Santosh Kumar Singh vs State Of M.P on 3 July, 2014

Equivalent citations: AIR 2014 SUPREME COURT 2745, 2014 (12) SCC 650, 2014 AIR SCW 4049, AIR 2014 SC (CRIMINAL) 1819, 2014 (3) AJR 617, 2014 CRILR(SC MAH GUJ) 880, (2014) 3 CRILR(RAJ) 880, (2014) 3 JLJR 476, (2014) 4 JCR 25 (SC), (2014) 3 CAL LJ 50, 2014 (3) BOMCR(CRI) 372, 2014 (8) SCALE 365, (2014) 4 ALLCRILR 74, (2014) 87 ALLCRIC 266, (2014) 4 DLT(CRL) 591, 2014 CRILR(SC&MP) 880, (2014) 142 ALLINDCAS 151 (SC), (2014) 4 CGLJ 73, 2014 CRILR(SC&MP) 362, (2014) 3 RECCRIR 642, (2014) 8 SCALE 365, (2014) 4 MPHT 1, (2014) 3 CRIMES 472

Bench: M.Y. Eqbal, Sudhansu Jyoti Mukhopadhaya, H.L. Dattu

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS.410-411 OF 2012

SANTOSH KUMAR SINGH … APPELLANT

VERSUS

STATE OF MADHYA PRADESH … RESPONDENT

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

These appeals are directed against the common impugned judgment dated 24th March, 2011 passed by the High Court of Madhya Pradesh, Principal Seat at Jabalpur, by which High Court upheld the judgment of conviction and sentence for the offences u/s 302, 307, 394, 397 and 450 IPC, as follows:

Section	Sentence imposed
For offence under Section 302 IPC (on two counts);	Sentenced to death.
For offence under Section 307 IPC (on two counts);	Sentence for life on each count with fine of Rs.10,000/- each on failure of payment RI for two years each.
For offence under Section 394 read with Section 397 (on four counts);	RI for ten years on each count with fine of Rs.5,000/- each on failure of payment further RI for one year each.
For offence under Section 450 IPC.	RI for ten years with fine of Rs.5,000/-. On failure of payment, further RI for one year.

2. The learned counsel for the appellant assailed the conviction, inter alia, on the following grounds:

(a) The trial was not fair as the appellant was not given an opportunity to defend by the counsel of his choice.

(b) The Trial Court gravely erred in placing implicit reliance on the statement of Razia Khatoon (PW-4) and Zeenat Parveen (PW-

3) and on the evidence of recovery of the ornaments and other articles from the possession of the appellant.

(c) The death sentence awarded by the Trial Court as confirmed by the High Court is not justified, as no case of rarest of the rare is made out.

3. The case of the prosecution is that the accused-Santosh Kumar Singh was known to the family of Gulam Mohd. including his wife, Noorjahan, son Javed Akhtar, and daughters viz. Rozi @ Razia and Zeenat Parveen. On 7th May, 2010, accused came to their house in Sector No.12, Quarter No.B-664, N.C.L. Colony, Singrauli at about 2 p.m. He had a chat with Noorjahan Begum (deceased) for about 30 minutes. In the same room besides her Rozi @ Razia Khatoon(PW-4) and Zeenat Parveen (PW-3) were also present. Javed Akhtar (deceased), son of Noorjahan Begum was sleeping in the bedroom. After accused left, Noorjahan Begum (deceased) started offering Namaz, Rozi @ Razia went to bathroom to take bath and Zeenat Parveen was sitting in the outside room. After sometime, accused came back and knocked the door; Zeenat Parveen opened the door and the accused came inside. At that time Rozi @ Razia came out of the bathroom and saw accused talking to Zeenat in the outside room, at that moment, the accused suddenly pulled out an iron hammer from his T-shirt and hit on the head of Zeenat Parween two-three times with hammer. Zeenat Parveen screamed and became unconscious. The accused, thereafter, with intention to kill Noorjahan Begum and Javed Akhtar also hit them with hammer on their heads, because of which both fell down and became unconscious. After that accused hit Rozi @ Razia by the hammer on her head with an intention to kill her resultantly Razia's head got fractured. Thereafter, the accused opened the almirah, suitcases and boxes and looted two gold chains, one pair of tops, one pair of bali, one pair of jhala, three rings, one nose pin and four pairs of silver anklets, artificial jewellery etc. and Rs. 23,000/- cash of Noorjahan Begum. He also took out four brass bangles from the hands of Noorjahan Begum. As a result of assault Noorjahan Begum died on the spot. On hearing shrieks of Rozi @ Razia, Ramesh Satnami (PW-1), Ramawadh Pal (PW-5) and other people of the colony came. At the time of incident, Gulam Mohd. (PW-2) was on duty and on receiving the news he came to the place of incident and took Rozi @ Razia, Zeenat Parveen and Javed Akhtar to Nehru Hospital.

