Rajesh Kumar vs State Th:Govt Of Nct Of Delhi on 28 September, 2011

Equivalent citations: 2011 AIR SCW 5997, 2012 (1) AIR KAR R 316, AIR 2011 SC (CRIMINAL) 2268, 2012 (3) AIR JHAR R 139, 2011 CRI LJ (SUPP) 215 (SC), (2012) 1 MAD LJ(CRI) 85, (2011) 50 OCR 633, (2011) 4 CURCRIR 55, (2011) 11 SCALE 182, (2011) 4 DLT(CRL) 89, 2011 (13) SCC 706, (2011) 4 RECCRIR 459, (2011) 107 ALLINDCAS 65 (SC), (2011) 4 CHANDCRIC 266, (2011) 183 DLT 78, (2011) 75 ALLCRIC 553, 2012 (2) SCC (CRI) 836, 2011 (4) KLT SN 49 (SC), 2012 (4) KCCR SN 272 (SC)

Bench: Asok Kumar Ganguly, D.K. Jain

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1871-1872 OF 2011

(Arising out of SLP(CRL) Nos.9516-9517 of 2009)

Rajesh Kumar ...Appellant(s)

- Versus -

State through Govt. of NCT of Delhi ...Respondent(s)

J U D G M E N T

GANGULY, J.

1. Leave granted.

2. These Criminal Appeals are preferred from the judgment of conviction under section 302 of the Indian Penal Code (hereinafter "IPC") and the penalty of death sentence, delivered on 6th August, 2009 by the High Court of Delhi in Death Sentence Reference no. 2/2007 and Criminal Appeal no.

635/2007, whereby the High Court upheld the conviction and confirmed the penalty of the death sentence imposed by the Additional Sessions Judge, Rohini Court in Session Case No.178/06.

3. This Court had issued notice on the limited question of quantum of sentence. The facts and circumstances, which are relevant to these appeals, are as under.

4. According to the prosecution, the duty officer in the Police Control Room received a call from number 20056630 at 15:38 hours on 28.7.2003 informing him that a man had entered a house in Subhash Nagar and had assaulted two children and had locked the door of a room from inside. Another call was made to the Police Control Room from mobile No. 9810458303 noting that the informant had informed that a man had murdered two children inside House No. 2/129 Subhash Nagar near Arya Samaj Temple.

5. Each time the duty officer at the police control room, on receipt of afore-noted information, relayed the information to the concerned police station i.e. P.S. Rajouri Garden, where the duty constable recorded the said information by way of entries in the daily diary register, being DD No. 11, Ex.PW-

16/A at 3:35 PM and DD No. 12, Ex.PW-16/B at 3:50 PM.

6. ASI Jagpal PW-22 was handed over a copy of both the DD entries and was deputed to investigate. He took along with him HC Naresh PW-19 and Const. Sukhbir PW-24. The three police officers reached House No. 2/129 Subhash Nagar. A crowd had gathered outside the house. Mr. Bahadur Singh PW-4 a resident of House No. 2/130 Subhash Nagar i.e. the immediate neighbour and one Mr. Negi (not examined as a witness) were present in the gathering and told the police officers that the assailant had locked himself in a room on the second floor of House No. 2/129 Subhash Nagar. The officers climbed up the staircase and reached the second floor and knocked the door. The man inside did not oblige. The three police officers had a peep inside through the ventilator above the door and saw the body of a male child, smeared with blood and the neck badly cut.

Blood was splattered all over the room. They had no option but to break open the door and apprehend the man inside who was Rajesh Kumar, the appellant.

7. Inspector Ram Chander PW-32, the SHO of P.S. Rajouri Garden, was given the information about a man killing two children on the second floor of House No. 2/129 Subhash Nagar. He reached the house and by that time the appellant had been apprehended by ASI Jagpal Singh, HC Naresh and Const. Sukhbir.

8. On learning that Harshit, the younger son had been removed to Chanan Devi Hospital, Inspector Ram Chander went to the hospital and learnt that Harshit was in an unconscious state. He collected the MLC Ex.PW-8/A of Harshit and returned to the spot.

9. Inspector Ram Chander recorded the statement Ex.PW-

1/A of Sangeeta Sethi and made an endorsement Ex.PW-

32/A on the same. He sent the same through Constable Kamal at 6.30 PM for registration of an FIR. HC Rajesh Tyagi PW-17, the duty officer at P.S. Rajouri Garden, recorded the FIR Ex.PW-17/A at 6:50 PM on the basis of the statement of Sangeeta Sethi and sent a copy of the FIR back to the spot with Constable Kamal. Constable Amarender PW-8 was handed over the FIR to be delivered to the Area Magistrate and he left the police station at around 7:20 PM and returned to the police station at 10:10 PM.

10. After the incident, Swanchetan, a Society for Mental Health was informed by the police and they were requested to counsel the family. Dr. Rajat Mitra (P.W.-7), Director of Swanchetan Society for Mental Health found the mother of the children in a state of total shock and she was unable to speak.

Dr. Rajat Mitra then talked with the appellant and did not find an abnormality in the behavior of the appellant wherefrom he could be certified as an insane person.

11. The investigation being complete, the police personnel left for the police station. The appellant was formally arrested as recorded in the arrest memo Ex.PW-32/F at 10:00 PM from the place of occurrence.

12. Unfortunately Master Harshit could not survive and died the same night in the Hospital.

13. The appellant was charged under section 302 IPC for committing the murder of two children namely, Anshul and Harshit.

14. At the trial, Sangeeta PW-1, the mother of the two children, deposed that she was a housewife and was living on the second floor of house No. 2/129, Subhash Nagar at the time of the occurrence. Her elder son was named Anshul and the younger one was named Harshit. Their age was 4= years and 8 months respectively. The incident took place at around 3:00 PM on 28.7.2003 when she was

present in her house and her sons were sleeping in the bed room.

