Shivaji @ Dadya Shankar Alhat vs State Of Maharashtra on 5 September, 2008

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Author: Arijit Pasayat

Bench: Mukundakam Sharma, Arijit Pasayat

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1409 OF 2008
(Arising out of Special Leave Petition (Crl.) No.57 of 2007)

Shivaji @ Dadya Shankar Alhat .. Appellant

versus

The State of Maharashtra ..Respondent

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

A large number of cases in recent times coming before this Court involving rape and murder of young girls, is a matter of concern. In the instant case victim was about nine years of age who was the victim of sexual assault and animal lust of the accused-appellant; she was not only raped but was murdered by the accused appellant.

2. Learned Second Additional Judge, Pune in Sessions Case No.209 of 2002 tried the appellant for offences punishable under Sections 302 and Section 376 (2)(f) of the Indian Penal Code, 1860 (in short the `IPC'). By judgment and order dated 27th June, 2004, the trial court found the appellant guilty for the aforesaid offences and he was sentenced to death for the offence of murder and in respect of the other offence sentence to suffer rigorous imprisonment for ten years and to pay fine with default stipulation. Appellant questioned the judgment in Criminal Appeal No.574 of 2004 before the Bombay High Court which heard the same alongwith Confirmation Case No.1 of 2003 which was referred to the High Court as required under Section 366 of the Code of Criminal Procedure, 1973 (in short the `Code'), for confirmation of death sentence. The appeals were heard together, the reference was accepted but the appeal filed by the accused was dismissed.

3. Prosecution version as unfolded during trial is as follows:

> Shivaji-appellant (hereinafter referred to as the `accused') is an educated person i.e. B.A. BEd. and was serving as teacher at Pune in the year 1986. He was staying with his mother and sister near the house of Hemlata (hereinafter referred to as the `deceased'), a tiny girl who had not seen ten summers in life. The accused is a married man and has three children. His wife and children were not residing with him.
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> The accused was known to the deceased and her family.
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> The deceased and her family used to sometime give him bread. The deceased was studying in 5th standard. She has two sisters, namely, Bhagyashree and Jayshree (PW 8). Her mother Sushilabai (PW 2) was working as a maid. All of them were staying with their grandmother Yashodabai (PW 7). The father of the deceased was not staying with them on account of strained relationship between him and Sushila, the mother of deceased.
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> The incident in question occurred on 14th January, 2002.
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> On that day there was festival of Makarsankranti. Sushilabai had gone to the house of one Tirandaz for work. The deceased and her two sisters and their grandmother Yashodabai were present in the house. At about 11.30 a.m., the deceased and her sister Jayshree had gone to the borewell of one Sangale to fetch water. The accused was sitting on the slab, where construction work of one Mr. Gaikar was going on. The accused told the deceased that he would give her fuel wood from the hill. Thereafter they came to deceased's house. The deceased kept the pitcher in the house and she went alongwith the accused towards the hill called Manmodya Dongar. Thereafter the deceased did not return home.
>
> Sushilabai came home at about 4.30 P.M. She was told that her daughter Hemlata had gone with the accused and had not returned. They started searching for the deceased but could not find her. On the same day i.e. on 14th January,

2002,Yashodabai, the grandmother of the deceased gave a missing complaint to the police in which she stated that the deceased had left the house with the accused and had not come back. Search was going on to find out the deceased. It appears that Sushilabai got to know from one Sakinabai that dead body of Hemlata was lying on Manmodya hill. She also gave information to the police on 15th January, 2002 regarding missing of Hemlata which is at Exhibit 12. In this complaint she also stated that the deceased had left the house alongwith the accused.

After seeing the dead body of Hemlata at Junnar Hospital, Sushilabai reported the matter to the police. Her complaint came to be recorded in which she stated that her daughter had left with the accused on 14.1.2002. She specifically stated that she was convinced that, it is the accused who had raped her daughter and assaulted her on her abdomen with a sharp edged weapon, strangulated her with a rope and murdered her. On the basis of this FIR investigation started.

The accused was not traceable. He could be arrested only on 16th January, 2002. He was found hiding in the sugarcane crop of one Gaikwad. After completion of the investigation the accused came to be charged as aforesaid.

Since the accused abjured guilt trial was held.