4. On the basis of the report, Ext.P-10, of Rozi @ Razia Khatoon(PW-4), a case Crime No.0/10 was registered under Section 302, 307, 450, 394 & 397 IPC at the Police Station Vindhya Nagar. After receiving the news of the death of Noorjahan and Javed Akhtar, Shiv Kumar Dubey (PW-13) recorded the marg intimation of Ext.P-24 & 25 in Police Chauki Jayant, P.S. Vindhya Nagar and the marg intimation-Ext.P/10 was sent to the concerned Police Station, on the basis of which Crime No.Ka-0-304/10 was registered at P.S. Baidhan and investigation was started.

5. Sub-Inspector, J.S. Paraste (PW-12), on the same day, went at the spot and prepared the inquest memo of the body of Noorjahan Begum (Ext.P/12).The dead body of Noorjahan Begum was sent for postmortem examination. After conducting inquest proceedings in respect of the dead body of Javed Akhtar, the same was also sent for postmortem examination. Dr. Vinod Sharma(PW.16) examined the injuries of Razia Khatoon and Zeenat Parveen and found injuries on their heads. The injuries, grievous in nature, were dangerous to life.

6. Dr. V.N. Satnami (PW-10) conducted autopsy of the body of Noorjahan Begum. He found three injuries on her skull, skull bones were fractured. He submitted his postmortem report-Ext.P/19. In his opinion, death of the deceased was homicidal in nature. Dr. V.N. Satnami (PW-10) also conducted autopsy of body of Javed Akhtar and found two injuries on his head. There was depressed fracture of skull bone underneath the injuries. In his opinion, death of the deceased was homicidal in nature. Postmortem report of Javed Akhtar is Ext.P/20.

7. Anil Upadhyay (PW-11) was the Investigation Officer, who on the same night apprehended the accused from Khariya Chowk and recovered Rs.23,020/- from the pocket of his pants. On the information given by the appellant under Section 27 of the Indian Evidence Act, he recovered stolen articles, iron hammer and blood stained clothes from the house of the accused situated in N.C.L. Colony. The recovered articles were identified by Gulam Mohd (PW.2) and Razia Khatoon (PW-4).

8. After due investigation, the chargesheet was filed and the case was committed for trial. The appellant denied the guilt and pleaded false implication but he did not adduce any evidence in his defence.

9. Prosecution examined altogether 16 witnesses and produced a number of documentary evidence to prove their case. The Trial court on the appreciation of the evidence held the accused guilty and convicted and sentenced him for the offence as mentioned above, which was affirmed by the High Court.

10. Dr. V.N. Satnami (PW-10), who performed the postmortem examination of the body of Noorjahan Begum found the following injuries on her body:

> "(1)Reddish contusion 5 cm x 4 cm present on right side of forehead. Red blood clot was deposited under the skin.
>
> (2)Lacerated wound 5 cm x 3 cm x bone deep on middle of the forehead posteriorly with depressed multiple fractures of underlying bone.
>
> (3) Lacerated wound 4 cm x 3 cm x bone deep on left occipito parietal region of head with depressed multiple fractures of underlying bones.

In his opinion, death of deceased Noorjahan had occurred as a result of coma due to head injury. Death was homicidal in nature. The postmortem examination report (P/19) was written and signed by him." On the same day, Dr. Satnami (PW-10) performed postmortem examination of the body of

deceased Javed Akhtar and found the following injuries:

> "(1) Lacerated wound on left parietal region of head 2 cm x 1 cm x bone deep with peripheral contusions in size of 6 cm x 5 cm. subcutaneous reddish blood clot with multiple depressed fractures of underlying bone.
>
> (2) Reddish contusion on occipital region of head 5 cm x 4 cm in size with subcutaneous reddish blood clot with depressed fracture of underlying bone.

