AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Reference No.1 of 2018

Judgment reserved on: 11-3-2022

Judgment delivered on: 12-5-2022

In reference of State of Chhattisgarh, Through Station House Officer, Police Station Basna, District Mahasamund (C.G.)

---- Petitioner

Versus

Dolalal, R/o Village Kayatpali, Police Station Basna, District Mahasamund (C.G.)

---- Respondent

For Petitioner/State: -
Mr. Sunil Otwani, Additional Advocate General and
Mr. Sudeep Verma, Deputy Govt. Advocate.
For Respondent: Mr. D.K. Gwalre, Advocate.

AND

Criminal Appeal No.1083 of 2018

Dolalal, S/o Ugrasen Sidar, aged about 23 years, R/o Village Kayatpali, Police Station Basna, District Mahasamund (C.G.)

(In Jail)
---- Appellant

Versus

State of Chhattisgarh, through Station House Officer, Police Station Basna, District Mahasamund (C.G.)

---- Respondent

For Appellant: Mr. D.K. Gwalre, Advocate.
For Respondent/State: -
Mr. Sunil Otwani, Additional Advocate General and
Mr. Sudeep Verma, Deputy Govt. Advocate.

Hon'ble Shri Sanjay K. Agrawal and
Hon’ble Smt. Rajani Dubey, JJ.

C.A.V. Judgment

Sanjay K. Agrawal, J: -

1. The appellant herein namely Dolalal has been awarded with death sentence by the learned Additional Sessions Judge, Saraipali, Distt. Mahasamund in Sessions Trial No.27/2017 vide judgment dated 26-6-2018 after having found him guilty for offence punishable under Section 302 of the IPC on two counts and also sentenced to fine of ₹ 500/-, in absence of failure to pay the amount of fine to further undergo rigorous imprisonment for two months. He was sentenced to death by hanging under sub-section (5) of Section 354 of the CrPC. Conviction and sentences imposed upon the appellant are as follows:-

Conviction	Sentence
Sec. 302 of the IPC (two counts)	Death sentence and fine of ₹ 500/-, in default, RI for two months.

2. The learned Additional Sessions Judge in exercise of power conferred under Section 366 of the CrPC after passing the sentence of death submitted the proceedings to this Court for its confirmation and this is how this death reference is before us for consideration along with the appeal preferred by the accused / appellant herein being Cr.A. No.1083/2018.

3. The prosecution case as unfolded during the course of trial is as under: -

Admitted Facts / Prosecution Case, in brief: -

3.1) Case of the prosecution, in brief, is that in the intervening night of 25th & 26th January, 2017, at Village Kayatpali, Police Station

Basna, near the field of Puran Sidar, the appellant murdered his son Shubham, aged about 8 years and daughter Jasmine @ Soniya, aged about 9 years, by spade by decapitating their head from the rest of the body and thereby committed the above-stated offences. It is admitted fact on record that deceased Shubham, aged about 8 years and deceased Jasmine, aged about 9 years were son and daughter of the appellant herein / accused and Geeta (PW-2), who is wife of the appellant herein.

3.2) Further case of the prosecution is that on 26-1-2017 in the morning, Dhaneshwar (PW-1) received information at Village Saraipali that dead bodies of son and daughter of Dolalal – the appellant herein, aged about 8 years and 9 years, respectively, are lying in the field of Puran Sidar at Village Kayatpali, the dead bodies were lying decapitated their head from the rest of body and spade was also lying in the field. At his instance, Dehati Nalishi Ex.P-1 was recorded on 26-1-2017 at 11.50 a.m. and Dehati Morgue Ex.P-2 with regard to Jasmine was recorded at 12 noon at the instance of Dhaneshwar (PW-1) and also Dehati Morgue Ex.P-23 with regard to Shubham was recorded on the same day at 12.20 p.m. by the investigating officer K.K. Bajpai (PW-14). The informant namely Dhaneshwar (PW-1) identified the dead bodies of Shubham and Jasmine as his nephew and niece vide Exs.P-3 & P-4. Shawl of the accused was also recovered vide Ex.P-5. Thereafter, inquest on the dead bodies of the deceased was conducted on 26-1-2017 vide Ex.P-10 (Jasmine) and Ex.P-11 (Shubham). Morgue intimation with regard to Jasmine was recorded on the same day at 6.25 p.m. vide Ex.P-25 and morgue

intimation with regard to Shubham was recorded at 7 p.m. vide Ex.P-26 and subsequently, first information report (FIR) was registered at 5.35 p.m. vide Ex.P-24 by Dauram Sagar (PW-12) against the sole appellant herein for offence under Section 302 of the IPC. Dead bodies were sent for postmortem and Dr. S.R. Sidar (PW-9) conducted postmortem of Shubham vide report Ex.P-20 and postmortem of Jasmine was conducted vide Ex.P-21. According to the postmortem report, Shubham and Jasmine died on account of excessive bleeding and shock. Neck of Shubham and Jasmine were completely cutoff from the rest of the body and crushed injuries were also found on their head and face. Death was homicidal in nature in both the cases.

3.3) Further case of the prosecution is that on the basis of suspicion made by Dhaneshwar (PW-1), further investigation was conducted and the appellant was found to be absconding from village and home and after query to relatives, he has been caught by Saraipali police at Village Jamhari Sajapali and was brought to Village Kayatpali, Police Station Basna, District Mahasamund and thereafter, the appellant was taken into custody and his memorandum statement Ex.P-17 was recorded under Section 27 of the Evidence Act on 26-1-2017. At the instance of the accused, one T-Shirt and half pant containing bloodstains were seized vide Ex.P-19 and one spade (rapa) used in the commission of offence was also seized from the spot vide Ex.P-18. On 1-2-2017, at the instance of Constable Om Prakash Chandrakar (PW-6), clothes of deceased Jasmine and T-Shirt of deceased Shubham were also seized vide Ex.P-16. Seized articles

were sent for chemical examination to Forensic Science Laboratory from where report Ex.P-15 was received. According to the FSL report, human blood was found on T-Shirt and half pant (E1 & E2) which were seized from the possession of appellant Dolalal and also on frock of deceased Jasmine and T-Shirt & underwear of deceased Shubham.

3.4) During the course of investigation, statements of the witnesses were recorded under Section 161 of the CrPC and after completion of investigation, charge-sheet was filed before the Court of Judicial Magistrate First Class, Basna who committed the case to the Court of Sessions, Mahasamund from where the Additional Sessions Judge, Saraipali, received the case on transfer for trial for hearing and disposal in accordance with law for offence under Section 302 of the IPC.

4. In order to bring home the aforesaid offence, the prosecution has examined as many as 14 witnesses and exhibited documents Exs.P-1 to P-30.

Defence of the accused: -

5. The appellant herein / accused entered into defence and abjured his guilt, and pleaded innocence and false implication. His defence was that he has not murdered his son and daughter and he has been falsely implicated. He has exhibited the statement of Rohit Kumar vide Ex.D-1, but did not adduce any oral evidence.

Judgment of trial Court: -

6. The learned Additional Sessions Judge upon appreciation of oral and

documentary evidence on record, by its impugned judgment, convicted the appellant under Section 302 of the IPC and awarded death sentence and further, made reference to this Court for confirmation of the same.

7. Following incriminating circumstances have been relied upon by the prosecution during trial and accepted by the learned trial Court while convicting the appellant herein: -

- Prior to the date of offence, Shubham and Jasmine both were staying with their mother, maternal grand-father and maternal grand-mother at Village Lamkasa.
- On 25-1-2017, the appellant visited their Village Lamkasa and brought them to his Village Kayatpali on the pretext of celebrating 26th January – Republic Day and as such, they were last seen together with the appellant and next day, dead bodies of Shubham & Jasmine were found decapitated from their neck.
- On the memorandum statement of the accused, on 26-1-2017 at 2.50 p.m., T-Shirt (E1) and half pant (E2) of the accused with blood stains were seized vide Ex.P-19.
- As per FSL report, human blood (Group B) was found on T-Shirt and half pant of the accused.
- Conduct of the accused in absconding immediately after the commission of crime to his sister-in-law's Village Jamhari Sajapali is an additional link against him and he failed to explain the same by offering reasonable and satisfactory explanation.
- Human blood was found on bloodstained soil, frock of Jasmine

and T-Shirt of Shubham recovered from the spot.

8. Feeling dissatisfied and aggrieved against the judgment of conviction recorded and sentence awarded, the appellant herein has preferred this appeal under Section 374(2) of the CrPC. However, the learned Additional Sessions Judge in accordance with the provisions contained in Section 366(1) of the CrPC, submitted the sentence of death to this Court for confirmation.

Submissions of parties: -

9. Mr. D.K. Gwalre, learned counsel appearing for the accused/appellant, would submit as under: -

1. The main circumstance relied upon by the prosecution which was eventually accepted by the trial Court was that the accused took away Shubham & Jasmine from the custody of their mother on 25-1-2017 on the pretext of celebrating Republic Day of 26th January, 2017 and next day, they were found dead, but same has not been corroborated by ocular evidence of Geeta (PW-2) – wife of the appellant herein who is a hearsay witness. Likewise, Setram (PW-5) – father-in-law of the accused / appellant also came to know from his wife Gowri Bai (PW-3) and thus, he is also a hearsay witness. Gunmani Pareshwar (PW-4) – uncle of the accused / appellant saw deceased Jasmine in the village in the night of 25th January, 2017 and K.K. Bajpai (PW-14) – investigating officer has admitted in his cross-examination that he did not investigate on this aspect and, therefore, the circumstance of last seen together does not stand proved in accordance with law. The solitary circumstance of

last seen together is not conclusive in itself to hold the suspect guilty. The theory of last seen together comes into play, when other attending circumstances stand proved beyond all reasonable doubts. Mr. Gwalre, learned counsel, would rely upon the decisions of the Supreme Court in the matters of Sharad Birdhichand Sarda v. State of Maharashtra[1], Bodhraj alias Bodha and others v. State of Jammu and Kashmir[2], Arjun Marik and others v. State of Bihar[3], Inderjit Singh and another v. State of Punjab[4], Sahadevan and another v. State of Tamil Nadu[5] and Kanhaiya Lal v. State of Rajasthan[6] to buttress his submission.

