

Subhash Ramkumar Bind @ Vakil & Anr vs State Of Maharashtra on 12 November, 2002

Equivalent citations: AIR 2003 SUPREME COURT 269, 2002 AIR SCW 4732, 2002 (8) SCALE 410, 2003 ALL MR(CRI) 188, 2003 CRIAPPR(SC) 49, 2003 SCC(CRI) 362, 2003 CRILR(SC&MP) 252, 2003 (1) SRJ 111, 2003 (1) UJ (SC) 576, (2002) 9 JT 445 (SC), 2003 (1) SCC 506, (2003) 2 ALLINDCAS 412 (SC), 2003 CRILR(SC MAH GUJ) 252, 2002 (6) SLT 550, (2003) 1 EASTCRIC 122, (2003) 1 RECCRIR 709, (2002) 4 CURCRIR 293, (2002) 8 SUPREME 228, (2003) 2 ALLCRIR 1776, (2002) 8 SCALE 410, (2003) 1 GCD 804 (SC), (2003) 1 CRIMES 108, 2002 (2) ALD(CRL) 924

Bench: Umesh C. Banerjee, B.N. Agrawal

CASE NO.:

Appeal (crl.) 18 of 2002

PETITIONER:

Subhash Ramkumar Bind @ Vakil & Anr.

RESPONDENT:

State of Maharashtra

DATE OF JUDGMENT: 12/11/2002

BENCH:

Umesh C. Banerjee & B.N. Agrawal.

JUDGMENT:

JUDGMENT Banerjee, J.

On a reference to the High Court by the Principal Judge of the Sessions Court at Bombay for confirmation of an order of death sentence passed against the appellants herein in Sessions Case No.477 of 1996, the High Court recorded its finding in the affirmative to the order of conviction and sentence passed by the learned Sessions Judge. It is this order of confirmation which is before this Court presently under consideration. Significantly, accused Nos.4 to 10 are absconding and the matter was dealt with thus against accused Nos.1, 2 and 3. Since the matter has been argued before this Court in rather great a length, we think it fit and proper to note the charges so framed in extenso at this juncture and before entering on to the arena of merits. The charges read as below :

above named on the aforesaid date, time and place and prior to it agreed to murder Harish Vallabhdas Bhatia hatched a criminal conspiracy to that effect above named, did commit murder of said Harish Vallabhdas Bhatia by means of pistol and revolver

and inflicted such bullet injuries on his person as were sufficient in ordinary course of nature to cause his death and in fact caused his death and thereby you all committed an offence punishable u/s 120-B r/w 302 of I.P.C. and within my cognizance.

Secondly - Alternatively you Nos. 2 and 3 above named on or about 13th June, 1995 at 20.20 hrs., on the ground floor of Lalchand Bungalow at Shankar Lane, Kandivali (W), Mumbai in furtherance of common intention of you both did commit murder by causing death of Harish Vallabhdas Bhatia, by means of pistol and revolver causing bullet injury on the person of said Harish Vallabhdas Bhatia, which were sufficient in the ordinary course of nature to cause his death and in fact caused his death and thereby committed an offence punishable u/s 302 r/w 34 of I.P.C. and within my cognizance.

Thirdly That you Nos.2 and 3 above named, on the aforesaid date, time and place, did possess, carried and used the fire arms to wit committing the murder of deceased Harish Vallabhdas Bhatia by the said fire arms and thereby committed an offence punishable u/s 27(3) of the Arms Act and within my cognizance."

The charge thus itself records two counts, namely, on the first count under Section 302 read with Section 34 of IPC and on the second count under Section 27(3) of the Arms Act, 1959. It is at this juncture, however, it would be convenient to advert to the true purport of the punishment of death and the social ramifications therefor. On this score we, however, deem it expedient to note an earlier decision of this Court in the case of *Jai Kumar v. State of M.P.* (1999 (5) SCC 1) (in which one of us was a party : U.C. Banerjee, J). In *Jai Kumar* (supra) this Court while considering the above stated as below :

"Section 302 of the Indian Penal Code authorises the Court to punish the offender of murder with death or imprisonment for life the statute therefore has provided a discretion to the court to sentence the offender either with death or with imprisonment for life: obviously, a serious decision and a heavy burden imposed on the Court This discretion conferred, however, shall have to be thus exercised in a manner and in consonance with the concept of law so as to sub- serve the ends of justice and it is on this aspect of the matter that in a long catena of cases this Court in no uncertain terms laid down that the award of death sentence though within the ambit of jurisdiction of the courts, but that does not clothe the courts to exercise the same in a manner indiscriminate. This Court has been candid enough to record on more occasions than one that it is only in the rarest of the rare cases that this discretion as regards capital punishment ought to be exercised. Ours is a civilised society a tooth for a tooth and eye for an eye ought not to be the criterion; the civilisation and the due process of law coupled with social order ought not to permit us to be hasty in regard to the award of capital punishment and as a matter of fact the Courts ought to be rather slow in that direction.

