Brajendrasingh vs State Of M.P on 28 February, 2012

Equivalent citations: AIR 2012 SUPREME COURT 1552

Author: Swatanter Kumar

Bench: A.K. Patnaik, Swatanter Kumar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS.113-114 OF 2010

Brajendrasingh b & Appellant

Versus

State of Madhya Pradesh b & Respondent

J U D G M E N T

Swatanter Kumar, J.

1. The present appeals are directed against the judgment of the High Court of Madhya Pradesh, Bench at Indore, confirming the judgment of conviction and order of sentence of imposition of extreme penalty of death by the Trial Court.

2. The disaster that can flow from unchastity of a woman and the suspicions of a man upon the character of his wife cannot be more pathetically stated than the facts emerging from the present case.

As per the case of the prosecution, a man suspecting his wife of having illicit relations with his neighbor, killed his three young children, namely, Varsha, Lokesh and Mayank, who were asleep, sprinkled kerosene oil on his wife and put her on fire. However, when called upon to make a statement under Section 313 of the Code of Criminal Procedure, 1973 (for short, Cr.P.C.), the accused rendered the following explanation :

> b There was illicit relationship between my wife, the deceased Aradhna and Liladhar, when on 27.02.2005 I came from the factory, at that time it was 11.00 b

> 11.30 Ob clock at night, there was no fixed time coming and going from the factory. When I came to my house the door of the house was opened. My wife was not at the house and then I searched her here and there. I heard her voice in the house of Liladhar Tiwari, the voice of male was also coming. My children were sleeping in my house, when I shouted loudly and I hit the door of Liladhar Tiwari with foot, then the door opened then I saw that both were naked and then she came out then I threw her on the ground after catching her hair and then she started shouted and speaking cohabitedly and said that she would go with Tiwari Jee only and if I would stop her from meeting Tiwari Jee then she would kill the children and she would kill me also. Thus quarrel went on. After some time she came with knife from the kitchen and she inflicted injuries in the necks of the three children. I tried to snatch the knife from her and the in that process in my neck also the knife inflicted injury and then after taking that very knife I inflicted injury on the neck of deceased because she had inflicted the injury in the necks of children, Aradhna fell down on the back after being hit by the knife. My mental balance was upset and I put the kerosene oil kept there at myself, that some of that kerosene oil fell on me and some on the deceased, I was standing nearby. I ignited the match stick and at first I burnt myself and the match stick fell on the deceased, due to which she was also burnt and then in the burning condition after extinguishing the fire taking the knife I went towards the Bye-pass. After some time, I saw that one truck was coming, I was going to commit suicide under that truck but in the meantime police came there and the police brought me to the police station. I got the report written but as I had said in the report it was not written like that. I have not killed the children.b

3. From the above statement, it is clear that the accused neither disputes the attempt to murder, nor the consequent death of his three young children and wife, Aradhna. What this Court has to examine, with reference to the evidence on record, is as to which of the two versions is correct and stands established beyond reasonable doubt, i.e., whether the case of the prosecution is to be accepted as proved beyond reasonable probability or whether the defence of the appellant is to be accepted by the Court.

4. Before we dwell upon the issues before us, it will be appropriate to refer to the facts giving rise to the present appeal, as stated by the prosecution. The facts, as given, as well as the conduct of the appellant are somewhat strange in the present case as the appellant who is accused of this heinous crime, is himself the informant of the incident. Laconically, the factual matrix of the case that emerges from the record is that the appellant had lodged a report in respect of the commission of the crime at the Police Station, Industrial Area, District Dewas in the night intervening the 27/28th, February, 2005 at about 2.00 a.m. which was recorded by Sub-Inspector Mohan Singh Maurya, PW16. The appellant was serving in White Star Milk Product Factory, Dewas. Besides his wife and three young children, his brother-in-law was also residing with him who was serving in Sudarshan Factory. One Liladhar Tiwari was the neighbour of the appellant. In fact, both the appellant and Liladhar Tiwari stayed in two different rooms of the same flat, i.e., LIG Flat No.225, Vikas Nagar, Dewas which they had taken on rent from PW3, Smt. Kamal Kunwar. Smt. Aradhna, the deceased wife of the appellant, used to talk to Liladhar, to which the appellant had serious objections. He had

