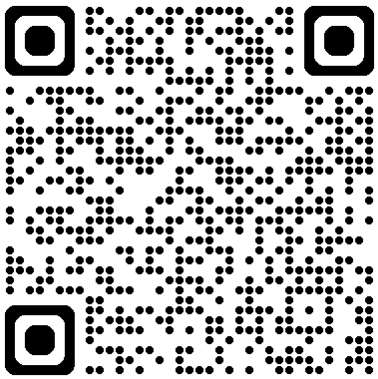
Death Penalty Converted to Life Imprisonment

Case Name: State of Maharashtra v. Pradip Vishwanath Jagtap

Citation: 2024:BHC-AS:40862-DB

Act: Indian Penal Code, Code of Criminal Procedure



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CONFIRMATION CASE NO. 02 OF 2024.

The State of Maharashtra
(Through Shahapur Police Station) …. Appellant

vs.

Pradip Vishwanath Jagtap
Age – 35 yrs, Occu-Service,
R/o.Shirgave Mala, Yadrav,
Tal. Shirol, Dist. Kolhapur. .... Respondent/Accused

WITH
CRIMINAL APPEAL NO. 431 OF 2024

Pradip Vishwanath Jagtap
Age – 35 yrs, Occu-Service,
R/o.Shirgave Mala, Yadrav,
Tal. Shirol, Dist. Kolhapur. .... Appellant.

vs.

(1) The State of Maharashtra
(Through Shahapur Police Station
in C.R.No. 153/2018) ....Respondent

(2) Abhishek Shripati Airekar
Age : Major, 23 years,
R/o. Behind Parvati Industries, Yadrav,
Tal. Shirol, Dist. Kolhapur. ....Orig. Complainant

Mrs. P.P. Shinde, APP for the State.
Mr. Kedar J. Patil a/w. Mr. Sachin Y. Mane, Mr. Pratik Tare, Ms. Sakshi Kadam, Mr. Jitesh Mundwa, Mr. Madan Bhosale, Mr. Prajay Kutkar and Mr. Rahul Shrigure for the Appellant in APEAL/431/2024 and for the Respondent in Conf./02/2024.

CORAM : REVATI MOHITE DERE &
SHYAM C. CHANDAK, JJ.

RESERVED ON : 11th JULY, 2024
PRONOUNCED ON : 10th OCTOBER, 2024

JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

1) Sole accused Pradip Vishwanath Jagtap was charged and tried for the offence punishable under Sections 302 of the Indian Penal Code in Sessions Case No.06 of 2019, for committing murder of 4 persons. The trial Court at Jaysingpur, District Kolhapur *vide* impugned judgment and order dated 22nd and 26th March, 2024 has held the Appellant guilty of the charge and opined that the case falls in "rarest of rare" category, and hence awarded capital punishment. In terms of mandate of Section 366(1) of the Code of Criminal Procedure, the learned Additional Sessions Judge, has submitted the proceedings to this Court for confirmation *vide* Criminal Confirmation Case No.2 of 2024. Being aggrieved by the same impugned judgment and order of conviction and sentence, the accused has also preferred an appeal bearing Criminal Appeal No.431/2024, mounting a challenge to the finding of guilt, as well as to the nature and proportionality of punishment.

2) Heard elaborate submissions made by learned APP Mrs.P.P.Shinde for the State-Respondent and learned Advocate Mr. Kedar

Patil, for the accused-Appellant, considered the factual aspect, evidence led before the trial Court, impugned judgment, as well as various pronouncements cited by the learned counsel for the Appellant in support of his contentions. Also heard both sides exhaustively on the point of imposition of appropriate sentence. Perused the record.

3) The prosecution case is as under :-

3.1) That, Chhaya Airekar was mother, Sonali Ravan and Rupali Jagtap were sisters and Rohit was brother of first informant PW6-Abhishek Airekar ('*Chhaya*', '*Sonali*', '*Rupali*', and '*Rohit*', for short). The incident occurred on 06th October, 2018, in the house of PW6-Abhishek, i.e., room No.8 in *Shirgave Chawl,* at *Yadrav.* At the time of incident, Sonali was staying with PW6-Abhishek, for delivery purpose. PW12-Sanavi is daughter of Rupali, born from her first husband. After divorce from her first husband, Rupali and PW12-Sanavi were residing with PW6-Abhishek. Thereafter, Rupali got married with the accused and they were blessed with a son, Ganesh. Rupali and accused were working in Jubilee Process Company and Bahubali Company, respectively.

3.2) That the accused was always suspecting the character of Rupali and quarreling with her, and hence Rupali was residing with PW6-Abhishek, alongwith the accused. Despite the same, the accused used to suspect the fidelity of Rupali and quarrel with her on account of the same. The accused was also following Rupali to her workplace and keep watch on her.

3.3) On 30th September, 2018 Rupali went to work in the night shift. Then, the accused went there and by calling Rupali outside, he assaulted her. Immediately, Rupali came home and disclosed the said incident to her family members. In turn, PW6-Abhishek and his family members gave an understanding to the accused not to assault Rupali. At that time, the accused went away carrying his son Ganesh with him. Next day, in the morning, the accused returned and dropped Ganesh home. On 03rd October, 2018 the accused came home and by calling Rupali outside the house, quarreled with her and went away.

3.4) On 05th October 2018, at about 08:00 p.m., the first informant was preparing to go for work. At that time, the accused was arguing with Rupali. It being routine, PW6-Abhishek ignored them and went for his work. At about 11:30 p.m., again quarrel occurred between accused and

Rupali, which was settled by PW8-Jagdish Sankpal, Police Patil . On 06th October 2018, at about 04:30 a.m., one Vikram came to PW6-Abhishek and informed that his mother, brother and sisters have been assaulted. Instantly, informant rushed home. At that time, he saw that PW12-Sanavi was crying there and his mother was lying on the bed in an injured condition and both his sisters and brother Rohit lying on the floor with injuries on their person.

3.5) On inquiry, PW12-Sanavi disclosed that, after PW6-Abhishek went for his work in the night, the accused was demanding mobile phone from Rupali, to which the latter resisted. This led the couple to enter into a quarrel. Therefore, Sonali intervened. However, the accused pushed Sonali and went away snatching the mobile phone. Thereafter, they all slept. However, suddenly she heard screams of her mother Rupali. Therefore, she woke up with fright. At that time, she saw that the accused was assaulting Rupali by means of a wooden log. Then, the accused assaulted Sonali and Rohit on their head with the same weapon and caused them bleeding injuries. Lastly, the accused assaulted Chhaya on head. PW12-Sanavi further disclosed that, thereafter she came out of the house and shouted, pursuant to which their Neighbour *Meher didi* came there. Seeing her, the accused fled away from the rear door of the house. Chhaya died on the spot. The rest

three injured were taken to the hospital. However, Sonali was declared as brought dead. Rohit and Rupali were admitted in the ICU, however medical intervention could not save them as they died shortly after being shifted there. Thereafter, the informant lodged the First Information Report at (Exh.86) and C.R.No.153 of 2018 was registered against the accused at Shahapur Police Station, District Kolhapur for the offence punishable under Section 302 of the Indian Penal Code.

3.6) Police visited the spot. PSI Yadav seized the blood stained quilts, pillows, clothes etc. found at the spot, took samples of the blood found there and recorded the spot panchanama (Exh.47). Then police recorded the Inquest Panchnamas (Exhs.14, 30 to 32, respectively) of the bodies of Chhaya, Sonali, Rupali and Rohit. All four dead bodies were subjected to post-mortem examination. The blood stained clothes on the respective dead bodies were seized. PSI Mujawar arrested the accused on 6th October, 2018. On 7th October, 2018 police seized the CCTV footage of 'Ingres and Egress' of the accused at his work place in the night intervening 5th and 6th October.

