duty to look into possible mitigating circumstances even if the accused was silent. The Court held that: (Mofil Khan case [Mofil Khan v. State of Jharkhand, (2021) 20 SCC 162] , SCC pp. 172-73, paras 15-17)

“15. It would be profitable to refer to a judgment of this Court in Mohd. Mannan v. State of Bihar [Mohd. Mannan v. State of Bihar, (2019) 16 SCC 584 : (2020) 2 SCC (Cri) 382] in which it was held that before imposing the extreme penalty of death sentence, the Court should satisfy itself that death sentence is imperative, as otherwise the convict would be a threat to the society, and that there is no possibility of reform or rehabilitation of the convict, after giving the convict an effective, meaningful, real opportunity of hearing on the question of sentence, by producing material. The hearing of sentence should be effective and even if the accused remains silent, the Court would be obliged and duty-bound to elicit relevant factors.

16. It is well-settled law that the possibility of reformation and rehabilitation of the convict is an important factor which has to be taken into account as a mitigating

circumstance before sentencing him to death. There is a bounden duty cast on the Courts to elicit information of all the relevant factors and consider those regarding the possibility of reformation, even if the accused remains silent. A scrutiny of the judgments of the trial court, the High Court and this Court would indicate that the sentence of death is imposed by taking into account the brutality of the crime. There is no reference to the possibility of reformation of the petitioners, nor has the State procured any evidence to prove that there is no such possibility with respect to the petitioners.

17. We have examined the socio-economic background of the petitioners, the absence of any criminal antecedents, affidavits filed by their family and community members with whom they continue to share emotional ties and the certificate issued by the Jail Superintendent on their conduct during their long incarceration of 14 years. Considering all of the above, it cannot be said that there is no possibility of reformation of the petitioners, foreclosing the alternative option of a lesser sentence and making the imposition of death sentence imperative.”

(emphasis supplied)

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91. Considering the above factors, we are of the view that even though the crime committed by the petitioner is unquestionably grave and unpardonable, it is not appropriate to affirm the

death sentence that was awarded to him. As we have discussed, the “rarest of rare” doctrine requires that the death sentence not be imposed only by taking into account the grave nature of crime but only if there is no possibility of reformation in a criminal.

92. However, we are also aware that a sentence of life imprisonment is subject to remission. In our opinion, this would not be adequate in view of the gruesome crime committed by the petitioner.

*93. This Court has been faced with similar situations earlier where it has noticed that the sentence of life imprisonment with remission may be inadequate in certain cases. For instance, in **Swamy Shraddananda (2) v. State of Karnataka** [**Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113**] the Court noted that: (SCC pp. 804-805, para 92)*

“92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court

may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 year's imprisonment would amount to no punishment at all."

(emphasis in original and supplied)

130. Having heard learned counsel for the parties and taking into consideration the precedent judgment of the Hon'ble Supreme Court of India, we are of the opinion that the present case, even though the offence is gruesome and displace totality, however, it may not be a case warranting capital punishment as the only punishment to be imposed. It cannot be held by this Court that the accused is beyond reform and is a threat to society at large. It is evident that the accused also has children of her own and has not exhibited any disorderly or disruptive behaviour. She thus cannot be

perceived to be beyond reform and incapable of co-existence in harmony.

She had maintained cordial relations with all fellow inmates and has not indulged in any indiscipline of any nature whatsoever. We also ponder whether capital punishment is beginning of a sentence or end of it. A sentence which affords time for introspection and repent each day for the crime committed is a sentence served. The past, which serves as a reminder on every new morning, to make good for the sin committed and make efforts for some meaningful contribution. While a mother has lost her daughter, let the children of the accused not lose their mother to a point of no return. A society is not built upon denying to the children, what their mother stole but by ushering in some hope.

131. At the given circumstances, we are of the view that the death sentence imposed upon the accused be commuted to rigorous imprisonment for a period of 30 years, without remissions alongwith a fine of Rs. 50,000/-. She is accordingly sentenced as under:-

Offence	Sentence awarded by the trial Court and fine	Modified sentence
U/s 302 of IPC	Death sentence and she be hanged by the neck till she is dead. Death sentence subject to its confirmation by the Hon’ble High Court of Punjab and Haryana, Chandigarh. In case her death sentence is not confirmed by the Hon’ble High Court, convict to pay a fine of Rs.50,000/-(fifty thousand) and in default of payment of fine to undergo rigorous imprisonment for one year.	Commuted to rigorous imprisonment for a period of 30 years, without remissions and a fine of Rs. 50,000/- and in default of payment of fine to undergo rigorous imprisonment for one year.

132. The punishment awarded for commission of other offences by the trial Court i.e. under Sections 364 and 201 IPC is maintained with fine.
133. All the sentences shall run concurrently.

(VINOD S. BHARDWAJ)
JUDGE

(RAVINDER MALIK)
JUDGE

September 23rd, 2026
Sapna adhikari

Whether speaking/reasoned	:	Yes
Whether reportable	:	No