Vikram Singh @Vicky Walia vs The State Of Punjab on 7 July, 2017

Equivalent citations: AIR 2017 SC(CRI) 1194, 2017 (8) SCC 518, 2017 AJR 542, (2017) 3 RECCRIR 648, (2017) 3 MAD LJ(CRI) 665, (2017) 4 ALLCRILR 777, (2017) 3 DLT(CRL) 376, (2017) 3 CURCRIR 188, 2017 (3) SCC (CRI) 641, (2017) 7 SCALE 381, (2017) 3 KER LT 76, (2017) 3 CRIMES 86, 2017 CRILR(SC&MP) 1116, (2017) 179 ALLINDCAS 65 (SC), 2017 CRILR(SC MAH GUJ) 1116, (2017) 4 CRILR(RAJ) 1116, (2017) 2 ALD(CRL) 590, AIR 2017 SUPREME COURT 3227, AIR 2017 SC (CRIMINAL) 1194, 2017 (3) AJR 542, (2017) 68 OCR 1066, (2018) 102 ALLCRIC 331

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Bench: Ashok Bhushan, R. Banumathi, Dipak Misra

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL M.P.NOS.16673-16674 OF 2016 &
CRIMINAL M.P. NOS.16675-16676 OF 2016
IN
REVIEW PETITION (CRL.) NOS.192-193 OF 2011
IN
CRIMINAL APPEAL NOS.1396-1397 OF 2008

VIKRAM SINGH @ VICKY
WALIA AND ANR. … APPLICANTS/
PETITIONERS

VS.

STATE OF PUNJAB AND ANR. … RESPONDENTS

J U D G M E N T

ASHOK BHUSHAN, J.

Delay condoned. These criminal miscellaneous petitions have been filed by the applicants for reopening the Review Petition (Crl.) Nos. 192-193 of 2016 in Criminal Appeal Nos.1396-1397 of 2008 on the basis of Date: 2018.04.07 12:51:09 IST Reason:

> Constitution Bench judgment in Mohd. Arif alias Ashfaq versus Registrar, Supreme Court Of India And Others, 2014(9) SCC 737, by which judgment liberty was granted to those petitioners whose review applications seeking review of judgment of this Court confirming death sentence were rejected by circulation but death sentences were not executed.

2. Both the applicants Vikram Singh @ Vicky Walia and Jasvir Singh @ Jassa were tried for offences under Section 302, 364A, 201 and 120B IPC. The trial court vide its judgment dated 20th December, 2016/21st December, 2016 convicted both the applicants as well as one Smt. Sonia wife of Jasvir Singh and awarded death sentence to all the three accused under Section 302 and 364A IPC. Criminal Appeal No.105-DB of 2007 was filed before the High Court by all the accused against the judgment of Sessions Judge, Hoshiarpur. Murder Reference No. 1 of 2007 was also made by the Sessions Judge before the High Court seeking confirmation of death sentence. Both Murder Reference No.1 of 2007 as well as Criminal Appeal No.105-DB of 2007 were heard and disposed of by a common judgment of the High Court dated 30.05.2008. The High Court accepted the Murder Reference No.1 of 2007 and confirmed the death sentence awarded by the trial court resultantly Criminal Appeal No.105-DB/2007 was dismissed. Aggrieved by the judgment of the High court dated 30.05.2008 Criminal Appeal Nos.1396-1397 of 2008 were filed by the accused. This court heard the criminal appeals. Two Judge Bench of this Court by its judgment dated 25.01.2010 dismissed the criminal appeals of Vikram Singh and Jasvir Singh whereas death sentence awarded to Smt. Sonia, the third accused was converted into life imprisonment. Vikram Singh and Jasvir Singh filed Review Petition (Crl.) Nos.192-193 of 2011 which review petitions were dismissed by circulation vide order dated 20.04.2011 by two-Judge Bench which had heard the criminal appeals on the ground of delay as well as on merits. As noted above after the Constitution Bench judgment of this Court in Mohd. Arif alias Ashfaq (supra) Criminal M.P.Nos.16673-16674 of 2016 and 16675-16676 of 2016 were filed by the applicants for reopening the Review Petition (Crl.) Nos.192- 193 of 2011.

3. Learned counsel for the parties were permitted to advance their oral submissions on 24.10.2016 in support of Review Petition (Crl.) Nos.192-193 of 2011.