2. The prosecution case is mainly based on the self-serving statement of Gowri Bai (PW-3) – mother-in-law of the accused. The evidence of this witness is required to be scrutinised carefully as to whether his evidence is worth credence or not. The evidence of this witness does not inspire confidence. Reliance has been placed upon the decision of the Supreme Court in the matter of State of Maharashtra v. Dinesh[7].

3. Bloodstained T-Shirt and half pant were seized from the accused on his memorandum statement and they were sent to the FSL for chemical examination. The FSL report has been filed and proved as Ex.P-15 in which human blood was found on T-Shirt & half pant Articles E1 & E2. Similarly human blood

1 (1984) 4 SCC 116
2 (2002) 8 SCC 45
3 1994 Supp (2) SCC 372
4 AIR 1991 SC 1674
5 (2012) 6 SCC 403
6 (2014) 4 SCC 715
7 (2018) 15 SCC 161

was found on frock Article G of deceased Jasmine and on T-Shirt Article H1 of deceased Shubham. Likewise, human blood was found on Article H2 underwear of deceased Shubham. However, the FSL report does not connect the accused with the commission of offence as it was not sent for serologist report in view of the decision of the Supreme Court in the matter of Sattatiya alias Satish Rajanna Kartalla v. State of Maharashtra[8].

4. The accused immediately after the incident did not went untraceable, he was found staying in the house of his sister-in-law at Village Jamhari Sajapali and there is no investigation on the point of whereabouts of the accused at the relevant point of time, therefore, no adverse inference can be drawn against the appellant. Reliance has been placed upon the decisions of the Supreme Court in the matters of Durga Burman Roy v. State of Sikkim[9]and Sunil Clifford Daniel v. State of Punjab[10] in support thereof.

5. The prosecution was under bounden duty to prove its case beyond all reasonable doubts; when the prosecution is failed to prove its case, it cannot take advantage of the fact that the accused has not been able to probabilise his defence. It is settled law that the prosecution must stand or fall on its own. Reliance has been placed upon the decision of the Supreme Court in the matter of Kanhaiya Lal v. State of Rajasthan[11].

6. In a case based on circumstantial evidence, motive to commit

8 (2008) 3 SCC 210
9 (2014) 13 SCC 35
10 (2012) 11 SCC 205
11 (2014) 4 SCC 715

crime plays an important role and assumes importance. In the instant case, the prosecution has not proved any motive of the accused to commit the crime in question. Learned counsel relied upon the decisions of the Supreme Court in the matters of **Tarseem Kumar v. Delhi Administration**[12], **Amitava Banerjee alias Amit alias Bappa Banerjee v. State of West Bengal**[13] and **Kanhaiya Lal** (supra) to buttress his submission.

7. Lastly, Mr. Gwalre, learned counsel, would submit that the learned Additional Sessions Judge has committed grave legal error in holding the present case falls within the category of rarest of rare case and failed to follow the legal proposition laid down by the Constitution Bench of the Supreme Court in the matter of **Bachan Singh v. State of Punjab**[14] and the learned Additional Sessions Judge has failed to record special reasons for sentencing the accused / appellant to death as required under Section 354(3) of the CrPC.

8. Concluding the submissions, Mr. Gwalre, learned counsel, would submit that the prosecution has miserably failed to connect the accused / appellant with the crime in question either by direct, medical or circumstantial evidence and therefore the appellant be acquitted from the charge and the criminal appeal be allowed and the reference be rejected.

10. On the other hand, Mr. Sunil Otwani, learned Additional Advocate General, ably assisted by Mr. Sudeep Verma, learned Deputy Govt.

12 1994 Supp (3) Scc 367
13 (2011) 12 SCC 554
14 AIR 1980 SC 898

Advocate, would submit that the prosecution has brought sufficient material in shape of ocular, medical and circumstantial evidence to justify conviction of the appellant for the above-stated offence. He would further submit that this is a case of rarest of rare case where the appellant has took away the custody of his two minor son & daughter Shubham & Jasmine from the custody of their mother Gowri Bai (PW-3) on the pretext of celebrating Republic Day on 26th January, 2017 and thereafter brutally murdered them, by decapitating their neck from the rest of the body and absconded from the scene of occurrence by locking the house which will fall within the meaning of rarest of rare case as indicated by their Lordships of the Supreme Court in **Bachan Singh** (supra). He would further submit that the manner in which murder of his own son & daughter has been committed by the appellant brutally by cutting off the neck from the rest of the body, it can be said to be a rarest of rare case and there is no chance of reformation of the appellant and he is burden to the society, therefore, imprisonment for life or other sentence is completely inadequate, only the sentence of death would be appropriate and adequate punishment which has rightly been awarded to him. He would also submit that once the theory of last seen together is found established and coupled / corroborated with other incriminating circumstances, conviction can be maintained on those cumulative circumstances. He would contend that on the basis of memorandum statement of the accused Ex.P-17, T-Shirt & half pant of the accused were recovered vide Ex.P-19 and as per the FSL report Ex.P-15, human blood was found on T-Shirt & half pant of the accused, on frock of deceased Jasmine and also on T-

Shirt & underwear of deceased Shubham. In absence of serologist report to match the blood groups, still it is on substantive proof of circumstantial evidence and no benefit would be extended in favour of the accused. He would rely upon the decision of the Supreme Court in the matter of **Balwan Singh v. State of Chhattisgarh and another**[15] to support his contention. Mr. Otwani, learned Additional Advocate General, would further contend that seizure of bloodstained clothes vide Exs.P-18 & P-19 pursuant to the memorandum statement Ex.P-17 at the instance of the accused itself is a substantial piece of evidence containing truth and is an incriminating circumstance in the chain of circumstantial evidence against the accused. He would further rely upon the decision of the Supreme Court in the matter of **Suresh Chandra Bahri v. State of Bihar**[16] in support of his contention. He would also contend that absence of motive would not prejudice the case of the prosecution as absence of motive could be a missing link of incriminating circumstances but once the prosecution case has established other incriminating circumstances to its entirety, absence of motive will not give any benefit to the accused and would rely upon the decision of the Supreme Court in the matter of **State of Gujarat v. Anirudhsing and another**[17] and that of the Delhi High Court in the matter of **Ramesh Kumar alias Rameshwar v. State**[18]. Lastly, he would submit that in view of the aforesaid evidence available on record, the criminal appeal preferred by the accused deserves to be dismissed and the death sentence awarded to him deserves to be

15 (2019) 7 SCC 781
16 1995 Supp (1) SCC 80
17 (1997) 6 SCC 514
18 2010 Cri.L.J. 85 (Delhi High Court)

confirmed.

11. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record of the trial Court thoroughly and extensively.

12. In order to consider the submissions raised by learned counsel for the parties, since the case is merely based on ocular / circumstantial evidence and medical evidence, we will consider the evidence together.

<u>Circumstantial Evidence (Last Seen Together)</u>

13. The prosecution has mainly relied upon the theory of last seen together of the appellant with Shubham and Jasmine – son and daughter of the appellant herein. It is the case of the prosecution that relation of the appellant with his wife became strained and on account of that, 3-4 days prior to the date of incident, his wife Geeta (PW-2) left her matrimonial house along with her son Shubham and daughter Jasmine to her parents' house namely, Gowri Bai (PW-3) – mother and Setram (PW-5) – father, but immediately after one day, the appellant reached there to take his son & daughter back with him to which Geeta (PW-2) refused, but on 25-1-2017 again the appellant reached to the house of his father-in-law & mother-in-law and took away both the children to his house on the pretext of celebrating Republic Day in absence of Geeta (PW-2) – wife of the accused and Setram (PW-5) – father-in-law of the accused. Thereafter, on the very next day, dead bodies of Shubham & Jasmine were seen and found near the field of Puran Sidar at Village Kayatpali.

14. Gowri Bai (PW-3) has clearly stated that 4-5 days prior to 26th January, 2017, her daughter Geeta came to her house along with her children Shubham & Jasmine, thereafter, after two days, Dolalal – the appellant herein, came and on the pretext of celebrating 26th January, took away both the children with him. On cross-examination, she has clarified that on 25th January, the appellant has taken away the children at 1-1.30 p.m. when she was all alone in the house and despite having resisted by her, he had taken away them forcibly in absence of their mother and her husband Setram (PW-5), next day, their dead bodies were noticed and found near the field of Puran Sidar. In cross-examination, she has maintained her version by clearly stating that Dolalal has taken her grand-son and grand-daughter to his village and on next day, when they reached to the house of Dolalal, none were present in his house.

15. Gunmani Pareshwar (PW-4), who is relative of the accused, was informed about the dead bodies of Shubham & Jasmine, he was taken to the spot in question and he has seen the dead bodies of Shubham & Jasmine and he has informed the police through Kotwar of Village and when they visited the house of the appellant along with the police, the appellant's house was locked and he was absconding and thereafter, he was found in Village Jamhari (Sajapali).

16. Mr. Gwalre, learned counsel for the appellant, has heavily relied upon paragraph 15 of the evidence of Gunmani Pareshwar (PW-4) wherein he has stated that on 25th January, Dolalal was not in the village and he has seen his daughter Jasmine in the village.

17. Setram (PW-5) has corroborated the statement of his wife Gowri Bai

(PW-3) and clearly informed that one day prior to the date of incident, Dolalal came intoxicated and on the pretext of celebrating 26th January – Republic Day, he has taken away the children with him and next day, he has gone to school for Republic Day, then he came to know that the appellant has caused murder of his grand-son and grand-daughter by spade and thereafter, he visited the spot where he found the dead bodies of Shubham & Jasmine.

18. Though Geeta (PW-2) and Setram (PW-5) are hearsay witnesses, but the statement of Gowri Bai (PW-3) remains uncontroverted to the effect that custody of her grand-son & grand-daughter – Shubham & Jasmine was taken away by the appellant herein and as such, the fact of last seen together of the appellant with Shubham & Jasmine alive is clearly established and rightly been found estbalished by the learned trial Court.

19. The law with regard to circumstantial evidence is well settled. In a case where the prosecution relies upon the circumstantial evidence, it must not only prove the circumstances but should link them in such a fashion so as to form an unending chain i.e. the guilt of the accused. But if there is any chance of the accused being innocent or the crime has been committed by some other person, then the accused has to be given the benefit of doubt and on the basis of circumstantial evidence, he cannot be convicted.

