

HIGH COURT OF CHHATTISGARH, BILASPUR

DIVISION BENCH: HON'BLE SHRI YATINDRA SINGH, CJ. &

HON'BLE SHRI PRASHANT KUMAR MISHRA, J.

Criminal Reference No. 06 of 2013

Office Reference

Vs.

Chhannu Lal Verma

AND

Criminal Appeal No. 712 of 2013

Chhannulal Verma

Vs.

State of Chhattisgarh.

Present:

Shri Ashok Verma, counsel for the appellant.

Shri DK Gwalare, Govt. Advocate for the State.

JUDGMENT

(11th/04/2014)

Per Prashant Kumar Mishra, J.

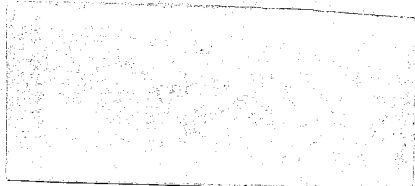
1. This is a reference under Section 366 of the Code of Criminal Procedure made by the Sessions Judge, Durg for **confirmation of death sentence** as the Sessions Judge, Durg in Sessions Trial No.288/2011 vide its judgment dated 25th June, 2013, convicted and sentenced the accused/appellant in the following manner:-

Offence	Sentence
Section 450 IPC	RI for 5 years and fine of Rs.1,000/-, in default, additional RI for 6 months
Section 506 (2) IPC	RI for 5 years and fine of Rs.1,000/-, in default, additional RI for 6 months
Section 307 IPC for attempting on the life of Smt. Meera Banchor	RI for 10 years and fine of Rs.5,000/-, in default, additional RI for 6 months
Section 307 IPC for attempting on the life of Channu Banchor	RI for 10 years and fine of Rs.5,000/-, in default, additional RI for 6 months
Section 307 IPC for attempting on the life of Gendlal Verma	RI for 10 years and fine of Rs.5,000/-, in default, additional RI for 6 months

Section 302 IPC for committing murder of Anandram Sahu	Death sentence and fine of Rs.5,000/-, in default, additional RI for 6 months
Section 302 IPC for committing murder of Smt. Ratna Sahu	Death sentence and fine of Rs.5,000/-, in default, additional RI for 6 months
Section 302 IPC for committing murder of Firanteen Bai	Death sentence and fine of Rs.5,000/-, in default, additional RI for 6 months

2. Criminal Appeal No.712/2013 has been preferred by appellant Chhannulal Verma challenging his conviction and sentence imposed by the Sessions Judge, Durg as mentioned above. Since the office reference and criminal appeal arise out of same impugned judgment, they are being decided by this common judgment.

3. Case of the prosecution, in short, is that at about 17.55 hours on 19.10.2011 the concerned Police Station received information regarding the quarrel which took place at village Borid, on which the Police team reached the village and recorded the same in the form of Dehati Nalishi lodged by Smt. Durga (PW-11) to the effect that at about 5 pm Basanta Bai was cleaning the utensils and her daughter-in-law was sitting in the courtyard. Channu Banchhor was standing near the door of threshing field. At that time Sonu, grandson of Anand Ram Sahu, came to the place and informed that appellant- Channu Lal Verma is killing his mother and grandmother by knife. Immediately thereafter appellant- Chhannu Lal Verma reached there with blood stained knife in his hand and abused Meera Bai that she is behaving like a leader and is supporting Ratna Bai. The appellant entered the house and repeatedly assaulted Meera Bai on different parts of the body and thereafter inflicted injuries on the person of Channu Banchhor over his chest. While uttering that he would kill all those persons who have supported Ranta Bai, the appellant went out on a bicycle and he came back with the blood stained knife and again assaulted Meera Banchor. When Durga Bai tried to intervene, she was pushed by the appellant and he fled from the spot. When Durga Bai went to see her son, she found that Anandram, who was assaulted by the appellant, is lying dead. According to Durga Bai, the incident was witnessed by Basanta Bai (PW-8), Jailal Dhankar (PW-10) and Sukhdev Yadav (PW-9).