Justice is supreme and justice ought to be beneficial for the society so that the society is placed in a better off situation. Law courts exist for the society and ought to rise up to the occasion to do the needful in the matter, and as such ought to act in a manner so as to sub-serve the basic requirement of the society. It is a requirement of the society and the law must respond to its need. The greatest virtue of law is its flexibility and its adaptability, it must change from time to time so that it answers the cry of the people, the need of the hour and the order of the day. In the present day society, crime is now considered a social problem and by reason therefore a tremendous change even conceptually is being seen in the legal horizon so far as the punishment is concerned.

One school of thought on this score propagates that the function of the law court is that of a social reformer and as such in its endeavour to act as such, question of deterring punishment would not arise since the society would otherwise be further prone to such violent acts or activities by reason of the fact that with the advancement of the age the mental frame of boys of tender age also go on changing and in the event of any arrogance being developed or a sense of revenge creeping into the society, the society would perish to the detriment of its people. The other school, however, expressly recorded and rather emphatically that unless the severest of the severe punishments are inflicted on an offender (obviously depending upon the nature of the crime) the society would perish.

The other school professes that since one has taken the life of another that does not mean that his life shall have to be taken but during the trial if it transpires the method and manner or the nature of the activities which have resulted in the elimination of a human being from this world, there should not be any laxity on the part of the law courts, otherwise people will and in turn the society will be engulfed in a false sense of security of life in the event of there being the most heinous crime of the earth.

The law courts as a matter of fact have been rather consistent in the approach that a reasonable proportion has to be maintained between the seriousness of the crime and the punishment. While it is true that a sentence disproportionately severe, ought not to be passed but that does not even clothe the law courts with an option to award the sentence which would be manifestly inadequate having due regard to the nature of the offence since an inadequate sentence would fail to produce a deterrent effect on the society at large. Punishments are awarded not because of the fact that it has to be an eye for an eye or a tooth for tooth, rather having its due impact on the society: while undue harshness is not required but inadequate punishment may lead to sufferance of the community at large."

Turning attention on to the second count, to wit, the charge under Section 27(3) of the Arms Act, 1959 first, and for the purposes of proper appreciation of the submissions on this count as well, we deem it fit to note the provisions as provided in the Statute and the same reads as below :

"27. Punishment for using arms, etc. (1) (2) .

(3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of section 7 and such use or act results in the death of any other person, shall be punishable with death."

Before, however, detailing out the applicability of Section 27(3) of the Act, we do feel it expedient to advert to the factual backdrop of the matter presently before us. On the contextual facts it appears that on 13th June, 1995 at about eight o'clock in the evening, the deceased, his mother, father, maid Pramila and Anjana were watching Television in the hall. Shortly, thereafter, however, somebody pressed the doorbell of the house and Pramila, the maid, went to see as to who was at the door. As the maid was coming back, Anjana also went to gallery to see who was at the door whereupon she saw that one person was standing on the step near the grill and the other person was standing below the step. She asked the person standing on the step as to who he was. He gave his name as Arvind. She asked him as to what work he had. He told her that he was a friend of Harishbhai and that he had some work with Harishbhai. At that time Harish on being told by Pramila came to the passage. He went to the grill of the gallery and he asked the person standing on the step as to who he was. That person was talking in a very low voice. In order to ascertain as to what he was talking Harish leaned on the grill and that person immediately put his hand inside the grill and caught hold of the kurta of Harish just to give a violent jerk. He then put his second hand inside the grill. At that time Anjana saw that he was holding a pistol in his right hand and pointed it at the abdomen of Harish and started firing. At that time the second person climbed on the grill. He also had a pistol in his hand. He started firing on the head of Harish and Harish collapsed thereafter. This collapse of Harish dumb-founded Anjana by reason wherefor it took about a minute or so before Anjana started shouting and ran inside. She went to the western balcony to see them where she heard the sound of high acceleration of a vehicle in which accused Nos.2 and 3 fled from the place of occurrence. Harish was then shifted to Bhagwati Hospital, where however he was pronounced dead. Complaint of Anjana came to be recorded immediately thereafter i.e. on the same day at about 10 p.m. The records depict that from the scene of offence empty cartridges and bullets were recovered. Panchanama was drawn up and the empty cartridges, bullets and two pieces of bullets recovered from the stretcher on which the deceased was kept were sent to the Chemical Analyser by the Police. The further factual score depicts that on 3.7.1995 accused Nos.2 and 3 were arrested in LAC No.49 of 1995 at Goregaon and various arms and ammunitions were recovered from them under a panchanama. Amongst them were one 9 mm pistol and one .38 bore imported revolver. On 14.8.1995 the custody of the accused was obtained in DCB CR No.177 of 1995 and on 15.8.1995 judicial custody of the accused was obtained and it is on 16.8.1995 identification parade of accused Nos.2 and 3 was held in which P.W.1 Anjana and P.W.3 Pramila identified the accused.