forbidden her from doing so. Again, on the fateful day, he had allegedly stopped her from talking to Liladhar Tiwari, but she retorted that she would die and poured kerosene oil on her person and then put herself on fire. The appellant claims to have made an effort to extinguish the fire. However, being under the impression that she was dying, he also caused injuries to his wife by a knife (chhuri) and killed her. The appellant also suffered burn injuries in his attempt to extinguish the fire. After killing his wife, he was concerned about what would be the fate of their children, who will now have to grow up without their mother. Thus, he killed them by the same process, i.e., inflicting injuries by knife to the throat of the children. After committing the murder of his own family members, he also tried to commit suicide by injuring his neck but could not succeed in his attempt. The incident is said to have occurred at 2330 hours on the night of 27th February, 2005.

5. PW4, Sri Ram Verma, Head Constable, was on patrolling duty and he, along with another constable, was patrolling by road by a Government vehicle bearing registration No. MP 03 b 5492 in the night between half past one and two Ob clock. They saw a person on the bye-pass road. They stopped the said vehicle and interrogated him. Then they came to know that he was Brajendrasingh, the appellant. The appellant narrated the entire incident to the Police and informed them that he wanted to commit suicide. The Police Officers stopped him from doing so and brought him to the Police Station, Industrial Area in the same Government vehicle. Upon reaching the Police Station, the appellant lodged the report at 2.00 a.m. narrating the above facts to the Police.

6. On the basis of the statement of the appellant, First Information Report, Exhibit P27, under Section 302 of the Indian Penal Code (IPC), was registered on 27/28th February, 2005 at about 2.00 a.m. PW16, Mohan Singh Maurya, prepared the inquest report Exhibits P2 to P5 and the bodies of the deceased persons were taken into custody. The dead bodies were taken to the hospital for post mortem which was performed by Dr. Shakir Ali, PW12 and the post mortem reports were recorded as Exhibits P12 to P15. The doctor opined that the injuries on the person of the deceased could have been caused by a knife. The appellant was also examined medically by Dr. Hari Singh Rana, PW14, who issued his medico-legal certificate report Exhibit P18. The clothes of the deceased persons were seized. The photographs of the spot were taken and the CDs of photography were seized vide Exhibits P7 to I/9. Blood stained and controlled earth (P4) was taken into custody vide Exhibit P10, knife, shirt and pant of the appellant were seized vide Exhibit P13. Seized articles were sent to the Forensic Science Laboratory, Sagar for chemical examination from which the reports Exhibits P22, P24 and P26 were received. As per the post mortem report of deceased Aradhna, Exhibit P12, the medical expert found 36 per cent burn injuries on her chest and abdomen. The Investigating Officer recorded the statement of 16 prosecution witnesses and after completing the investigation in all respects, he submitted the charge sheet before the Court. The accused was committed to the Court of Sessions as the offences were exclusively triable by the Court of Sessions being an offence under Sections 302 and 309 IPC. The accused stood trial and made a statement under Section 313 Cr.P.C. giving his stand and explanation as afore-indicated. The learned Trial Court, vide its judgment dated 15th June, 2007, acquitted the accused for the offence under Section 309 IPC. However, while returning a finding of being guilty for the offence under Section 302 IPC, the Court held that it does not appear to be appropriate to award any sentence less than death sentence to the appellant and, therefore, imposed upon him the extreme punishment of death under Section 302 IPC. This judgment of the Trial Court was challenged before the High Court which

affirmed the judgment of conviction and order of sentence of death. Against these concurrent findings, the appellant has filed the present appeals.

7. We may notice here that against the acquittal of the appellant under Section 309 IPC, no appeal was preferred by the State, either before the High Court or before this Court.