In his opinion, death of Javed Akhtar had occurred as a result of coma due to injury. Death was homicidal in nature."

11. From the inquest memorandums (Ext.P/6 and P/12) and the evidence of Sub-Inspector, J.S. Paraste (PW-12) and constable Raj Bahadur Pandey (PW-

15), who conducted inquest, it was established that Noorjahan and Javed Akhtar died of homicidal injuries found on their bodies.

12. Anil Upadhyay (PW-11), Investigation Officer arrested the accused from Khariya Chowk, Main Road, P.S. Shakti Nagar in the presence of witnesses Mohd.Sadiq (PW-6) and Mohd. Yunus (PW-7) and seized money from him and prepared seizure memo-Ext.P-15. After arrest the accused was brought to the Police Station-Jayant and was interrogated in front of the witnesses. During interrogation accused gave information regarding jewellery and the hammer which was used in committing crime; the clothes, hammer and jewellery were seized from the house of the accused vide memorandum-Ext.P-13, written by Anil Upadhyay (PW-11). Anil Upadhyay stated that he went to the house of accused and seized the jewellery article from articles-A1 to A 24; seizure memo-Ext.P-14 was prepared. He had also stated that blood stained clothes and iron hammer were seized in the presence of witnesses vide seizure memo-Ext.P-16.

13. Mohd. Sadiq (PW.6) and Mohd. Yunus (PW-7) are the independent witnesses of the memorandum of seizure. In their statement they deposed that the Police arrested the accused at Khariya Chowk in their presence and seized about Rs. 23,000/-from him and the accused was brought to the Police Station-Jayant for inquiry. At the Police Station the accused disclosed about the jewellery, hammer and clothes, on the basis of which jewellery, hammer and clothes were seized. Both the witnesses thereby have corroborated the statement of Anil Upadhyay(PW-11). During the cross- examination both the witnesses, PW-6 and PW-7 admitted that they visited the house of Gulam Mohd. There is no infirmity or contradiction in the statements of the two witnesses.

14. Mohd. Ayaz Khan (PW-9) stated that on 8th July, 2010 at the request of the Police he conducted identification of the jewellery at stadium Baidhan and prior to the identification Police had handed over other jewellery in a sealed packet. He mixed it and then conducted the identification and during the identification Gulam Mohd. and Razia had identified the original jewellery. After identification he had handed over the jewellery in a packet to the Police who were standing outside the stadium.

15. Zeenat Parween(PW-3) and Razia Khatoon (PW-4), daughters of deceased Noorjahan and sisters of deceased Javed Akhtar are the injured eyewitnesses; both of them received serious injuries at the incident. Both the witness PW-3 and PW-4 clearly stated that sometime before the incident, the accused had come to their house and he being a prior acquaintance, the accused had taken refreshment sitting with their mother and also was talking with her. From the statements of both the witnesses the facts of the accused coming to their house before the incident, taking refreshment with deceased Noorjahan and talking with her are proved, which is also corroborated from the FIR-Ext.P-10. Both these witnesses have also stated that in the past the accused used to come for tuitions and their mother used to treat the accused like her son and the photograph of the accused was also hanging in their house. From the aforesaid evidence, it is clear that the PW-3 and PW-4 were in a position to identify the accused, the accused was well acquainted with both PW-3 and PW-4 since long. The prosecution proved beyond reasonable doubt that even prior to the incident the accused was known to the deceased and the injured witnesses PW-3 and PW- 4 and on the date of incident also, the accused had come to their house and had taken refreshments and had talks.

16. Zeenat Parveen (PW-3) and Razia Khatoon (PW-4) in their statements clearly stated that initially the accused left their house and after sometime the accused had come again to their house. On opening the door he had hit the hammer on the head of Javed Akhtar, who had come out after hearing screams of Zeenat Parveen and then after entering into the bedroom he hit deceased Noorjahan on her head. From the statement of Razia Khatoon (PW-4), it is also clear that the accused after entering the store-room had hit on her head and then the accused had taken out the money and jewellery from the almirah, suitcase, box and attaché, etc. In paragraph 7 Zeenat Parveen (PW-3), has also stated that she had seen the accused hit Javed Akhtar on his head but she could not see as to who hit Razia and her mother. Such statement cannot be stated to be contradiction and does not adversely affect the case of the prosecution in view of the deposition made by Razia Khatoon(PW-4).