4. We have heard Shri K.T.S. Tulsi, learned senior counsel appearing for Vikram Singh whereas Shri Tripurari Ray has been heard for applicant No.2. Shri V. Madhukar, learned Additional Advocate General has been heard for the State of Punjab and Haryana and Ms. Anvita Cowshish, learned counsel for complainant.

5. The applicants by their review petitions are seeking review of the judgment of this Court dated 25.01.2010 by which judgment criminal appeals filed by the applicants were dismissed and death sentence awarded by the trial court and affirmed by the High Court was maintained by dismissing the appeals.

6. Before we proceed to examine the review petitions, it is necessary to note the ambit, scope and parameters of the review jurisdiction of this Court.

7. Article 137 of the Constitution of India provides for review of judgments or orders of this Court in following words:

> "137. Review of judgments or orders by the Supreme Court.— Subject to the provisions of any law made by Parliament or any rules made under Article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it."

8. Order 40 of Supreme Court Rules, 1966 deals with the review, Rule 1 of which provides:

> "1. The Court may review its judgment or order, but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order 47 Rule 1 of the Code, and in a criminal proceeding except on the ground of an error apparent on the face of the record."

9. This Court has constitutional power to review its judgment as granted by Article 137 of the Constitution which is subject to provisions of any law made by Parliament or any Rules made under Article 145. Under Article 145 the Supreme Court has framed Rules, 1966 as noted above. As per Rule 1 of Order 40 an application for review in a criminal proceeding can be entertained on the ground of an error apparent on the face of the record.

10. Granting power of review to this Court by the Constitution is in recognition of the universal principle that the power of review is part of all judicial system. Rule 1 of Order 40 of Supreme Court Rules, 1966 provides for the procedure and manner in which the power of review can be exercised by this Court. The ambit and scope of power of review of this Court has come up for consideration time and again before this Court. Justice Krishna Iyer in Sow Chandra Kante and another vs. Sheikh Hai, (1975) 1 SCC 674, held that to review of a judgment of this Court are subject to the rules of the game and cannot be lightly entertained. Explaining the scope and ambit of the review jurisdiction of this Court following was stated:

> "A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient."

11. As noticed above although Rule 1 of Order 40 prohibits filing of review application in a criminal proceeding except on the ground of error apparent on the face of the record. The Constitution Bench of this Court has occasion again to consider the ambit and scope of review jurisdiction in P.N. Eswara Iyer and others vs. Registrar, Supreme Court of India, (1980) 4 SCC 680. In the above case Order 40 Rule 3 as amended in 1978 was under challenge. In the above context this Court had

occasion to consider contour of the review jurisdiction and the Constitution Bench speaking through Justice Krishna Iyer categorically held that although Order 40 Rule 1 limits the ground viz-a-viz criminal proceedings to errors apparent on the face of the record but the power to review in Article 137 is wide and framers of the rules never intended a restrictive review over criminal orders or judgments. In paragraphs 34 and 35 following was laid down:

> "34. The rule, on its face, affords a wider set of grounds for review for orders in civil proceedings, but limits the ground vis-a-vis criminal proceedings to "errors apparent on the face of the record". If at all, the concern of the law to avoid judicial error should be heightened when life or liberty is in peril since civil penalties are often less traumatic. So, it is reasonable to assume that the framers of the rules could not have intended a restrictive review over criminal orders or judgments. It is likely to be the other way about. Supposing an accused is sentenced to death by the Supreme Court and the "deceased" shows up in court and the court discovers the tragic treachery of the recorded testimony. Is the court helpless to review and set aside the sentence of hanging? We think not. The power to review is in Article 137 and it is equally wide in all proceedings. The rule merely canalises the flow from the reservoir of power. The stream cannot stifle the source.
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> Moreover, the dynamics of interpretation depend on the
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> demand of the context and the lexical limits of the test. Here "record" means any material which is already on record or may, with the permission of the court, be brought on record. If justice summons the Judges to allow a vital material in, it becomes part of the record; and if apparent error is there, correction becomes necessitous.
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> 35. The purpose is plain, the language is elastic and interpretation of a necessary power must naturally be expansive.