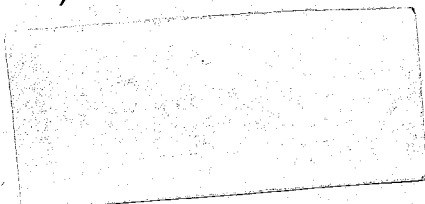


4. On the basis of Dehati Nalishi (Ex.P/18), merg intimation (Ex.-P/19) and F.I.R. (Ex.-P/33) were registered one after another. Injured Meera Banchhor, Gendlal and other injured persons were sent for medical examination, however, Ratna Sahu and Anandram were declared brought dead to the hospital, whereas deceased Firanteen died in course of treatment on 20/10/2011. Dr. Sanjay Kumar Bhoi (PW/13) examined Channu Banchhor only. This witness also sent information to the Kotwali Police, Bhilai about the death of Ratna Sahu. Dr. Minakshi Dave (PW-14) examined injured Meera Banchhor (PW-6) and Gendlal Verma (PW-7) and informed the Police Kotwali about their medical examination. Dr. Jyoti Ranjan Putthal (PW-27) performed Sonography test of injured Channu Lal Banchor and Meera Banchor and submitted report (Ex.P-54 and 55). Both these injured were admitted in the hospital and they were treated by Dr. Parag Gupta (PW-29). It was Head Constable Mansingh Sonwani (PW-17), who recorded FIR (Ex. P/33) on the basis of unnumbered Dehati Nalishi. Autopsy on the dead body of Ratna was performed by Dr. Thakur Ajay Singh (PW-23) and Dr. S. Rotela, who submitted the report vide (Ex.P/48). These two doctors also conducted autopsy on the dead body of deceased Anandram Sahu and submitted report vide (Ex.P/47) and that of deceased Firanteen Bai and submitted report vide (Ex.P/46).
5. The police went to the place of incident, prepared site map (Ex.P/15), collected blood stained soil (Ex. P/12, P/13 and P/14) and seized the blood stained cloths of Anandram vide (Ex.P/39), deceased Firanteen Bai vide (Ex.P/40) and Ratna Bai vide (Ex.P/41).
6. Appellant Channu Lal Verma was taken into custody on 21/10/2011 and his memorandum statement vide (Ex.P/29) was recorded in the presence of witnesses Goplal Ram (PW-3) and Shankar Lal (PW-5), pursuant to which blood stained knife was recovered from bushes near village pond whereas shirt was recovered vide (Ex.P/10) from inside the pond. His wearing apparels i.e. full pent, one half sando vests were seized vide (Ex.P/11). The report of Radiologist pertaining to injured Meera Banchor conducted by Dr. Lata Dewangan (PW-21) was obtained vide (Ex.P/42) and the report prepared by Dr. Tushar Ranjan Meher (PW-24) was obtained vide (Ex.P/50). The prosecution also seized wearing apparels of deceased



Ratna Bai vide (Ex.P/41). The medical report of accused vide (Ex.P/72) was also obtained. Towel belonging to Channu Banchhor was recovered vide (Ex.P/67) on 30/10/2011 whereas one printed Sari of Meera Bai was recovered on the same day vide (Ex.P/16). All the seized articles were sent for Forensic Examination to the State Forensic Science Laboratory, Raipur vide (Ex.P/52) and the report of the FSL examination was submitted vide (Ex.P/71).

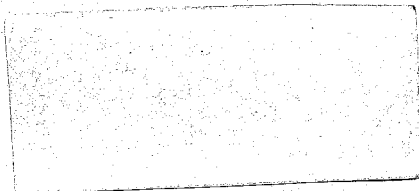
7. In course of investigation, the prosecution recorded evidence of Tulsiram Sahu (PW-1), Anup Sahu (PW-2), Gopal Ram Markande (PW-3), Santosh Kumar Ghirwani (PW-4), Shankar Lal Banjare (PW-5), Smt. Meera Banchhor (PW-6), Gendlal Verma (PW-7), Smt. Basanta Bai (PW-8), Sukhdev Yadav (PW-9), Jailal Dhankar (PW-10), Smt. Durga Bai (PW-11), Omprakash Sahu (PW-12), Sanjay Kumar Bhoi (PW-13), Dr. Meenakshi Dave (PW-14), Roshan @ Sonu Sahu (PW-15), Khuleshwar Gaikwad (PW-16), Man Singh Sonwani (PW-17), Vindhyachal Yadav (PW-18), Somanlal Ramteke (PW-19), Santosh Soni (PW-20), Dr.(Smt.) Lata Dewangan (PW-21), Toshani Sahu (PW-22), Dr. Thakur Ajay Singh (PW-23), Dr. Tushar Ranjan Meher (PW-24), Hemlal Mahipal (PW-25), Lakhan Lal Tandan (PW-26), Dr. Jyoti Ranjan Putthal (PW-27), Dr. Sumanta Mishra (PW-28), Dr. Parag Gupta (PW-29) and Santok Ram Lahre (PW-30).
8. The prosecution thus examined 30 witnesses to bring home the charges. After his examination under Section 313 of CrPC, the appellant did not produce any defence witness. On the basis of obtaining evidence, the trial Court has convicted and sentenced the appellant as mentioned in para-1 of the judgment.
9. Learned counsel for the appellant would submit that the prosecution has failed to prove the guilt beyond all reasonable doubt, therefore, the impugned conviction and sentence deserves to be set-aside. Shri Verma, learned counsel for the appellant would particularly submit that Sonu (PW-15) is a child witness and his evidence does not repose confidence so as to base the conviction on his deposition. He would then submit that Smt. Durga (PW-11) on whose information merged (Ex.P/18) and Dehati Nalishi (Ex.P/19) were recorded is also not a trustworthy witness because there are