Appellant came and asked for water. She gave him water. Appellant wanted a meal. She went to the kitchen and heard cries of Harshit. She returned and picked up Harshit. Appellant told her to give the child to him and cook meals for him. She gave her child to the appellant and went to the kitchen. Her son cried continuously even in the arms of the appellant and suddenly the crying stopped. She went to the bed room and saw that her son was being held from his legs by the appellant who was hitting the child on the floor. Her other son was sleeping on the bed in the same room. She snatched her son from the appellant and rushed to Pinki's house and handed over her unconscious son to Pinki and rushed back, by which time the appellant had bolted the door. She raised an alarm. She heard her son crying Ma Ma..

Suddenly the cries died down. By that time her neighbour Pritam Singh and Bahadur as also a few other persons gathered. The police arrived and a police person climbed a table and through a ventilator saw the dead body of her son and the appellant standing nearby. They pushed and opened the door. She saw her son with his throat slit. A piece of glass, stained with blood, was lying on the chest of her son. The dressing table glass was broken. The walls were stained with blood.

15. PW-1 was cross-examined and she admitted that there was no quarrel between her husband and the appellant qua the demand of any money, but volunteered that the appellant used to demand money from her husband.

16. Mukesh Sethi PW-2, the husband of PW-1, deposed that on the day of the incident i.e. 28.7.2003, he was residing with his wife and children on the 2nd floor of house No. 2/219, Subhash Nagar, and the appellant was the husband of his sister Alka, and was unemployed for the last 2= to 3 years and during this period the appellant used to demand money for setting up business and that he gave him Rs.15,000/-

and Rs.20,000/- on two occasions. 15-20 days prior to the date of the incident the appellant had demanded more money, which he refused because he did not have money to spare. On 28.7.2003 at around 4- 4:15 PM he was sitting in his other house at Rohini and received a call from his wife who rang up from a neighbour's house at 4:45 PM. He reached his house and saw a crowd and the police. His wife was crying that her children had been killed. His younger son had been removed to the hospital and the other son was lying dead inside the house.

17. PW-2 was cross-examined and he admitted that relations between him and the appellant were normal.

He stated that he saw the appellant for the first time after the incident in the police station only.

He denied that the appellant was mentally sick.

18. The appellant did not lead any evidence in defence.

19. After the appreciation of evidence, the Trial Court observed that the prosecution established the charges against the appellant beyond reasonable doubt. Consequently, the Trial Court vide order-

dated 12.03.2007 convicted the appellant under section 302 IPC and vide order dated 24.03.2007 awarded death sentence to the appellant subject to the confirmation of the High Court.

20. Consequently, a petition for confirmation of Death Sentence bearing Death Sentence Ref. no. 2/2007 was filed before the High Court

21. Being aggrieved the appellant also preferred a Criminal Appeal no. 635/2007 before the High Court.

22. By judgment dated 06th August 2009, the High Court after re-appreciation of the entire evidence on record observed that it is beyond reasonable doubt that the appellant committed the murder of two children and upheld the conviction of the appellant under section 302 IPC. The High Court further observed that the case falls in the category of rarest of rare case, dismissed the Criminal Appeal filed by the appellant and confirmed the death sentence imposed upon him.

23. The learned Counsel for the appellant submitted that the facts of this case do not put the case in the category of the rarest of the rare cases, attracting the penalty of death. Listing the mitigating circumstances in this case, the learned Counsel urged that there are several of them. The first is that the appellant is a first time offender. The second is that he has two sons, a wife and a widowed mother to support. The third is the young age of the appellant who was aged 37 years when he committed the crime. The fourth is the chance of the appellant's rehabilitation in the society being not ruled out. The fifth, which is a corollary of the fourth is, that it cannot be said that the appellant is a continuing threat to the society.

24. The learned Additional Solicitor General appearing on behalf of the State urged that the facts and circumstances of this case clearly bring it within the rarest of rare case and warrants the imposition of death sentence. He argued that the appellant killed two children, one of which was 8 months old and the other was 4= years of age, who were obviously unarmed and innocent and incapable of giving any provocation to the appellant.

25. The learned Additional Solicitor General also contended that the killing of children is always a heinous crime. The evidence against the appellant is clinching and the appellant has not suffered any remorse.

26. The learned Additional Solicitor General referred to the report from Swanchetan, which is a society for mental health. The said report reflects the opinion of Dr. Rajat Mitra (PW-7), Director of Swanchetan, who examined the appellant after the incident.

27. By placing reliance on the said report, the learned Additional Solicitor General argued that the appellant did not show any sign of remorse to Dr. Rajat Mitra, when he was examined after the incident.

28. The learned Additional Solicitor General also referred to report of All India Institute of Medical Sciences dated 27.05.2009. This report was prepared pursuant to the order of the Delhi High Court dated 04.05.2009. The said Medical Board examined the appellant on 27.05.2009. The Board opined that the appellant is of sound mind and did not want to discuss the issue of the nature of offence but informed the Doctor that he has to spend his life in prison. The Medical Board opined that the appellant was mentally fit.

29. The learned Additional Solicitor General also drew the attention of this Court to Question no. 138 in the examination of appellant under section 313 of Criminal Procedure Code. Both the question and the answer are set out below:

> "Q.138 Anything else you want to say? A. I am unwell since childhood. I am on medicine since then. The problem with me is that I fell anywhere while walking. I also start shouting. I become unaware about myself. My treatment was under going in jail and of late now I have left my treatment, as doctor is not going to change my medicine. The problem, which I was facing in the past has re-surfaced. Even in the past while I use to drive my eyes use to get closed of its own. Mukesh and his relations know about my medical problems.
>
> I do not know how Anshul and Harshit have expired. I am innocent. I have been falsely implicated. My medical documents have been torn apart by my wife and for that reason out of having a sense of guilt she has not come to see me even in jail. I cannot produce these medical papers.

30. In the impugned judgment, the High Court also noted certain mitigating factors which are as follows:

> "48. ... The first is that the appellant is a first time offender. The second is that he has two sons, a wife and a widowed mother to support. The third is the fact that financial hardship created stress in the mind compelling the appellant to commit the crime. The fourth is the young age of the appellant who was aged 37 years when he committed the crime. The fifth is the chance of the appellant's rehabilitation in the society being not ruled out."