8. The learned counsel appearing for the appellant has primarily raised the following two contentions :

> (i) The courts have failed to appreciate the evidence in its correct perspective. The accused had stated that his wife had murdered the three children and that he had only inflicted injuries on her body under a belief that she was not going to survive. He had no intention to kill her. Thus, the applicant cannot be punished for murder of the entire family. It is also the contention of the appellant that the prosecution has not been able to prove its case beyond reasonable doubt.
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> (ii) The imposition of extreme penalty of death was not called for in the facts and circumstances of the present case. The incident even if, as stated by the prosecution, assumed to be correct, still it was an offence committed on extreme provocation and at the spur of the moment without any intent to kill any person.

9. Neither the death of three children nor that of his wife Aradhna is disputed and/or practically admitted by the appellant in his statement under Section 313 Cr.P.C. He has also admitted that he had inflicted injuries on the person of the deceased Aradhna with a knife. Only a part of his statement under Section 313 Cr.P.C. does not corroborate the prosecution evidence. According to the case of the prosecution, the appellant had inflicted injuries resulting in the death of three minor children and then he had poured the kerosene oil upon the deceased Aradhna as well as inflicted injury on her throat, whereas according to the appellant, it was the deceased Aradhna who had inflicted injuries upon their three minor children and poured kerosene on herself and thereafter set herself on fire.

10. It is a settled principle of law that the statement of an accused under Section 313 Cr.P.C. can be used as evidence against the accused, insofar as it supports the case of the prosecution. Equally true is that the statement under Section 313 Cr.P.C. simplicitor normally cannot be made the basis for conviction of the accused. But where the statement of the accused under Section 313 Cr.P.C. is in line with the case of the prosecution, then certainly the heavy onus of proof on the prosecution is, to some extent, reduced. We may refer to a recent judgment of this Court in the case of Ramnaresh & Ors. v. State of Chhattisgarh, (being pronounced today) wherein this Court held as under :

> b In terms of Section 313 Cr.P.C., the accused has the freedom to maintain silence during the investigation as well as before the Court. The accused may choose to maintain silence or complete denial even when his statement under Section 313 Cr.P.C. is being recorded, of course, the Court would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law. Right

> to fair trial, presumption of innocence unless proven guilty and proof by the prosecution of its case beyond any reasonable doubt are the fundamentals of our criminal jurisprudence. When we speak of prejudice to an accused, it has to be shown that the accused has suffered some disability or detriment in relation to any of these protections substantially. Such prejudice should also demonstrate that it has occasioned failure of justice to the accused. One of the other cardinal principles of criminal justice administration is that the courts should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage, as this expression is perhaps too pliable. [Ref. Rafiq Ahmed @ Rafi v. State of Uttar Pradesh [(2011) 8 SCC 300].
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> It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 Cr.P.C. is upon the Court. One of the main objects of recording of a statement under this provision of the Cr.P.C. is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313 Cr.P.C., in so far as it supports the case of the prosecution, can be used against him for rendering conviction. Even under the latter, he faces the consequences in law.b

11. Now, all that this Court is called upon to decide in the present case is that between the varying versions put forward by the prosecution and the accused which one is correct and has been proved in accordance with law.

12. As we have already noticed in the narration of facts above that the FIR was recorded by Sub-Inspector Mohan Singh Maurya, PW16 based on the statement of the appellant itself, made in the Police Station. This cannot be treated, in law and in fact, as a confessional statement made by the accused and it would certainly attain its admissibility in evidence as an FIR recorded by the competent officer in accordance with law.