3.7) On 8th October 2018, the accused made a disclosure statement (Exh.16) that he is ready to produce the weapon of the offence. Then, the

accused led the police and panchas to *Shirgave Mala, Yadrav*, and there he recovered the wooden log (MO1), which was hidden under the bushes. Police seized the same under recovery panchnama (Exh.17). During investigation again, on 11th October 2018, the accused gave one more disclosure statement at (Exh.21) that, he would show his blood stained clothes which he had worn at the time of incident and led the police and panchas to one factory owned by Rajgopal Chhaparwal. There, the accused produced his t-shirt and pant stained with blood from a bag hanging on a hook. The police seized the clothes under recovery panchnama (Exh.22).

3.8) PW24-API Harugade, I.O. recorded the statement of witnesses from time to time and obtained the statement of certain witnesses recorded under Section 164 of the Criminal Procedure Code. He collected the postmortem reports. He referred the *muddemal* articles, blood samples, etc. to RFSLs, Kolhapur and Pune, for C.A. and D.N.A. examinations.

3.9) On completion of the investigation it was revealed that, the accused committed the murder of the four persons. Therefore, PW24-API Harugade submitted charge-sheet before the Judicial Magistrate First Class, Jaysingpur, who complied with Section 207 of Cr.P.C. and committed the

case to the Court of Sessions, as the offence under Section 302 was exclusively triable by Court of Sessions.

4) The learned trial Court framed the charge. The accused pleaded not guilty to the charge and claimed to be tried. In order to bring home the guilt of the accused, the prosecution has examined following 24 witnesses.

Name of witnesses	Details on which examined.
PW1-Rahul Tatyaso Parit	Panch- seizure of clothes of the deceased.
PW2-Vaishali Vijay Pawar	Panch- Inquest Panchnama of Chhaya.
PW3-Sham Janardhan Kamble	Panch- disclosure statement of accused leading to recovery of wooden log.
PW4-Shrikant Shivaji Kamble	Panch- disclosure statement of accused leading to recovery of his blood stained clothes (hostile).
PW5-Santosh D. Gound	Panch- seizure of the CCTV footage.
PW6-Abhishek Shripati Airekar	First informant.
PW7-Gundurao Piraji Bhosale	Watchman, Manpasand Textile Process.
PW8-Jagdish Bhupal Sankpal	Police Patil
PW9-Sunil Babaso Mane	Panch- disclosure statement of accused leading to recovery of his blood stained clothes.
PW10-Rupesh Sambhaji Airekar	Cousin of PW6-Abhishek to whom PW12-Sanavi disclosed the incident.
PW11-Raju Maruti Gaikwad	Brother of first wife of accused (hostile).
PW12-Sanavi Pradip Jagtap	Eye witness (minor).
PW13-Mahadev Krishna Kamble	Spot panch
PW14-Zubeda Alam Pathan	Neighbour of the deceased and accused.
PW15-Amit Chandrakant Bhore	Police Constable- he deposited DNA samples at FSL, Pune.
PW16- Dr. Smita Dhananjay Mahadik	Medical Officer, IGM, Ichalkaranji, who examined accused.
PW17-Gurunath	Police Naik- he deposited *Muddemal* Objects,

Balwant Chavan	blood samples etc. at RFSL, Kolhapur.
PW18-Tahirnaksha Shahajahan Shaikh	Police Constable- he deposited sample nail clippings of accused at FSL, Pune.
PW19-Dr. Ravikant Raghunath Terwade	Medical Officer, IGM, Ichalkaranji-- post-mortem of Chhaya.
PW20-Dr. Prabhakar Rajaram Patil	Medical Officer, Civil Hospital, Sangli-- post mortem of Sonali, Rupali and Rohit.
PW21-Maruti Somappa Gavali	PSO- Station Diary entries and registration of crime
PW22-Vikas Jagannath Bhujbal	PI in-charge CCTNS. He gave certificates under Section 65B of the Evidence Act in respect of station diary entries in CCTNS.
PW23-Irgonda Satgonda Patil	PI, Shivaji Nagar, Initial investigation Officer.
PW24-API Sanjay A. Harugade	Investigation Officer

5) After the prosecution closed its evidence, statement of the accused under Section 313 of the Cr.P.C. recorded. The defence of the accused was of total denial and false implication.

6) On appraisal of the prosecution evidence in the light of submissions made by learned APP and learned Advocate for the accused, the trial Court held the accused guilty of the four murders and awarded him with death penalty.

7) Learned APP Mrs. Shinde representing the State strongly submitted that, there is sufficient, cogent and reliable, direct as well as circumstantial evidence. That, on the strength of said evidence, the prosecution has proved that, the accused has committed four murders; that

the murders had been committed in a planned manner and with an intent to eliminate the entire family; but PW6-Abhishek escaped only because he was at his work place. Learned APP submitted that the assault was at night time when the four murdered were asleep and in a defenseless condition. She submitted that all of them were forcefully assaulted on their head by the accused with a heavy wooden log. That out of said four, three were women i.e. a mother and the two young sisters, Rupali and Sonali. Rohit was aged 17 years and Sonali was a mother of an infant. According to the learned APP, even though, the accused had a dispute with only Rupali, he took the lives of three other innocent namely, Chhaya, Sonali and Rohit. As such the murders were brutal and merciless. She submitted that the cold-blooded act of the accused not only shook the very psyche of PW12-Sanvi, a 10-year-old, but also deeply affected the public throughout the entire Kolhapur district. Learned APP further submitted that the evidence indicates that, after the murders the accused hardly showed any remorse or repentance for he killed his near and dear ones, on account of a trivial matter. As such, there is not even a bleak chance that, the accused would reform if the impugned sentence is converted to life imprisonment. Therefore, according to learned A.P.P., said sentence of death is justified and need not be interfered with.

8) Learned Counsel Mr. Patil for the accused-Appellant submitted that, even though the incident occurred at 3 am, it was registered in the station diary entry at about 14.00 hours and the crime was registered at about 19.00 hours, on the next day. Thus, there is a 16 hours delay in registration of said crime, which is not explained.

8.1) He submits that, the room was completely dark, when the incident occurred and that, at that time PW12-Sanvi was sleeping. He submitted that looking at the nature of assault, PW12-Sanvi undoubtedly, must have panicked and in such a mental state, it is impossible for a small child aged 10 years like PW12-Sanvi, to courageously remain at the scene/spot of the incident, observe the assault closely, and identify the assailant. He submitted that to the contrary, being frightened, PW12-Sanvi immediately ran out of the house. He submits that, according to PW14-Zubeda, immediately after the incident she saw the accused standing near a water tank, in front of the room of incident, however, there was no light where the accused was allegedly standing, near the tank. Thus, it is apparent that, PW14-Zubeda, lied to the Court that, she saw the accused as above, immediately after the incident.

8.2) He submits that, there is discrepancy in the evidence of PW12-Sanvi and PW14-Zubeda. Initially PW12-Sanvi stated that, the accused escaped on a motorcycle, but in cross-examination she admitted that, the accused escaped from the back side door. However, evidence of PW14-Zubeda indicates that, the accused fled from the front side of the room. Learned counsel submits that this discrepancy is sufficient to hold that, the aforesaid two witnesses had not seen the accused while assaulting the victims and nor immediately thereafter. Further, he submits that looking at the quality of the evidence of PW12-Sanvi, she appears to be a tutored witness, therefore, it would be risky to act upon her evidence.

8.3) He submits that, PW4-Shrikant Kamble, panch to the disclosure statement of the accused leading to recovery of his blood stained clothes has turned hostile and that the said witness admits that, he did not go out of the police station. This fact makes the clothes recovery doubtful. The recovery of the wooden log is from an open place, which was easily accessible to all and as such the said disclosures and recoveries are neither admissible in evidence nor reliable.