20. The law laid down by their Lordships of the Supreme Court in Sharad Birdhichand Sarda (supra) is that the conditions which must be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence are as under:-

(1) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established.

(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."

21. In Sharad Birdhichand Sarda (supra), the Supreme Court has further held that suspicion, however strong, cannot take the place of legal proof. It has also been held that the well established rule of criminal justice is that "fouler the crime higher the proof" and in case of capital sentence, a very careful, cautious and meticulous approach was necessary to be made. It has been observed in paragraph 180 of the report as under: -

> "180. It must be recalled that the well established rule of criminal justice is that "fouler the crime higher the proof". In the instant case, the life and liberty of a subject was at stake. As the accused was given a capital sentence, a very careful, cautious and meticulous approach was necessary to be made."

22. At this stage, it is appropriate to notice the submission of learned counsel for the appellant that the solitary circumstance of last seen together is not conclusive in itself to hold the suspect guilty. It comes into play when other attending circumstances stand proved beyond all reasonable doubts. This submission will be dealt with at the later stage after considering the other piece of evidence. The further argument of learned counsel for the appellant that the evidence of Gowri Bai (PW-3) needs to be scrutinized carefully will also be considered at appropriate stage.

Memorandum statement and seizure of clothes from the appellant: -

23. The memorandum statement of the appellant was recorded vide Ex.P-17 and seizure of clothes from the house of the accused / appellant was made vide Ex.P-19 and seizure of spade from the spot was made vide Ex.P-18. Rohit Kumar Tandi (PW-7) and Karuna Nagesh (PW-8) have proved the fact of seizure at the instance of the accused. They have categorically supported the case of the prosecution while acknowledging the memorandum statement of the accused and consequently, recovery and seizure have been made from the accused / appellant herein.

24. The two essential requirements for the application of Section 27 of the Evidence Act are that (1) the person giving information must be an accused of any offence and (2) he must also be in police custody. The Supreme Court in Suresh Chandra Bahri (supra), has clearly held that the provisions of Section 27 of the Evidence Act are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was

true and consequently the said information can safely be allowed to be given in evidence because if such an information is further fortified and confirmed by the discovery of articles or the instrument of crime and which leads to the belief that the information about the confession made as to the articles of crime cannot be false. In the instant case, pursuant to the disclosure statement made by the appellant herein, recovery of bloodstained T-Shirt and half pant of the accused was made vide Ex.P-19 and as such, it can be held that the disclosure statement was true and the evidence led in that behalf is also worthy of acceptance and credence.

25. Mr. Gwalre, learned counsel for the appellant, has made vehement submission that spade was found lying on the spot as per the statements of Dhaneshwar (PW-1), Gunmani Pareshwar (PW-4), Setram (PW-5), Rohit Kumar Tandi (PW-7), Karuna Nagesh (PW-8) and Dauram Sagar (PW-12), but there is no explanation for not making the seizure of spade though it was lying on the spot while preparing Dehati Nalishi (Ex.P-1), Dehati Morgue (Ex.P-2), map (Ex.P-6) and Dehati Morgue (Ex.P-23). However, since the trial Court has not accepted this as a piece of incriminating evidence, we are not dealing with the effect of not making the seizure of spade at the earlier point of time by the prosecution.

Medical Evidence

26. Admittedly, as per the disclosure statement of the accused / appellant, T-Shirt (E1) & half pant (E2) of the accused were recovered from his possession vide Ex.P-19 and they were sent to the FSL for examination and vide Ex.P-15, human blood was found on T-Shirt

(E1) and human blood of Group B was found on half pant (E2) of accused / appellant Dolalal. Similarly, human blood was found on frock of Jasmine and on T-Shirt & underwear of Shubham.

27. It has been contended by learned counsel for the appellant that the FSL report does not connect the accused / appellant with the alleged commission of offence in absence of Serology report and he relied upon the decision of the Supreme Court in **Sattatiya alias Satish Rajanna Kartalla** (supra).

28. In **Sattatiya alias Satish Rajanna Kartalla** (supra), the two-Judges Bench of the Supreme Court has held that as per the chemical examiner's report the bloodstains found on the shirt, pants and half blade were those of human blood, the same could not be linked with the blood of the deceased and thereby there was serious lacuna in the prosecution story. The Supreme Court, however, in **Balwan Singh** (supra) (three-Judges Bench), has considered the decision in **Sattatiya alias Satish Rajanna Kartalla** (supra) in paragraph 12 of its report and also noticed the Constitution Bench decision in the matter of **Raghav Prapanna Tripathi v. State of U.P.**[19] and summarised the law relating to effect of failure to establish origin of blood as being of human origin and/or its blood group and held that the same has to be ascertained in the facts and circumstances of each case, and there is no fixed formula for the same. It has been observed in paragraphs 15, 16, 20, 21, 22 and 23 of the report – **Balwan Singh** (supra) as under: -

> "15. We are also conscious of the fact that, at times, it may be very difficult for the serologist to detect the origin of

19 AIR 1963 SC 74

the blood due to the disintegration of the serum, or insufficiency of bloodstains, or haematological changes, etc. In such situations, the court, using its judicious mind, may deny the benefit of doubt to the accused, depending on the facts and circumstances of each case, if other evidence of the prosecution is credible and if reasonable doubt does not arise in the mind of the court about the investigation.

16. Thus, in *R. Shaji v. State of Kerala*[20], this Court had observed:

> "31. A failure by the serologist *to detect the origin of the blood due to disintegration of the serum does not mean that the blood stuck on the axe could not have been human blood at all*. Sometimes it is possible, either because the stain is insufficient in itself, or due to haematological changes and plasmatic coagulation, that a serologist may fail to detect the origin of the blood in question. However, in such a case, unless the doubt is of a reasonable dimension which a judicially conscientious mind may entertain with some objectivity, no benefit can be claimed by the accused in this regard. Once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or non-matching of blood group(s) loses significance."
>
> (emphasis in original)

20. However, we cannot lose sight of the fact that the accused would be in a disadvantageous position in case if the aforementioned dictum laid down by this Court in *R. Shaji*, *Gura Singh*[21], *Jagroop Singh*[22] and *Teja Ram*[23] relating to the bloodstains is applied in each and every case. Non-confirmation of blood-group or origin of the blood may assume importance in cases where the accused pleads a defence or alleges mala fides on the part of the prosecution, or accuses the prosecution of fabricating the evidence to wrongly implicate him in the commission of the crime.

21. In *John Pandian v. State*[24], this Court, on facts,

20 (2013) 14 SCC 266
21 Gura Singh v. State of Rajasthan, (2001) 2 SCC 205
22 Jagroop Singh v. State of Punjab, (2012) 11 SCC 768
23 State of Rajasthan v. Teja Ram, (1999) 3 SCC 507
24 (2010) 14 SCC 129

observed that the evidence of recovery of weapons was credible. The forensic science laboratory (FSL) report had disclosed that the blood was of human origin. The Court proceeded to conclude that since the evidence of recovery of weapon was proved to the satisfaction of the Court, it was sufficient that the prosecution had proved that the bloodstains were of human origin, even though the blood group could not be ascertained.

22. The cases discussed above highlight the burden that the prosecution would ordinarily have to discharge, depending on the other facts and circumstances of the case, for the evidence relating to recovery to be considered against the accused. At the same time, as mentioned above, we are conscious of the fact that it may not always be possible to inextricably link the bloodstains on the items seized in recovery to the blood of the deceased, due to the possibility of disintegration of bloodstains on account of the time-lapse in carrying out the recovery. For this reason, in *Prabhu Dayal v. State of Rajasthan*[25], where one of us (Mohan M. Shantanagoudar, J.) had the occasion to author the judgment, this Court, relying on *Teja Ram*, had held that the failure to determine the blood group of the bloodstains collected from the scene of offence would not prove fatal to the case of the prosecution. In *Prabhu Dayal case*, although the FSL report could not determine the blood group of the bloodstains on account of disintegration, the report clearly disclosed that the bloodstains were of human origin, and the chain of circumstantial evidence was completed by the testimonies of the other witnesses as well as the reports submitted by the ballistic expert and the forensic science laboratory regarding the weapon used to commit murder.

23. From the aforementioned discussion, we can summarise that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin though, even though the blood group is not proved because of disintegration of blood. The Court will have to come to the conclusion based on the facts and circumstances of each case, and there cannot be any fixed formula that the prosecution has to prove, or need not prove, that the blood groups match."

25 (2018) 8 SCC 127

29. Reverting to the facts of the case in the light of the principles of law laid down in **Balwan Singh** (supra) which has followed the decision in **John Pandian** (supra), it is quite vivid that in the instant case, the FSL report Ex.P-15 has clearly disclosed that bloodstains found on T-shirt (E1) and on half pant (E2) of appellant Dolalal was human blood. We have also found in the earlier paragraphs that the evidence of recovery of T-Shirt (E1) and half pant (E2) has been found proved in the judgment of the trial Court and further disclosed and as such, since the prosecution has proved that the bloodstains were of human origin, non-confirmation of blood-group would not be fatal to the prosecution case as held by their Lordships of the Supreme Court in **John Pandian** (supra) in same facts of the case. Even otherwise, it is not the case of defence nor it has been found established that investigation of the instant case, in any way was tainted. As such, failure to determine blood-group of the bloodstained clothes recovered and seized at the instance of the accused/appellant would not make the prosecution case weak.

Abscondence of accused:

30. The trial Court has found that immediately after the incident, the appellant went missing and was found in the house of his sister-in-law at Village Jamhari (Sajapali) and that is the additional circumstance available against the accused. The Supreme Court in **Durga Burman Roy** (supra), relying upon the decision in the matter of **Sunil Kundu v. State of Jharkhand**[26] held that absconding by itself does not prove the guilt of a person. A person may run away due to fear of false

26 (2014) 13 SCC 35

implication or arrest. It has been observed as under: -

> "13. "To abscond" means, go away secretly or illegally and hurriedly to escape from custody or avoid arrest. It has come in evidence that the accused had told others that they were going from their place of work at Gangtok to their home at New Jalpaiguri. They were admittedly taken into custody from their respective houses only, at New Jalpaiguri on the third day of the incident. Therefore, it is difficult to hold that the accused had been absconding. Even assuming for argument's sake that they were not seen at their work place after the alleged incident, it cannot be held that by itself an adverse inference is to be drawn against them ..."