13. There is no doubt that there is no eye witness in this case despite the fact that it occurred in an LIG flat and obviously some people must be living around that flat. However, to complete the chain of events and to prove the version given by the appellant in the FIR, it examined a number of witnesses. PW2 is the brother-in-law of the appellant and brother of the deceased Aradhna. He clearly stated that Brajendrasingh had been married to Aradhna 12-13 years before the date on which his statement was recorded and the couple had three children. He was staying with his sister and on 27th February, 2005, he had been in the house of the accused during the day and in the evening he left for the house of his brother Kamla Singh who was staying at Joshipura whereafter he went to Sudarshan Factory near Dewas to work. At about 2.30 a.m. in the night, while he was in the factory, he received a phone call from the Police Station informing him that his sister, nephews and niece had been murdered. He came back and went to the Police Station where he found Brajendrasingh, the accused was also present.

14. PW3, Smt. Kamal Kunwar was examined to prove that the appellant was the tenant at a monthly rent of Rs.650/- and two rooms had been given to him on rent. According to her, one Liladhar Tiwari had also been residing in one room in the same building on rent.

15. PW5, Shobhna is again the sister of the deceased Aradhna. Her statement was similar to that of PW2. According to her, somebody from Vikas Nagar had come and told her that an altercation had taken place between Aradhna and the accused. He asked her to go there. After she reached near the house of the accused, she met two boys who told her that somebody had killed Aradhna and her three children. Upon hearing this, she fell unconscious. This witness was declared hostile and was subjected to cross-examination by the prosecution. Witness PW7, Veerendra Singh, who is the husband of PW5 and brother of the present appellant, also made a similar statement. PW10, Liladhar Tiwari, was also examined and he stated that he was residing in the same building in one room. When his children and wife used to go to village, he used to live alone in that room. According to him, the Police had come to his house at about 2.00 Ob clock in the night, knocked at his door and informed him about the murder. He stated that wife of the accused used to inquire from him whenever he came late, b brother today you have come lateb and I used to reply that because of heavy work I was late. PW12 is Dr. Shakir Ali who had performed post mortem examination upon the body of Aradhna and noticed various injuries on her body. According to him, both the lungs were having less blood and two portions of the heart were empty of blood. The upside down Carotid artery was incised. The membrane of the intestines was healthy. The liver, spleen and kidney all were blood less and all the injuries were ante mortem and fatal. According to the doctor, the cause of death was shock which had resulted from excessive hemorrhage. Post mortem upon the other dead bodies was also performed by this witness and the cause of death was common. The incised wound of Lokesh was 1b x B=b x 2b below the jaw which resulted in excessive bleeding and death. PW16 is the Sub-Inspector in the Police Station, Industrial Area, Dewas. He, as already noticed, had recorded his statement at the Police Station and had conducted the investigation. He had prepared the site plan and seized the knife Exhibit P12. It is with the help of these witnesses that the prosecution has attempted to prove its case but the foundation of this case was laid on the basis of the information given by the appellant-accused himself. The statements of these witnesses have to be examined in light of the FIR, Exhibit P27, as well as the statement of the accused made under Section 313 Cr.P.C. But for Exhibit P27, it would have been difficult for the prosecution to demonstrate as to who was responsible for committing the murder of the three young children. To this extent, it is a case purely of circumstantial evidence.

16. There is no doubt that it is not a case of direct evidence but the conviction of the accused is founded on circumstantial evidence. It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstances from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only one hypothesis, i.e. the guilt of the accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete so as not to leave any substantial doubt in the mind of the Court. Irresistibly, the evidence should lead to the conclusion inconsistent with the innocence of the accused and the only possibility that the accused has committed the crime. To put it simply, the circumstances forming the chain of events should be proved and they should cumulatively point towards the guilt of the accused alone. In such

circumstances, 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. Furthermore, the rule which needs to be observed by the Court while dealing with the cases of circumstantial evidence is that the best evidence must be adduced which the nature of the case admits. The circumstances have to be examined cumulatively. The Court has to examine the complete chain of events and then see whether all the material facts sought to be established by the prosecution to bring home the guilt of the accused, have been proved beyond reasonable doubt. It has to be kept in mind that all these principles are based upon one basic cannon of our criminal jurisprudence that the accused is innocent till proven guilty and that the accused is entitled to a just and fair trial. [Ref. Dhananajoy Chatterjee vs. State of W.B. [JT 1994 (1) SC 33]; Shivu & Anr. v. R.G. High Court of Karnataka [(2007) 4 SCC 713]; and Shivaji @ Dadya Shankar Alhat v. State of Maharashtra [(AIR 2009 SC 56].