8.4) In view of the above submission, learned Advocate for the accused submits that, there is a reasonable doubt about the truthfulness of

the prosecution story and therefore the accused, is entitled for acquittal by giving him benefit of doubt. To accept this, he has relied upon following decisions :

Naresh vs. State of Haryana[1]
Jasobanta Sahu vs. State of Orissa[2]
Pradeep vs. State of Haryana[3]
Rahul vs. State of Delhi[4]
Sarwan Singh Rattan Singh vs. State of Punjab[5]
Rajesh and Anr. vs. State of Madhya Pradesh[6]
Ramanand vs. State of Uttar Pradesh[7]

8.5) In the alternate, he submits that looking at the submissions made by and on behalf of the accused before the trial Court on the point of sentence, his socio-economic condition, the period he has served in jail till date, there being no adverse report about conduct of the accused in the jail, this is a fit case to commute the death penalty to life imprisonment. Learned counsel cited the following decisions, in support of his submission.

Bachan Singh vs. State of Punjab[8]
Machhi Singh and Ors. vs. State of Punjab[9]

1 (2023) 10 SCC 134
2 Cri.Appeal No.493 of 2022
3 2023 SCC Online SC 777
4 (2023) 1 SCC 83
5 1957 SCC Online SC 1
6 2023 SCC Online SC 1202
7 2022 SCC Online SC 1396
8 AIR 1980 SC 898
9 AIR 1983 SC 957

Rameshbhai Chandubhai Rathod vs. State of Gujarat[10]

Santoshkumar Shantibhushan Bariyar vs. State of Maharashtra[11]

Ramnaresh & Ors. vs. State of Chandigarh[12]

Sangeet & Anr. vs. State of Haryana[13]

Madan v/s. State of Uttar Pradesh[14]

Prakash Dhawal Khairnar (Patil) v/s. State of Maharashtra State of Maharashtra v/s. Sandeep alias Babloo Prakash Khairnar (Patil)[15]

Proof of culpable homicide amounting to murder :

9) Considering the charge held against the accused, first and foremost the prosecution is duty bound to prove that the death of Chhaya, Sanvi, Rupali and Rohit was homicidal. The evidence indicates that, immediately after the incident PW23-Sr. PI Patil sent the body of Chhaya for postmortem and PW6-Abhishek removed the injured Sonali, Rupali and Rohit to the Civil Hospital by ambulance but soon the three died there. The defence has admitted the Inquest Panchanamas and has not disputed that, PW19-Dr. Ravikant Terwade conducted the postmortem examination of Chhaya; that PW20-Dr.Prabhakar Patil held the postmortem examination of Sonali, Rupali and Rohit; that they noticed the grievous injuries stated in the

10 (2011) 2 SCC 764
11 (2009) 6 SCC 498
12 AIR 2012 SC 1357
13 (2013) 2 SCC 452
14 2023 SCC OnLine SC 1473
15 (2002) 2 SCC 35

respective postmortem report; and that they gave the postmortem reports, accordingly (Exhs.69, 73, 76 & 79). In fact, it is not in conflict from the accused side that, the death of the four deceased is homicidal. Yet, as we are seized with the question of confirmation of the death penalty and, that the accused has also impugned the sentence as unwarranted, we deem it proper to reproduce the injuries suffered by the four deceased because it would aid in getting an insight as to the intention as well as the brutality with which the homicidal deaths have been caused. This exercise would also assist to answer the significant question *viz.*, whether the death penalty should be upheld or not.

10) The assertion of PW19-Dr. Terwade linked with the postmortem report (Exh.69) indicates that, Chhaya had suffered the following injuries.

External Injuries :

1) Incised wound over left parieto occipital region of scalp, size 22 cm x 11 cm, comminuted fracture of skull; Brain matter expelled out from skull vault; Brain matter contains skull bone pieces; The injury was red in colour.

2) Incised wound over left parietal region of scalp, below injury No.1 and 5 cm from ear, size 7cm x 10 cm, muscle and bone deep with fracture of skull; The injury red in colour.

3) Hematoma over left arm medial aspect with size 5 cm x 4 cm red in colour.

4) Palatable comminuted partial occipital region on left side.

Internal injuries :

1) Hematoma over left parietal region of scalp, size 7 cm x 6 cm, blackish red in colour.

2) Hematoma over occipital region of scalp, size 8 cm x 6 cm, blackish red in colour.

10.1) PW19-Dr. Terwade deposed that, all above injuries were ante-mortem injuries. He opined that, the injuries are possible by heavy, sharp or cutting edged object; that, the said injuries were sufficient in the ordinary course of nature to cause death; that, the cause of the death was hemorrhagic shock due to the injuries to the vital organ. He has deposed that, he took samples of blood and sternum of the Chhaya and gave it to police. That, the aforesaid injuries are possible by the wooden log.

11) The evidence of PW20-Dr.Patil along with the postmortem report (Exh.73) revealed that, Sonali had suffered the following injuries.

External Injuries :

1] cut wound at right parietal region 7 cm x 1 cm bone deep.
2] cut would at occipital region 6 cm x 1 cm bone deep.
3] cut would at right frontal region 2 cm x 1 cm.
4] abrasion at right shoulder 3cm x 0.5 cm.
5] abrasion at right wrist 4 in number each of size 0.2 cm x 0.1 cm.

Internal Injuries :

1] Scalp haematoma over right parietal region 6 cm diameter.
2] fracture of 5 cm depressed type, antero posterior over right parieto temporal bone.
3] fracture of 12 cm zigzag in coronal plane over occipital bone.
4] Subdural haematoma of defused type over right hemisphere.

11.1) PW20-Dr.Patil deposed that, the injuries stated in column Nos.17 and 19 were ante mortem, grievous in nature and fatal and that the said injuries were sufficient in the ordinary course of nature to cause death. The cause of death was intracranial bleeding due to the head injury.

12) The evidence of PW20-Dr.Patil coupled with the postmortem report (Exh.76) disclosed that, Rupali had suffered the following injuries.

External Injuries :

1) CLW- at right parieto frontal region 9 cm x 0.5 cm bone deep, oblique.
2) cut wound at right temporoparietal region posterior to injury No.1 above, size 4cm x 1 cm bone deep.
3) cut wound over right temporal region behind right ear, size 4 cm x 0.5 cm bone deep.
4) cut wound at right partial region 4 cm x 0.5 cm bone deep.

Internal Injuries :

1) scalp haematoma at right frontal region 3 cm diameter.
2) fracture of right temporoparietal bone L shape, vertical 9 cm and horizontal 6 cm.
3) fracture of base of skull present.

12.1) PW20-Dr. Patil opined that, the injuries mentioned in column Nos.17 and 19 were ante mortem, grievous in nature and fatal and that the said injuries were sufficient in the ordinary course of nature to cause death. The cause of death was intracranial bleeding due to head injury.

13) The evidence of PW20-Dr.Patil alongwith the postmortem report (Exh.79) revealed that, Rohit had suffered following injuries.

External Injuries :

1) cut wound over right parietal region, oblique, 9 cm x 0.5 cm, bone deep.
2) cut wound anterior to injury no. (1), 4 cm x 0.5 bone deep.
3) laceration over right ear 2 cm.

Internal Injuries :

1) Scalp haematoma over right parietal region 5 cm diameter.
2) fracture of 18 cm zigzag in coronal plane over parietal bones.
3) fracture of 6 cm in coronal plane posterior to fracture No.1 over right parietal bone.

13.1) PW20-Dr. Patil opined that, the injuries were ante mortem, grievous in nature and fatal and that the said injuries were sufficient in the

ordinary course of nature to cause death. The cause of death was intracranial bleeding due to head injury.