17. Similarly, from the statement of Razia Khatoon (PW-4), we find that the accused after hitting Zeenat Parveen, Javed Akhtar and Noorjahan took away jewellery, cash amount and the bangles of Noorjahan and then he ran away after bolting the door from outside.

18. PW-4 further deposed that after the accused run away by bolting the door from outside she went into the balcony and stop Satnami (PW-1), who at that time had taken out his vehicle and was going somewhere. Then, the door was got open. Statements of Razia Khatoon (PW-4) about shouting from the balcony stopping Satnami (PW-1) and then opening of the door by Satnami are also proved by the statement of Ramesh Satnami (PW-1), who made similar statement.

19. In view of the statements made by the injured witnesses Zeenat Parveen (PW-3) and Razia Khatoon (PW-4) as corroborated by the postmortem report, seizure of jewellery, hammer, blood stained clothes (Ex.P-13)and statement of Anil Upadhyay (PW-11), as corroborated by Sadiq (PW-6) and Yunus (PW-7), the Trial Court rightly held the accused guilty for the offences u/s 302, 307, 394 r/w 397 and 450 IPC.

20. First ground taken by the learned counsel for the appellant with respect to denial of opportunity to the accused to be defended by a counsel of his choice is incorrect as from the record we find that proper opportunity was given to the accused.

21. The order sheets of the Trial Court dated 25th September, 2010 shows that the appellant made an application that appellant wanted to get the witnesses cross-examined by senior Advocate, Mr. Rajendra Singh Chauhan, therefore, he requested to defer the cross-examination of the witnesses. The Trial court rejected the application. On 27th September, 2010, counsel of the accused, Mr. Amrendra Singh, who was defending the accused, refused to defend him. The Trial Court then appointed one Mr. G.P. Dwivedi, Advocate, as defence counsel on State expenses.

22. On perusal of records it transpires that Shri Amrendra Singh, Advocate had filed his Vakalatnama for representing the appellant. On 25th September, 2010, when the case was fixed for evidence though he was competent to cross-examine the witnesses but he moved the application to defer the cross-examination of the witnesses on the ground that the accused wanted to engage senior Advocate, Mr. Rajendra Singh Chauhan. However, neither Rajendra Singh Chauhan was present nor any Vakalatnama was filed on his behalf. On that day, two witnesses, namely Ramesh Satnami (PW-1) and Gulam Mohd. (PW-2) were examined and Mr. Amrendra Singh, Advocate had cross- examined those witnesses. None of those witnesses were eyewitnesses; in fact one of them, Ramesh Satnami (PW-1) was declared hostile. On 27th September, 2010, Mr. Amrendra Singh refused to appear on behalf of the appellant, when the appellant on asking expressed his inability to appoint any counsel. Since there was none to represent the accused, the Trial Court appointed Mr. G.P. Dwivedi, Advocate, to pursue the appeal. The appellant has failed to show that Mr. G.P. Dwivedi was not competent or was incapable of handling the case. On the contrary from the cross-examination of the witnesses made by Mr. G.P. Dwivedi we find that he was competent to deal with the case. Even on the next date neither Mr. Rajendra Singh Chauhan, Advocate appeared nor he filed his Vakalatnama.

23. The next question is whether death sentence awarded to the appellant is excessive, disproportionate on the facts and circumstance of the case, i.e. whether the present case can be termed to be a rarest of the rare case.

24. Guidelines emerged from Bachan Singh vs. State of Punjab, 1980 (2) SCC 684 were noticed by this Court in Machhi Singh and others vs. State of Punjab, 1983 (3) SCC 470. In the said case the Court observed:

> 38. In this background the guidelines indicated in Bachan Singh case, 1980 (2) SCC 684 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 case(supra):
>
> "(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 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.