As regards the injuries suffered by the deceased, PW.8 Dr. Shinde conducted the post-mortem examination and had the following to state :

"On my external examination I found the following injuries on the person were noted by me in Column No.17 of my P.M. Reprot.

(1) Fire arm wound of Entry on left eye brow medical and (if side forehead front) 0-8 cm.

Diameter with 0-5 c.m. semicircular abraded collar on upper and outer aspect, inverted margins. No Tattooing or singeing of hair, dried blood/clots within circular shape.

(2) Fire arm wound of Entry on right side chest front, at the level of right nipple, 9-5 cm. from right nipple, 3-2 cm. from midline, 0-8 cm.

Diameter with 0-1 cm. Abraded collar encircling, inverted margins. No tattooing/singeing of hair, dried blood/clots within, circular shape.

(3) Fire arm wound of entry on left side chest front 3-5 cm from midline, 10-0 c.m. below and medial to left nipple, 0-8 cm. Diameter with 0-1 cm. Abraded collar encircling inverted margins. No tattooing, singeing of hair, dried blood/clots within circular shape.

(4) Fire arm wound of entry on right side abdomen, epigastric area, 1-5 cm. From midline 2-0 cm. Below and lateral to right costal border. 9-8 cm. Diameter with one cm. Semicircular abraded collar on upper aspect, inverted margins. No tattooing, singeing of hair, dried blood/elects within, circular shape.

(5) Fire arm wound of entry on the right side chest front, two cm. Lateral to anterior armpit line, 20-0 c.m. below right axilla/152 c.m. Below and lateral to right nipple. 0-8 cm. Diameter with 1-4 cm. Semicircular abraded singeing of hair, dried blood/clots within circular shape.

(6) Fire arm wound of entry on the left side abdomen front, pelvic/fossa, 15-1 cm. From midline, 16-0 cm. Below and lateral to umbilicus 0-8 cm. Diameter with 0-2 cm. Semicircular abraded collar on medial aspect (medically) inverted margins. No tattooing/singeing of hair, dried blood/ clots within circular shape.

(7) Fire arm wound of entry on the left side abdomen front, iliac fossa, 17-2 (17-2 cm) from midline, 0-8 cm. Diameter with 0-5 cm.

Semicircular or singeing of hair; dried blood/clots within circular shape.

(8) Fire arm wound of exit on the left side chest back, 31-0 cm. Below neck throat junction 3.5 cm. From midline, 1.1 cm. x 1.10 cm. Everted margins, blood oozes out, oval shape.

(9) Fire arm wound of exit on the left side trunk back 41-0 cm. Below left shoulder belt, 14.0 cm. From midline, 2.0 cm. x 1.4 cm. Everted margins oval shape.

(10) Fire arm wound of exit on the left side trunk back, 6-1 cm. Below and medial to ext. injury No. (9) (Nine) 13.5 cm. From midline, 2-0 cm. x 1.6 cm. Everted margins, oval shape.

(11) Grazed abrasion on the left side trunk back extending from lower border of ext. injury No.10 (Ten) to ext. injury No.9 (Nine) to left side chest back, length 22.0 cm. Breadth one c.m. Red colour tapering towards chest of breadth 0.5 cm.

(12) Fire arm wound of entry on the left thigh lower 1/3 medially, 8.0 cm. Above left knee joint, 0-8 cm. Diameter with 0-5 cm. Semi circular abraded collar on lower and front aspect, inverted margins. No tattooing or singeing of hair, dried blood/clots within circular shape.

(13) Fire arm wound of exit on the left thigh upper 1/3 back, midline, 2.0 cm. x 1.4 cm.

Everted margins, oval shaped, blood oozes out. Also multiple puncture wounds within everted irregular margins, extending from left buttock lower part to left thigh middle 1/3 back of size varying from 0.8 cm. x 0.5 cm. To x 0.3 cm. x 0.2 cm. with a copper piece retrieved from left buttock lower medial part and four small lead pieces retrieved from left thigh skin underneath.

(14) Multiple puncture wounds with inverted irregular margins, over right thigh upper 1/3 to middle 1/3 on back, of size varying from 0.4 cm. x 0.3 cm. to 0.2 cm. x 0.1 cm. with three small lead pieces retrieved from right thigh skin underneath.