serious contradictions and omissions in her deposition. According to him, Smt. Durga has named Jailal as one of the eyewitness whereas he has not supported the case of prosecution, therefore, the entire prosecution case becomes doubtful. For other eyewitnesses, he would submit that they are inmates of the same house and were servants of Smt. Durga Bai, therefore, their evidence cannot be believed. Similarly, Sonu is not only child witness but is also an interested witness, therefore, there is absolutely no cogent and reliable evidence insofar as the injured witnesses are concerned. Shri Verma would argue that injured Meera Banchor, Chhannu and Gendlal should not be believed because the very first occasion for them to disclose the name of the assailant occurred when they were examined by Dr. Parag Gupta (PW-29) and Dr. Sumanta Mishra (PW-28), however, the medical papers containing the nature and reason of assault prepared by these doctors do not contain the name of the assailant, therefore, it clearly appears that they have subsequently roped the appellant in the crime to falsely implicate him.

10. In the alternative, Shri Verma would submit that the present is not the rarest of rare case wherein death penalty should have been imposed. He would submit that there are other persons like Sonu (PW-15), Anup Sahu (PW/2), Toshani Sahu (PW/22), all relatives of deceased Ratna Bai, who have not been assaulted by the appellant, therefore, the conduct of the appellant in sparing these persons is demonstrative of the fact that neither he was prepared nor he tried to inflict injuries on all those persons whom he met in course of the incident and had occasion to interact with them. He would also submit that in similar manner Smt. Durga Bai came in between him and Meera Banchhor, however, the appellant did not cause any injury on the person of Durga Bai. He would further submit that the size of weapon allegedly used in the offence is not as such which can cause death of a person on single blow and in any case the size is demonstrative of the fact that at the very inception the appellant did not want to kill anybody.

11. Per contra, Shri Gwalre, learned State counsel would submit that the present is a case where the appellant has committed brutal attack on three persons belonging to one family and has given repeated blows all over the bodies of all the deceased persons, particularly on vital parts of the body.



He would submit that even if it is assumed that the appellant wanted to take revenge for his false implication in a rape case at the instance of deceased Ratna, her murder might be on account of revenge or provocation, however, committing murder of two other persons cannot be justified in any manner. He would submit that the incident has taken place in two stages, though immediately succeeding one after another but the fact remains that the appellant did not stop after assaulting Anandram, but he traveled to some distance to assault Firanteen and Ratna and came back to assault Anandram once again and thereafter dragged him up to the courtyard of Durga Bai. He would further submit that the appellant crossed all limits of brutality and was in such mental state where he was not thinking of any other situation but to kill the persons belonging to family of Ratna Bai, therefore, the *mens rea* was of such high degree and intensity that the appellant has rightly been punished with death sentence. He would also submit that the appellant has previous criminal antecedents involving the same family, therefore, it is a case where he failed to reform himself on more than one occasion. According to him, it is not a fit case for reduction of sentence by any legally permissible standard.

12. Before proceeding to consider the evidence adduced by the prosecution, it would be appropriate to refer to some basic principles.