17. It is a settled rule of law that in a case based on circumstantial evidence, the prosecution must establish the chain of events leading to the incident and the facts forming part of that chain should be proved beyond reasonable doubt. They have to be of definite character and cannot be a mere possibility.

18. The circumstances in the present case, which have been proved, are that :

(1) The couple used to quarrel on the issue of deceased Aradhna speaking to Liladhar Tiwari even after the appellant having restrained her from doing so;

(2) The three children were sleeping at the time of occurrence;

(3) The injury on their necks just below the jaw was caused by a knife which was recovered and exhibited as article b Lb in accordance with law.

(4) It was mentioned in Doctorb s report that there were number of burn injuries on the body of Aradhna and the injuries on the throats of all the deceased. The cause of death was common to all, i.e., excessive hemorrhage.

19. These circumstantial evidences read with the statements of the prosecution witnesses and the statement of the appellant himself prove one fact without doubt, i.e., the accused had certainly murdered his wife. His stand is that since he believed that his wife may not survive the burn injuries, therefore, he killed her by inflicting the injury with knife on her throat similar to the one inflicted upon the throats of the three young children. Thus, there is no escape for the appellant from conviction for the offence under Section 302 IPC vis-C -vis the murder of his wife Aradhna.

20. Now, coming to the death of the children, according to the prosecution, they had been murdered by the appellant while according to the appellant, they had been murdered by his wife Aradhna. One very abnormal conduct on the part of the appellant comes to light from the evidence on record that a father, seeing his wife killing his children, would certainly have prevented the death of at least two out of the three children. He could have overpowered his wife and could even have prevented the

murder of all the three children. This abnormal conduct of the appellant renders his defence unbelievable and untrustworthy. Upon appreciation of the evidence on record, we are more inclined to accept the story of the prosecution though it is primarily based on circumstantial evidence and there is no witness to give optical happening of events. Once these circumstances have been proved and the irresistible conclusion points to the guilt of the accused, the accused has to be held guilty of the offences. Normally, the injuries like the ones inflicted in the present case would not lead to instantaneous death. The excessive bleeding leading to death would be possible over a short period. The injured would struggle before he succumbs to such injury. As alleged by the accused, if the wife caused death of all the three children, he could have certainly prevented death of at least two of them. When the deceased inflicted such severe injuries on the throat of the sleeping child, the child would have got up, there would have been commotion and disturbance in the room which would have provided enough opportunity to the appellant to protect his other two children. According to the prosecution, at that stage, none had suffered any injury. This unnatural conduct of the accused in not making an effort to protect the children and exhibiting helplessness creates a serious doubt and renders the entire case put forward by the defence as unreliable and of no credence. This abnormal conduct of exhibiting helplessness on the part of the appellant creates a serious doubt and entire case put forward by the defence loses its credibility.

21. The cumulative effect of the prosecution evidence is that the accused persisted with commission of the crime despite availability of an opportunity to check himself from indulging in such heinous crime. May be there was some provocation initially but nothing can justify his conduct. Whatever be the extent of his anger, revenge and temper, he still could have been kind to his own children and spared their life. He is expected to have overcome his doubts about the conduct of his wife, for the larger benefit of his own children. Though the appellant had stated that he lost his mind and did not know what he was doing, this excuse is not worthy of credence. Admittedly, he was not ailing from any mental disorder or frustration. He was a person who was earning his livelihood by working hard.

22. Having appreciated the evidence on record, we have no hesitation in holding that the appellant is guilty of an offence under Section 302 IPC for murdering his wife and three minor children. He deserves to be punished accordingly.