(15) Fire arm wound of entry on the right lower arm (Forearm) middle 1/3 back (level of little finger) 0.8 cm. Diameter with 0.5 cm. Semicircular abraded collar on lower aspect (towards hand), inverted margins. No tattooing or singeing of hair, dried blood/clots within circular shape.

(16) Fire arm wound of exit on the right lower arm (forearm) front 8.0 cm. (Eight cm.) below right cubital fossa, 1.3 cm. x 1.1 cm. Oval shape everted margins, blood oozes out.

(17) Abrasion red colour on the left lower leg below knee, middle 1.3, front 1.4 cm. x 1.3 cm.

On the internal examination the doctor found the following internal injuries :

(1) Corresponding with ext. injury No. One (1) Perforated skin and muscles underneath, passes through left nose to right side nose with perforated nasal septum, perforated and passes through right maxillary sinus to palate right side perforated.

Passes and perforated right side tongue fossa and pharyngeal fossa muscles to right side neck muscles laterally with injured and perforated right carotid sheath of cervical fourth and fifth vertebra intervertebral disc. with its contents i.e. right common carotid artery, right internal jugular veins, nerve accompanying with haemorrhage into adjacent muscles of neck, passes to right side chest back muscles with perforated 1st inter-costal space on right side chest back near vertebra, perforated right lung upper lobe. Haemorrhage along passage of bullet. A copper jacketed lead long (slender) bullet retrieved from right side chest cavity in blood/clots.

(2) Corresponding with ext. injury No.2 (2) :-

Perforated skin and muscle underneath with haematoma underneath. Perforated 4th rib (fourth rib) costal cartilage, perforated pericardium, perforated right ventricle through and through, perforated pericardium perforated right pleura, perforated right limb, lower lobe through and through, perforated right pleura, perforated 11th

rib with fracture 11th rib right side chest back.

Penetrate right side chest back muscles.

Haemorrhage along passage of bullet. A copper jacketed lead small bullet retrieved from right side chest back muscles at 11th rib level with haematoma and haemorrhage wound.

(3) Corresponding with Ext. injury No.three (3). Perforated skin and muscles underneath with haematoma underneath. Perforated 7th rib costal cartilage at left side chest front, perforated diaphragm, perforated stomach through and through upper part, perforated diaphragm, perforated 11th inter-costal space on left side chest. Perforated left side chest back muscles with exit wound corresponding to ext. injury no. eight (8). Haemorrhage along passage of bullet.

(4) Corresponding with ext. Injury No.four (4) Perforated right side abdomen skin and muscles underneath with haematoma underneath.

Perforated peritoneum, perforated ilea coils at two places through and through with mesentery with its vessels and nerves. Perforated peritoneum, perforated bladder through and through penetrate and passes right pelvic floor muscles to buttock muscles. Haemorrhage along passage of bullet. A copper jacketed lead small bullet retrieved from right buttock muscles lower medial quadrant with haemorrhage and haematoma around.

(5) Corresponding with ext. Injury No.five (5) Perforated right side chest laterally skin and muscles underneath with haematoma underneath. Perforated 9th inter-costal space on right side chest laterally, perforated diaphragm, perforated right lobe of liver through and through. Perforated diaphragm, perforated 11th inter-costal space on right side chest back, penetrate right side chest back muscles. Haemorrhage along passage of bullet. A copper jacketed lead along (slender) bullet retrieved from right side chest back muscles at 12th rib level with haemorrhage and haematoma around.

(6) Corresponding with Ext. Injury No.Six (6) Ext. Injury No.Six Entry passes through muscles.

Ext. Injury No. Nine exist Haemorrhage along passage.

(7) Corresponding with Ext. Injury No. twelve Ext. Injury No.Twelve passes left thigh lower entry.

Ext. injury No. thirteen Exist 1/3 medial muscles to left thigh back upper 1/3. Muscles with injured and perforated left femoral artery and vein underneath. Haemorrhage along passage of bullet.

(8) Corresponding with Ext. Injury No. fifteen Ext. Injury No. fifteen passes through underneath.

Entry: muscles only Haemorrhage Ext. Injury No. Sixteen along passage of bullet exist."

It is in this context Ballistic Expert's Report seems to go a long way as regards the pistol and revolver recovered from the accused persons' possession (marked with article Nos.19 and 20 respectively). The Report indicated that the bullets and pieces of bullets retrieved from the body of the deceased on 14.6.1995 were fired from 9 mm pistol and .38 caliber revolver. Bullets and empties seized under panchanama Exhibit 63 from the scene of offence tallied with bullets and pieces of bullets retrieved from the body of the deceased and they were fired from 9 mm and .38 revolver. Bullets retrieved from the body of the deceased and those bullets and empties recovered from the scene of offence were fired from articles 19 and 20.