31. In para 79 of the impugned judgment, the High Court has noted the aggravating circumstances. The first aggravating circumstance which the High Court noted is the brutal, diabolical and dastardly nature of assault by the appellant on the two children. The second aggravating circumstance is the trauma produced on the mother of children. The third aggravating circumstance is that the victims are innocent children. The fourth aggravating circumstance is breach of trust by the appellant.

The appellant wanted P.W.1, the mother of the children, to cook food for him and the mother went to the kitchen giving the younger child to the appellant, trusting that no harm would be caused to the child but that trust was breached. The fifth aggravating circumstance was the close relationship

between the appellant and the victims. The sixth aggravating circumstance, pointed out by the High Court, is the motive of revenge of the appellant towards the children, as the father of the children did not extend financial help to him. The seventh aggravating circumstance is the lack of remorse on the part of the appellant. The eighth aggravating circumstance is pre-meditation of the appellant in committing the crime and the cruel weapon of offence used namely a piece of glass, which was retrieved by breaking the mirror of the dressing table.

32. The High Court in the impugned judgment while balancing these circumstances confirmed the Death Sentence.

33. In so far as the plea of insanity is concerned, both the Trial Court and the High Court rejected the same. In fact no such plea was taken by the appellant in the Trial Court. Before this Court also the said plea of insanity has been taken half-

heartedly. What has been primarily argued in this Court is that the Trial Court and the High Court had improperly balanced the consideration of aggravating and mitigating circumstances and it has been urged that if mitigating circumstances are properly weighed in accordance with the well-known judicial principles, the death sentence awarded to the appellant cannot be sustained.

34. In this connection, we may consider the evolution of sentencing structure and the concept of mitigating circumstances in India relating to death penalty. The Code of Criminal Procedure, 1898 (hereinafter "1898 Code"), had section 376(5) which required that if an accused is convicted of an offence punishable with death and the court sentences him with any punishment other than death, the court shall, in its judgment, give reasons why death sentence was not passed. The provision of section 367(5) of 1898 Code reads as follows:

> "(5) If the accused is convicted of an offence punishable with death, and the court sentences him to any punishment other than death, the court shall in its judgment state the reason why sentence of death was not passed."

35. This was during the colonial days when the worth and dignity of human life was not the central point in our jurisprudence.

36. Even after the coming of Constitution of India, the aforesaid provision of section 367(5) of the 1898 Code continued for some time.

37. In 1955, the Code of Criminal Procedure (Amendment) Act, 1955 deleted the aforesaid section 367(5) of the 1898 Code. As a result of this amendment, which came into effect from 1st January 1956, it was no longer necessary for a Court to record in its judgment, in case of conviction in connection with an offence punishable with death, any reason for not imposing the death sentence.

38. With the functioning of this Court under the Constitution, several cases of death sentence came before this Court from 1950 onwards. But reference to extenuating or mitigating circumstances in a case of death penalty was made possibly for the first time by this Court in the case of Nawab Singh v.

The State of Uttar Pradesh (AIR 1954 SC 278). In that case it was urged that for delay of execution, the death sentence should be commuted to one for transportation of life. This Court rejected the said argument holding inter-alia that it is a matter primarily for the consideration of local Government.

This Court, however, opined that in a proper case an inordinate delay in the execution of sentences may be regarded as a ground for commutation. However, this Court held that in the facts of that case murder was a cruel and deliberate one and there were no extenuating circumstances.

39. After the amendment of 1898 Code, in the year 1955, the first case relating to death sentence, which came before this Court was that of Vadivelu Thevar v. The State of Madras reported in AIR 1957 SC 614 wherein this Court made the following pertinent observations:

> "13.....If the court is convinced about the truth of the prosecution story, conviction has to follow. The question of sentence has to be determined, not with reference to the volume or character of the evidence adduced by the prosecution in support of the prosecution case, but with reference to the fact whether there are any extenuating circumstances which can be said to mitigate the enormity of the crime. If the court is satisfied that there are such mitigating circumstances, only then, it would be justified in imposing the lesser of the two sentences provided by law. In other words, the nature of the proof has nothing to do with the character of the punishment. The nature of the proof can only bear upon the question of conviction - whether or not the accused has been proved to be guilty. If the court comes to the conclusion that the guilt has been brought home to the accused, and conviction follows, the process of proof is at an end. The question as to what punishment should be imposed is for the court to decide in all the circumstances of the case with particular reference to any extenuating circumstances....."

40. It is, therefore, clear that this Court was making a distinction between its formation of opinion on the conviction of the accused for the crime committed and its formation of opinion on the punishment to be imposed for the crime on consideration of extenuating or mitigating circumstances.

41. The next decision of this Court rendered on the constitutionality of death sentence was in the case of Jagmohan Singh v. The State of U.P. (1973) 1 SCC

20. The Constitution Bench of this Court in Jagmohan Singh (supra) examined whether total discretion can be conferred on the judges in awarding death sentence, when the statute does not provide any guidelines on how to exercise the same.

42. The decision in Jagmohan Singh (supra) was rendered when the present Code of Criminal Procedure, 1973 was not in existence.

43. The Constitution Bench in Jagmohan Singh (supra) held that the policy of the law giving a wide discretion to the judges in the matter of imposition of death sentence had its origin in the

impossibility of laying down any standards for exercise of such discretion. However, the Court found that such discretion is liable to be corrected by superior courts, but the court did not find that conferment of such discretion on the judges was unconstitutional.

44. The Constitution Bench in Jagmohan Singh (supra) however felt it difficult to follow the ratio of United States Supreme Court in William Henry Furman v. State of Georgia [reported in 408 US 238 (1972)], as this Court found that our Constitution does not have a provision like the Eighth Amendment of the Constitution of United States. This Court also held in Jagmohan Singh (supra) that the test of reasonableness cannot be applied by this Court in the same manner as is done by the United States Supreme Court in view of the existence of `due process clause' in the United States Constitution (see para 12 at page 27 of the report). The learned Judges quoting from the commentary by Ratanlal's, Law of Crimes, (Twenty-second edition), referred to certain mitigating and aggravating circumstances in para 22 at page 32 of the report, but opined that the said list is not exhaustive (para 23 at page 32 of the report).