23. Now, coming to the question of quantum of sentence, it is always appropriate for this Court to remind itself of the need for recording of special reasons, as contemplated under Section 354(3) Cr.P.C., where the Court proposes to award the extreme penalty of death to an accused. This leads us to place on record the principles governing exercise of such discretion which have been stated in a very recent judgment of this Bench in the case of Ramnaresh (supra) wherein the Court, after considering the entire law on the subject, recapitulated and enunciated the aggravating and mitigating circumstances as well as the principles that should guide the judicial discretion of the Court in such cases. This Court held as under :

> b The above judgments provide us with the dicta of the Court relating to imposition of death penalty. Merely because a crime is heinous per se may not be a sufficient reason for the imposition of death penalty without reference to the other factors and

attendant circumstances.

Most of the heinous crimes under the IPC are punishable by death penalty or life imprisonment. That by itself does not suggest that in all such offences, penalty of death should be awarded. We must notice, even at the cost of repetition, that in such cases awarding of life imprisonment would be a rule, while b deathb would be the exception. The term b rarest of rare caseb which is the consistent determinative rule declared by this Court, itself suggests that it has to be an exceptional case. The life of a particular individual cannot be taken away except according to the procedure established by law and that is the constitutional mandate. The law contemplates recording of special reasons and, therefore, the expression b specialb has to be given a definite meaning and connotation. b Special reasonsb in contra-distinction to b reasonsb simplicitor conveys the legislative mandate of putting a restriction on exercise of judicial discretion by placing the requirement of special reasons.

Since, the later judgments of this Court have added to the principles stated by this Court in the case of Bachan Singh (supra) and Machhi Singh (supra), it will be useful to re-state the stated principles while also bringing them in consonance, with the recent judgments.

The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in the case of Bachan Singh (supra) and thereafter, in the case of Machhi Singh (supra). The aforesaid judgments, primarily dissect these principles into two different compartments b one being the b aggravating circumstancesb while the other being the b mitigating circumstanceb . The Court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the Court. It will be appropriate for the Court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the Court as contemplated under Section 354(3) Cr.P.C.

Aggravating Circumstances :

1. The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

2. The offence was committed while the offender was engaged in the commission of another serious offence.

3. The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

4. The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

5. Hired killings.

6. The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

7. The offence was committed by a person while in lawful custody.

8. The murder or the offence was committed, to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 Cr.P.C.

9. When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

10. When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

11. When murder is committed for a motive which evidences total depravity and meanness.

12. When there is a cold blooded murder without provocation.

13. The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating Circumstances :

1. The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

2. The age of the accused is a relevant consideration but not a determinative factor by itself.

3. The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

4. The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

5. The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

6. Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a pre-ordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

7. Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused.

While determining the questions relateable to sentencing policy, the Court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

Principles :

1. The Court has to apply the test to determine, if it was the b rarest of rareb case for imposition of a death sentence.

2. In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.

3. Life imprisonment is the rule and death sentence is an exception.

4. The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant circumstances.

5. The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.

Stated broadly, these are the accepted indicators for the exercise of judicial discretion but it is always preferred not to fetter the judicial discretion by attempting to make the excessive enumeration, in one way or another. In other words, these are the considerations which may collectively or otherwise weigh in the mind of the Court, while exercising its jurisdiction. It is difficult to state, it as an absolute rule. Every case has to be decided on its own merits. The judicial pronouncements, can only state the precepts that may govern the exercise of judicial discretion to a limited extent. Justice may be done on the facts of each case. These are the factors which the Court may consider in its endeavour to do complete justice between the parties.

The Court then would draw a balance-sheet of aggravating and mitigating circumstances. Both aspects have to be given their respective weightage. The Court has to strike a balance between the two and see towards which side the scale/balance of justice tilts. The principle of proportion between the crime and the punishment is the principle of b just desertsb that serves as the foundation of every criminal sentence that is justifiable. In other words, the b doctrine of proportionalityb has a valuable application to the sentencing policy under the Indian criminal jurisprudence. Thus, the court will not only have to examine what is just but also as to what the accused deserves keeping in view the impact on the society at large.