The substantive power is derived from Article 137 and is as wide for criminal as for civil proceedings. Even the difference in phraseology in the rule (Order 40 Rule 2) must, therefore, be read to encompass the same area and not to engraft an artificial divergence productive of anomaly. If the expression "record" is read to mean, in its semantic sweep, any material even later brought on record, with the leave of the court, it will embrace subsequent events, new light and other grounds which we find in Order 47 Rule 1, CPC. We see no insuperable difficulty in equating the area in civil and criminal proceedings when review power is invoked from the same source."

12. This Court in subsequent judgments has also noticed that scope of review in criminal proceedings has been considerably widened by the Constitution Bench of this Court in P.N. Eswara (supra). In Suthendraraja alias Suthenthira Raja alias Santhan and others vs. State through Superintendent of Police, CBI, (1999) 9 SCC 323, Justice D.P Wadhwa made the following observation:

> "5. It would be seen that the scope of review in criminal proceedings has been considerably widened by the pronouncement in the aforesaid judgment. In any case review is not rehearing of the appeal all over again and to maintain a review petition it has to be shown that there has been a miscarriage of justice. Of course, the expression "miscarriage of justice" is all-embracing..."

13. Again a two-Judge Bench in Lily Thomas and others vs. Union of India and others, (2000) 6 SCC 224, had the occasion to consider the scope of review jurisdiction of this Court. In paragraph 52 following was laid down:

> "52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v.
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> Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844, held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.

It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in S. Nagaraj v. State of Karnataka, 1993 Supp (4) SCC 595, held: (SCC pp. 619-20, para 19) "19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai, AIR 1941 FC 1, the Court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajunder Narain Rae v. Bijai Govind Singh, (1836) 1 Moo PC 117:2 MIA 181, that an order made by the Court was final and could not be altered:

'... nevertheless, if by misprision in embodying the judgments, errors have been introduced, these courts possess, by common law, the same power which the courts of record and statute have of rectifying the mistakes which have crept in.... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority.

The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.' Basis for exercise of the power was stated in the same decision as under:

> 'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.' Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause
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> (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court.

The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice." The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength."

14. It was further held that mere possibility of two views on the same subject is not a ground for review. In paragraph 56 following was stated:

> "56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review..."

15. Further in Devender Pal Singh vs. State, NCT of Delhi and another, (2003) 2 SCC 501, Arijit Pasayat,J., elaborately examined the scope and ambit of review jurisdiction of this Court after referring to all earlier relevant judgments of this Court. In paragraph 11 following was stated:

> "11. Though the scope of review in criminal proceedings has been widened to a considerable extent, in view of the aforesaid exposition of law by the Constitutional Bench, in any case review is not rehearing of the appeal all over again, and as was observed in Suthendraraja in order to maintain the review petition, it has to be shown that there is a miscarriage of justice. Though the expression "miscarriage of justice" is of a wider amplitude, it has to be kept in mind that the scope of interference is very limited....."

16. It was further held that resort to review is proper only where a omission or patent mistake or like grave error has crept in earlier judgment by judicial fallibility. In paragraph 16 following has been stated:

> "16. As was observed by this Court in Col. Avtar Singh Sekhon v. Union of India, 1980 Supp SCC 562, review is not a routine procedure. A review of an earlier order is not permissible unless the Court is satisfied that material error, manifest on the face of the order undermines its soundness or results in miscarriage of justice. A review of judgment in a case is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.... The stage of review is not a virgin ground but review of an earlier order which has the normal feature of finality."

17. As noted above under Order 40 Rule 1 no application for review can be entertained except on the ground of an error apparent on the face of the record. Although, the power of review given to this Court is wider as has been held by the Constitution Bench in P.N. Eshwara (supra), Justice Krishna Iyer has given an illustration where the Court will not hesitate in exercising its power to review in a case where deceased himself walks in the Court on whose murder accused were convicted. Justice Krishna Iyer rightly observed that Court is not powerless to do justice in such case. Thus, although the power of review granted to this Court is wider but normally and ordinarily the review in a criminal case has to be on the grounds as enumerated in Rule 1 of Order 40.

18. What is "an error apparent on the face of the record" has also been a subject matter of consideration by this Court in a large number of cases. What are the grounds on which this Court shall exercise its jurisdiction and what is the error apparent on the face of the record came to be considered by this Court in Kamlesh Verma vs. Mayawati and others, (2013) 8 SCC 320 (in which case one of us Dipak Misra, J. was also a party). This Court held that an error which is not self-evident and has to be detected by a process of reasoning is not an error apparent on the face of the record. In paragraphs 15 and 16 following was laid down:

> "15. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. This Court in Parsion Devi v. Sumitri Devi, 1997 (8) SCC 715, held as under:

> (SCC pp. 718-19, paras 7-9) "7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P., AIR 1964 SC 1372, this Court opined: (AIR p. 1377, para 11) '11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.'
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> 8. Again, in Meera Bhanja v.