31. Similarly, in **Sunil Clifford Daniel** (supra), the Supreme Court has held that the mere act of absconding, on the part of the accused, alone does not necessarily lead to a final conclusion regarding the guilt of the accused, as even an innocent person may become panic-stricken and try to evade arrest, when suspected wrongly of committing a grave crime; such is in the instinct of self-preservation. It is held so accordingly.

Motive

32. It is the case of appellant that the prosecution has failed to prove motive on the part of the appellant to commit murder of his own son and daughter and in case of circumstantial evidence, motive to commit crime plays important role and assumes importance.

33. In **Tarseem Kumar** (supra), the Supreme Court has clearly held that when the prosecution case is based solely on the circumstantial evidence, the court has to be satisfied that: (i) The circumstances from which conclusion of guilt is to be drawn has been fully established. (ii) All the facts so established are consistent only with the hypothesis of

guilt of the accused and they do not exclude trustworthy or not. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance.

34. Similarly, in **Amitava Banerjee** (supra), the Supreme Court has laid down the principles holding that motive for the commission of an offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of the offence is available. And yet failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. It has been observed as under: -

> "41. Motive for the commission of an offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of the offence is available. And yet failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. All that the absence of motive for the commission of the offence results in is that the court shall have to be more careful and circumspect in scrutinizing the evidence to ensure that suspicion does not take the place of proof while finding the accused guilty.
>
> 42. Absence of motive in a case depending entirely on circumstantial evidence is a factor that shall no doubt weigh in favour of the accused, but what the courts need to remember is that motive is a matter which is primarily known to the accused and which the prosecution may at times find difficult to explain or establish by substantive evidence.
>
> 43. Human nature being what it is, it is often difficult to fathom the real motivation behind the commission of a crime. And yet experience about human nature, human conduct and the frailties of human mind has shown that inducements to crime have veered around to what Wills has in his book *Circumstantial Evidence* said:

> "The common inducements to crime are, the desire of revenging some real or fancied wrong; of getting rid of rival or an obnoxious connection; of escaping from the pressure of pecuniary or other obligation or burden; of obtaining plunder or other coveted object; of preserving reputation, either that of general character or the conventional reputation of profession or sex; or of gratifying some other selfish or malignant passion."
>
> 44. The legal position as to the significance of motive and effect of its absence in a given case is fairly well settled by the decisions of this Court to which we need not refer in detail to avoid burdening this judgment unnecessarily. (See *Dhananjoy Chatterjee v. State of W.B.*, (1994) 2 SCC 220, *Surinder Pal Jain v. Delhi Admn.*, 1993 Supp (3) SCC 681, *Tarseem Kumar v. Delhi Admn.*, 1994 Supp (3) SCC 367, *Jagdish v. State of M.P.*, (2009) 9 SCC 495 and *Mulakh Raj v. Satish Kumar*, (1992) 3 SCC 43.)"

35. However, it is also well settled and it is trite law that absence of motive could be a missing link of incriminating circumstances, but once the prosecution has established the other incriminating circumstances to its entirety, absence of motive will not give any benefit to the accused. {See **Anirudhsing's** case (supra), **Suresh Chandra Bahri** (supra) and **Ramesh Kumar alias Rameshwar** (supra).} As such, mere absence of motive would not be fatal to the prosecution case.

36. Now, the question would be whether on the basis of incriminating circumstance of last seen together, memorandum statement followed by seizure of bloodstained clothes of the accused and further, the FSL report Ex.P-15 having found the bloodstains to be of human origin, conviction of the appellant for offence under Section 302 of the IPC can be sustained?

37. It has been vehemently contended by learned counsel for the

appellant that the circumstance of last seen together itself is the only evidence against the appellant to hold him guilty and other incriminating circumstances have not been found proved.

38. The Supreme Court in **Bodhraj alias Bodha** (supra) has held that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by this Court. Similarly, in **Arjun Marik** (supra), it has been held that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused. Likewise, in **Inderjit Singh** (supra), it has been held that in a case pending on circumstantial evidence, the prosecution must establish all the circumstances by independent evidence and the circumstances so established must form a complete chain in proof of guilt of the accused beyond all reasonable doubts. The circumstances so proved must also be consistent only with the guilt of the accused. Similarly, in **Kanhaiya Lal** (supra), the Supreme Court has held that the circumstance of last seen together does not by itself necessarily lead to inference that it was accused who committed crime and there must be something more establishing connection between accused and crime, that points to guilt of accused and none else.

39. Reverting to the facts of the case, it is quite vivid that it is not the only evidence of last seen together of the appellant and his son & daughter / deceased persons, apart from that there are recoveries made from the house of the accused i.e. bloodstained T-Shirt & half pant of the accused vide Ex.P-19 pursuant to the disclosure statement made by

him vide Ex.P-17 and the same have been found proved by the trial Court and also by us in the foregoing paragraphs. Furthermore, FSL report Ex.P-15 shows that human blood was present on the bloodstained T-Shirt and half pant seized from the accused. In absence of determination of blood-group, non-confirmation of blood-group would not be fatal to the prosecution case and conduct of the accused in absconding from the spot is also a relevant fact to be considered which has been taken into account by us. As such, it cannot be held that only on the basis of theory of last seen together as one of the incriminating circumstances, conviction has been recorded by the trial Court, it is coupled with the other incriminating circumstances as pointed out and even if motive of the crime is missing, that will not make the prosecution case fatal.

40. Thus, after appreciating the entire ocular and medical evidence on record, we do not find any illegality in appreciation of oral, medical and circumstantial evidence or arriving at a conclusion as to the guilt of the appellant by the trial Court warranting interference by this Court and we accordingly hereby confirm the conviction of the appellant recorded under Section 302 of the IPC.

41. Now, the next question would be the question of death sentence awarded by the learned Additional Sessions Judge to the appellant herein directing that he should be hanged to death till his death and it has been sent to us for confirmation in accordance with Section 366 of the CrPC.

Death sentence

42. Now, the only question is, whether this case falls under the category

of rarest of rare case justifying capital punishment. Their Lordships of the Supreme Court in umpteen number of judgments have laid down principles for awarding capital punishment for which the balance between aggravating circumstances and mitigating circumstances has to be struck. Seven other factors like, age of the accused, possibility of reformation and lack of intention of murder have also to be gone into the judicial mind.

43. Death penalty or imprisonment for life for the commission of murder under Section 302 of the IPC has been provided. In case of conviction under Section 302 of the IPC or any conviction for an offence punishable with death or in the alternative imprisonment for life, the Court is required to assign special reasons for awarding such penalty and the special reason for awarding death sentence in accordance with sub-section (3) of Section 354 of the CrPC. Sub-section (3) of Section 354 of the CrPC reads as under:-

> **"S. 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."

44. The language of Section 354(3) of the CrPC demonstrates the legislative concern and the conditions which need to be satisfied prior to imposition of death penalty. The words, 'in the case of sentence of death, the special reasons for such sentence' unambiguously demonstrate the command of the legislature that such reasons have to be recorded for imposing the punishment of death sentence i.e. the Court is required to hold that it is a case of rarest of rare warranting

imposition of only death sentence.

45. While dealing with the question of imposing death penalty, in the matter of **Sushil Murmu v. State of Jharkhand**[27], the Supreme Court after relying on **Bachan Singh** (supra), has summarized the law with regard to imposition of death sentence on the basis of guidelines emerges from the case of **Bachan Singh** (supra). Brutal, grotesque, diabolical, revolting or dastardly manner in which murder committed has been considered as rarest of rare case for imposition of death penalty. Multiple murders of almost all the members of a family or a member of particular caste, community or locality has also been considered as rarest of rare case for imposing death penalty. While dealing with the imposition of death penalty in the aforesaid cases, the Supreme Court has also considered it to be a rarest of rare case in case of murder of a innocent child or a helpless woman or old or infirm person or a person vis-à-vis whom the murderer is in a dominating position or a public figure generally loved and respected by the community and for such commission of murders, death penalty can be imposed.

46. While dealing with the question of imposition of death penalty for commission of murder, the Supreme Court in **Bachan Singh** (supra) held that provision of death penalty as an alternative punishment for murder is not violative of Article 19 of the Constitution of India. Paragraph 132 of the report is relevant and reads as under:

> "132. To sum up, the question whether or not death penalty serves any penological purpose is a difficult, complex and intractable issue. It has evoked strong

27 2003 AIR SCW 6782

divergent views. For the purpose of testing the constitutionality of the impugned provision as to death penalty in Section 302, Penal Code on the ground of reasonableness in the light of Articles 19 and 21 of the Constitution, it is not necessary for us to express any categorical opinion, one way or the other, as to which of these two antithetical views, held by the Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion on this issue, is a ground among others, for rejecting the petitioner's argument that retention of death penalty in the impugned provision, is totally devoid of reason and purpose. If notwithstanding the view of the Abolitionists to the contrary, a very large segment of people, the world over, including sociologists, legislators, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of society, if in the perspective of prevailing crime conditions in India, contemporary public opinion channelized through the people's representatives in Parliament, has repeatedly in the last three decades, rejected all attempts, including the one made recently, to abolish or specifically restrict the area of death penalty, if death penalty is still a recognised legal sanction for murder or some types of murder in most of the civilized countries in the world, if the framers of the Indian Constitution were fully aware as we shall presently show they were of the existence of death penalty as punishment for murder, under the Indian Penal Code, if the 35th Report and subsequent Reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code and the insertion of the new Sections 235 (2) and 354 (3) in that Code providing for pre-sentence hearing and sentencing procedure on conviction for murder and other capital offences were before the Parliament and presumably considered by it when in 1972-1973 it took up revision of the Code of 1898 and replaced it by the Code of Criminal Procedure, 1973, it is not possible to hold that the provision of death penalty as an alternative punishment for murder, in Section 302, Penal Code is unreasonable and not in the public interest. We would, therefore, conclude that the impugned provision in Section 302, violates neither the letter or the ethos of Article 19."