14) According to PW20-Dr. Patil, the injuries noted in the postmortem reports (Exhs.73, 76 & 79) are possible by hard and sharp edged weapon. In his opinion the said injuries are possible by the Wooden log MO1. He has deposed that, he collected the blood, hairs and bone samples of deceased Sonali, Rupali and Rohit and gave it to the police.

15) In so far as the cross-examination of PW19-Dr. Terwade and PW20-Dr. Patil is concerned, nothing material has been elicited so as to record a variance in their testimonies. Therefore, it is safe to rely upon the said expert evidence. From the said evidence it is obvious that, the injuries sustained by the four deceased were caused by inflicting immensely forceful blows with the object stated by both the experts and as such, there can be no doubt that, the said injuries were inflicted with an intention to cause death. In view thereof, we conclude that, the deaths of Chhaya, Sonali, Rupali and Rohit constitute culpable homicide amounting to murder as defined in Section 300 of I.P.C.

Abhishek's family and the accused were residing together :

16) Now coming to the material incriminating evidence against the

accused. The accused has admitted the relationship of PW6-Abhishek with the four deceased; that PW12-Sanavi is daughter of Rupali, from her first husband; that Rupali was divorced from her first husband; that therefore, Rupali and PW12-Sanavi were residing with PW6-Abhishek. However, the accused has disputed that Rupali was married to him. Yet, the accused has admitted that Ganesh is his biological child from Rupali. The accused has not challenged the evidence of PW12-Sanvi and PW14-Zubeda that, at the time of incident he, Rupali, and Ganesh were residing with PW6-Abhishek; that Sonali had come to stay with PW6-Abhishek for her delivery purpose. The accused has not disputed the evidence of PW14-Zubeda that, at the time of the incident she, her husband Alam and daughter *Mehar* were residing at Shirgave mala. Therefore, mere denial by the accused in his statement under Section 313 of Cr.P.C. that he was not residing with PW6-Abhishek, is of no avail. Hence, we hold that, at the time of incident all the aforesaid family members including the accused were residing together in the room/house where the incident had occurred.

Prelude of the incident :

17) The evidence of PW12-Sanavi Jagtap is that, at the relevant time her mother Rupali used to talk with someone on phone; that the accused did not like it; and that Rupali and accused used to quarrel on account of mobile

phone. PW6-Abhishek has also deposed that the accused was suspecting on Rupali as she was talking on mobile phone and, that the accused used to threaten and assault Rupali. PW10-Rupesh Airekar has deposed that Chhaya was his aunt and her children were his cousin; that relations between accused and Rupali were not good; that Chhaya used to inform him that the accused was suspecting Rupali's character, as she was talking on mobile phone and used to assault her. PW14-Zubeda also testified that, there used to be frequent quarrels between the accused and Rupali because the later would often talk on her mobile phone.

17.1) PW6-Abhishek has deposed that, on 30th September 2018, at about 08:00 p.m., when Rupali was returning home from work, the accused assaulted her, therefore, Chhaya and Sonali gave the accused an understanding, however the accused did not listen and continued suspecting Rupali's character. He deposed that on 03rd October 2018, there was quarrel between the accused and Rupali.

17.2) The aforementioned evidence of the four is consistent that, as Rupali was regularly talking on phone with some person, the accused did not like that and on that account, he was suspecting Rupali's character, that he

used to quarrel with her and threaten and assault her. Said evidence is corroborated by the report (Exh.35). Nothing has come in the cross-examination of the aforesaid four witnesses to disbelieve their said claim. They have no reason to falsely depose the said facts. Hence we hold the same.

18) PW6-Abhishek has deposed that, on 05th October 2018, at about 08:00 p.m., he was to go for work in the night shift; that at about 09:00 p.m., quarrel took place between accused and Rupali on account of the accused snatched Rupali's mobile phone when she was talking on the phone, however, the dispute was settled. This evidence is supported by the report (Exh.35) and testimony of PW12-Sanavi that, on 05th October, 2018 at about 08:00 p.m., while Rupali was talking on phone, the accused took the mobile phone from Rupali and started leaving; that therefore, Sonali held the collar of the accused; that the accused gave a jerk to Sonali and ran away; and that, thereafter PW6-Abhishek went to his work.

18.1) PW12-Sanavi has deposed that, after the aforesaid quarrel they all eat and slept in the house; that, at about 11:00 p.m., someone knocked the door; that therefore, Rupali called to PW8-Jagdish Sankpal, Police Patil who came there; at that time, the accused was near her house; that the Police

Patil took the mobile phone of Rupali and the accused and told the latter to go away; that then the accused and Police Patil went away and they all slept. This assertion is consistent with the evidence of PW8-Jagdish Sankpal that, on 05th October 2018, at about 11:30 p.m., Namdeo Shirgave informed him on phone that, the accused and the four deceased were quarreling; that within short time, he went there and saw them quarreling; that therefore, he and others intervened; that the quarrel was on account of the accused suspected that Rupali was talking on mobile, hence, he advised the quarreling parties to lodge a report, but they declined giving an excuse that it was a domestic dispute and they will resolve it. This evidence also find aid from the evidence of PW14-Zubeda that, in the night of the incident, when she and *Mehar* returned home from work at about 11:30 p.m., her husband Alam told her that Rupali was talking with someone on mobile phone and it led to a quarrel between the couple. This is very natural on the part of Alam, as he was expected to see the said quarrel. The aforesaid testimonies hardly met an adequate challenge in the cross-examination. It seems very natural. Therefore, it is safe to rely upon the same. Accordingly we hold that, just 2/3 hours before the murders, there was quarrel between Rupali and the accused on account of Rupali was regularly talking on mobile phone and therefore the accused suspected her character.

Direct evidence as to the murders :

19) On the crucial aspect of the murders, PW12-Sanavi has deposed that, at about 03:00 a.m., the accused opened the latch and came inside the house; that then, the accused assaulted Rupali by means of a wooden log; that she woke up due to its noise; then she saw that the accused assaulted Chhaya, Sonali and Rupali on their head by the same wooden log; then the accused ran away on a motorcycle. She has deposed that Chhaya died on the spot and the other injured were removed to Sangli hospital, however, soon they also expired. This evidence did not meet requisite contest in the cross-examination so as to brush the same aside. It is corroborated by PW12-Sanavi's statement under Section 164 of Cr.P.C. at (Exh.45). Looking at the facts and circumstances of the case, it is apparent that PW12-Sanavi is a natural witness of the incident because she being a child, aged 10 years, she was expected to be in the company of her mother Rupali. In fact PW12-Sanavi has successfully withstood the cross examination and thus, has passed all the test to accept her evidence as a reliable child witness. Hence, the claim of PW12-Sanavi that she witnessed the accused assaulting the four deceased is worthy of reliance.

19.1) The conclusion from the prelude makes it evident that, as Rupali was regularly talking on phone with someone, the accused did not like that.

As a result, he used to frequently quarrel with Rupali and assault her. For the same reason there was quarrel between Rupali and accused at 8:00 p.m. and 11:00 p.m. prior to occurrence of the incident in which other deceased were also involved. Therefore, it is probable that the accused would develop anger against all the deceased including Rupali and the said anger would lead the accused to assault them. Thus, the conclusion as to the prelude strengthens the testimony of PW12-Sanavi, on the point of the assault.

19.2) As held above, the accused, Rupali and PW12-Sanavi were residing with PW6-Abhishek' family. The accused has not satisfactorily explained as to why PW12-Sanavi would falsely deposed against him that he committed the murder of four. Except the accused, no other person had any dispute or quarrel with Rupali, Chaya, Sonali and Rupesh, immediately before their murder. Therefore, the question does not arise of any other person committing their murder, nor it was the defence of the accused. Thus, on this count also, the said testimony of PW12-Sanavi cannot be rejected.