Nirmala Kumari Choudhury, 1995 (1) SCC 170, while quoting with approval a passage from Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, 1979 (4) SCC 389, this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'." (emphasis in original)

16. Error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review."

19. Further elaborating on the parameters of review jurisdiction following was laid down in paragraphs 17 and 18:

> "17. In a review petition, it is not open to the Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. This Court in Kerala SEB v. Hitech Electrothermics & Hydropower Ltd., 2005 (6)SCC 651, held as under:

> (SCC p. 656, para 10) "10. ... In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. The learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court.
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> If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."
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> 18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications.

This Court in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd., (2006) 5 SCC 501, held as under:

> (SCC pp. 504-505, paras 11-12) "11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.
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> 12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted.""

20. Summarising the principles when review will be maintainable and review will not be maintainable following was held in paragraphs 20.1 and 20.2:

"20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence

which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki,AIR 1922 PC 112, and approved by this Court in Moran Mar Basselios Catholicos v.

Most Rev. Mar Poulose Athanasius, AIR 1954 SC 526, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.(2013)8 SCC 337.

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

> (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

21. In view of above, it is clear that scope, ambit and parameters of review jurisdiction are well defined. Normally in a criminal proceeding, review applications cannot be entertained except on the ground of error apparent on the face of the record. Further, the power given to this Court under Article 137 is wider and in an appropriate case can be exercised to mitigate a manifest injustice. By review application an applicant cannot be allowed to re-argue the appeal on the grounds which were urged at the time of the hearing of the criminal appeal. Even if the applicant succeeds in establishing that there may be another view possible on the conviction or sentence of the accused that is not a sufficient ground for review. This Court shall exercise its jurisdiction to review only when a glaring omission or patent mistake has crept in earlier decision due to judicial fallibility. There has to be error apparent on the face of the record leading miscarriage of justice to exercise the review jurisdiction under Article 137 read with Order 40 Rule 1. There has to be a material error manifest on the face of the record with results in the miscarriage of the justice.

22. In view of parameters of the review jurisdiction as noticed above, we now proceed to examine the review petition to find out as to whether there are sufficient grounds as enumerated above for reviewing the judgment of the criminal appeal affirming the death sentence awarded to the applicants.

23. Learned counsel contended that the tape- recorded conversation has been relied on without there being any certificate under Section 65B of the Evidence Act, 1872. It was contended that audio tapes are recorded on magnetic media, the same could be established through a certificate under Section 65B and in the absence of the certificate, the document which constitutes electronic record, cannot be deemed to be a valid evidence and has to be ignored from consideration. Reliance has been placed by the learned counsel on the judgment of this Court in Anvar P.V. vs. P.K. Basheer and others, (2014) 10 SCC 473. The conversation on the landline phone of the complainant situate in a shop was recorded by the complainant. The same cassette containing conversation by which ransom call was made on the landline phone was handed over by the complainant in original to the Police. This Court in its judgment dated 25.01.2010 has referred to the aforesaid fact and has noted the said fact to the following effect:

> "The cassette on which the conversations had been recorded on the landline was handed over by Ravi Verma to S.I. Jiwan Kumar and on a replay of the tape, the conversation was clearly audible and was heard by the Police."

24. The tape recorded conversation was not secondary evidence which required certificate under Section 65B, since it was the original cassette by which ransom call was tape- recorded, there cannot be any dispute that for admission of secondary evidence of electronic record a certificate as contemplated by Section 65B is a mandatory condition. In Anvar P.V. (supra) this Court had laid down the above proposition in paragraph 22. However, in the same judgment this Court has observed that the situation would have been different, had the primary evidence was produced. The conversation recorded by the complainant contains ransom calls was relevant under Section 7 and

was primary evidence which was relied on by the complainant. In paragraph 24 of the judgment of this Court in Anvar P.V. it is categorically held that if an electronic record is used as primary evidence the same is admissible in evidence, without compliance with the conditions in Section 65B. Paragraph 24 is as extracted below:

> "24. The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65-B of the Evidence Act are not satisfied. It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence of electronic record with reference to Sections 59, 65-A and 65-B of the Evidence Act, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance with the conditions in Section 65-B of the Evidence Act."