Seventeen witnesses were examined to further the prosecution version.

Prosecution examined Sushilabai (PW 2), the mother of the deceased and Yashodhabai (PW 7), grandmother of the deceased. Jayshree (PW 8) the sister of the deceased, Shantabai (PW 9) and Khanwar Hussein (PW 6) were examined to establish the prosecution case that the accused and the deceased were last seen together on 14th January, 2002 at about 11.30 a.m. going towards Manmodya Hill. Suresh B. Visave (PW 3) is a Pancha to the Panchnama of recovery of penknife at the instance of the accused. Dr. Suresh R. Shahane (PW 15) had examined the accused. Dr. Suresh B. Patankar (PW 17) had examined the accused to find out whether he was capable of sexual intercourse. The prosecution also examined Dr. Nana N. Sonawane (PW 5), who proved the postmortem notes. Investigation was conducted by PSI Ramesh R. Bhosale (PW 14) and PSI Dilip D. Jagdale (PW

16).

The accused pleaded innocence and false implication. His case was that in fact at the relevant point of time he was not present in the village and has gone to his daughter's house, then to his sister's house.

Learned trial court found the evidence cogent and found the accused guilty and imposed the sentence. The appeal before the High Court was dismissed and the reference made under Section 366 IPC was confirmed.

4. In support of the appeal learned counsel for the appellant submitted that the case at hand is based on circumstantial evidence and the circumstances do not warrant conclusion of guilt of the accused. Since the conviction was based on circumstantial evidence, no death sentence should have been awarded and in any event this is not a case where death sentence should have been imposed.

5. Learned counsel for the respondent-State on the other hand submitted that trial court and the High Court have analysed the evidence in great detail to show the horrendous manner in which a tiny girl was gone to death after ravishing her. The circumstances which have highlighted by the prosecution relate to the fact that the accused was last seen in the company of the deceased and injury on the abdomen and the rope by which the deceased was strangulated were recovered at the instance of the accused and the fact that the accused had absconded and was arrested from a place where he was hiding and the presence of blood on his cloth is a relevant factor. The plea of alibi set up has not been established.

6. From the evidence of Sushila (PW 1), Yashodabai (PW 7) and Jayashree (PW 8) it appears that they are a poor family. Sushila (PW l) is lame and at the relevant time was deserted by her husband. Sushila and her daughters used to stay with her mother Yashodabai who was about 69 Years old. Sushila used to work as a maid and used to be away from the house for long hours in connection with work leaving in the house her mother and three daughters. The daughters used to do household work like filling water and used to go to school. The deceased was thus a helpless poor girl of tender age. She had no protection of the father. She was, therefore, a vulnerable girl.

7. Yashodabai (PW 7) has stated that the accused was residing near their house. He was not doing any work. His wife and children were not residing with him. Sushila (PW 1) has stated that since the accused used to stay in hilly area the deceased used to sometimes give him bread. Khanwar Husssein (PW 6) and Shantabai (PW 9) stay in village Barav Junnar where the deceased was staying. They have also confirmed that the accused used to stay in the same village. Therefore, that the accused was staying near the house of the deceased and was known to her has been established.

8. Sushila (PW1), the mother of the deceased has stated that on 14th January, 2002, she had gone to the house of one Tirandaz for work. At that time her three daughters and mother were present in the house. She left the house at about 11-15 a.m. and came back at about 4.30 p.m. When she came back, her mother told her that the deceased had gone to bring fuel wood along with the accused. Since the deceased did not come back they started searching for her. Yashodabai, the grandmother of the deceased gave a missing complaint to the Junnar police on 14.1.2002. On 15th January, 2002 at about 8.30 to 9.00 a.m. one Sakinabai who was residing near their house, came and informed that the dead body of the deceased was found on the hill. Sushila then gave a complaint to the police on 15.1.2002 that her daughter had left with the accused on 14.1.2002 at about 11 O' clock in the morning; that she had not returned home; that they had searched for her; that her neighbour Sakina Shaikh had told her that the dead body of her daughter was lying on the hill and that out of fear she had not gone to see the dead body.