Evidence as to conduct of witnesses and accused:

20) Evidence of PW12-Sanavi clearly indicates that, immediately

after the incident she went to her neighbour *Mehar didi* and informed the incident to her and one shopkeeper. Looking at the age of PW12-Sanavi at the time of incident, it is natural that on witnessing the terrorising and heart rending incident she would get frightened and therefore she would rush to the neighbour to get some help and inform the incident to them.

20.1) Evidence of PW14-Zubeda bespeaks that, after the dinner she slept and her husband Alam was watching TV; that, after some time, she heard a sound of smacking (फटाफट) and crying of Sanavi. This is highly probable as rooms of PW14-Zubeda and accused were adjacent to each other. PW14-Zubeda has deposed that, initially she alone went to the room of the accused; that, at that time, she saw that the accused was having a wooden log in his hand and he was standing near a water tank; that, Sanavi was holding Sonali's baby and she was crying; that, then she, her husband and daughter *Mehar* went inside the said room and saw the four injured there; that her husband asked Sanavi as to the assailant on which she replied that, it is the accused; that, they informed the incident to *Mali mama,* who called the police. Lastly, she has proved her statement under Section 164 of Cr.P.C. (Exh.53).

20.2) PW6-Abhishek has deposed that, at about 04:30 a.m. of 6th October, his friend Vikram came to his work place and informed about the incident; that immediately, he rushed home riding on Vikram's bike; that, when he reached home he saw that, PW12-Sanvi and Ganesh were present in the house; that Chhaya was lying dead on a cot; that Sonali, Rupali and Rohit were lying there with injuries on head. He has deposed that, at that time PW12-Sanavi informed him that at about 3.00 a.m. the accused came home and assaulted the four deceased by means of wooden log; that he was intending to kill her; that therefore, she lifted Ganesh (Sonali's son) and went to the neighbour's house; then he promptly lodged the report (Exh.35). Further, he has proved his statement under Section 164 of Cr.P.C. (Exh.36).

20.3) The evidence of PW8-Jagdish Sankpal, Police Patil is that, at about 05:00 a.m. to 05:30 a.m. of 6th October, Namdeo Shirgave called and informed him, that again there was a quarrel, Rupali, Sonali and Rohit were injured and they have been taken to the Hospital. Lastly, he has proved his statement under Section 164 of Cr.P.C. (Exh.39).

20.4) PW10-Rupesh Airekar has deposed that, on 06th October 2018, his cousin Sunil Airekar informed him the incident on phone; that he went

to the spot and saw the scene of the crime; that PW12-Sanvi told him that the accused assaulted Chhaya, Sonali, Rupali and Rohit and ran away.

20.5) The aforesaid evidence of the PW14-Zubeda, PW8-Jagdish Sankpal, PW12-Abhishek and PW10-Rupesh Airekar are consistent. The said testimonies are corroborated by their statement under Section 164 of Cr.P.C. (Exhs.36, 39 and 53). It is common experience that on getting knowledge or information of such a serious incident, any normal person would react as the aforesaid witnesses reacted when they perceived/knew about the incident. Similarly, it is foreseeable that, PW12-Sanavi would disclose the incident to her close relatives and neighbour at the very first encounter with them, post incident.

21) In the above context it is significant to note that PW14-Zubeda has candidly stated that, after perceiving the incident when she first went to the room of the accused, the latter was standing near the water tank and he was holding a wooden log. Said water tank was in front of the room of accused, as PW14-Zubeda admitted . The accused failed to explain as to why he was standing there at such an abnormal time in the night, holding an unwanted object in hand. On the contrary, if the accused was innocent, he was expected to be in the room to attend all the deceased who were seriously

injured and get them prompt medical, which he regrettably did not. That apart, the accused also not tried to immediately report the incident to police and surprisingly, outsiders had to do that for him. This is quite unnatural of the accused. Hence, the aforesaid evidence is reliable that, on getting information of the incident, the said four witnesses rushed to the spot and PW12-Sanavi informed them the incident and that, the accused assaulted the four deceased as above. Thereafter, PW6-Abhishek lodged the prompt report (Exh.35) ruling out the possibility of concocting a story and false implication of the accused in the crime.

Absence of accused at his work place :

22) The evidence of PW7-Gundurao clearly indicates that, at the relevant time he and the accused were serving in Manpasand Textile process, *Yadrav*. This fact is admitted by the accused in his statement under Section 313 of Cr.P.C. Even though PW11-Raju Gaikwad turned hostile, he has deposed that the accused was working in Manpasnad company and this evidence remained unchallenged by the accused. PW7-Gundurao has deposed that, on 05th October 2018, he was on night duty on the east side gate of the company; that at about 08:00 p.m., the watchman on duty Mr. Chougule gave him the report of day duty; that on that day, the accused had done the day duty; that the accused again came for the night duty at about

09.00 p.m.; that entry to that effect was taken in the 'Ingress and Egress' register; that the accused had gone out of the company and he returned at about 02:30 a.m. The accused has admitted the aforesaid facts in his statement under Section 313 of Cr.P.C. with a distinction that, he returned to the work place at about 02:00 a.m. The accused did not explain as to where he had gone out of the company. Therefore, and considering the other evidence it is safe to presume that, the accused had gone to his house to commit the murders.

Other circumstantial evidence :

23) The evidence indicates that, after getting the information of the incident from PW8-Jagdish Sankpal and others, PW23-Sr. PI Patil, Shivaji Nagar Police Station, Ichalkaranji visited the spot for initial investigation, because jurisdictional police officer PW24-API Harugade was on leave. PW23-Sr. PI Patil instructed PSI Yadav to record the spot panchnama. PW13-Mahadeo Kamble, spot panch has testified that, police inspected the spot and seized several blood stained quilts, pillows, clothes, school uniforms, chappals, broken bangle pieces etc. MO24 to MO35, from the spot; that police also sealed the samples of the blood found on the spot; that police recorded the spot panchanama (Exh.47). PW10-Rupesh Airekar also stated that police prepared the spot panchanama in his presence.

24) PW23-Sr. PI Patil has testified that, PSO Gawali recorded the report (Exh.35) of PW1-Abhishek; that, he seized the blood samples and clothes MO7 to MO24 of the deceased under panchanama (Exhs.11 and 29); that, PSO Gawali arrested the accused *vide* arrest Panchanama (Exh.95); and that he gave the letter (Exh.97) to obtain a DNA kit. There is nothing on record to disbelieve the aforesaid evidence.

Disclosure statement and recoveries :

25) PW3-Sham Kamble and PW24-API Harugade have testified that, on 8th October 2018, the accused gave a disclosure statement (Exh.16) in presence of him and two panchas; that thereafter, the accused lead them to village Shirgave Mala, *Yadrav*; that there, the accused produced the wooden log MO1 from bushes; and that PW24-API Harugade seized the same under recovery panchnama (Exh. 17). PW12-Sanavi identified the said wooden log as the weapon of the offence.

25.1) PW9-Sunil Mane has testified that, on 11th October 2018 the accused gave a disclosure statement (Exh.21) in his presence, co-panch and the police that, he would show and produce his clothes; that, then the accused led them to certain factory and there the accused produced his

clothes i.e., t-shirt article MO3 blue jeans MO4 from one bag. PW24-API Harugade has also deposed the said fact but with slight variation. However, nothing turns on it looking at the evidence as a whole. Therefore, there is no hurdle to accept the disclosure (Exh.21) and the recovery of the clothes (Exh.22).

C.A. and D.N.A. Reports :

26) The evidence of PW17-PHC Gurunath and PW24-API Harugade joined with letter (Exh.62) proves that, on 19th October 2018, PW17- PHC Gurunath carried the MOs and blood samples seized from the spot, the clothes of the deceased persons, the clothes of the accused and their blood samples to the R.F.S.L., Kolhapur and deposited the same there.