Every punishment imposed is bound to have its effect not only on the accused alone, but also on the society as a whole. Thus, the Courts should consider retributive and deterrent aspect of punishment while imposing the extreme punishment of death.

Wherever, the offence which is committed, manner in which it is committed, its attendant circumstances and the motive and status of the victim, undoubtedly brings the case within the ambit of b rarest of rareb cases and the Court finds that the imposition of life imprisonment would be inflicting of inadequate punishment, the Court may award death penalty. Wherever, the case falls in any of the exceptions to the b rarest of rareb cases, the Court may exercise its judicial discretion while imposing life imprisonment in place of death sentence.b

24. First and the foremost, this Court has not only to examine whether the instant case falls under the category of b rarest of rareb cases but also whether any other sentence, except death penalty, would be inadequate in the facts and circumstances of the present case.

25. We have already held the appellant guilty of an offence under Section 302, IPC for committing the murder of his three children and the wife. All this happened in the spur of moment, but, of course, the incident must have continued for a while, during which period the deceased Aradhna received burn injuries as well as the fatal injury on the throat. All the three children received injuries with a knife similar to that of the deceased Aradhna. But one circumstance which cannot be ignored by this Court is that the prosecution witnesses have clearly stated that there was a rift between the couple on account of her talking to Liladhar Tiwari, the neighbor, PW10. Even if some credence is given to the statement made by the accused under Section 313 Cr.P.C. wherein he stated that he had seen the deceased and PW10 in a compromising position in the house of PW10, it also supports the allegation of the prosecution that there was rift between the husband and wife on account of PW10. It is also clearly exhibited in the FIR (P27) that the accused had forbidden his wife from talking to

PW10, which despite such warning she persisted with and, therefore, he had committed the murder of her wife along with the children. It will be useful to refer to the conduct of the accused prior to, at the time of and subsequent to the commission of the crime. Prior to the commission of the crime, none of the prosecution witnesses, including the immediate blood relations of the deceased, made any complaint about his behaviour or character. On the contrary, it is admitted that he used to prohibit Aradhna from speaking to PW10 about which she really did not bother. His conduct, either way, at the time of commission of the crime is unnatural and to some extent even unexpected. However, subsequent to the commission of the crime, he was in such a mental state that he wanted to commit the suicide and even inflicted injuries to his own throat and also went to the bye-pass road with the intention of committing suicide, where he was stopped by PW4, Head Constable and taken to the Police Station wherein he lodged the FIR Exhibit P27. In other words, he felt great remorse and was sorry for his acts. He informed the Police correctly about what he had done.

26. Still another mitigating circumstance is that as a result of the commission of the crime, the appellant himself is the greatest sufferer. He has lost his children, whom he had brought up for years and also his wife. Besides that, it was not a planned crime and also lacked motive. It was a crime which had been committed out of suspicion and frustration. The circumstances examined cumulatively would, to some extent, suggest the existence of a mental imbalance in the accused at the moment of committing the crime. It cannot be conceived much less accepted by any stretch of imagination that the accused was justified in committing the crime as he claims to have believed at that moment.

27. Considering the above aspects, we are of the considered view that it is not a case which falls in the category of b rarest of rareb cases where imposition of death sentence is imperative. It is also not a case where imposing any other sentence would not serve the ends of justice or would be entirely inadequate.

28. Once we draw the balance-sheet of aggravating and mitigating circumstances and examine them in the light of the facts and circumstances of the present case, we have no hesitation in coming to the conclusion that this is not a case where this Court ought to impose the extreme penalty of death upon the accused. Therefore, while partially accepting the appeals only with regard to quantum of sentence, we commute the death sentence awarded to the accused to one of life imprisonment (21 years).

b &b &b &b &b &b &b &b &b &b &b &.,J.

[A.K. Patnaik] b &b &b &b &b &b &b &b &b &b &b &.,J.

[Swatanter Kumar] New Delhi;

February 28, 2012