At this juncture, however, it be noticed that the submissions in support of the appeal can thus be summarised under two specific counts, namely, (i) submissions pertaining to the Arms Act, 1959; and (ii) under the provisions of Indian Penal Code. Admittedly, the provisions, both under the Arms Act as also under the Indian Penal Code prescribe death sentence. It would thus be convenient to deal with the above noted two several aspects in two distinct manners since one is strictly statutory and technical in nature and the other is to be borne out on the basis of the facts and circumstances of the matter under consideration.

Re: Arms Act, 1959 Referring at this stage to Section 27(3) of the Arms Act, 1959 it appears that the statutory provision provides for a definite punishment for a definite offence : to wit, user of any prohibited arms, which results in the death of another person and in that event the Statute has been categorical enough to prescribe that user shall be punishable with death. There are thus two specific requirements of the Statute in order to bring home the guilt of the accused within the meaning of Section 27(3) : the requirements being (a) user of a prohibited arm; and (b) resultant death of a person by reason of such user. Incidentally, prohibited arms as defined under Section 2 (1) (i) of the Arms Act means -

"(i) firearms so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty, or

(ii) weapons of any description designed or adapted for the discharge of any noxious liquid, gas or other such thing, and includes artillery, anti-aircraft and anti-tank firearms and such other arms as the Central Government may, by notification in the Official Gazette, specify to be prohibited arms."

Rule 3 of the Arms Rules, 1962 prescribes that for the purposes of the Arms Act, 1959 and the Rules, "arms" and "ammunition" shall be of the categories specified in Columns 2 and 3 respectively of Schedule 1.

The relevant extract of Schedule 1 stands as under:

SCHEDULE 1 Category Arms Ammunition

(a) Prohibited arms as defined in Section 2(1) (i) and other in Section 2(1)(h) and such arms as the Central Government may, by Notification in the official Gazette specify to be prohibited arms. prohibited ammunition.

- | | | |
|-----|--|---|
| (b) | Semi-automatic firearms, other than those included in categories 1(c) and iii (a) smooth bore guns having barrel of less than 20" in length. | Ammunition for arms of category (b) |
| (c) | Blot action or semi-automatic fires of 303" or 7.62 mm. Bore or any other bore which can chamber and fire service ammunition of 303" or 7.62 m.m. calibre; muskets of .410" musket ammunition pistols, revolvers or carbines of any bore which can chamber .380" or .455" rimmed cartridges or service 9 m.m. or .445" rimless cartridges. | Ammunition for fire-arms of category 1(c) |
| (d) | . | |

III Firearms other those in Ammunition for fire-arms categories I,II and IV, other than those in namely: categories I,II and IV, namely:

(a) Revolvers and pistols Ammunition for fire-arms of category III (a).

..

It is on this score that Mr. Ranjit Kumar has been rather emphatic that since weapons of offences have been alleged to be a 9 mm pistol and a .38 revolver and since they are not automatically triggered but use of both these arms would depict that only one shot can be fired by the pull of trigger and for firing the second shot, the trigger has to be released first and pulled again, the arms in question cannot come within the purview of 'Prohibited Arms' as defined under Section 2(1)(i) of the Act of 1959. It is on this score the Statement of Objects and Reasons of the Legislation has been referred to by Mr. Ranjit Kumar in aid of his submissions. But before recording such a submission

be it noted that the Statement of Objects and Reasons is not otherwise admissible as an aid to the construction of a Statute but the same simply assists as to the necessity of introduction of such a law and since the decision of this Court in *Aswini Kumar Ghosh & Anr. v. Arabinda Bose & Anr.* (1953 SCR 1), the law seems to be well settled without a contra note being sounded till now that while construing the clear terms of an Act the Court is not required to ascertain the object of the enactment. We, however, hasten to add that though, in case of an urgent need of the situation by reason wherefor the intent of the legislature is to be assessed, the Statements and Objects can be looked into for the limited purpose of ascertaining the conditions prevailing at the time which prompted or actuated the proposer of the Bill to introduce the same and the extent of remedying the existing evil of the society.

Be that as it may apropos the Statement of Objects and Reasons and having felt the necessity of considering the same by reason of the factum of introduction of deterrent punishment for offences relating to prohibited arms and ammunitions and to meet the challenges from anti-national elements, we do feel it expedient to note the same in extenso.