45. In paragraph 28 at page 36 of the report in Jagmohan Singh (supra) the Constitution Bench found that the legal position as it stood in 1972 was as follows:-

> ".....The sentence follows the conviction, and it is true that no formal procedure for producing evidence with reference to the sentence is specifically provided. The reason is that relevant facts and circumstances impinging on the nature and circumstances of the crime are already before the court. Where counsel addresses the court with regard to the character and standing of the accused, they are duly considered by the court unless there is something in the evidence itself which belies him or the Public Prosecutor for the State challenges the facts. If the matter is relevant and essential to be considered, there is nothing in the Criminal Procedure Code which prevents additional evidence being taken. It must, however, be stated that it is not the experience of criminal courts in India that the accused with a view to obtaining a reduced sentence ever offers to call additional evidence."

46. However, the aforesaid position substantially changed with the introduction of a changed sentencing structure under the present Code of Criminal Procedure, 1973. If we compare the 1898 Code with 1973 Code, we would discern lot of changes between the two Codes in sentencing structure.

47. Chapter XXIII of 1898 Code under the heading of "Trial before the High Court and Sessions Courts"

> lays down the procedure for trials conducted before a High Court or Court of sessions. Section 268 of 1878 Code provides for trials before a Court of sessions either by a Jury or by the Judge himself. Section 309 of 1898 Code provides for the manner in which judgment is to be given in cases tried by the Judge himself.

48. Section 309 of 1898 Code reads as follows :

"309. Judgment in cases tried by the Judge himself.-

(1) When, in a case tried by the Judge himself, the case for the defence and the prosecutor's reply (if any) are concluded, the Judge shall give a judgment in the case.
(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 562, pass sentence on him according to law."

49. The 41st Law Commission Report (Volume I) dated 24th September, 1969 proposed extensive changes in 1898 Code. In paragraph 23.2 of the said report, the Law Commission recommended a set of new provisions for governing "Trials before a Court of sessions". With regard to Section 309 of the 1898 Code, the Law Commission recommended that hearing of the accused was most desirable before passing any sentence against him. This recommendation was accepted and incorporated while enacting Section 235 Cr.P.C in 1973 Code within Chapter XVIII of the same under the heading "Trial before a Court of Sessions".

50. Section 235 Cr.P.C. reads as follows:

"235. Judgement of acquittal or conviction.

- (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.

51. The most significant change brought about by the incorporation of the recommendation of the Law Commission (supra), is the giving of an opportunity of hearing to the accused on the question of sentence. This is the incorporation of the great humanizing principle of natural justice and fairness in procedure in the realm of penology. The trial of an accused culminating in an order of conviction essentially relates to the offence and the accused under 1898 Code did not get any statutory opportunity to establish and prove in such trial the mitigating and other extenuating circumstances relating to himself, his family and other relevant factors which are germane to a fair sentencing policy. This opportunity of hearing at the post conviction stage, gives the accused an opportunity to raise fundamental issues for adjudication and effective determination by Court of its sentencing discretion in a fair and reasonable manner.

52. Similarly the corresponding provision of section 354 of 1973 Code was section 367 of the 1898 Code. Both the sections 354 of 1973 Code and section 367 of 1898 Code have virtually the same title. In section 367 of 1898 Code, it was `Language of judgment.

Contents of judgment' and in 1973 Code, title of section 354 is `Language and contents of judgment'.

But Section 354 of 1973 Code is substantially different from section 367 of 1898 Code as there was no such provision as section 354(3) of 1973 Code in the 1898 Code. Section 354 of 1973 Code runs as under:-

> "354. Language and contents of judgment. -
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> (1) Except as otherwise expressly provided by this Code, every judgment referred to in section 353,--
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> (a) shall be written in the language of the Court;
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> (b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;
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> (c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted and the punishment to which he is sentenced;
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> (d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.
>
> (2) When the conviction is under the Indian Penal Code (45 of 1860) and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative. (3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.
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> (4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the ease was tried summarily under the provisions of this Code.
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> (5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.
>
> (6) Every order under section 117 or sub-

section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision."

53. The importance of section 235(2) of 1973 Code has been explained by this Court in several decisions and its importance can hardly be overemphasized in a case where prosecution demands the imposition of death penalty and the court awards the same.

54. In Santa Singh v. State of Punjab [(1976) 4 SCC 190] this Court held that this new provision is in consonance with the modern trends in penology and sentencing procedures. Noticing the fact that section 235(2) is a new provision introduced by the legislature in 1973 Code, this Court went on to explain that this is an important stage in the process of administration of criminal justice and is as important as the adjudication of guilt and this stage should not be confined to a subsidiary position as if it were a matter of not much consequence.

55. In Santa Singh (supra) this Court noted that in most countries of the world problem of sentencing the criminal offender is receiving increasing attention and it is so in view of rapidly changing attitude towards crime and criminal. In many countries, intensive study of sociology of the crime has shifted the focus from the crime to the criminal, leading to a widening of the objectives of sentencing and simultaneously of the range of the sentencing procedures.

56. Bhagwati, J., (as His Lordship then was) giving the judgment in Santa Singh (supra) pointed out and which was later on accepted in Bachan Singh v. State of Punjab [(1980) 2 SCC 684] that proper exercise of sentencing discretion calls for consideration of various factors like the nature of offence, the circumstances - both extenuating or aggravating, the prior criminal record, if any, of the offender, the age of the offender, his background, his education, his personal life, his social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of his rehabilitation in the life of community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others. After referring to all the aforesaid facts, the learned Judge opined as under:

> "3. ..... These are factors which have to be taken into account by the court in deciding upon the appropriate sentence, and therefore, the legislature felt that, for this purpose, a separate stage should be provided after conviction when the court can hear the accused in regard to these factors bearing on sentence and then pass proper sentence on the accused. Hence the new provision in Section 235(2)."