47. While dealing with the circumstances in which the death sentence

may be imposed, the Supreme Court has summarized the circumstances and following guidelines have been issued for imposition of death sentence. Paragraph 179 of the report reads thus:-

> "179. Soon after the decision in Furman, the Georgia Legislature amended its statutory scheme. The amended statute retains the death penalty for six categories of crime: murder, kidnapping for ransom or where victim is harmed, armed robbery, rape, treason, and aircraft hijacking. The statutory aggravating circumstances, the existence of any of which may justify the imposition of the extreme penalty of death, as provided in that statute, are:
>
> (1) The offence of murder, rape, armed robbery, or kidnapping was committed by a person with a prior record of conviction for a capital felony, (or the offence of murder was committed by a person who has a substantial history of serious assaultive criminal convictions).
>
> (2) The offence of murder, rape, armed robbery, or kidnapping was committed while the offender was engaged in the commission of another capital felony, or aggravated battery, or the offence of murder was committed while the offender was engaged in the commission of burglary or arson in the first degree.
>
> (3) The offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person.
>
> (4) The offender committed the offences of murder for himself or another, for the purpose of receiving money or any other thing of monetary value.
>
> (6) The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.
>
> (7) The offences of murder, rape, armed robbery, or kidnapping was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an

aggravated battery to the victim.

(8) The offence of murder was committed against any peace officer, corrections employee or fireman while engaged in the performance of his official duties.

(9) The offence of murder was committed by a person in, or who has escaped from, the lawful confinement.

(10) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another."

The Supreme Court has further considered the mitigating circumstances in paragraph 204 of the said judgment as under:

"204. Dr Chitale has suggested these mitigating factors:

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

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

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

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

4. The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

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

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

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

48. After considering **Bachhan Singh** (supra), in the matter of **Machhi Singh v. State of Punjab**[28], the Supreme Court has summarized the instances of imposition of death sentence in paragraph 38 which reads thus:

> "38. In this background the guidelines indicated in Bachan Singh's case (supra) will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh's case:-
>
> (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;
>
> (ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.
>
> (iii) Life Imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances;
>
> (iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised."

49. As held by the Supreme Court in the matters of **Panchhi and others v. State of U.P.**[29], **Jai Kumar v. State of M.P.**[30] and **State of U.P. v.**

28 (1983) 3 SCC 470
29 (1998) 7 SCC 177
30 (1999) 5 SCC 1

Satish[31], imposition of life imprisonment is normal rule and imposition of death sentence is exception. In case of imposing death sentence, the prosecution is required to prove that it was a case of rarest of rare and no other sentence except death sentence is adequate.

50. While dealing with the question of imposition of death penalty, the Supreme Court has held that in case of imposing death penalty, capital punishment provided by law is proper award in rarest of the rare cases and not as a normal rule and in Sushil Murmu (supra), the Supreme Court has summarized the law with regard to imposition of death sentence. Paragraphs 15 and 16 of the report read as under:

> "15. The following guidelines which emerge from *Bachan Singh case* will have to be applied to the facts of each individual case where the question of imposition of death sentence arises: (SCC p. 489, para 38)
>
> (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.
>
> (ii) Before opting for the death penalty the circumstances of the "offender" also require to be taken into consideration along with the circumstances of the "crime".
>
> (iii) Life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.
>
> (iv) A balance sheet of aggravating and mitigating

31 (2005) 3 SCC 114

circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

16. In rarest of rare cases when the collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances:

1. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.

2. When the murder is committed for a motive which evinces total depravity and meanness e.g. murder by a hired assassin for money or reward or a cold-blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust, or murder is committed in the course of betrayal of the motherland.

3. When murder of a member of Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of “bride-burning” or “dowry deaths” or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

4. When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

5. When the victim of the murder is an innocent child, or a helpless woman or an old or infirm person or a person vis-à-vis whom the

> murderer is in a dominating position or a public figure generally loved and respected by the community."

51. While dealing with the question of brutality in the matter of **Ashrafi Lal and Sons v. State of U.P.**[32], the Supreme Court has held that it is the duty of the Court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment. In case of gruesome murder of two innocent girls to wreak their personal vengeance over the dispute, the death sentence awarded to the appellants was confirmed. Paragraph 3 reads as under:

> "3. We have heard learned counsel for the appellants mainly on the question of sentence but we are not impressed with his submission. The two appellants Ashrafi Lal and Babu were guilty of a heinous crime out of greed and personal vengeance and deserve the extreme penalty. This case falls within the test 'rarest of of rare cases' as laid down by this Court in Bachan Singh v. State of Punjab (1980) 2 SCC 684 : (AIR 1980 SC 898) as elaborated in the later case of Machhi Singh v. State of Punjab (1983) 3 SCC 470 : (AIR 1983 SC 957). The punishment must fit the crime. These were cold-blooded brutal murders in which two innocent girls lost their lives. The extreme brutality with which the appellants acted shocks the judicial conscience. Failure to impose a death sentence in such grave cases where it is a crime against the society particularly in cases of murders committed with extreme brutality will bring to naught the sentence of death provided by S. 302 of the Penal Code. It is the duty of the Court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment. The only punishment which the appellants deserve for having committed the reprehensible and gruesome murders of the two innocent girls to wreak their personal vengeance over the dispute they had with regard to property with their mother Smt. Bulakan is nothing but death. As a measure of social necessity and also as a

32 AIR 1987 SC 1721

> means of deterring other potential offenders the sentence of death on the two appellants Asharfi Lal and Babu is confirmed."

52. While dealing with the question of brutality, in the case of **Subhash Ramkumar Bind @ Vakil and another v. State of Maharashtra**[33], the Supreme Court has held that in every incident of murder brutality is involved but that brutality by itself will not bring it within the ambit of rarest of rare cases for imposition of death penalty. The requirement to prove the fact that brutality in the present case was exceptional and rarest of rare also to show that there is something uncommon about the crime which renders the sentence of imprisonment of life inadequate and called for death sentence.

53. In the matter of **Dhananjoy Chatterjee v. State of W.B.**[34], the Supreme Court while dealing with the question of penology for imposing death penalty, has held that Courts are required to impose proper punishment in the manner in which the Courts respond to the society's cry for justice against the criminals. Justice demands that Courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. Paragraphs 14 and 15 are relevant and read as under:

> "14. In recent years, the rising crime rate – particularly violent crime against women has made the criminal sentencing by the courts a subject of concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility. Of course, it

33 AIR 2003 SC 269
34 (1994) 2 SCC 220 : 1994 SCC (Cri) 358

> is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.
>
> 15. In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that Courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment."

54. While dealing with the question of imposition of death sentence affirmed by the Supreme Court, the Supreme Court in the matter of Sonu Sardar v. State of Chhattisgarh[35], in which case death sentence upon young male has been imposed, has held that the appellant though young but having no consideration for human lives and his criminal propensities being beyond reform, is a menace to the society, death sentence is proper being a case of rarest of rare, and observed in paragraphs 18 to 22 as follows: -

> "18. As against these aggravating circumstances, the trial court did not find any mitigating circumstance in favour of the appellant to avoid the death penalty. This is, therefore,

35 (2012) 4 SCC 97

not one of those cases in which the trial court has not recorded elaborate reasons for awarding death sentence to the appellant as contended by the learned counsel for the appellant.

19. Regarding the role of the appellant in the commission of the offence of dacoity and murder, we have already found that the turban and T-shirt of the appellant, which were seized and sent for examination to the Forensic Science Laboratory, had presence of human blood. We have also found that the axe and the iron rod, which were recovered pursuant to the statement of the appellant, had also bloodstains. We have also found from the evidence of PW-1 that when her mother was cooking food and came out on hearing the commotion, the appellant was demanding money from her father and her father gave to the appellant all the money which he was having in his pocket.

20. There is, therefore, clear and definite evidence in this case to show that the appellant not only participated in the crime, but also played the lead role in the offence under Section 396 IPC. This is, therefore, not a case where it can be held that the role of the appellant was not such as to warrant death sentence under Section 396 IPC.

21. In a recent judgment in *Sunder Singh v. State of Uttaranchal*[36] this Court found that the accused had poured petrol in the room and set it to fire and closed the door of the room when all the members of the family were having their food inside the room and, as a result, five members of the family lost their lives and the sixth member of the family, a helpless lady, survived. This Court held that the accused had committed the crime with premeditation and in a cold-blooded manner without any immediate provocation from the deceased and all this was done on account of enmity going on in respect of the family lands and this was one of those rarest of rare cases in which death sentence should be imposed.

22. The facts in the present case are no different. Five members of a family including two minor children and the driver were ruthlessly killed by the use of a knife, an axe and an iron rod and with the help of four others. The crime was obviously committed after premeditation with

36 (2010) 10 SCC 611

absolutely no consideration for human lives and for money. Even though the appellant is young, his criminal propensities are beyond reform and he is a menace to the society. The trial court and the High Court were therefore right in coming to the conclusion that this is one of those rarest of rare cases in which death sentence is the appropriate punishment."

55. While dealing with serious consideration relating to imposing of death sentence, the Supreme Court in the matter of **Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra**[37], in paragraph 135, has observed as follows: -

> "135. Right to life, in its barest of connotation would imply right to mere survival. In this form, right to life is the most fundamental of all rights. Consequently, a punishment which aims at taking away life is the gravest punishment. Capital punishment imposes a limitation on the essential content of the fundamental right to life, eliminating it irretrievably. We realise the absolute nature of this right, in the sense that is a source of all other rights. Other rights may be limited, and may even be withdrawn and then grated again, but their ultimate limit is to be found in the preservation of the right to life. Right to life is the essential content of all rights under the Constitution. If life is taken away, all other rights cease to exist."

56. On the basis of law enunciated by the Supreme Court on the subject i.e. for imposition of death sentence, the Supreme Court in the matter of **Ramnaresh and others v. State of Chhattisgarh**[38] has summarized the instances for imposition of death sentence in which the sentence other than death sentence would not be adequate or meaningful, and has observed in paragraph 76 as follows: -

> "76. The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in Bachan Singh (supra) and thereafter, in Machhi Singh (supra). The aforesaid

37 (2009) 6 SCC 498
38 (2012) 4 SCC 257

judgments, primarily dissect these principles into two different compartments—one being the “aggravating circumstances” while the other being the “mitigating circumstances”. The Court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the Court. It will be appropriate for the Court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the Court as contemplated under Section 354(3) CrPC.