26.1) From the evidence of PW15-PC Amit Bhore and PW24-API Harugade coupled with the letters (Exh.55 & 56), it has been proved that on 11th October, 2018 PW15-PC Amit Bhore received the sealed D.N.A. samples of the four deceased and accused; that he carried the same and deposited at the RFSL, Pune on 12th October, 2018.

26.2) Evidence of PW16-Dr. Smita Mahadik shows that, she took sample nails clippings of the accused and forwarded it to PW23-Sr. PI Patil

along with query reply letter dated 15th October 2018 (Exh.60), answering the queries asked by the police *vide* letter (Exh.59). From the evidence of PW18-PC Shaikh and PW24-API Harugade, it has been proved that on 1st November 2018, PW18-Shaikh received the sealed sample nail clippings of the accused from PW24-API Harugade; that he carried the same to the R.F.S.L. Pune and deposited it there under a forwarding letter (Exh.64).

27) Now about the C.A. and D.N.A. Reports (Exh.122 to 130). The said reports indicate that, the D.N.A. of the blood on found on certain *muddemal* objects (MOs) matched with the D.N.A. of the four deceased. Its details are as under :

Sr. No.	Description {All samples referred below are subject to samples referred by RFSL Pune ML Case No.DNAp-931/18}
1.	DNA profile obtained from Ex.1 - nails cutting of Pradip Jagtap (RFSL Pune ML Case No.DNAp-1006/18) **matched** with DNA profile obtained from Ex.1 blood of Pradip Jagtap
2.	DNA profile obtained from blood stained Quilt MO24–Ex.1; blood stained Pillow MO29–Ex.6; blood stained Blouse of Chaya MO9–Ex.16 **matched** with DNA profile obtained from Ex.9 Sternum of Chaya
3.	DNA profile obtained from blood stained Quilt MO25–Ex.2; blood stained Quilt MO27–Ex.4; blood stained Pillow MO28– Ex.5; blood stained Frock (school uniform)MO32–Ex.9; scrapping–Ex.11; blood stained small cloth piece–Ex.12; blood stained small cloth piece –Ex.14; blood stained Gown of Sonali MO13–Ex.18; blood stained peticoat MO14–Ex.19 **matched** with DNA profile obtained from Ex.5 and Ex.6 Sternum of Sonali
4.	DNA profile obtained from blood stained Quilt MO26–Ex.3; blood stained Pillow MO30–Ex.7; blood stained Pillow MO31– Ex.8 **matched** with DNA profile obtained from Ex.7 and Ex.8 Sternum of Rupali

5.	DNA profile obtained from blood stained frock (school uniform) MO33–Ex.10; Scrapping –Ex.15; blood stained full shirt of Rohit MO21–Ex.22; scrapping from wooden log MO1–Ex.23; blood stained half T-shirt of accused MO3–Ex.24; blood stained full jeanspant of accused MO4 –Ex.25 **matched** with DNA profile obtained from Ex.3 and Ex.4 Sternum of Rohit
6.	Mixed DNA profile obtained from blood stained small cloth piece – Ex.13; blood stained top of Rupali MO17 –Ex.20; blood stained leggings MO18 – Ex.21 **matched** with DNA profile obtained from Ex.5 and Ex.6 Sternum of Sonali and Ex.7 and Ex.8 Sternum of Rupali
7.	Mixed DNA profile obtained from blood stained peticoat of Chaya MO10 – Ex.17 **matched** with DNA profile obtained from Ex.3 and Ex.4 Sternum of Rohit and Ex.9 Sternum of Chaya

27.1) Thus, it is evident that the DNA of the blood collected from the spot, muddemal objects like quilts, pillows etc. and clothes of the deceased persons matched with the DNA samples of the deceased persons, as above. Another significant factor to be noted is that, the DNA of the blood found on the wooden log (MO1) matched with the DNA sample of deceased Rohit, whose DNA matches with the DNA of three other deceased persons. The end result of the above is that only accused is responsible for all the murders, concealment of his blood stained clothes and the weapon of the offence.

Failure of accused to give probable explanation :

28) In case of ***Munna Kumar Upadhaya vs. State of Andhra Pradesh***[16], in paragraph 76, the Supreme Court has observed that, if the

16*(2012) 6 SCC 174*

accused gave incorrect or false answers during the course of his statement under Section 313 Cr.P.C., the Court can draw an adverse inference against him. In the present case, we are of the considered opinion that the accused has not only failed to explain his conduct, in the manner in which every person of normal prudence would be expected to explain but had even given incorrect and false answers. Therefore, the Court not only draws an adverse inference, but such conduct of the accused would also tilt the case in favour of the prosecution. The accused also failed to explain the blood on the recovered wooden log and the clothes. In conclusion, failure on the part of the accused to give probable explanation is one more circumstance against him.

Appropriate Sentence :

29) In view of the forgoing discussion, the crucial question that arises for consideration is, what would be an appropriate sentence in this Appeal? Undoubtedly, punishment should be proportional to the offender's culpability and the crime. The trial Court held the accused guilty of the charge on 22nd March 2024, and adjourned the case to 26th March 2024 for hearing the accused and the A.P.P. on the point of sentence, in compliance of the mandate of Section 235 (2) of the Code. After such hearing on 26th

March 2023, the trial Court pronounced the impugned sentence holding that the offence is of such kind that it falls in the exceptional category of 'rarest of rare case', warranting capital punishment. To reach this conclusion, the trial Court considered facts and circumstances of the case in the light of the guiding factors and parameters laid down in ***Bachan Singh*** (supra) *and* ***Machhi Singh*** (supra) and noted that, thereafter, time and again, Hon'ble Supreme Court affirmed the need of death penalty in brutal and heinous crimes. In this background, the trial Court evaluated the 'Aggravating and Mitigating' circumstances, and convicted and sentenced the accused as stated aforesaid in para 1 of the Judgment.

30) No case of this kind is complete without reference to the decision of the Hon'ble Supreme Court in cases of ***Bachan Singh*** (supra) and ***Machhi Singh*** (supra). However, it would be beneficial to have a look to the different parameters and guiding factors laid down by the Hon'ble Supreme Court in the field. We may hasten to add that always precedents would serve as a guiding factor, but, the Courts have to decide the quantum and nature of punishment depending on peculiar facts of the case.

31) In case of ***Santosh Kumar*** (supra), the Hon'ble Supreme Court has held that the nature, motive, impact of crime, culpability, quality of

evidence, socio-economic circumstances, impossibility of rehabilitation are some of the factors, the Court may take into consideration while dealing with such cases.

32) In case of **Rajendra Pralhadrao Wasnik vs. State of Maharashtra**[17], it is observed that, if the evidence is proved by circumstantial evidence, ordinarily, death penalty would not be awarded.

33) In case of ***Deepak Rai vs. State of Bihar***[18]***,*** the Hon'ble Supreme Court noticed the shift in sentencing policy after elucidating the perceptible difference between Section 367(5) of the Code of Criminal Procedure, 1898 and Section 354 (3) of the present Code, 1973. Additionally, the Apex Court has referred to case law on the subject of death penalty and quoted the following passage from ***Bachan Singh*** (supra) interpreting Section 354 (3) of the Code :-

> *"(a) The normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. The Court can depart from that rule and impose the sentence of death only if there are special reasons for doing so. Such reasons must be recorded in writing before imposing the death sentence.*
>
> *(b)* ***While considering the question of sentence to be imposed for the offence of murder under Section 302 of the Penal Code, the Court must have regard to every relevant circumstance relating to***

17 (2019) 12 SCC 460
18(2013) 10 SCC 421

> ***the crime as well as the criminal.*** *If the Court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the Court may impose the death sentence."*

34) In case of ***Bachan Singh*** (supra), the Apex Court observed that special reasons means exceptional reasons founded on exceptionally grave circumstances relating to the crime and the criminal. Further, it is held that, relative weight has to be given to aggravating and mitigating circumstances, which are interlaced. Broad exemplifying guidelines have been laid down emphasizing that death penalty is an extreme penalty to be imposed only in rarest of rare crimes.