(para 3, page 195 of the report)

57. After analyzing the aforesaid aspects, the learned Judge posed the question: What is the meaning and content of expression "hear the accused"? By referring to various aspects and also the opinion expressed by Law Commission in its Forty-eighth report, Bhagwati, J. (as His Lordship then was) opined that the hearing contemplated under section 235(2) is not confined merely to oral submissions but it is also intended to give an opportunity to the prosecution and the accused to place before the court facts and material relating to various factors bearing on the question of sentence. However, there was a note of caution that in the name of such hearing, the court proceedings should not be unduly protracted.

58. This Court held in Santa Singh (supra) that non-

compliance with such hearing is not a mere irregularity curable under section 465 of the 1973 Code. This Court speaking through Bhagwati, J. (as His Lordship then was) emphasized that this legal provision under our constitutional values has acquired new dimension and must reflect "new trends in penology and sentencing procedures" so that penal laws can be used as a tool for reforming and rehabilitating criminals and smoothening out the uneven texture of the social fabric and not merely as a weapon for protecting the hegemony of one class over the other (see para 6, page 197 of the report).

59. In Muniappan v. State of Tamil Nadu [(1981) 3 SCC 11] Chief Justice Chandrachud, delivering the judgment again had to consider the importance of section 235(2) and section 354(3) Cr.P.C. in our sentencing procedure. The learned Chief Justice held that the obligation to hear the accused on the question of sentence under section 235(2) of 1973 Code is not discharged by putting a formal question to the accused as to what he has to say on the question of sentence. The learned Chief Justice made it clear that the Judge must make a genuine effort to elicit from the accused all items of information which will eventually bear on the question of sentence. All such items of information would furnish a clue to the genesis of the crime and the motivation of the criminal are relevant and the learned Chief Justice emphasized that in such an exercise, it is the bounden duty of the Judge to cast aside the formalities of the Court-scene and approach the question of sentence from a broad sociological point of view.

60. The learned Chief Justice further said in the sentencing procedure it is not only the accused but the entire society is at stake and therefore the questions the Judge puts and the answers accused gives may be beyond narrow constraints of the Evidence Act. In the words of the learned Chief Justice the position of Court in an exercise under section 235(2) is as follows:

> "2. .....The Court, while on the question of sentence, is in an altogether different domain in which facts and factors which operate are of an entirely different order than those which come into play on the question of conviction...."

(para 2, page 13 of the report)

61. To the same effect is the judgment of Ahmadi, J. (as His Lordship then was) in Allauddin Mian and others v. State of Bihar [(1989) 3 SCC 5]. Explaining the purpose of section 235(2), this Court in Allauddin Mian (supra) held that section 235(2) satisfies a dual purpose; first of all it satisfies rules of natural justice by according an opportunity to the accused of being heard on the question of sentence.

Under such sentencing procedure the accused is given an opportunity to place before the court all relevant materials having a bearing on the question of sentence. The Court opined that it is a salutary principle and must be strictly observed and is not a matter of mere formality. This Court further held that in such hearing exercise the accused should be given a real and effective opportunity to place his antecedents, social and economic background etc. before the court, for the

court to take a fair decision on sentence as otherwise the sentence would be vulnerable.

62. The Court therefore opined:-

> "10. ..... We think as a general rule the Trial Courts should after recording the conviction adjourn the matter to a future date and call upon both the prosecution as well as the defence to place the relevant material bearing on the question of sentence before it and thereafter pronounce the sentence to be imposed on the offender...."

(para 10, page 21 of the report)

63. Therefore, it is clear from the purpose of section 235(2) as explained in the aforesaid cases, that the object of hearing under section 235(2) being intrinsically and inherently connected with the sentencing procedure, the provision of section 354(3) which calls for recording of special reason for awarding death sentence must be read conjointly with section 235(2) of 1973 Code.

64. This Court is of the opinion that special reasons can only be validly recorded if an effective opportunity of hearing contemplated under section 235(2) of Cr.P.C. is genuinely extended and is allowed to be exercised by the accused who stands convicted and is awaiting the sentence.

65. These two provisions do not stand in isolation but must be construed as supplementing each other as ensuring the constitutional guarantee of a just, fair and reasonable procedure in the exercise of sentencing discretion by the court.

66. These changes in the sentencing structure reflect the "evolving standards of decency" that mark the progress of a maturing democracy and which is in accord with the concept of dignity of the individual

- one of the core values in our Preamble to the Constitution. In a way these changes signify a paradigm shift in our jurisprudence with the gradual transition of our legal regime from `rule of law' to the `due process of law', to which this Court would advert to in the latter part of the judgment.

67. The main issues which were considered in Bachan Singh (supra) are indicated in para 15 of the judgment, which is set out:

> "15. The principal questions that fall to be considered in this case are:
>
> (i) Whether death penalty provided for the offence of murder in Section 302, Penal Code is unconstitutional.
>
> (ii) If the answer to the foregoing question be in the negative, whether the sentencing procedure provided in Section 354(3) of the Cr.P.C., 1973 (Act 2 of 1974) is unconstitutional on the ground that it invests the Court with unguided and untrammelled discretion and allows death sentence to be arbitrarily or freakishly

> imposed on a person found guilty of murder or any other capital offence punishable under the Indian Penal Code with death or, in the alternative, with imprisonment for life."

68. In upholding the constitutionality of section 302 of Indian Penal Code and also the provisions of section 354(3) of 1973 Code the Constitution Bench in Bachan Singh (supra) considered the evolution of our Constitutional Jurisprudence from various decisions of Constitution Bench of this Court in A.K. Gopalan v. State of Madras (AIR (37) 1950 SC 27) and then the decisions of this Court in Sakal Papers (P) Ltd.

& ors. v. Union of India (AIR 1962 SC 305), Naresh Shridhar Mirajkar v. State of Maharashtra and another (AIR 1967 SC 1), Rustom Cavasjee Cooper v.

Union of India [(1970) 1 SCC 248], Maneka Gandhi v.

Union of India and another [(1978) 1 SCC 248] and several other decisions.