Aggravating Circumstances:

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody

in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 CrPC.

(9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

(10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold-blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating Circumstances:

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and

circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though the prosecution has brought home the guilt of the accused."

The Supreme Court has summarized following principles for consideration for imposition of capital sentence: -

(1) The Court has to apply the test to determine, if it was the "rarest of rare" case for imposition of a death sentence.

(2) In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime."

57. In order to decide whether death sentence would be the only meaningful and adequate sentence, the courts are required to draw a balance sheet of aggravating and mitigating circumstances. The Supreme Court in **Ramnaresh** (supra) has further observed in paragraph 79 as follows: -

"The Court then would draw a balance sheet of aggravating

and mitigating circumstances. Both aspects have to be given their respective weightage. The Court has to strike a balance between the two and see towards which side the scale/balance of justice tilts. The principle of proportion between the crime and the punishment is the principle of "just deserts" that serves as the foundation of every criminal sentence that is justifiable. In other words, the "doctrine of proportionality" has a valuable application to the sentencing policy under the Indian criminal jurisprudence. Thus, the court will not only have to examine what is just but also as to what the accused deserves keeping in view the impact on the society at large."

58. The Supreme Court in the matter of **Shankar Kisanrao Khade v. State of Maharashtra**[39] (Hon'ble Mr. Justice Madan B. Lokur in a separate but concurring judgment) reiterated the law laid down in **Bachan Singh** (supra) and **Machhi Singh** (supra) and ultimately in paragraph 52 held that the tests which have to be applied while awarding death sentence are "crime test", "criminal test" and the "R-R test" and not the "balancing test". Paragraph 52 of the report states as under (SCC p. 576, para 52): -

"52. Aggravating circumstances as pointed out above, of course, are not exhaustive so also the mitigating circumstances. In my considered view, 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 the rare case test (R-R test). R-R test depends upon the

39 (2013) 5 SCC 546

> 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 intellectually challenged minor girls, suffering from physical disability, old and infirm women with those disabilities, etc. Examples are only illustrative and not exhaustive. The 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."

In paragraph 106, their Lordships also considered and suggested several reasons, cumulatively taken, for converting the death penalty to that of imprisonment for life. Paragraph 106 of the said report states as under: -

> "106. A study of the above cases suggests that there are several reasons, cumulatively taken, for converting the death penalty to that of imprisonment for life. However, some of the factors that have had an influence in commutation include:
>
> (1) the young age of the accused (Amit v. State of Maharashtra[40] aged 20 years, Rahul[41] aged 24 years, Santosh Kumar Singh[42] aged 24 years, Rameshbhai Chandubhai Rathod (2)[43] aged 28 years and Amit v. State of U.P.[44] aged 28 years);
>
> (2) the possibility of reforming and rehabilitating the accused in Santosh Kumar Singh[42] and Amit v. State of U.P.[44] the accused, incidentally, were young when they committed the crime);
>
> (3) the accused had no prior criminal record (Nirmal

40 (2003) 8 SCC 93 : 2003 SCC (Cri) 1959
41 Rahul v. State of Maharashtra, (2005) 10 SCC 322 : 2005 SCC (Cri) 1516
42 Santosh Kumar Singh v. State, (2010) 9 SCC 747 : (2010) 3 SCC (Cri) 1469
43 Rameshbhai Chandubhai Rathod (2) v. State of Gujarat, (2011) 2 SCC 764 : (2011) 1 SCC (Cri) 883
44 (2012) 4 SCC 107 : (2012) 2 SCC (Cri) 590

Singh[45], Raju[46], Bantu[47], Amit v. State of Maharashtra[40], Surendra Pal Shivbalakpal[48], Rahul[41] and Amit v. State of U.P.[44]);

(4) the accused was not likely to be a menace or threat or danger to society or the community (Nirmal Singh[45], Mohd. Chaman[49], Raju[46], Bantu[47], Surendra Pal Shivbalakpal[48], Rahul[41] and Amit v. State of U.P.[44]).

(5) a few other reasons need to be mentioned such as the accused having been acquitted by one the courts (State of T.N. v. Suresh[50], State of Maharashtra v. Suresh[51], Bharat Fakira Dhiwar[52], Mansingh[53] and Santosh Kumar Singh[42]);

(6) the crime was not premeditated (Kumudi Lal[54], Akhtar[55], Raju[46] and Amrit Singh[56]);

(7) the case was one of circumstantial evidence (Mansingh[53] and Bishnu Prasad Sinha[57]).

In one case, commutation was ordered since there was apparently no "exceptional" feature warranting a death penalty (Kumudi Lal[54]) and in another case because the trial court had awarded life sentence but the High Court enhanced it to death (Haresh Mohandas Rajput[58])."

Further, their Lordships also laid down the principal reasons for confirming death penalty in paragraph 122 which are as under:-

"(1) the cruel, diabolic, brutal, depraved and gruesome

45 Nirmal Singh v. State of Haryana, (1999) 3 SCC 670 : 1999 SCC (Cri) 472
46 Raju v. State of Haryana. (2001) 9 SCC 50 : 2002 SCC (Cri) 408
47 Bantu v. State of M.P., (2001) 9 SCC 615 : 2002 SCC (Cri) 777
48 Surendra Pal Shivbalakpal v. State of Gujarat, (2005) 3 SCC 127 : 2005 SCC (Cri) 653
49 Mohd. Chaman v. State (NCT of Delhi), (2001) 2 SCC 28 : 2001 SCC (Cri) 278
50 (1998) 2 SCC 372 : 1998 SCC (Cri) 751
51 (2000) 1 SCC 471 : 2000 SCC (Cri) 263
52 State of Maharashtra v. Bharat Fakira Dhiwar, (2002) 1 SCC 622 : 2002 SCC (Cri) 217
53 State of Maharashtra v. Mansingh, (2005) 3 SCC 131 : 2005 SCC (Cri) 657
54 Kumudi Lal v. State of U.P., (1999) 4 SCC 108 : 1999 SCC (Cri) 491
55 Akhtar v. State of U.P., (1999) 6 SCC 60 : 1999 SCC (Cri) 1058
56 Amrit Singh v. State of Punjab, (2006) 12 SCC 79 : (2007) 2 SCC (Cri) 397
57 Bishnu Prasad Sinha v. State of Assam, (2007) 11 SCC 467 : (2008) 1 SCC (Cri) 766
58 Haresh Mohandas Rajput v. State of Maharashtra, (2011) 12 SCC 56 : (2012) 1 SCC (Cri) 359

nature of the crime (Jumman Khan[59], Dhananjoy Chatterjee[34], Laxman Naik[60], Kamta Tewari[61], Nirmal Singh[45], Jai Kumar[30], Satish[62], Bantu[47], Ankush Maruti Shinde[63], B.A. Umesh[64], Mohd. Mannan[65] and Rajendra Pralhadrao Wasnik, (2012) 4 SCC 37);

(2) the crime results in public abhorrence, shocks the judicial conscience or the conscience of society or the community (Dhananjoy Chatterjee[34], Jai Kumar[30], Ankush Maruti Shinde[63] and Mohd. Mannan[65]);

(3) the reform or rehabilitation of the convict is not likely or that he would be a menace to society (Jai Kumar[30], B.A. Umesh[64] and Mohd. Mannan[65]);

(4) the victims were defenceless (Dhananjoy Chatterjee[34], Laxman Naik[60], Kamta Tewari[61], Ankush Maruti Shinde[63], Mohd. Mannan[65] and Rajendra Pralhadrao Wasnik, (2012) 4 SCC 37);

(5) the crime was either unprovoked or that it was premeditated (Dhananjoy Chatterjee[34], Laxman Naik[60], Kamta Tewari[61], Nirmal Singh[45], Jai Kumar[30], Ankush Maruti Shinde[63], B.A. Umesh[64] and Mohd. Mannan[65]) and in three cases the antecedents or the prior history of the convict was taken into consideration (Shivu v. R.G., High Court of Karnataka[66]; B.A. Umesh[64] and Rajendra Pralhadrao Wasnik, (2012) 4 SCC 37)."

59. Thereafter, the three-Judge Bench of the Supreme Court entertained the review petitions in the matter of **Rajendra Pralhadrao Wasnik v. State of Maharashtra**[67] and held that the probability that a convict can be reformed and rehabilitated is a valid consideration for deciding whether he should be awarded capital punishment or life

59 Jumman Khan v. State of U.P., (1991) 1 SCC 752 : 1991 SCC (Cri) 283
60 Laxman Naik v. State of Orissa, (1994) 3 SCC 381 : 1994 SCC (Cri) 656
61 Kamta Tiwari v. State of M.P., (1996) 6 SCC 250 : 1996 SCC (Cri) 1298
62 State of U.P. v. Satish, (2005) 3 SCC 114 : 2005 SCC (Cri) 642
63 Ankush Maruti Shinde v. State of Maharashtra, (2009) 6 SCC 667 : (2009) 3 SCC (Cri) 308
64 B.A. Umesh v. State of Karnataka, (2011) 3 SCC 85 : (2011) 1 SCC (Cri) 801
65 Mohd. Mannan v. State of Bihar, (2011) 5 SCC 317 : (2011) 2 SCC (Cri) 626
66 2007 Cr.L.J. 1806
67 (2019) 12 SCC 460

imprisonment and responsibility that convict is not capable of being reformed and rehabilitated is upon the prosecution to prove to the court. It has been observed by their Lordships as under: -

> "45. The law laid down by various decisions of this Court clearly and unequivocally mandates that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. This is one of the mandates of the "special reasons" requirement of Section 354(3) CrPC and ought not to be taken lightly since it involves snuffing out the life of a person. To effectuate this mandate, it is the obligation on the prosecution to prove to the court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated. This can be achieved by bringing on record, inter alia, material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the convict can produce evidence on these issues as well.
>
> 47. Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be overemphasised. Until Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580], the emphasis given by the Courts was primarily on the nature of the crime, its brutality and severity. Bachan Singh (supra) placed the sentencing process into perspective and introduced the necessity of considering the reformation or rehabilitation of the convict. Despite the view expressed by the Constitution Bench, there have been several instances, some of which have been pointed out in Bariyar [Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498 : 2009 2 SCC (Cri) 1150] and in Sangeet v. State of Haryana [Sangeet v. State of Haryana, (2013) 2 SCC 452 : 2013 2 SCC (Cri) 611] where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in Sangeet (supra) "In the sentencing process, both the crime and the criminal are equally important." Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime.