On minor discrepancies/contradictions

13. In **Thoti Manohar Vs. State of Andhra Pradesh**¹, the Supreme Court has held that minor discrepancies on trivial matters not touching the core of the matter cannot bring discredit to the story of the prosecution. Giving undue importance to them would amount to adopting a hyper-technical approach. The Court, while appreciating the evidence, should not attach much significance to minor discrepancies, for the discrepancies which do not shake the basic version of the prosecution case are to be ignored. {See **State of U.P. Vs. M.K. Anthony**², **Appabhai Vs. State of Gujarat**³, **Rammi**

¹ (2012) 7 SCC 723

² (1985) 1 SCC 505

³ 1988 Supp SCC 241

Vs. State of M.P.⁴, State of H.P. Vs. Lekh Raj⁵, Laxman Singh Vs. Poonam Singh⁶, Dashrath Singh Vs. State of U.P.⁷

On child witness

14. In **Ratansinh Dalsukhbhai Nayak Vs. State of Gujarat⁸**, it has been held that the Indian Evidence Act, 1872 does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease – whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. The evidence of a child witness is not required to be rejected per se, but the Court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon.

15. In **K. Venkateshwarlu Vs. State of Andhra Pradesh⁹**, it has been held that the evidence of a child witness has to be subjected to closest scrutiny and can be accepted only if the Court comes to the conclusion that the child understands the question put to him and he is capable of giving rational answers (see Section 118 of the Evidence Act). A child witness, by reason of his tender age, is a pliable witness. He can be tutored easily either by threat, coercion or inducement. Therefore, the Court must be satisfied that the attendant circumstances do not show that the child was acting under the influence of someone or was under a threat or coercion. Evidence of a child witness can be relied upon if the Court, with its expertise and ability to evaluate the evidence, comes to the conclusion that the child is not tutored and his evidence has a ring of truth. It is safe and prudent to look for corroboration for the evidence of a child witness from the other evidence on

⁴ (1999) 8 SCC 649

⁵ (2000) 1 SCC 247

⁶ (2004) 10 SCC 94

⁷ (2004) 7 SCC 408

⁸ (2004) 1 SCC 64

⁹ (2012) 8 SCC 73

record, because while giving evidence a child may give scope to his imagination and exaggerate his version or may develop cold feet and not tell the truth or may repeat what he has been asked to say not knowing the consequences of his deposition in the Court. Careful evaluation of the evidence of a child witness in the background and context of other evidence on record is a must before the Court decides to rely upon it.

On relationship of witness with deceased/injured

16. In **Gali Venkataiah Vs. State of Andhra Pradesh**¹⁰, it has been held that relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

17. In **Dalip Singh and others Vs. The State of Punjab**¹¹, it has been laid down as under:-

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such an enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts." {See **Guli Chand and others Vs. State of Rajasthan**¹²}

18. In the case in hand, PW-15 Sonu, aged about 10 years, witnessed the incident and informed about the same to PW-11 Durga Bai. Before

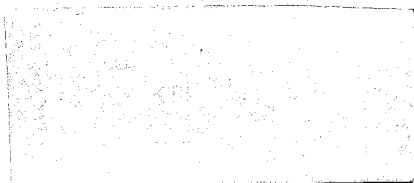
¹⁰ AIR 2008 SC 462

¹¹ AIR 1953 SC 364

¹² (1974) 3 SCC 698

proceeding to record his statement, the trial Court satisfied itself that he understands the question and is competent to answer them. He has categorically answered the questions put-forth by the Court that at about 5 pm on the date of the incident the appellant came to his house and when his mother came back after fetching water from the public tap, the accused, who was present in the house, started abusing his mother and when his grandfather tried to pacify him, he brought out the knife kept in his pocket and inflicted injury on the abdomen of his grandfather; the appellant then went inside the house and assaulted his mother on her abdomen and neck; he came out to the courtyard and assaulted her grandmother and thereafter he again assaulted his grandfather and while assaulting him, he dragged his grandfather to the house of Meera Banchor and thrown him on the platform of Meera Bai's house. This witness further says that he went to the house of Meera Bai and informed her mother-in-law Durga Bai (PW-11) that the appellant has killed his grandparents and mother and at that time, the appellant came there and assaulted Meera Bai. He came out and again assaulted his grandfather and at that time this witness escaped to the house of his uncle (बड़े पापा). Despite detailed cross-examination, the defence failed to elicit anything from this witness so as to dent his credibility. To the question that the appellant has not killed the deceased but some other persons have killed them, he denied the suggestion. He also denied that he has been explained as to what is to be told to the Court or that he was informed by someone else that the appellant has killed. When the defence counsel asked the question as to whether his mother raised any alarm, he replied in the affirmative and started weeping.