69. After considering all these Constitution Bench decisions of this Court, the learned Judges held that in the evolving mosaic of our Constitutional Jurisprudence, specially after the decision of this Court in Maneka Gandhi (supra), Article 21 of the Constitution which guarantees life and personal liberty has to be interpreted differently.

70. Article 21 as enacted in our Constitution reads as under:

> "No person shall be deprived of his life or personal liberty except according to procedure established by law."

71. But this Court in Bachan Singh (supra) held that in view of the expanded interpretation of Article 21 in Maneka Gandhi (supra), it should read as follows:

> "136.....No person shall be deprived of his life or personal liberty except according to fair, just and reasonable procedure established by valid law.

72. In the converse positive form, the expanded Article will read as below:

> "A person may be deprived of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law."

(See para 136 page 730 of the report)

73. This epoch making decision in Maneka Gandhi (supra) has substantially infused the concept of due process in our constitutional jurisprudence whenever the court has to deal with a question affecting life and liberty of citizens or even a person.

74. Krishna Iyer, J. giving a concurring opinion in Maneka Gandhi (supra) elaborated, in his inimitable style, the transition from the phase of rule of law to due process of law. The relevant statement of law given by the learned Judge is quoted below:

> "81.....'Procedure established by law', with its lethal potentiality, will reduce life and liberty to a precarious plaything if we do not ex necessitate import into those weighty words an adjectival rule of law, civilised in its soul, fair in its heart and fixing those imperatives of procedural protection absent which the processual tail will wag the substantive head. Can the sacred essence of the human right to secure which the struggle for liberation, with 'do or die' patriotism, was launched be sapped by formalistic and pharisaic prescriptions, regardless of essential standards? An enacted apparition is a constitutional, illusion. Processual justice is writ patently on Article 21. It is too grave to be circumvented by a black letter ritual processed through the legislature."

(Para 81 page 337 of the report)

75. Immediately after the decision in Maneka Gandhi (supra) another Constitution Bench of this Court rendered decision in case of Sunil Batra v. Delhi Administration & ors. [(1978) 4 SCC 494] specifically acknowledged that even though a clause like the 8th Amendment of the United States Constitution and concept of `due process' of American Constitution is not enacted in our Constitution text, but after the decision of this Court in R.C. Cooper (supra) and Maneka Gandhi (supra) the consequences is the same. The Constitution Bench of this Court in Sunil Batra (supra) speaking through Krishna Iyer, J held:

> "52. True, our Constitution has no `due process' clause or the VIII Amendment; but, in this branch of law, after Cooper (supra) and Maneka Gandhi (supra), the consequence is the same."

76. The Eighth Amendment (1791) to the Constitution of United States virtually emanated from the English Bill of Rights (1689). The text of the Eighth Amendment reads, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The English Bill of Rights drafted a century ago postulates, "That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

77. Our Constitution does not have a similar provision but after the decision of this Court in Maneka Gandhi's case (supra) jurisprudentially the position is virtually the same and the fundamental respect for human dignity underlying the Eighth Amendment has been read into our jurisprudence.

78. Until the decision was rendered in Maneka Gandhi (supra), Article 21 was viewed by this Court as rarely embodying the Diceyian concept of rule of law that no one can be deprived of his personal liberty by an executive action unsupported by law. If there was a law which provided some sort of a procedure it was enough to deprive a person of his life or personal liberty. In this connection, if we refer to the example given by Justice S.R. Das in his judgment in A.K. Gopalan (supra) that if the law

provided the Bishop of Rochester `be boiled in oil' it would be valid under Article 21. But after the decision in Maneka Gandhi (supra) which marks a watershed in the development of constitutional law in our country, this Court, for the first time, took the view that Article 21 affords protection not only against the executive action but also against the legislation which deprives a person of his life and personal liberty unless the law for deprivation is reasonable, just and fair. And it was held that the concept of reasonableness runs like a golden thread through the entire fabric of the Constitution and it is not enough for the law to provide some semblance of a procedure. The procedure for depriving a person of his life and personal liberty must be eminently just, reasonable and fair and if challenged before the Court it is for the Court to determine whether such procedure is reasonable, just and fair and if the Court finds that it is not so, the Court will strike down the same.

79. Therefore, `law' as interpreted under Article 21 by this Court is more than mere `lex'. It implies a due process, both procedurally and substantively.

80. Thus, the due process concept and the values of Eighth Amendment of the U.S. Constitution, which have been incorporated in our Constitution, are virtually articulated through the procedural safeguards of section 235(2) read with section 354(3) of 1973 Code. This marks the maturing of our criminal jurisprudence from the stage of rule of law to the realm of due process of law by experiencing the vicissitudes of a fascinating journey for about three decades of judicial decision making by this Court from A.K. Gopalan (supra) to Maneka Gandhi (supra).

81. In fact the Constitution Bench in Bachan Singh (supra) has construed the sentencing structure in Section 235(2) and 354(3) of 1973 Code through the prism of due process concept and only then it upheld the constitutionality of death sentence.

82. However, in the impugned judgment, the High Court failed to appreciate this ratio in Bachan Singh (supra). In the instant case to confirm the death sentence of the appellant, the High Court relied on the judgment of this Court in Dayanidhi Bisoi v.

State of Orissa [(2003) 9 SCC 310], wherein the accused was held guilty of murder of three persons of a family comprising husband, wife and their three year old daughter. In that case, the accused, who is a member of the family of the deceased, committed the criminal act for monetary benefits while the deceased were sleeping. In Dayanidhi Bisoi (supra) this Court, while awarding death sentence to the accused, relied on its previous decision in Ravji alias Ram Chandra v. State of Rajasthan [(1996) 2 SCC 175] and Surja Ram v. State of Rajasthan [(1996) 6 SCC 271].

83. In Ravji (supra), a Division Bench of this Court observed that it is only characteristics relating to the crime, to the exclusion of the ones relating to the criminal, which are relevant for sentencing in the criminal trial. In paragraph 24 at page 187 of the report, this Court held:

> "24. .....The crimes had been committed with utmost cruelty and brutality without any provocation, in a calculated manner. 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."