> Therefore, it is for the prosecution and the Courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and analyse this information is certainly not an easy task but must nevertheless be undertaken. The process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social reintegration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible."

60. Again, in the matter of **Lochan Shrivas v. State of Chhattisgarh**[68], reiterating the principle of law laid down in **Rajendra Pralhadrao Wasnik** (supra) particularly taking notice of paragraphs 45 and 47 of that judgment, held that it is the bounden duty of courts to take into consideration the probability of the accused being reformed and rehabilitated and also to take into consideration not only the crime but also the criminal, his state of mind and his socio-economic conditions, and their Lordships proceeded to commute the accused death sentence to life imprisonment by holding and relying upon its earlier judgment in the matter of **Sunil v. State of Madhya Pradesh**[69], as under: -

> "56. The appellant is a young person, who was 23 years old at the time of commission of the offence. He comes from a rural background. The State has not placed any evidence to show that there is no possibility with respect to reformation and the rehabilitation of the accused. The High Court as well as the trial court also has not taken into consideration this aspect of the matter. The appellant has placed on record the affidavits of Leeladhar Shrivas, younger brother of the appellant as well as Ghasanin Shrivas, elder sister of the appellant. A perusal of the affidavits would reveal that the appellant comes from a

68 2021 SCC OnLine SC 1249
69 (2017) 4 SCC 393

small village called Pusalda in Raigarh district of Chhattisgarh. His father was earning his livelihood as a barber. The appellant was studious and hardworking. He did really well at school and made consistent efforts to bring the family out of poverty. The conduct of the appellant in the prison has been found to be satisfactory. There are no criminal antecedents. It is the first offence committed by the appellant. No doubt, a heinous one. The appellant is not a hardened criminal. It therefore cannot be said that there is no possibility of the appellant being reformed and rehabilitated foreclosing the alternative option of a lesser sentence and making imposition of death sentence imperative.

57. A bench consisting of three Judges of this Court had an occasion to consider similar facts in the case of Sunil v. State of Madhya Pradesh, (2017) 4 SCC 393. In the said case too, the appellant-accused was around 25 years of age who had taken away a minor girl. The accused had committed rape on the said minor and caused her death due to asphyxia caused by strangulation. The trial court had sentenced the accused for the offences punishable under Sections 363, 367, 376(2)(f) and 302 of the IPC and awarded him death penalty. The same was upheld by the High Court. In appeal, this Court held thus:

> "12. In the present case, we do not find that the requirements spelt out in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] and the pronouncements thereafter had engaged the attention of either of the courts. In the present case, one of the compelling/mitigating circumstances that must be acknowledged in favour of the appellant-accused is the young age at which he had committed the crime. The fact that the accused can be reformed and rehabilitated; the probability that the accused would not commit similar criminal acts; that the accused would not be a continuing threat to the society, are the other circumstances which could not but have been ignored by the learned trial court and the High Court.
>
> 13. We have considered the matter in the light of the above. On such consideration, we are of the view that in the present case, the ends of justice would be met if we commute the sentence of death into one of life imprisonment. We order accordingly. The

> punishments awarded for the offences under Sections 363, 367 and 376(2)(f) IPC by the learned trial court and affirmed by the High Court are maintained."

> 58. We are also inclined to adopt the same reasoning and follow the same course as adopted by this Court in the case of Sunil (supra). The appeals are therefore partly allowed. The judgment and order of conviction for the offences punishable under Sections 363, 366, 376(2)(i), 377, 201, 302 read with Section 376A of the IPC and Section 6 of the POCSO Act is maintained. However, the death penalty imposed on the appellant under Section 302 IPC is commuted to life imprisonment. The sentences awarded for the rest of the offences by the trial court as affirmed by the High Court, are maintained."

61. Thereafter, the Supreme Court in the matter of **Mofil Khan and another v. State of Jharkhand**[70] relying upon its earlier judgment in **Rajendra Pralhadrao Wasnik** (supra) and **Mohd. Mannan v. State of Bihar**[71] held 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 and observed as under:-

> "10. 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. 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

70 2021 SCC OnLine SC 1136
71 (2019) 16 SCC 584

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. Therefore, we convert the sentence imposed on the Petitioners from death to life. However, keeping in mind the gruesome murder of the entire family of their sibling in a pre-planned manner without provocation due to a property dispute, we are of the opinion that the Petitioners deserve a sentence of a period of 30 years."

62. Very recently, their Lordships of the Supreme Court in the matter of **Bhagwani v. State of Madhya Pradesh**[72], relying upon its earlier pronouncement in **Bachan Singh** (supra), **Machhi Singh** (supra), **Mohd. Mannan** (supra), **Mofil Khan** (supra) and **Rajendra Pralhadrao Wasnik** (supra), finding that possibility of reformation and rehabilitation of accused have not been considered, commuted the death sentence to life imprisonment by holding as under: -

"21. The Appellant was aged 25 years on the date of commission of the offence and belongs to a Scheduled Tribes community, eking his livelihood by doing manual labour. No evidence has been placed by the prosecution on record to show that there is no probability of rehabilitation and reformation of the Appellant and the question of an alternative option to death sentence is foreclosed. The Appellant had no criminal antecedents before the commission of crime for which he has been convicted. There is nothing adverse that has been reported against his conduct in jail. Therefore, the death sentence requires to be commuted to life imprisonment. However, taking into account the barbaric and savage manner in which the offences of rape and murder were committed by the Appellant on a hapless 11 year old girl, the Appellant is sentenced to life imprisonment for a period of 30 years during which he shall not be granted remission.

22. The Appeals are partly allowed. The conviction of

72 2022 SCC OnLine SC 52

> the Appellant under Sections 363, 366A, 364, 346, 376D, 376A, 302, 201 of Penal Code, 1860 ("IPC") and Section 5(g)(m) read with Section 6 of The Protection of Children from Sexual Offences Act, 2012 is upheld and the sentence is converted from death to that of imprisonment for life for a period of 30 years without remission."

63. Similarly, in the matter of **Pappu v. State of Uttar Pradesh**[73], their Lordships of the Supreme Court while commuting the death sentence to life imprisonment, held as under: -

> "164. It could readily be seen that while this Court has found it justified to have capital punishment on the statute to serve as deterrent as also in due response to the society's call for appropriate punishment in appropriate cases but at the same time, the principles of penology have evolved to balance the other obligations of the society, i.e., of preserving the human life, be it of accused, unless termination thereof is inevitable and is to serve the other societal causes and collective conscience of society. This has led to the evolution of 'rarest of rare test' and then, its appropriate operation with reference to 'crime test' and 'criminal test'. The delicate balance expected of the judicial process has also led to another mid-way approach, in curtailing the rights of remission or premature release while awarding imprisonment for life, particularly when dealing with crimes of heinous nature like the present one."

64. In the light of aforesaid proposition of law, we are required to scrutinize the case in hand minutely in the light of aggravating circumstances and mitigating circumstances of the present case and to draw a balance-sheet to decide whether present case falls within the category of rarest of rare, whether there is no chance of reformation of the appellants, whether imprisonment for life which is the rule would not be adequate and would not meet the ends of justice and whether imposition of death penalty would be the only appropriate and meaningful sentence.

73 2022 SCC OnLine SC 176

65. In case of imposing capital sentence, the law requires the court to record special reasons for awarding such sentence. Therefore, we have to consider matters like nature of the offence, how and under what circumstances it was committed, the extent of brutality with which the offence was committed, the motive for the offence, any provocative or aggravating circumstances (crime test) at the time of commission of the crime, the possibility of the convict being reformed or rehabilitated, adequacy of the sentence of life imprisonment and other attending circumstances, and to see whether the State has brought out any evidence to establish that the appellant / accused cannot be reformed or rehabilitated and as to whether effective opportunity of hearing was granted to the appellant / accused on the question of sentence.

66. At this stage, it would be appropriate to notice the special reasons recorded by the learned Additional Sessions Judge while awarding sentence to the appellant herein in paragraphs 30, 31 & 32 of the judgment which are as under: -

> (30) "विरल से विरलतम" के परीक्षण हेतु प्रतिपादित सिद्धांतों के परिपेक्ष्य में प्रश्नगत प्रकरण में प्रकट तथ्यों से य 825 ह अवधारित किया जाना है कि क्या यह प्रकरण "विरल से विरलतम" प्रकरणों की श्रेणी में आता है । शव नक्शा पंचायतनामा प्र०पी० 10 के अनुसार मृतिका जासमिन का शव चित्त हालत में, सिर कुचला हुआ, चेहरा पहचान नहीं आ रहा है, मुंडी व खोपड़ी बाल सहित अलग होकर धड़ से करीब 50 से०मी० की दूर पर पड़ा होना उल्लेखित है । नक्शा पंचायतनामा प्र०पी० 11 के अनुसार मृतक शुभम का सिर धड़ अलग डेढ मीटर की दूरी पर पड़ा था, बच्चे के कान के उपर एवं पीछे की तरफ से धारदार चीज से मारने का निशान दिख रहा है । सिर का भेजा बाहर निकल गया है, दोनों आंखे दिख रही हैं, नाक के नीचे से मुंह गर्दन अलग कट गया है । शव परीक्षण करने वाले चिकित्सक साक्षी अ०सा० 09 डॉ० एस०आर० सिदार द्वारा शुभम के शव

परीक्षण प्रतिवेदन प्र०पी० 20 में सिर धड़ से अलग पाया गया, सिर में कटी हुई चोट 12 X 06 से०मी० तथा दूसरी चोट ठोड़ी में 10 X 05 से०मी० पायी गई । मस्तिष्क की हड्डी टूटी हुई थी । मस्तिष्क का अंदरूनी भाग फट गया था । जासमिन के शव परीक्षण प्रतिवेदन प्र०पी० 21 में बताया गया कि सिर पूर्णतः कुचला हुआ था, मुंह और आंख नहीं दिख रहे थे तथा सिर धड़ से अलग था । आंतरिक परीक्षण में खोपड़ी मस्तिष्क पूर्णतः कुचले हुए थे । कंठ व श्वास नली कटी हुई थी तथा कपाल, चेहरे व गर्दन की हड्डियां टूट गई थी । अ०सा० 14 के०के० वाजपेयी द्वारा कंडिका 14 में व्यक्त किया गया है कि आरोपी द्वारा दो छोटे बच्चों की हत्या की गई । पांच–सात सौ लोगों की भीड़ एकत्रित थी जो आरोपी को मारने का प्रयास कर रहे थे ।