19. PW-11 Durga Bai, aged about 70 years, is the lady on whose information Dehati Nalishi (Ex.-P/18) was recorded. She has fully supported the contents of Dehati Nalishi to the effect that Sonu informed her about the incident and when she came out of the house, the appellant reached her residence, abused and assaulted Meera Bai and Chhannu Bandhor; went out on bicycle and came back with blood stained knife and again assaulted Meera Banchor and that the incident was witnessed by PW-8 Basanta, PW-11 Jailal and PW-9 Sukhdev Yadav.

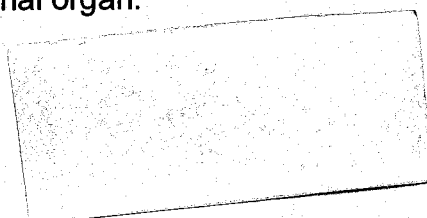


20. PW-8 Basanta, aged about 50 years, has fully supported the story narrated by Durga Bai. PW-9 Sukhdev Yadav has also supported the case of the prosecution with regard to assault made on the person of deceased Chhannu Banchor, however, for 2 other deceased persons, he has denied that he has seen the appellant assaulting them. Therefore, to this extent, he has been declared hostile. In cross-examination by the defence counsel also, he has stated that he has seen the incident and had assisted Chhannu Banchor to reach to the house of Hemu Nirmalkar. PW-10 Jailal Dhankar also stated that he had seen the appellant assaulting deceased Chhannu Banchor. However, when cross-examined by the prosecution after being declared hostile, he admits that the appellant had also assaulted Meera Banchor, Anand Ram and Ratna Bai.

21. The prosecution has proved injuries on the person of injured Chhannu Banchor by examining PW-13 Dr. Sanjay Kumar Bhoi; similarly, injuries on the person of Meera Banchor and Gendlal Verma have been proved by PW-14 Dr. Minakshi Dave. The postmortem report of deceased Firanteen vide Ex.-P/46, Anandram Sahu vide Ex.-P/47 and deceased Ratna Bai vide Ex.-P/48 has been proved by PW-23 Dr. Thakur Ajay Singh wherein the death has been found to be homicidal.

22. Deceased **Firanteen** received the following injuries on her body:-

- Incised wound of 9.5 cm x 2 cm left side, chin to cheek, oblique direction just below jygomatic arch, left side of face, gap 3 cm, muscle deep.
- Incised wound present on left side just above jygomatic arch of size 3x2 cm muscle deep
- Incised wound of 4-1/2 cm x 0.5 cm gaping 0.5 cm left side of anterio lateral aspect, upper part of forearm muscle cut.
- Incised wound present on left side of mastoid region of size 3½ x 3½ cm gap 0.3 cm scalp cut.
- Stab wound of size 3½ x 5 cm, left side on supraclavicular fossa, muscle cut and no any internal organ cut.
- Stab wound of size 5.5 cm x 3½ cm present on epigastric region on midline oblique direction gaping 2cm penetrate internal organ.



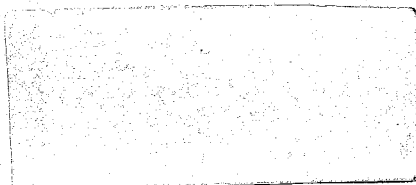
23. Deceased **Anandram** received the following injuries on his body:-

- "Incised wound present right side of forehead just above eyebrow 5 cm muscle and bone deep, depth 3 cm and gaping 0.5 cm direction oblique.
- Incised wound on left side of angle of mandible, direction transverse size 5 cm depth 1cm muscle cut.
- Incised wound on left side of lateral quadrant of gluteal region of size 5 cm & depth 3½ cm muscle cut.
- Incised wound present on right side of upper forearm lateral aspect of size 5 cm x 0.5 cm, depth and gaping 1 cm
- Incised wound on the left side of anterior aspect of shoulder joint of size 2.5 cm x 5 cm.
- Stab wound of size 3 x 0.5 cm muscle deep present on paraumbicus (epigastric) region.
- Stab wound of size 3 x 3 cm left supraclavicular fossa deep muscle and mucosa oblique clavicle fossa
- Stab wound in the size of 2.5 x 0.6 cm penetrated to muscle on left quadrant of breast.

24. Deceased **Ratna Bai** received the following injuries on her body:-

- Incised wound of size 5 x 2 cm bone deep, gaping 2 cm oblique direction , present on left side of forehead and root of nose.
- Incised wound present of size 5 x 3 cm bone deep from root of nose to tip of nose.
- Incised wound of size 9 x 1 cm, gaping 2 cm, bone deep, on midline of chin to angle of mandible, oblique direction.
- Stab wound present on epigastric region, left side penetrated up to small intestine, direction, gaping 3 cm and size 6 cm.