"Statement of Objects and Reasons of Arms (Amendment) Act, 42 of 1988 The Arms Act, 1959, had been amended to provide for enhanced escalating terrorist and anti-national activities. However, it was reported that terrorist and anti-national elements, particularly in Punjab, had in the recent past acquired automatic firearms, machine guns of various types, rockets and rocket launchers. Although the definitions of the expressions "arms", "ammunitions", "prohibited arms" and "prohibited ammunitions" included in the Act are adequate to cover the aforesaid lethal weapons in the matter of punishments for offences relating to arms, the Act did not make any distinction between offences involving ordinary arms and the more lethal prohibited arms and prohibited ammunitions. Further, while the Act provided for punishment of persons in possession of arms and ammunition with intent to use them for any unlawful purpose, it did not provide for any penalties for the actual use of illegal arms. To overcome these deficiencies, it was proposed to amend the Act by providing for deterrent punishment for offences relating to prohibited arms and ammunition and for the illegal use of firearms and ammunition so as to effectively meet the challenges from the terrorist and anti-national elements. Accordingly, the Arms (Amendment) Ordinance, 1988, was promulgated by the President on the 27th May, 1988."

The punishment provided stands to be the severe most one and under the general law of the land it is only in the rarest of the rare cases that such a punishment can be inflicted on to an accused. Obviously, the intent of the legislature as appears from the Statement of Objects and Reasons cannot possibly be decried by reason of the situation prevalent during the period in question. In more than one State of the country it was rather a dismal picture. The use of prohibited arms and deadly weapons turned out to be a regular feature and the existing state of law was not in a position to subvert these moves by the anti-national elements and in the event of incorporation in the Statute Book of a legislation which stands engrafted therein to protect the society from these unruly elements, it is a bounden obligation of the law Courts to attribute its widest possible amplitude to

the words used in the legislature and interpret the legislation in accordance therewith. Question of there being a restrictive meaning to be attributed thus would not arise. It is on the basis as noticed above that Mr. Ranjit Kumar's submission that in fact there was no notification as required by law (vide Category A, Schedule I noticed above), in the absence of which the articles being marked 19 and 20 ought to be treated within category 'C' noted above and thus cannot be termed to be a prohibited item shall have to be considered.

Incidentally, there is on record a note in the form of instructions to all the States. Before delving on to the same the note is extracted hereinbelow :

"I am directed to say that in accordance with Rule 7(a)

(iii) on the Indian Arms Rules, 1951 the import into India of .38 bore Pistols/revolvers is prohibited.

Representations have been received that .38 bore pistols which are not in use in the Armed Services may be excluded from the classification of prohibited bore weapons, import of which is prohibited under the Indian Arms Act. Some doubts also been raised as to whether .38 bore Pistols/Revolvers for this purpose. The Govt. of India has been advised by their technical experts that .38 or .380 bore pistols (self loaded or automatic Colt) which fire .38 Rimless cartridges are not in use in the Armed Services. It has accordingly been decided that these pistols should not be treated as weapons of prohibited bores falling under Rule of the Indian Arms Rules

2. It has further been decided that the following weapons of prohibited bore, import of which shall not be granted under Rule 7 of the Indian Arms Rules, namely :

1. .380 bore revolver.
2. 9.65 MM Caliber Revolvers (This should be equivalent to .38 bore Revolvers).
3. All weapons firing rimmed cartridges having bore diameter across lands in the range between .340 to .365 and
4. All 9 MM caliber pistol which can load and fire service cartridges rifles 9 MM."

3. The State Govt. are already aware that the question of revision of the Indian Arms Act & Rule is under consideration of the Govt. of India and it is intended to incorporate the classifications mentioned above in the Indian Arms Rules when revised. In the meantime, I am to request that the other State Govt. may give effect to the above decision at once." (As per the paper book filed).

The High Court on this score stated :

"On a fair interpretation of the relevant provisions of the Arms Act; the rules made thereunder; the relevant schedule and in the light of the above letter, we are of the

opinion that Articles 19 and 20, seized from the accused are prohibited arms within the meaning of Arms Act, 1959 and hence Section 27(3) thereof is squarely attracted to the facts of the present case."