39. In order to apply these guidelines inter alia the following questions may be asked and answered:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

40. If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."

25. In Ronny alias Ronald James Alwaris and others vs. State of Maharashtra, 1998 (3) SCC 625, this Court held:

"45. These principles have been applied in various judgments of this Court thereafter and it is unnecessary to multiply the cases here. Whether the case is one of the rarest of the rare cases is a question which has to be determined on the facts of each case. Suffice it to mention that the choice of the death sentence has to be made only in the rarest of the rare cases and that where culpability of the accused has assumed depravity or where the accused is found to be an ardent criminal and menace to the society and; where the crime is committed in an organised manner and is gruesome, cold-blooded, heinous and atrocious; where innocent and unarmed persons are attacked and murdered without any provocation, the case would present special reason for purposes of sub-section (3) of Section 354 of the Criminal Procedure Code." In Rony alias Ronald James Alwaris (supra) this Court noted the law laid-down by this Court in Allauddin Mian & Ors. Vs. State of Bihar, (1989) 3 SCC 5,

that unless the nature of the crime and circumstances of the offender reveal that criminal is a menace to the society and the sentence of life imprisonment would be altogether inadequate, the Court should ordinarily pass a lesser punishment and not punishment of death which should be reserved for exceptional case only. Considering the cumulative effect of all the factors, like the offences committed under the influence of extreme mental or emotional disturbance, the young age of the accused, the possibility of reform and rehabilitation, etc. the Court may convert the sentence into life imprisonment.

26. In State of Maharashtra vs. Goraksha Ambaji Adsul, 2011 (7) SCC 437, this Court made the following observation:

"30. The principles governing the sentencing policy in our criminal jurisprudence have more or less been consistent, right from the pronouncement of the Constitution Bench judgment of this Court in Bachan Singh v. State of Punjab,(2010) 8 SCC 775. Awarding punishment is certainly an onerous function in the dispensation of criminal justice. The court is expected to keep in mind the facts and circumstances of a case, the principles of law governing award of sentence, the legislative intent of special or general statute raised in [pic]the case and the impact of awarding punishment. These are the nuances which need to be examined by the court with discernment and in depth.

31. The legislative intent behind enacting Section 354(3) CrPC clearly demonstrates the concern of the legislature for taking away a human life and imposing death penalty upon the accused. Concern for the dignity of the human life postulates resistance to taking a life through law's instrumentalities and that ought not to be done, save in the rarest of rare cases, unless the alternative option is unquestionably foreclosed. In exercise of its discretion, the court would also take into consideration the mitigating circumstances and their resultant effects.

32. The language of Section 354(3) 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. This is how the concept of the rarest of rare cases has emerged in law. Viewed from that angle, both the legislative provisions and judicial pronouncements are at ad idem in law. The death penalty should be imposed in the rarest of rare cases and that too for special reasons to be recorded. To put it simply, a death sentence is not a rule but an exception. Even the exception must satisfy the prerequisites contemplated under Section 354(3) CrPC in light of the dictum of the Court in Bachan Singh(supra).

33. The Constitution Bench judgment of this Court in Bachan Singh (supra) has been summarised in para 38 in Machhi Singh v.

State of Punjab, (1998) 1 SCC 149, and the following guidelines have been stated while considering the possibility of awarding sentence of death: (Machhi Singh case(supra), SCC p. 489) "(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 requires 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 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." (emphasis supplied) [pic]

34. The judgment in Bachan Sing(supra), did not only state the above guidelines in some elaboration, but also specified the mitigating circumstances which could be considered by the Court while determining such serious issues and they are as follows:

> (SCC p. 750, para 206) "206. ... '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 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.'"

35. Now, we may examine certain illustrations arising from the judicial pronouncements of this Court.

36. In D.K. Basu v. State of W.B.,(2002) 1 SCC 351, this Court took the view that custodial torture and consequential death in custody was an offence which fell in the category of the rarest of rare cases. While specifying the reasons in support of such decision, the Court awarded death penalty in that case.