84. Ravji (supra) case was followed in as many as six cases where death sentence was imposed. However, this Court in Santosh Kumar Satishbhushan Bariyar v.

State of Maharashtra [(2009) 6 SCC 498] pointed out that Ravji's (supra) case and the six subsequent cases in which Ravji (supra) was followed were decided per incuriam, as the law laid down therein is contrary to the law laid by the Constitution Bench of the Supreme Court in Bachan Singh. In Bachan Singh (supra), this Court held that before giving death sentence Court should not confine its consideration principally or merely to the circumstances connected with the particular crime but must also give due consideration to the circumstances of the criminal. His Lordship Sinha, J. in para 63 at page 529 of Bariyar (supra) observed that:

> "63. We are not oblivious that Ravji case has been followed in at least 6 decisions of this Court in which death punishment has been awarded in last 9 years, but, in our opinion, it was rendered per incuriam. Bachan Singh specifically noted the following on this point:
>
> "163...The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302 of the Penal Code, the court should not confine its consideration `principally' or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal."

Shivaji v. State of Maharashtra - (2008) 15 SCC 269, Mohan Anna Chavan v. State of Maharashtra - (2008) 7 SCC 561, Bantu v. State of U.P. - (2008) 11 SCC 113, Surja Ram v. State of Rajasthan -

(1996) 6 SCC 271; Dayanidhi Bisoi v. State of Orissa - (2003) 9 SCC 310 and State of U.P. v. Sattan - (2009)4 SCC 736 are the decisions where Ravji has been followed. It does not appear that this Court has considered any mitigating circumstance or a circumstance relating to criminal at the sentencing phase in most of these cases. It is apparent that Ravji has not only been considered but also relied upon as authority on the point that in heinous crimes, circumstances relating to criminal are not pertinent."

85. The High Court in this case, by following the Ravji ratio, therefore, did not properly appreciate the ratio in Bachan Singh (supra) in awarding death sentence on the appellant.

86. In the instant case, the High Court while discussing the mitigating circumstances as against the aggravating circumstances has not properly followed the principles discussed in Bachan Singh's case. In Bachan Singh (supra) this Court at paragraph 206 (at page 750 of the report) sets out certain mitigating circumstances which were suggested by Dr. Chitale, the learned counsel and at paragraph 207 of the report the learned Judge observed that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence. Those circumstances are set out hereinbelow:

> "206. Dr. Chitaley has suggested these mitigating factors:
>
> Mitigating circumstances:-In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:
>
> (1) That the offence was committed under the influence of extreme mental or emotional disturbance.
>
> (2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.
>
> (3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
>
> (4) The probability that the accused can be reformed and rehabilitated.

The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.

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

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

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

87. In this connection the submission of the learned counsel that the State must by evidence prove that the accused does not satisfy conditions No.3 and 4 above is of great importance as this Court accepted that those submissions must be given `great weight in the determination of sentence'.

88. However, the categories of mitigating and aggravating circumstances are never close and no court can give an exhaustive list of such circumstances. For instance, a crime involving a terrorist attack may place the case under a completely different situation.

89. In the instant case State has failed to show that the appellant is a continuing threat to society or that he is beyond reform and rehabilitation. On the other hand, in paragraph 77 of the impugned

judgment the High Court observed as follows:

> "We have no evidence that the appellant is incapable of being rehabilitated in society. We also have no evidence that he is capable of being rehabilitated in society. This circumstance remains a neutral circumstance."

90. It is clear from the aforesaid finding of the High Court that there is no evidence to show that the accused is incapable of being reformed or rehabilitated in society and the High Court has considered the same as a neutral circumstance. In our view the High Court was clearly in error. The very fact that the accused can be rehabilitated in society and is capable of being reformed, since the State has not given any evidence to the contrary, is certainly a mitigating circumstance and which the High Court has failed to take into consideration.

The High Court has also failed to take into consideration that the appellant is not a continuing threat to society in the absence of any evidence to the contrary. Therefore, in paragraph 78 of the impugned judgment, the High Court, with respect, has taken a very narrow and a myopic view of the mitigating circumstances about the appellant. The High Court has only considered that the appellant is a first time offender and he has a family to look after. We are, therefore, constrained to observe that the High Court's view of mitigating circumstance has been very truncated and narrow in so far as the appellant is concerned.

91. On the other hand, while considering the aggravating circumstances, the High Court appears to have been substantially influenced with the brutality in the manner of committing the crime. It is no doubt that the murder was committed in this case in a very brutal and inhuman fashion, but that alone cannot justify infliction of death penalty. This is held in several decisions of this Court. Reference in this case may be made to the decision of this Court in Dharmendrasinh alias Mansinh Ratansinh v. State of Gujarat [(2002) 4 SCC 679] wherein the accused suspected the character of his wife and under the belief that his two sons were not born of him, murdered those two innocent children. This Court held that the act of accused was heinous, unpardonable and condemnable, but this Court commuted the death sentence to life sentence inter alia on the ground that accused had no previous criminal record and the chances of repetition of such criminal acts at his hands making the society further vulnerable are not apparent. In coming to this conclusion this Court observed:

> "20. .... A number of factors are to be taken into account namely, the motive of the crime, the manner of the assault, the impact of the crime on the society as a whole, the personality of the accused, circumstances and facts of the case as to whether the crime committed, has been committed for satisfying any kind of lust, greed or in pursuance of anti-social activity or by way of organized crime, drug-trafficking or the like. Chances of inflicting the society with the similar criminal act that is to say vulnerability of the members of the society at the hands of the accused in future and ultimately as held in several cases, mitigating and aggravating circumstances of each case have to be considered and a balance has to be struck..."