The submission of the State, however, has been that the note issued by the Central Government as noticed above, ought to be treated as an authorisation within the meaning of the first schedule to the Statute. Mr. Ranjit Kumar vis-a-vis the note had a two pronged attack on the score : On the first count, it has been contended that the note pertaining to the 9 mm pistol and .38 bore imported revolver stands out to be prohibited for the purposes of importation only, as such the general definition as regards the prohibited weapons would not in any way thus stand attracted and hence the note to be treated as an instruction and not a notification, thus does not authorise a punishment under Section 27(3) of the Arms Act. We find, however, that there is some justification in such a contention but the second count is rather important inasmuch as the requirement of the Statute is the issuance of a notification. Notification in common English acceptation mean and imply a formal announcement of a legally relevant fact and in the event of a Statute speaking of a Notification being published in the Official Gazette, the same cannot but mean a Notification published by the authority of law in the Official Gazette. It is on formal declaration and publication of an order and shall have to be in accordance with the declared policies or in the event the requirement of the Statute then in that event in accordance therewith. It is on this score the observations of this Court in Union of India & Anr. v. Charanjit S. Gill & Ors. (2000 (5) SCC 742) may be of some relevance. This Court while dealing with the Army Act, 1950 and the Court Martials thereunder observed that the "Notes" have been issued by the authorities of the Armed Forces for the guidance of the officers connected with the implementation of the provisions of the Act and the Rules and not with the object of supplementing or superseding the statutory Rules by administrative instructions thus more or less on similar situation as is presently under consideration since the "Note" cannot but be termed to be an administrative instruction. This Court in Charanjit S. Gill (supra) on the basis of the aforesaid stated that the administrative instructions issued or the notes attached to the Rules which are not referable to any statutory authority cannot be permitted to bring about a result which may take away the rights vested in a person governed by the Act we do record our concurrence with such a statement since in our view question of issuance of an administrative order or a note pertaining to special type of weapons to bring it within the ambit of the Arms Act which was hitherto not being included therein cannot be said to be included in the manner as it has sought to have been so done. Section 27(3) of the Arms Act prescribes a death penalty in the event the arm or weapon concerned stands out to be a prohibited arm, user of which results in a death a rather stringent provision. A person, howsoever graver the offence may be, cannot be punished more than as is prescribed under Section 27(3) of the Arms Act. On a comparative analysis of Section 302, there is some amount of laxity involved as regards the resultant death of a person by reason of a deliberate act of the accused it is on this score the legislature prescribes two objects, namely, imprisonment of life or death thus leaving it to the wisdom of the Court to pass the sentence in accordance with the gravity of the nature of offence and the methodology used to bring an end to the life of the assassin. It is in this perspective that the law is settled enough to record that it is only in the rarest of the rare cases that the maximum penalty, namely, the death sentence ought to be levied since that would be a barbarous act as that would run counter to the civilised notion and concept of the justice delivery system. True, a man's life comes to an end but would the justice delivery system require that he

should equally be punished in the same fashion and manner. This issue has been answered in the negative with a rider that in the event, however, the methodology adopted by the accused cannot but be termed to be rarest of the rare, this court would be at liberty to punish the offender with a death penalty. The jurisprudential system has developed in the country on this backdrop and it is in this perspective this possible attraction of Section 27(3) of the Arms Act shall also have to be dealt with. The Court must use the greatest amount of caution in the matter of exercise of jurisdiction under Section 27(3) and unless, needless to record that the issue in question stands covered in all its perspective and no two opinions can be had thereon, the Court will not be justified to bring home the charge under Section 27(3) of the Arms Act. Liberty is precious but life is more precious than liberty and the latter cannot possibly be taken away, if one does not cross the limits even at the cost of unforensic language in judicial phraseology on 'the drop of a hat' but one needs to bring home the attributes without any doubt as regards Section 27(3) of the Arms Act. The Statute speaks of a notification in the Official Gazette can an administrative note in relation to importation of a prohibited arm be termed to be sufficient so as to come within the ambit of the statutory requirement of a notification in the Official Gazette the answer cannot but be in the negative. Administrative instructions cannot possibly be a substitute for a notification which stands as a requirement of the Statute.

On the wake of the aforesaid, question of there being any notification even in the guise of an administrative order does not and cannot arise. The requirement of the Statute is sacrosanct and since the issue shall have to be dealt with utmost care and caution, without the issuance of a notification question of a conviction under Section 27(3) of the Arms Act would not arise. We are thus unable to record our concurrence with the submissions of the State that the administrative instructions ought to be treated as a notification the same cannot be sustained for reasons noticed hereinbefore and by reason of the stringency of the provision as laid down in Section 27(3), we do find some justification in the criticism of the judgment of the High Court as regards the acceptability of the administrative note.

In that view of the matter, the first contention of Mr. Ranjit Kumar in support of the appeal succeeds that conviction under Section 27(3) cannot be sustained.