25. On the basis of the above evidence, it is found that the appellant has committed murder of the deceased persons namely, Firanteen, Anandram Sahu and Ratna Bai and there is nothing in the evidence of PW-15 Sonu and PW-11 Durga Bai to disbelieve or discredit them and the finding of guilt recorded by the trial Court is fully substantiated by the evidence on record. The appellant has rightly been convicted by the trial Court.



26. The question now to be considered is – whether in the facts and circumstances and in the state of evidence on record, sentence of death penalty imposed by the trial Court deserves to be sustained or it should be converted into life imprisonment?

27. In the event, death sentence is sustained, this Court is required to record special reasons as contemplated under Section 354 (3) CrPC.

28. In **Bachan Singh Vs. State of Punjab**¹³, the Supreme Court was dealing with the challenge to the constitutional validity of death penalty for murder provided in Section 302 IPC and the sentencing procedure embodied in sub-section (3) of Section 354 CrPC. While dealing with the matter, it has been observed in para-74 thus:-

“74. Death penalty has been the subject of an age-old debate between Abolitionists and Retentionists, although recently the controversy has come in sharp focus. Both the groups are deeply anchored in their antagonistic views. Both firmly and sincerely believe in the righteousness of their respective stands, with overtones of sentiment and emotion. Both the camps can claim among them eminent thinkers, penologists, sociologists, jurists, judges, legislators, administrators and law enforcement officials.”

29. While dealing with the arguments raised by the “Abolitionists”, the Supreme Court referred to its several judgments to answer the issue as to whether death penalty serves any penological purpose. It was observed in paras-78 to 89, 103, 123 and 132 thus:-

“78. Firstly, in most of the countries in the world, including India, a very large segment of the population, including notable penologists, judges, jurists, legislators and other enlightened people still believe that death penalty for murder and certain other capital offences does serve as a deterrent, and a greater deterrent than life imprisonment. We will set out very briefly, by way of sample, opinions of some of these distinguished persons.

¹³ (1980) 2 SCC 684



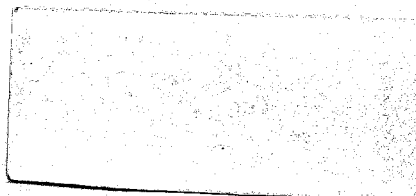
79. In the first place, we will notice a few decisions of courts wherein the deterrent value of death penalty has been judicially recognised.

80. In *Paras Ram v. State of Punjab*²⁵, the facts were that Paras Ram, who was a fanatic devotee of the *Devi*, used to hold *satsangs* at which *bhajans* were sung in praise of the Goddess. Paras Ram ceremonially beheaded his four year old boy at the crescendo of the morning *bhajan*. He was tried, convicted and sentenced to death for the murder. His death sentence was confirmed by the High Court. He filed a petition for grant of special leave to appeal to this Court under Article 136 of the Constitution. It was contended on behalf of Paras Ram that the very monstrosity of the crime provided proof of his insanity sufficient to exculpate the offender under Section 84 of the ⁷¹⁴Indian Penal Code, or material for mitigation of the sentence of death. V.R. Krishna Iyer, J., speaking for the Bench, to which one of us (Sarkaria, J.) was a party, refused to grant special leave and summarily dismissed the petition with these observations:

"The poignantly pathological grip of macabre superstitions on some crude Indian minds in the shape of desire to do human and animal sacrifice, in defiance of the scientific ethos of our cultural heritage and the scientific impact of our technological century, shows up in *crimes of primitive horror* such as the one we are dealing with now, where a *blood-curdling butchery* of one's own beloved son was perpetrated, aided by other 'pious' criminals, to propitiate some blood thirsty diety. Secular India, speaking through the court must administer shock therapy to such anti-social 'piety', *when the manifestation is in terms of inhuman and criminal violence*. When the disease is social, *deterrence through court sentence must, perforce, operate* through the individual culprit coming up before court. Social justice has many facets and Judges have a sensitive, secular and civilising role in suppressing grievous injustice to humanist values by inflicting condign punishment on dangerous deviants." (emphasis added)

81. In *Jagmohan*², also, this Court took due note of the fact that for certain types of murders, death penalty alone is considered an adequate deterrent: (SCC p. 28, para 13)

"A large number of murders is undoubtedly of the common type. But some at least are diabolical in conception and cruel in execution. In some others where the victim is a person of high standing in the country society is liable to be rocked to its very foundation. Such murders cannot be simply wished away by finding alibis



in the social maladjustment of the murderer. Prevalence of such crimes speaks, in the opinion of many, for the inevitability of death penalty not only by way of deterrence but as a token of emphatic disapproval of the society."