(31) दोनों बच्चों शुभव व जासमिन को कारित चोटों से स्पष्ट है कि आरोपी द्वारा सोच विचार कर उनकी मृत्यु कारित करने के आशय से शरीर के अत्यंत मर्म अंगों पर सांघातिक चोट कारित की गई । चोटें कारित करते समय अभियुक्त का आशय यह सुनिश्चित करना प्रतीत होता है कि दोनों बच्चे किसी भी परिस्थिति में जीवित न बचें । 08 वर्षीय शुभम तथा 09 वर्षीय जासमिन के सिर शरीर से अलग पाए गए । जासमिन के सिर व चेहरे पर कई प्रहार किए जाने के परिणामस्वरूप उसका चेहरा पूरी तरह कुचल गया था । आरोपी के दोनों बच्चे अपने पिता के स्नेह व प्यार में उसके साथ आ गए, बच्चों को कहीं से भी यह आशंका नहीं थी कि उनका पालन पोषण एवं संरक्षण करने वाला पिता उनकी हत्या इतने निर्मम ढंग से कर देगा । दोनों बच्चों द्वारा आरोपी को हत्या करने का कोई हेतुक भी प्रदान नहीं किया गया । आरोपी द्वारा किया गया अपराध समाज की अंतश्चेतना को स्तब्ध कर देता है । आरोपी द्वारा बच्चों को उनकी मां के गांव से लागर रात्रि में तालाब के पास ले जाकर पहले से रखे हुए फावड़े से उनकी हत्या करना, उसकी सुनियोजित योजना दर्शित करता है ।

(32) प्रकरण में गुरूत्तरकारी एवं उपशमनकारी परिस्थितयों का संतुलन पत्र (बैलेंस शीट) तैयार कर विचार किए जाने पर गुरूत्तरकारी परिस्थितियों की बहुलता पायी गई । आरोपी द्वारा अत्यंत क्रूर, पाशविक, वीभत्स ढंग से निष्ठुरता के साथ अपने दो छोटे–छोटे अबोध बच्चों की फावड़ा से निर्मम हत्या की गई । आरोपी द्वारा अपने ही अबोध बच्चों को, जिनके भरण–पोषण, लालन–पालन एवं सुरक्षा की जिम्मेदारी उस पर थी, अकारण फावड़ा से बर्बरतापूर्वक काट डाला गया। कहा जाता है कि "शिशु परमात्मा का उपहार है ।" वर्तमान माममला निर्मम हत्या का एक असाधारण मामला है । आरोपी द्वारा दोनों निर्दोष एवं असहाय बच्चों

की हत्या बहुत ही निर्ममता एवं पाशविक ढंग से की गई है । आरोपी द्वारा चतुराई से पूर्व योजना बनाकर, निष्ठुरता, क्रूरता एवं पैशाचिक तरीके से हत्या की गई । बच्चों के शरीर पर पाई गई क्षतियॉ आरोपी की निर्दयता दर्शित करती है । आरोपी द्वारा अपने बच्चों के साथ विश्वासघात किया गया । हत्या करने की परिस्थितयॉ अत्यधिक हृदयहीन, घृणात्मक एवं लोमहर्षक थी । दण्डादेश के समय अपराध की नृशंसता विचारणीय तथ्य है । अभियुक्त का कार्य न केवल पशुता से परिपूर्ण है, वरन राक्षसी कृत्य है । आरोपी द्वारा अपने अबोध बच्चों पर दया नहीं की गई । उपरोक्त गुरुत्तरकारी एवं उपशमनकारी परिस्थितियों पर गंभीरतापूर्वक विचार करने के उपरांत न्यायालय इस निष्कर्ष पर है कि प्रश्नगत प्रकरण "विरल से विरलतम" मामले के संवर्ग में आता है । आरोपी समाज के लिए जोखिम है और उसको आजीवन कारावास के दंड से दंडित किया जाना अपर्याप्त होगा । उपरोक्त विश्लेषण के आधार पर आरोपी **डोलालाल** को **धारा 302 (दो बार) भा०द०स०** के आरोप में **मृत्युदंड** एवं 500/– **(पॉच सौ)** रूपए के अर्थदंड से दंडित किया जाता है । अर्थदण्ड की राशि अदा न करने पर 02 **माह** का **कठोर कारावास** पृथक से भुगताया जावे । **आरोपी डोलालाल को गर्दन में फांसी लगाकर तब तक लटकाया जाए, जब तक उसकी मृत्यु न हो जाए ।**

67. A careful perusal of the findings so recorded would show that,

(1) the trial Court had convicted the appellant and imposed death penalty on the very same day.

(2) the trial Court has not taken into consideration the probability of the appellant being reformed and rehabilitated;

(3) the trial Court has taken into consideration only the crime and the manner in which it was committed, and it has not taken into consideration the criminal's state of mind and his socio-economic conditions;

(4) the trial Court has not given any effective opportunity of hearing on the question of sentence to the appellant herein as held by the Supreme Court in **Mohd. Mannan** (supra); and

(5) similarly, no evidence was brought on record on behalf of the prosecution to prove to the court that convict cannot be reformed or rehabilitated by producing material about his conduct in jail, and no opportunity was given to the accused to produce evidence as held by the Supreme Court in **Rajendra Pralhadrao Wasnik** (supra).

68. We have to apply all the above-stated principles noticed herein supra in the present case to decide whether the learned Additional Sessions Judge is justified in awarding death sentence to the appellant and for confirmation of death sentence.

Crime test

69. In the present case, the deceased were son and daughter of the appellant aged about 8 and 9 years. In the evening of 25th January, 2017, the appellant took away the custody of his son & daughter from their grand-mother on the pretext of celebrating Republic Day in absence of their mother Geeta (PW-2) who has gone to fields for agricultural work. The appellate brutally murdered his children by spade by which neck of the two minor children Shubham & Jasmine was chopped off from the rest of the body and thereafter, the appellant absconded from his house by locking it and stayed at his sister-in-law's house at Village Jamhari (Sajapali). As such, the offence of murder (two counts) was committed by the appellant by taking into the custody of his two children in absence of their mother. The barbaric act of the appellant was not only inhumane but extremely shocking and cruel. The appellant visited the house of his mother-in-law in intoxicated condition and on the pretext of celebrating Republic Day on the next day, took away the two children. The act of the appellant

in decapitating the body from neck is definitely an aggravating circumstance which goes against the appellant and it satisfies the crime test.

Criminal test

70. The accused was aged about 23 years at the time when the offence was committed and now, he is aged about 25 years, and this is the mitigating factor favouring him. No criminal antecedents have been brought against him and he has committed the offence of murder of his own children (son & daughter), even though they have left his guardianship on account of his bad conduct and behaviour, and staying with their mother, maternal grand-father and maternal grand-mother, yet, taking the custody of his two children on the pretext of celebrating Republic Day, he murdered them brutally, which makes his act totally barbaric and condemnable. As such, the appellant has committed offence against innocent, minor and defence-less children, who have not even crossed 10 years of age. Therefore, we do not find any mitigating circumstance against the appellant except he is young person aged about 25 years now.

R-R test

71. After consideration of crime test and criminal test, it brings us to R-R test (Rarest of Rare). After considering oral and documentary evidence on record and the entire material on record, the question would be, whether this is the rarest of rare case and whether the death sentence awarded should be confirmed?

72. The appellant was a young person aged about 23 years at the time of

commission of offence. He is resident of Village Kayatpali in Mahasamund district which is remote village of said Mahasamund district. The State has not brought on record any evidence to demonstrate that there is no possibility with respect to reformation and rehabilitation and even that aspect has not been considered by the trial Court while awarding death sentence to the appellant herein. We have called report from the Superintendent of Jail, Raipur wherein the appellant herein has been lodged currently and in which the conduct of the appellant has been found to be normal / satisfactory. The appellant has no criminal antecedents, though he has committed an offence which is heinous one causing death of two children. At this stage, we are reminded of what John F. Kennedy has said, “children are the world’s most valuable resources and best hope for the future”. Thus, in absence of evidence on record that there is no possibility with respect to reformation and rehabilitation of the accused / appellant, as he was young person when he committed the offence and he is not likely to be a menace or threat or danger to the society or to the community, there is nothing to suggest that he is likely to repeat similar crimes in future and following the law laid down by their Lordships of the Supreme Court in **Amit v. State of Maharashtra** (supra), **Santosh Kumar Singh** (supra), **Rameshbhai Chandubhai Rathod** (supra), **Amit v. State of U.P.** (supra) and **Lochan Shrivas** (supra) in which considering young age of the accused persons, their Lordships were pleased to convert the death sentence into that of imprisonment for life. Upon thoughtful consideration, we are of the view that extreme sentence of death penalty is not warranted in the

facts and circumstances of the case. We are of the opinion that this is not the rarest of rare case in which major penalty of sentence of death awarded has to be confirmed. In our view, imprisonment for life would be completely adequate and would meet the ends of justice. Accordingly, we direct commutation of death sentence into imprisonment for life. We further direct that the life sentence must extend to the imprisonment for remainder of natural life of the appellant herein – Dolalal.

Conclusion

73. Consequently, Cr.Ref.No.1/2018 made by the Additional Sessions Judge, Saraipali to the extent of confirmation of imposition of death sentence to appellant Dolalal is rejected accordingly.

74. However, Cr.A.No.1083/2018 filed on behalf of Dolalal is partly allowed. Conviction of the appellant under Section 302 of the IPC is maintained, but, sentence of death is commuted to life imprisonment by maintaining the fine amount. We further direct that life sentence must extend to the imprisonment for remainder of natural life of the appellant herein – Dolalal.

Compliance

75. The Registrar (Judicial) is directed to send a duly attested copy of this judgment to the concerned Court of Session as mandated under Section 371 of the CrPC for needful.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Rajani Dubey)
Judge

Soma