9. Jayashree (PW 8) is the minor daughter of Sushila (PW1). Her evidence in our opinion is crucial to the prosecution case and it also inspires confidence. She has stated that on 14th January, 2002,

she had gone with her sister deceased Hemlata, towards the borewell of one Sangale in order to fetch water, at about 11.30 a.m. The construction work of one Gaikar was going on and the accused was sitting on the slab there. The accused met them and told the deceased that he would give her fuel wood from the hill. Thereafter they came home. The deceased kept her pitcher in the house. She took a towel and a sickle and went alongwith the accused towards Manmodya hill. She has further stated that as her mother was not present she told her grandmother that the deceased had gone along with the accused to bring fuel wood. When her mother came back at 4.30 p.m. she told her mother that the deceased had gone along with the accused. Since the deceased did not come back they started searching for her. The body of the deceased was found on the next day on the hill. This witness has stood the test of cross examination very well. She has stuck to her version in the examination-in- chief. There is not a single discrepancy in her evidence. The trial Court and the High Court rightly placed reliance on the evidence of this witness.

10. The evidence of Jayshree (PW 8) is corroborated by evidence of Shantabai (PW 9). According to her on the day of the incident she was collecting cow dung near Manmodya hill at about 11 a.m. She saw the accused and the deceased going towards the hill. In the cross examination an attempt was made to suggest to her that her financial position was sound and, therefore, there was no reason for her to collect cow dung on Makarsankrati day. There is no substance in this submission. Shantabai (PW 9) has stated that she was being maintained out of the amount of pension which her husband was getting. This does not mean that Shantabai came from an affluent family. There is nothing abnormal in finding a village woman collecting cow dung in the morning. She knew both, the accused and the deceased. Her evidence to the effect that she saw the accused and the deceased going towards Manmodya hill on 14th January, 2002 at about 11 O'clock in the morning is credible.

11. The third witness who had seen the accused and the deceased is Khanwar Hussain (PW 6). He is also a resident of Barav. He has stated that on 14th January, 2002 at 11 to 11.15 a.m. he was offering water to his cattle from the cistern of one Sangale. At that time he saw the accused and the deceased proceeding towards the hill. The evidence of this witness is reliable. It is significant to note that he has stated that he was offering water to his cattle from the cistern of Sangale. Jayshree (PW 8) has also stated that she and the deceased were going towards the borewell of Sangale and that accused met them when they were proceeding towards their house after collecting water. Therefore, the claim of Khanwar Hussein that he had seen the accused and the deceased cannot be disbelieved. The statement of this witness is recorded on 15th January, 2002 i.e. immediately after the incident.

12. So far as the last seen aspect is concerned it is necessary to take note of two decisions of this court. In State of U.P. v. Satish [2005 (3) SCC 114] it was noted as follows:

> "22. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last

> seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2."

13. In Ramreddy Rajeshkhanna Reddy v. State of A.P. [2006 (10) SCC 172] it was noted as follows:

> "27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration".

(See also Bodh Raj v. State of J&K (2002(8) SCC 45).)"

14. A similar view was also taken in Jaswant Gir v. State of Punjab [2005(12) SCC 438], Kusuma Ankama Rao v State of A.P. (2008(9) SCALE 652) and in Manivel & Ors. v. State of Tamil Nadu (2008(5) Supreme 577).

15. Before analyzing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

16. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh v. State of Rajasthan AIR (1977 SC 1063); Eradu and Ors. v. State of Hyderabad (AIR 1956 SC 316); Earabhadrappa v. State of Karnataka (AIR 1983 SC 446); State of U.P. v. Sukhbasi and Ors. (AIR 1985 SC 1224); Balwinder Singh v. State of Punjab (AIR 1987 SC

350); Ashok Kumar Chatterjee v. State of M.P. (AIR 1989 SC 1890). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

17. We may also make a reference to a decision of this Court in C. Chenga Reddy and Ors. v. State of A.P. (1996) 10 SCC 193, wherein it has been observed thus:

> "In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....".