Examining whether life imprisonment was an adequate substitute for death penalty, the court observed: (SCC p. 28, para 14)

"In the context of our Criminal Law which punishes murder, one cannot ignore the fact that life imprisonment works out in most cases to a dozen years of punishment and it may be seriously questioned whether that sole alternative will be an adequate substitute for the death penalty."

82. In *Ediga Anamma v. State of A.P.*²⁶, V.R. Krishna Iyer, J., speaking for the Bench to which one of us (Sarkaria, J.) was a party, observed that "deterrence through threat of death may still be a promising strategy in some frightful areas of murderous crime". It was further observed that "horrendous features of the crime and the hapless and helpless state of the victim steel the heart of law for the sterner sentence".

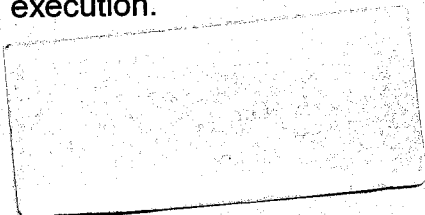
83. In *Shiv Mohan Singh v. State (Delhi Admn.)*²⁷, the same learned Judge, speaking for the court, reiterated the deterrent effect of death penalty by referring to his earlier judgment in *Ediga Anamma case*²⁶ as follows: (SCC p. 245, para 19)

715 "In *Ediga Anamma*²⁶ this Court, while noticing the social and personal circumstances possessing an extenuating impact, has equally clearly highlighted that in India under present conditions deterrence through death penalty may not be a time-barred punishment in some frightful areas of barbarous murder."

84. Again, in *Charles Sobraj v. Supdt., Central Jail, Tihar, New Delhi*²⁸, the same learned Judge, speaking for a Bench of three learned Judges of this Court, reiterated that deterrence was one of the vital considerations of punishment.

85. In *Trop v. Dulles*²⁹, Brennan, J. of the Supreme Court of the United States, concurring with the majority, emphasised the deterrent end of punishment, in these words:

"Rehabilitation is but one of the several purposes of the penal law. Among other purposes are deterrents of the wrongful act by the threat of punishment and insulation of society from dangerous individuals by imprisonment or execution."



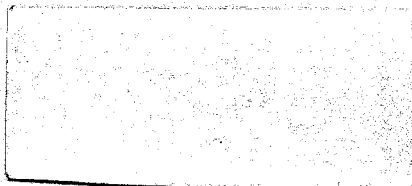
86. In *Furman v. Georgia*³⁰, Stewart, J. took the view that death penalty serves a deterrent as well as retributive purpose. In his view, certain criminal conduct is so atrocious that society's interest in deterrence and retribution wholly outweighs any considerations of reform or rehabilitation of the perpetrator, and that, despite the inconclusive empirical evidence, only penalty of death will provide maximum deterrence.

87. Speaking for the majority, in *Gregg v. Georgia*, Stewart, J. reiterated his views with regard to the deterrent and retributive effect of death penalty.

88. Now, we may notice by way of specimen, the views of some jurists and scholars of note. Sir James Fitzjames Stephen, the great Jurist, who was concerned with the drafting of the Indian Penal Code, also, was a strong exponent of the view that capital punishment has the greatest value as a deterrent for murder and other capital offence. To quote his words:

"No other punishment deters men so effectually from committing crimes as the punishment of death. This is one of those propositions which it is difficult to prove, simply because they are in themselves more obvious than any proof can make them. It is possible to display ingenuity in arguing against it but that is all. The whole experience of mankind is in the other direction. The threat of instant death is the one to which resort has always been made when there was an absolute necessity for producing some result.... No one goes to certain inevitable death except by compulsion. Put the matter the other way. Was there ever yet a criminal who, when sentenced to death and brought out to die, would refuse the offer of commutation of his sentence for the severest secondary punishment? Surely not. Why is this? It can only be because 'All that a man has will he give for his life'. In any secondary punishment, however terrible, there is hope, but death is death; its terrors cannot be described more forcibly."