Turning attention on to the offence under the general law of the land, the High Court thought it fit to confirm the death sentence as granted by the learned Sessions Judge. Be it noted that Section 354(3) of the Criminal Procedure Code, 1973 specifically records that in the event of a sentence of death the Court must state special reasons for such a sentence. Let us, however, at this juncture see for ourselves as to whether in fact the High Court confirming the death sentence have recorded any special reasons therefor. In paragraph 83 of the judgment, the High Court recorded as below :

"Deceased Harish Bhatia was only trying to recover legitimate dues of the brother-in-law P.W.6 Rajesh by persuasion and requests. He was a respectable person not involved in any crimes. When the incident occurred he was totally defenceless. He was shot at in a most brutal manner. Depravity of the accused is evident from the way in which they fired at the deceased by going to his door steps when he was unarmed. We have no manner of doubt that this is one of the rarest of

rare cases which warrant imposition of death penalty."

This, however, in our view, does not satisfy the statutory requirement as noticed hereinbefore since the same cannot be termed to be a special reason for imposition of such a penalty. Gunshot injuries were caused and at that point of time the deceased was unarmed and was taken aback as to the whole situation in every incidence of murder brutality is involved. It is not as that what we find on the factual score in Jai Kumar (supra). Brutality, obviously would be an existing factor but how the same did take place is the relevant and necessary material to be considered. In Jai Kumar (supra) the accused was trying to commit rape on his brother's wife and having failed to achieve the object committed a brutal murder by severing her head from the body and hanging her head on the tree. The accused further committed a murder of the 8 years old daughter of deceased sister-in-law who had witnessed the incident and the facts establish the depravity and criminality of the accused in no uncertain terms that has been the factual finding in Jai Kumar (supra) and the Court confirmed the sentence of death :

Is it with the same brutality or can the acts be termed to be similar in nature so far as brutality is concerned, the answer cannot but be in the negative. The High Court placed reliance on the decision of this Court in Dhananjay (Dhananjay Chatterjee alias Dhana v. State of W.B. - 1994(2) SCC 220) and in particular relied upon the following observation :

"In our opinion, 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."

In the last noticed decision the factual score prompted this Court to confirm the death sentence. Paragraph 16 of the judgment gives us a glimpse thereof and as such the same is set out hereinbelow :

"The sordid episode of the security guard, whose sacred duty was to ensure the protection and welfare of the inhabitants of the flats in the apartment, should have subjected the deceased, a resident of one of the flats, to gratify his lust and murder her in retaliation for his transfer on her complaint, makes the crime even more heinous. Keeping in view the medical evidence and the state in which the body of the deceased was found, it is obvious that a most heinous type of barbaric rape and murder was committed on a helpless and defenceless school-going girl of 18 years. If the security guards behave in this manner who will guard the guards? The faith of the society by such a barbaric act of the guard, gets totally shaken and its cry for justice becomes loud and clear. The offence was not only inhuman and barbaric but it was a

totally ruthless crime of rape followed by cold blooded murder and an affront to the human dignity of the society. The savage nature of the crime has shocked our judicial conscience. There are no extenuating or mitigating circumstances whatsoever in the case. We agree that a real and abiding concern for the dignity of human life is required to be kept in mind by the courts while considering the confirmation of the sentence of death but a cold blooded preplanned brutal murder, without any provocation, after committing rape on an innocent and defenceless young girl of 18 years, by the security guard certainly makes this case a "rarest of the rare" cases which calls for no punishment other than the capital punishment and we accordingly confirm the sentence of death imposed upon the appellant for the offence under section 302 IPC. The order of sentence imposed on the appellant by the Courts below for offences under Sections 376 and 380 IPC are also confirmed along with the directions relating thereto as in the event of the execution of the appellant, those sentences would only remain of academic interest. This appeal fails and is hereby dismissed."

Ours being a civilised society a tooth for a tooth and an eye for an eye ought not to be the criterion and as such the question of there being acting under any haste in regard to the capital punishment would not arise : Rather our jurisprudence speaks of the factum of the law courts being slow in that direction and it is in that perspective a reasonable proportion has to be maintained between the heinousness of the crime and the punishment. While it is true punishment disproportionately severe ought not to be passed but that does not even clothe the law courts, however, with an option to award the sentence which would be manifestly inadequate having due regard to the nature of offence since an inadequate sentence would not subserve the cause of justice to the society. In the contextual facts, we do not find the brutality of such a nature so as to exercise the discretion of passing an order of capital punishment undoubtedly brutality is involved but that brutality by itself will not bring it within the ambit of the rarest of the rare cases. On the wake of the aforesaid and having regard to the nature of the offence and the methodology adopted, we are convinced that the punishment awarded to the appellants herein is in excess of the requirement of the situation and as such while recording our concurrence with the finding as recorded by the High Court in the judgment impugned, as regards the guilt of the accused under Section 302 read with Section 34 of the Indian Penal Code, we are inclined to modify the sentence of death to that of life imprisonment under Section 302 read with Section 34 of the Indian Penal Code as against the appellants herein, and it is ordered accordingly: Except however, as above, this appeal fails and is dismissed.