18. In Padala Veera Reddy v. State of A.P. and Ors. (AIR 1990 SC 79), it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

> "(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
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> (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
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> (3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

19. In State of U.P. v. Ashok Kumar Srivastava, (1992 Crl.LJ 1104), it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

20. Sir Alfred Wills in his admirable book "Wills' Circumstantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted".

18. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch- stone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

21. In Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh, (AIR 1952 SC 343), wherein it was observed thus:

> "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

22. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra, (AIR 1984 SC 1622). Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
>
> (3) the circumstances should be of a conclusive nature and tendency;
>
> (4) they should exclude every possible hypothesis except the one to be proved; and (5) there must be a chain of evidence so compete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

23. In Joseph and Poulo v. State of Kerala [2000(5) SCC 197] it was, inter alia, held as follows:

> "The formidable incriminating circumstances against the appellant, as far as we could see, are that the deceased was taken away from the convent by the appellant under a false pretext and she was last seen alive only in his company and that it is on the

information furnished by the appellant in the course of investigation that jewels of the deceased which were sold to PW 11 by the appellant, were seized."

"The incriminating circumstances enumerated above unmistakably and inevitably lead to the guilt of the appellant and nothing has been highlighted or brought on record to make the facts proved or the circumstances established to be in any manner in consonance with the innocence at any rate of the appellant. During the time of questioning under Section 313 Cr.P.C. the appellant instead of making at least an attempt to explain or clarity the incriminating circumstances inculpating him, and connecting him with the crime by his adamant attitude of total denial of everything when those circumstances were brought to his notice by the Court not only lost the opportunity but stood self-condemned. Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed.(See: State of Maharashtra v. Suresh). That missing link to connect the accused appellant, we find in this case provided by the blunt and outright denial of every one and all that incriminating circumstances pointed out which, in our view, with sufficient and reasonable certainty on the facts proved, connect the accused with the death and the cause of the death of Gracy and for robbing her of her jewellery worn by her -- MOs 1 to 3, under Section 392. The deceased meekly went with the accused from the Convent on account of the misrepresentation made that her mother was seriously ill and hospitalised apparently reposing faith and confidence in him in view of his close relationship -- being the husband of her own sister, but the appellant seems to have not only betrayed the confidence reposed in him but also took advantage of the loneliness of the hapless woman. The quantum of punishment imposed is commensurate with the gravity of the charges held proved and calls for no interference in our hands, despite the fact that we are not agreeing with the High Court in respect of the findings relating to the charge under Section 376.

24. In Damodar v. State of Karnataka [2000 SCC (Crl) 90] it was, inter alia, observed as follows:

"From the evidence of PWs. 1,6,7 & 8 the prosection has satisfactorily established that the appellant was last seen with the deceased on 30.4.91. The appellant either in his Section 313 Cr.P.C. statement or by any other evidence has not established when and where he and the deceased parted company after being last seen."

25. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins.

Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a corner-stone of the edifice of "order" should meet the challenges confronting the society. Friedman in his "Law in Changing Society" stated that, "State of criminal law continues to be - as it should be - a decisive reflection of social consciousness of society". Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. For instance a murder committed due to deep- seated mutual and personal rivalry may not call for penalty of death. But an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence. In Mahesh v. State of M.P. (1987) 2 SCR 710), this Court while refusing to reduce the death sentence observed thus:

> "It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon."

26. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. This position was illuminatingly stated by this Court in Sevaka Perumal etc. v. State of Tamil Naidu (AIR 1991 SC 1463).

27. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.

28. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of

greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

29. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle MCG Dautha v. State of Callifornia: 402 US 183: 28 L.D. 2d 711 that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

30. In Jashubha Bharatsinh Gohil v. State of Gujarat (1994 (4) SCC 353), it has been held by this Court that in the matter of death sentence, the Courts are required to answer new challenges and mould the sentencing system to meet these challenges. The object should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Even though the principles were indicated in the background of death sentence and life sentence, the logic applies to all cases where appropriate sentence is the issue.

31. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

32. In Dhananjoy Chatterjee v. State of W.B. (1994 (2) SCC

220), this Court has observed that shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminals and in the ultimate making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the

crime and the society at large while considering the imposition of appropriate punishment.

33. Similar view has also been expressed in Ravji v. State of Rajasthan, (1996 (2) SCC 175). It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance.