25. He has further contended that on the plain reading of the Chemical Examiner's report, it is clear that the death was caused due to overdose of chloroform and pentazocine poisoning. Hence, the conviction ought to have been under Section 304A IPC and not under Section 302 IPC. The conviction against the applicants under Section 302 and 364A was recorded after considering entire evidence on record. This Court while dismissing the criminal appeals and affirming the death Reference No.1 has appreciated the entire evidence and approved the decision of the trial court and the High Court. The conviction of the applicant was based on cogent, ocular and medical evidence and in the review application applicants have again asked this Court to re- appraise the evidence and come to a different conclusion. There is no apparent error on the face of the record in recording conviction of the applicants under Section 302 and 364A.

26. It is further contended that this Court had relied on the disclosure statement of Jasvir Singh, which led to the recovery of the dead body which disclosure statement does not connect Vikram Singh with the crime. The trial court as well as the High Court marshaled the ocular evidence by which evidence role of Vikram Singh was duly proved in commission of crime. Hence, this submission deserves to be rejected.

27. Lastly, Shri K.T.S. Tulsi, learned senior counsel submits that this Court in paragraph 18 has recorded its conclusion that the finger prints of Vikram Singh were found on the Alto and Chevrolet cars, therefore, connection of Vikram Singh is established in the crime. It is submitted that since this Court recorded at para 18 that the said cars belong to Vikram Singh, the existence of finger prints cannot by itself be of any significance with regard to his culpability in the crime. It is submitted that by relying on finger prints, this Court had committed an apparent error on the face of the record.

The above submission of learned counsel is misconceived and incorrect. In para 18 of the judgment this Court never observed that Alto and Chevrolet cars belonged to Vikram Singh. The statement of facts made in para 18 was to the effect that the finger prints from the Alto and Chevrolet cars belong to Vikram Singh and Jasvir Singh respectively. It is useful to extract below para 18 of the judgment:

"18. We also find that the prosecution has been able to show that the finger prints lifted by the Police Officers from the Alto and Chevrolet cars belonged to Vikram Singh and Jasvir Singh respectively. It is significant that the Chloroform bottle recovered from Darshan Kaur's residence was also examined and the thumb impression of Jasvir Singh was detected thereon."

28. There is evidence of the owner of Alto car, PW.3, Naresh Kumar Sharma who had stated in his statement that the car was lent by him to Vikram Singh in the morning of 14th February, 2005 at about 7 a.m. to 7.30 a.m. Thus, it was no one's case that Alto car belonged to Vikram Singh. The argument raised by Shri K.T.S. Tulsi is misconceived and we unhesitatingly repel the same.

29. Learned counsel has further contended that present was not a case where death penalty could have been awarded to the applicants. In the review petition reliance has been placed by the applicants on Constitution Bench judgment in Bachan Singh vs. State of Punjab, (1980) 2 SCC 684, and judgment in Machhi Singh and others vs. State of Punjab, (1983) 3 SCC 470. This Court in its judgment dismissing the appeals referred to Bachan Singh and Machhi Singh and has categorically applied its mind to various parameters laid down in the aforesaid judgments and on the broad principle which emerged from the judgments for evaluating the category of the rarest of the rare case. Various mitigating and aggravated factors which have been noted in the judgment of the High Court were referred to by this Court, and this Court recorded its conclusion that balance- sheet has been drawn by the High Court of aggravating and mitigating circumstances which was duly adopted by this Court. We do not find any error apparent on the record in the above consideration by this Court in affirming the judgment of the High Court.

30. Learned counsel appearing for Jasvir Singh adopted the submissions of Shri K.T.S. Tulsi on legal issues and on the question of sentence. Certain other submissions have been raised on behalf of the second applicant which also do not disclose any ground which can be said to be a valid ground for exercising review jurisdiction.

31. We, after carefully considering the submissions of the applicants, are of the considered opinion that submissions raised in the review petitions do not raise any ground for review of judgment of this Court dated 25.01.2010.

32. In the result, the review applications are rejected.

……J. (DIPAK MISRA) ……J. (R. BANUMATHI) .....J. (ASHOK BHUSHAN) New Delhi, July 07, 2017.