(Para 20, page 695 of the report)

92. Again in Panchhi & ors. v. State of U.P. [(1998) 7 SCC 177] four members of a family comprising two adult male and female, murdered four members of neighbouring family comprising an adult male and female, an old lady and a child of five years of age in most heinous, brutal and diabolical manner to fulfill their vengeance. This Court while commuting their death sentence to life imprisonment observed:-

> "20. ..... No doubt brutally looms large in the murders in this case particularly of the old and also the tender-aged child. It may be that the manner in which the killings were perpetrated may not by itself show any lighter side, but that is not very peculiar or very special in these killings. Brutality of the manner in which a murder was perpetrated may be a ground but not the sole criterion for judging whether the case is one of the "rarest of rare cases" as indicated in Bachan Singh's case. In a way every murder is brutal, and the difference between one from the other may be on account of mitigating or aggravating features surrounding the murder."

(para 20, page 183 of the report) (Emphasis supplied)

93. In Haru Ghosh v. State of West Bengal [(2009) 15 SCC 551] wherein the accused, a previous convict of murder and facing a sentence of life imprisonment was out on bail when his appeal was pending before the High Court, murdered a woman and her child because the deceased woman's husband asked the accused not to sell illicit liquor in the locality.

94. The facts in Haru Ghosh (supra) are that one day accused entered the house of deceased and started strangulating the child. On the intervention of the mother the child was released from the clutches of accused. The mother took the child to a nearby tubewell and while she was pouring water on unconscious child's face the accused got hold of a sharp weapon from a by-stander and assaulted the mother and child to death.

95. This Court observed that this was a dastardly murder of two helpless persons for no fault on their part.

But this Court commuted the death sentence to life imprisonment taking into consideration following factors, firstly that there was no pre-meditation in the act of the accused. This was at the spur of the moment as accused did not come armed with any weapon. Secondly it is unknown under what circumstances accused entered the house of deceased and what prompted him to assault the boy. Thirdly the cruel manner in which the murder was committed cannot be the guiding factor in favour of death sentence. Fourthly the accused himself has two minor children.

96. This Court observed as under:

> "39. ..... the cruel manner in which the murder was committed and the subsequent action on the part of the accused in severing the parts of the body of the deceased, do not by themselves, become the guiding factor in favour of the death sentence"

(para 39, page 564 of the report)

97. In Smt. Triveniben v. State of Gujarat [(1989) 1 SCC 678], the Constitution Bench of this Court, following the Bachan Singh ratio, held "death sentence cannot be given if there is any mitigating circumstance in favour of the accused. All circumstances of the case should be aggravating"

(Para 25, page 698 of the report).

98. Unfortunately, the High Court contrary to the ratio in the aforesaid cases, fell, in this case, into an error by approving the death sentence as it was swayed by the cruel manner in which the two children were done to death by the appellant. The mitigating circumstances in favour of the appellant, were not properly considered.

99. The ratio in Bachan Singh (supra) has received approval by the international legal community and has been very favourably referred to by David Pannick in `Judicial Review of the Death Penalty:

Duckworth' (see page 104-105).

100. Roger Hood and Carolyn Hoyle in their treaties on `The Death Penalty' Fourth Edition (Oxford) have also very much appreciated the Bachan Singh ratio (See page 285).

101. The concept of `rarest of rare' which has been evolved in Bachan Singh (supra) by this Court is also the internationally accepted standard in cases of death penalty.

102. Reference in this connection may also be made to the right based approach in exercising discretion in death penalty as suggested by Edward Fitzgerald, the British Barrister. [Edward Fitzgerald: The Mitigating Exercise in Capital Cases in Death Penalty Conference (3-5, June, Barbados: Conference Papers and Recommendations]

103. It has been suggested therein that right approach towards exercising discretion in capital cases is to start from a strong presumption against the death penalty. It is argued that `the presence of any significant mitigating factor justifies exemption from the death penalty even in the most gruesome cases' and Fitzgerald argues:

> "Such a restrictive approach can be summarized as follows: The normal sentence should be life imprisonment. The death sentence should only be imposed instead of the life sentence in the `rarest of rare' cases where the crime or crimes are of exceptional heinousness and the individual has no significant mitigation and is considered beyond reformation."

[Quoted in The Death Penalty: Roger Hood and Hoyle, 4th Edition Oxford, Page 285]

104. Opposing mandatory death sentence, United Nations in its interim report to the General Assembly in 2000 advanced the following opinion:

> "The proper application of human rights law- especially of its provision that `no one shall be arbitrarily deprived of his life' and that `no one shall be subjected to....cruel, inhuman or degrading....punishment'
>
> - requires weighing factors that will not be taken into account in the process of determining whether a defendant is guilty of committing a `most serious crime'. As a result, these factors can only be taken into account in the context of individualized sentencing by the judiciary in death penalty cases...The conclusion, in theory as well as in practice, was that respect for human rights can be reliably ensured in death penalty cases only if the judiciary engages in case-specific, individualized sentencing that accounts for all of the relevant factors....It is clear, therefore, that in death penalty cases, individualized sentencing by the judiciary is required to prevent cruel, inhuman or degrading punishment and the arbitrary deprivation of life."

[The Death Penalty: Roger Hood and Hoyle, 4th Edition, Oxford, Page 281]

105. Taking an overall view of the facts in these appeals and for the reasons discussed above, we hold that death sentence cannot be inflicted on the appellant since the dictum of Constitution Bench in Bachan Singh (supra) is that the legislative policy in Section 354(3) of 1973 Code is that for person convicted of murder, life imprisonment is the rule and death sentence, an exception, and the mitigating circumstances must be given due consideration.

Bachan Singh (supra) further mandates that in considering the question of sentence the Court must show a real and abiding concern for the dignity of human life which must postulates resistance to taking life through law's instrumentality. Except in `rarest of rare cases' and for `special reasons' death sentence cannot be imposed as an alternative option to the imposition of life sentence.

106. For the reasons discussed above, we are of the view that in the facts of this case the death sentence imposed by the High Court cannot be sustained and the death sentence imposed upon the appellant is substituted by the sentence of imprisonment for life.

107. The appeals are allowed to the extent indicated above. The conviction of the appellant is upheld and he is to serve out the life sentence.

.....J.

(D.K. JAIN)

.....J.

New Delhi (ASOK KUMAR GANGULY)

September 28, 2011