35) In case of ***Machhi Singh*** (supra), the following categories of crimes were delineated to possibly fall in this extreme category, but with the caution that the said factors are not inflexible, absolute or immutable, but only indicators :-

> "I. Manner of commission of murder -
>
> (i) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance, (i) when the house of the victim is set aflame with the end in view to roast him alive in the house.
>
> (ii) when the victim is subjected to inhuman acts of torture or

cruelty in order to bring about his or her death.

(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II. Motive for commission of murder -

When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-à-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course of betrayal of the motherland.

III. Anti-social or socially abhorrent nature of the crime -

(a) When murder of a member of a Scheduled Caste or minority community, etc. is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. Magnitude of crime -

When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a

family or a large number of persons of a particular caste, community, or locality, are committed.

V. Personality of victim of murder -

When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less aprovocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-à-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

36) In case of ***Ramnaresh*** (supra), the Supreme Court has observed that cumulative effect of aggravating and mitigating circumstances has to be considered and it may not be appropriate for the Court to give importance to one of the classes under a particular head, ignoring the classes under the other head for balance and equilibrium is required. The Apex Court after analyzing aggravating and mitigating circumstances enunciated the principles as under :-

(1) The Court has to apply the test to determine, if it was the "rarest of rare" case for imposition of a death sentence.
(2) In the opinion of the Court, imposition of any other punishment i.e. life imprisonment would be completely inadequate and would not meet the ends of justice.
(3) Life imprisonment is the rule and death sentence is an exception.

> (4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations.
> (5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.

37) In the decision ***Shankar Kisanrao Khade vs. State of Maharashtra***[19] the Hon'ble Supreme Court again referred a large number of cases on either side, that is, where the death sentence was upheld/awarded or where it was commuted; and pointed out the requirement of applying 'crime test', 'criminal test' and 'rarest of rare test'. On referring certain earlier decisions, the Hon'ble Supreme Court stated the aggravating circumstances (crime test) and the mitigating circumstances (criminal test) in paragraph 49 of the decision, thus :

> "49. In Bachan Singh and Machhi Singh cases, this Court laid down various principles for awarding sentence: (Rajendra Pralhadrao case, SCC pp. 47-48, para 33)-
>
> 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

19 (2013) 5 SCC 546

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 of the Code of Criminal Procedure.
(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 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 appreciate the circumstances of his criminal conduct.

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

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

(7) Where it is absolutely unsafe to rely upon the testimony of sole eyewitness though the prosecution has brought home the guilt of the accused."

38) In case of **Rajendra Wasnik** (supra), in paragraphs 45 and 47, the Hon'ble Supreme Court observed and held as follows :

"45. **The law laid down by various decisions of this Court clearly and unequivocally mandates that the probability** (not possibility

or improbability or impossibility) **that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the Courts before awarding the death sentence. This is one of the mandates of the "special reasons" requirement of Section 354 (3) CrPC and ought not to be taken lightly since it involves snuffing out the life of a person. To effectuate this mandate, it is the obligation on the prosecution to prove to the Court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated. This can be achieved by bringing on record, *inter alia*, material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the convict can produce evidence on these issues as well.**

*** ***

47. Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be over emphasised. Until Bachan Singh (supra), the emphasis given by the Courts was primarily on the nature of the crime, its brutality and severity. Bachan Singh placed the sentencing process into perspective and introduced the necessity of considering the reformation or rehabilitation of the convict. Despite the view expressed by the Constitution Bench, there have been several instances… where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in Sangeet vs. State of Haryana (2013) 2 SCC 452. "In the sentencing process, both the crime and the criminal are equally important." Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the Courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and analyse this information is certainly not an easy task but must nevertheless be

undertaken. The process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social reintegration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible."

39) In case of ***Manoj Pratap Singh vs. State of Rajasthan***[20], the Hon'ble Supreme Court considered the earlier decisions and made certain observation, which are helpful as guiding factor. The relevant observations stated in paragraphs 76, 77 and 80 read as follows :

"76. The Court also stated that 'special reasons' in the context of Section 354(3) CrPC would obviously mean 'exceptional reasons', meaning thereby, that the extreme penalty should be imposed only in extreme cases in the following terms: - (Bachan Singh vs.State of Punjab (1980) 2 SCC 684)

"161. ….The expression "special reasons" in the context of this provision, obviously means "exceptional reasons" founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal. Thus, the legislative policy now writ large and clear on the face of Section 354 (3) is that on conviction for murder and other capital offences punishable in the alternative with death under the Penal Code, the extreme penalty should be imposed only in extreme cases."

77. After taking note of various circumstances projected before it, which could be of mitigating factors, and while observing that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction, the Court proceeded to uphold the constitutional validity of Section 354 (3) CrPC, with the observations that the legislature had

20(2022) 9 SCC 81

explicitly prioritised life imprisonment as the normal punishment and death penalty as being of exception, and with enunciation of rarest of rare doctrine in the following words : - (Bachan Singh vs.State of Punjab (1980) 2 SCC 684)

"209.....It is, therefore, imperative to voice the concern that Courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354 (3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

…..

80. The Court also explained the relevant propositions of Bachan Singh (supra) and the pertinent queries for applying those propositions in the following terms : - (Machhi Singh v. State of Punjab (1983) 3 SCC 470)

"38. In this background the guidelines indicated in Bachan Singh case will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh case:

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the

> crime and all the relevant circumstances.
> (iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.
>
> 39. In order to apply these guidelines *inter alia* the following questions may be asked and answered:
> (a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?
> (b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?
>
> 40. If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the Court would proceed to do so."

40) Recently, in case of ***Manoj & Ors. vs. State of Madhya Pradesh***[21], after considering various decisions in line on the subject of death penalty, the Hon'ble Supreme Court observed as below :

> "223. The decades that followed, have witnessed a line of judgments in which this Court has continually taken judicial notice of the in-congruence in application of the 'rarest of rare' test enunciated in Bachan Singh, and therefore, tried to restrict imposition of the death penalty, in an attempt to strengthen a principled application of the same.
>
> 224. This aspect was dealt with extensively in Santosh Kumar Satishbhushan Bariyar vs. State of Maharashtra (2009) 6 SC 49

21 (2023) 2 SCC 353

where the Court articulated the test to be a two-step process to determine whether a case deserves the death sentence – firstly, that the case belongs to the 'rarest of rare' category, and secondly, that the option of life imprisonment would simply not suffice. For the first step, the aggravating and mitigating circumstances would have to be identified and considered equally. For the second test, the Court had to consider whether the alternative of life imprisonment was unquestionably foreclosed as the sentencing aim of reformation was unachievable, for which the State must provide material.