34. These aspects have been elaborated in State of M.P. v. Munna Choubey [2005 (2) SCC 712].

35. In Bachan Singh v. State of Punjab [1980 (2) SCC 684] a Constitution Bench of this Court at para 132 summed up the position as follows: (SCC p.729) "132. To sum up, the question whether or not death penalty serves any penological purpose is a difficult, complex and intractable issue. It has evoked strong, divergent views. For the purpose of testing the constitutionality of the impugned provision as to death penalty in Section 302, Penal Code on the ground of reasonableness in the light of Articles 19 and 21 of the Constitution, it is not necessary for us to express any categorical opinion, one way or the other, as to which of these two antithetical views, held by the Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion on this issue, is a ground among others, for rejecting the petitioners' argument that retention of death penalty in the impugned provision, is totally devoid of reason and purpose. If, notwithstanding the view of the Abolitionists to the contrary, a very large segment of people, the world over, including sociologists, legislators, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of society, if in the perspective of prevailing crime conditions in India, contemporary public opinion channelised through the people's representatives in Parliament, has repeatedly in the last three decades, rejected all attempts, including the one made recently, to abolish or specifically restrict the area of death penalty, if death penalty is still a recognised legal sanction for murder or some types of murder in most of the civilised countries in the world, if the framers of the Indian Constitution were fully aware -- as we shall presently show they were -- of the existence of death penalty as punishment for murder, under the Indian Penal Code, if the 35th Report and subsequent reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code and the insertion of the new Sections 235(2) and 354(3) in that Code providing for pre-sentence hearing and sentencing procedure on conviction for murder and other capital offences were before Parliament and presumably considered by it when in 1972-73 it took up revision of the Code of 1898 and replaced it by the Code of Criminal Procedure, 1973, it is not possible to hold that the provision of death penalty as an alternative punishment for murder, in Section 302, Penal Code is unreasonable and not in the public interest. We would, therefore, conclude that the impugned provision in Section 302, violates neither the letter nor the ethos of

Article 19."

36. Similarly, in Machhi Singh v. State of Punjab [1983 (3) SCC 470] in para 38 the position was summed up as follows:

> (SCC p. 489) "38. In this background the guidelines indicated in Bachan Singh's case (surpa) will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh's case (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."

37. The position was again reiterated in Devender Pal Singh v. State of NCT of Delhi [2002 (5)SCC 234] : (SCC p. 271, para

58) "58. From Bachan Singh 's case (supra) and Machhi Singh's case (supra) the principle culled out is that when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, the same can be awarded. It was observed:

> The community may entertain such sentiment in the following circumstances:
>
> (1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.
>
> (2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded

murder for gains of a person vis-`-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.

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

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

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-`-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community."

38. If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the rarest of rare cases, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.

39. What is culled out from the decisions noted above is that while deciding the question as to whether the extreme penalty of death sentence is to be awarded, a balance sheet of aggravating and mitigating circumstances has to be drawn up.

40. The plea that in a case of circumstantial evidence death should not be awarded is without any logic. If the circumstantial evidence is found to be of unimpeachable character in establishing the guilt of the accused, that forms the foundation for conviction. That has nothing to do with the question of sentence as has been observed by this Court in various cases while awarding death sentence. The mitigating circumstances and the aggravating circumstances have to be balanced. In the balance sheet of such circumstances, the fact that the case rests on circumstantial evidence has no role to play. In fact in most of the cases where death sentence are awarded for rape and murder and the like, there is practically no scope for having an eye witness. They are not committed in the public view. But very nature of things in such cases, the available evidence is circumstantial evidence. If the said evidence has been found to be credible, cogent and trustworthy for the purpose of recording conviction, to treat that evidence as a mitigating circumstance, would amount to consideration of an irrelevant aspect. The plea of learned Amicus Curiae that the conviction is based on circumstantial evidence and, therefore, the death sentence should not be awarded is clearly unsustainable.

41. The case at hand falls in the rarest of rare category. The circumstances highlighted above, establish the depraved acts of the accused, and they call for only one sentence, that is death sentence.

42. Looked at from any angle the judgment of the High Court, confirming the conviction and sentence imposed by the trial Court, do not warrant any interference.

43. We record our appreciation for the able assistance rendered by learned amicus curiae in the true spirit of friend and officer of the Court.

44. Appeal fails and is dismissed.

.....J. (Dr. ARIJIT PASAYAT) .....

.....J. (Dr. MUKUNDAKAM SHARMA) New Delhi, September 5, 2008