37. In Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (1972) 2 SCC 640, this Court also spelt out in paras 56 to 58 that nature, motive, impact of a crime, culpability, quality of evidence, socio-economic circumstances, impossibility of rehabilitation are the factors which the court may take into consideration while dealing with such cases. In that case the friends of the victim had called him to see a movie and after seeing the movie, a ransom call was made, but with the fear of being caught, they murdered the victim. The Court felt that there was no evidence to show that the criminals were [pic]incapable of reforming themselves, that it was not a rarest of the rare case, and therefore, declined to award death sentence to the accused.

38. Interpersonal circumstances prevailing between the deceased and the accused was also held to be a relevant consideration in Vashram Narshibhai Rajpara v. State of Gujarat, (1996) 8 SCC 167, where constant nagging by family was treated as the mitigating factor, if the accused is mentally unbalanced and as a result murders the family members. Similarly, the intensity of bitterness which prevailed and the escalation of simmering thoughts into a thirst for revenge and retaliation were also considered to be a relevant factor by this Court in different cases.

39. This Court in Satishbhushan Bariya (supra) also considered various doctrines, principles and factors which would be considered by the Courts while dealing with such cases. The Court discussed in some elaboration the applicability of the doctrine of rehabilitation and the doctrine of prudence. While considering the application of the doctrine of rehabilitation and the extent of weightage to be given to the mitigating circumstances, it noticed the nature of the evidence and the background of the accused. The conviction in that case was entirely based upon the statement of the approver and was a case purely of circumstantial evidence. Thus, applying the doctrine of prudence, it noticed the fact that the accused were unemployed, young men in search of job and they were not criminals. In execution of a plan proposed by the appellant and accepted by others, they kidnapped a friend of theirs. The kidnapping was done with the motive of procuring ransom from his family but later they murdered him because of the fear of getting caught, and later cut the body into pieces and disposed it off at different places. One of the accused had turned approver and as already noticed, the conviction was primarily based upon the statement of the approver." "41. The above principle, as supported by case illustrations, clearly depicts the various precepts which would govern the exercise of judicial discretion by the courts within the parameters spelt out under Section 354(3) CrPC. Awarding of death sentence amounts to taking away the life of an individual, which is the most valuable right available, whether viewed from the constitutional point of view or from the human rights point of view. The condition of providing special reasons for awarding death penalty is not to be construed linguistically but it is to satisfy the basic features of a reasoning supporting and making award of death penalty unquestionable. The circumstances and the manner of committing the crime

should be such that it pricks the judicial conscience of the court to the extent that the only and inevitable conclusion should be awarding of death penalty."

27. This Court in Ramnaresh and others vs. State of Chattisgarh, 2012 (4) SCC 257, noticed the aggravating and mitigating circumstances with respect to a crime and held 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,(1980) 2 SCC 684, and thereafter, in Machhi Singh,(1983) 3 SCC 470. The aforesaid 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 [pic]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.

[pic] (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 behaviour 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 behaviour 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.

While determining the questions relating to sentencing policy, the Court laid down the Principles at paragraph 77 which reads as follows:

"77. While determining the questions relatable to sentencing policy, the court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence. Principles (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."

28. Recently, this Court in Shankar Kisanrao Khade vs. State of Maharashtra, 2013 (5) SCC 546, dealing with a case of death sentence, observed:

"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 the "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 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."

29. In the present case the appellant is an educated person, he was about 26 years old at the time of committing the offence. The accused was a tutor in the family of the deceased-Noorjahan. He was in acquaintance with the deceased as well as Zeenat Parveen (PW-3) and Razia Khatoon (PW-4). There is nothing specific to suggest the motive for committing the crime except the articles and cash taken away by the accused. It is not the case of the prosecution that the appellant cannot be reformed or that the accused is a social menace. Apart from the incident in question there is no criminal

antecedent of the appellant. It is true that the accused has committed a heinous crime, but it cannot be held with certainty that this case falls in the "rarest of the rare category". On appreciation of evidence on record and keeping in mind the facts and circumstances of the case, we are of the view that sentence of death penalty would be extensive and unduly harsh.

30. Accordingly, we commute the death sentence of appellant to life imprisonment. The conviction and rest part of the sentence are affirmed. Appeals are partly allowed.

.....J. (H.L. DATTU) .....J. (SUDHANSU JYOTI MUKHOPADHAYA) .....J. (M.Y. EQBAL) NEW DELHI, JULY 3, 2014.