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227. Recently, while considering a review petition, this Court in Rajendra Pralhadrao Wasnik v. State of Maharashtra (2019) 12 SCC 460 held that Bachan Singh had intended the test to be 'probability' and not improbability, possibility or impossibility of reformation and rehabilitation as a mandate of Section 354(4) Cr.P.C. **The Court analysed numerous earlier precedents, noting that evidence by the state on this has been sparse and limited, but was essential for the Courts to measure the probability of reform, rehabilitation and reintegration. The Court located this requirement in the right of the accused, who regardless of being ruthless, was entitled to a life of dignity, notwithstanding his crime. While this process is not easy, it was noted that the neither is the process of rehabilitation since it involve reintegration into society. When this is found to be not possible in certain cases, a longer duration of imprisonment was instead permissible.**

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232. This Court in Rajesh Kumar v. State (2011) 13 SCC 706 again reiterated that brutality in itself, was not enough to impose death sentence – the accused was convicted for murder of two children who offered no provocation or resistance to the brutal and inhuman fashion in which the accused committed the crime, however, it was held that due consideration to the mitigating circumstances of the criminal still had to be given. **Evidence had to be placed on record by the State, demonstrating that he was**

beyond reform or rehabilitation, the absence of which was a mitigating circumstance in itself. The High Court had merely noted that he was a first time offender and had a family to take care of – which this Court noted was a very narrow and myopic view on the mitigating circumstances.

233. Therefore, 'individualised, principled sentencing' – based on both the crime and criminal, with consideration of whether reform or rehabilitation is achievable (held to be 'probable' in Rajendra Pralhadrao Wasnik), and consequently whether the option of life imprisonment is unquestionably foreclosed – should be the only factor of 'commonality' that must be discernible from decisions relating to capital offences. With the creation of a new sentencing threshold in Swamy Shraddananda (2), and later affirmed by a constitution bench in Union of India v. Sriharan (2016) 7 SCC 1, of life imprisonment without statutory remission (i.e., Article 72 and 161 of the Constitution are still applicable), yet another option exists before imposition of death sentence. However, serious concern has been raised against this concept, as it was upheld by a narrow majority, and is left to be considered at an appropriate time.

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241. In Santosh Bariyar, making observations on nature of information to be collected at the pre-sentencing stage, this Court further observed that :

"56. At this stage, Bachan Singh (1980) 2 SCC 684 informs the content of the sentencing hearing. The Court must play a proactive role to record all relevant information at this stage. Some of the information relating to crime can be culled out from the phase prior to sentencing hearing. This information would include aspects relating to the nature, motive and impact of crime, culpability of convict, etc. **Quality of evidence adduced is also a relevant factor. For instance, extent of reliance on circumstantial evidence or child witness plays an important role in the sentencing analysis.** But what is sorely lacking, in most capital sentencing cases, is information relating to characteristics and socioeconomic background of the offender. This issue was also raised in the 48th Report of the Law Commission."

41) In case of **State of M.P. vs. Munna Choubey & Anr.**[22], the Hon'ble Supreme Court observed that, "…, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. This position was illuminatingly stated by this Court in Sevaka Perumal vs. State of Tamil Naidu 1991 (3) SCC 471."

42) Having regard to the aforementioned judicial pronouncements and taking an indication therefrom, we have revisited the facts of the case. We have broadly considered the 'aggravated and mitigating' circumstances emerged from the evidence on record. We have also examined the possibility of reformation and considered the factors which are relevant to be considered to decide the question of sentence.

Aggravated circumstances :

i) Brutality of crime :

ii) Pre-mediated and pre-planned attack :

iii) Absence of provocation :

22 (2005) 2 SCC 710

iv) Victims were Defenceless :

v) Victims and accused were close relatives :

vi) Victims were female and minor :

vii) Motive : Frequent quarrels between accused and Rupali on account of the latter regularly talking on phone with some person, which accused did not like.

Mitigating circumstances :

a) At present the accused is aged 35 years.

b) The accused was doing labour to earn livelihood. This indicates that, he belongs to poor socio-economic conditions or deprived class.

c) The prosecution has not submitted any proof of the level of education of the accused. Considering the facts of the case, the accused does not seem much literate.

d) There were no criminal antecedents against the accused.

e) The prosecution has not filed any report indicating that conduct of the accused in the jail, is improper or objectionable.

f) It cannot be said that, the accused would be a menace or, threat to and incompatible with harmony in the society, if the death sentence is brought down to life imprisonment.

g) In our considered view, it cannot be held that, sentence of life imprisonment would be completely inadequate and would not meet the

ends of justice.

h) Before the trial Court the accused has stated that, he has children from his first marriage but there is no one to look after them. However, the prosecution has not submitted any report in that regard.

i) The prosecution has proved its case on the basis of only one eye witness.

43) The learned trial Court has not considered the aforestated mitigating circumstances. In the cited case of ***Madan*** (supra) 6 persons were murdered by giving gun shots, on account of political rivalry. The role attributed to all the accused persons was similar i.e., firing of gun shots and indiscriminately indulged in the said firing. Hence, the trial Court imposed the capital sentence on the Appellants. However, one accused was sentenced to life imprisonment. The High Court on the basis of the same evidence, partly allowed the Appeal of the Appellant – Sudesh Pal and sentenced him to undergo life imprisonment. However, the High Court confirmed the death penalty of the Appellant – Madan for the additional factor that, he was already awarded life imprisonment in another case. After considering the earlier judgments in the field, the Hon'ble Supreme Court in paragraph 81 of the said decision held that :

> *" **81.** It can thus be seen that the Court found that there might be certain cases wherein the Court may feel that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission which normally works out to a term of 14 years would be grossly disproportionate and inadequate. The Court held that the Court cannot be limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death. It has been held that a far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It has been held that the Court would be entitled to substitute a death sentence by life imprisonment or by a term in excess of fourteen years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order. ".*

In this background, in paragraph 97, the Hon'ble Supreme Court observed that, if the judgment of the High Court is maintained, it would lead to an anomalous situation. Whereas, Appellant – Sudesh Pal would be entitled for consideration of his case for remission and pre-mature release on completion of a particular number of years in accordance with the relevant number of years, Appellant – Madan will have to face death penalty. Therefore, the Hon'ble Supreme Court partly allowed the Appeals filed by the Appellant – Madan and

confirming his conviction under Section 302 of IPC, his death penalty was converted into imprisonment for a fixed term of 20 years including the period already undergone, without remission.

43.1) In the cited case of ***Prakash Khairnar (Patil)*** (Supra), said Appellant – Prakash Khairnar along with his 17 year old son allegedly gunned down his mother, brother, brother's wife, brother's three children (two daughters and a son), giving them gunshots. The Appellant was a Senior Scientific Assistant and having no criminal tendency. Murders were committed as the Appellant's brother was not partitioning the alleged joint property. Hence, it was held that, it cannot be said to be rarest of the rare cases. As a result, the Hon'ble Supreme Court converted the death sentence to life imprisonment with a direction that the Appellant shall not be released from prison unless he has served atleast 20 years of imprisonment.

44) Having regard to these reported cases and the balance between the aggravated and mitigating circumstances noted in forgoing paragraph 42, we are of the considered view that the present case would fall in the middle path as laid down in **Madan** (supra) and various other decisions of the Hon'ble Supreme Court. We find that the interest of justice would be met by

converting the death penalty into life imprisonment i.e., actual imprisonment for a period of 25 years without remission.

45) In view thereof, the Confirmation Case No.02 of 2024 is liable to be answered in negative and the Criminal Appeal No. 431 of 2024 deserves to be partly allowed. Hence, the following order :-

ORDER

(i) Confirmation Case No.02 of 2024 is answered in the negative.

(ii) Criminal Appeal No. 431 of 2024 is partly allowed.

(iii) The conviction of the Appellant-Pradip Vishwanath Jagtap. under Section 302 of the Indian Penal Code is confirmed. However, death penalty on the Appellant is converted into imprisonment for a fixed term of 25 years, including the period already undergone, without remission;

(iv) In other words, the case of Appellant-Pradip Vishwanath Jagtap would not be considered for pre-mature release unless he completes the actual sentence of 25 years.

SHYAM C. CHANDAK, J. REVATI MOHITE DERE, J.

Case Brief & MCQs on "State of Maharashtra v. Pradip Vishwanath Jagtap" (2024:BHC-AS:40862-DB) is available in the eBook:

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