89. Even Marchese De Cessare Bonesana Beccaria, who can be called the father of the modern Abolitionist movement, concedes in his treatise, *Dei Delitti a della Pana*, (1764), that capital punishment would be justified in two instances: Firstly, if an execution would prevent a revolution against popularly established government; and, secondly, if an execution was the only way to *deter others* from committing a crime. The adoption of double standards for capital punishment in the realm of conscience is considered by some scholars as the biggest infirmity in the Abolitionists' case.



103. Lord Justice Denning, Master of the Rolls of the Court of Appeal in England, appearing before the British Royal Commission on Capital Punishment, stated his view on this point as under:

"Punishment is the way in which society expresses its denunciation of wrongdoing; and, in order to maintain respect for law, it is essential that the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishment as being deterrent or reformatory or preventive and nothing else.... The truth is that some crimes are so outrageous that society insists on adequate punishment, because the wrongdoer deserves it, irrespective of whether it is a deterrent or not."

That retribution is still socially acceptable function of punishment, was also the view expressed by Stewart, J., in *Furman v. Georgia*³⁰, at p. 389, as follows:

"... I would say only that I cannot agree that retribution is a constitutionally impermissible ingredient in the imposition of punishment. The instinct for retribution is part of the nature of man, and channeling that instinct, in the administration of criminal justice serves an important purpose in promoting the stability of a society governed by law. When people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they 'deserve', then there are sown the seeds of anarchy — of self-help, vigilante justice, and lynch law."

123. Pursued beyond a certain point, both the Abolitionists and the Retentionists retreat into their own conceptual bunkers firmly entrenched in their respective "faiths". We need not take sides with either of them. There is always a danger in adhering too rigidly to concepts. As Prof. Brett has pointed out all concepts are abstractions from reality, and that in the process of abstraction something of the reality is bound to be lost".⁴¹ We must therefore, view the problem against the perspective of the hard realities of the time and the conditions prevailing in the world, particularly in our own country.

132. To sum up, the question whether or not death penalty serves any penological purpose is a difficult, complex and intractable issue. It has evoked strong, divergent views. For the purpose of testing the constitutionality of the impugned provision as to death penalty in Section 302 of the Penal Code on the ground of reasonableness in the light of Articles 19 and 21 of the Constitution, it is not necessary for us to express any categorical opinion, one way or the other, as to which of



these two antithetical views, held by the Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion on this issue, is a ground among others, for rejecting the petitioners argument that retention of death penalty in the impugned provision, is totally devoid of reason and purpose. If, notwithstanding the view of the Abolitionists to the contrary, a very large segment of people, the world over, including sociologists, legislators, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of society, if in the perspective of prevailing crime conditions in India, contemporary public opinion channelized through the people's representatives in Parliament, has repeatedly in the last three decades, rejected all attempts, including the one made recently, to abolish or specifically restrict the area of death penalty, if death penalty is still a recognised legal sanction for murder or some types of murder in most of the civilised countries in the world, if the framers of the Indian Constitution were fully aware — as we shall presently show they were — of the existence of death penalty as punishment for murder, under the Indian Penal Code, if the 35th Report and subsequent reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code and the insertion of the new Sections 235(2) and 354(3) in that Code providing for pre-sentence hearing and sentencing procedure on conviction for murder and other capital offences were before the Parliament and presumably considered by it when in 1972-1973 it took up revision of the Code of 1898 and replaced it by the Code of Criminal Procedure, 1973, it is not possible to hold that the provision of death penalty as an alternative punishment for murder, in Section 302 of the Penal Code is unreasonable and not in the public interest. We would, therefore, conclude that the impugned provision in Section 302, violates neither the letter nor the ethos of Article 19."

30. The Supreme Court then proceeded to examine methodology of sentencing under sub-section (3) of Section 354 CrPC and held in para-201 thus:-

"201. With great respect, we find ourselves unable to agree to this enunciation. As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the court must pay due regard *both* to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and



circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because "style is the man". In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist."

31. Relying and explaining **Bachan Singh** (Supra), the Supreme Court in **Machhi Singh and others Vs. State of Punjab**¹⁴ has held thus:-

"The following questions may be asked and answered as a test to determine the 'rarest of rare' case in which death sentence can be inflicted:

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

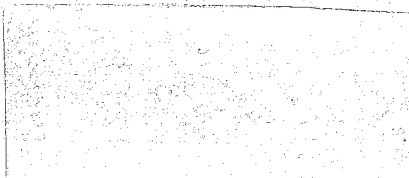
The following guidelines which emerge from **Bachan Singh** case will have to be applied to the facts of each individual case where the question of imposition of death sentence arises:

(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. 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

¹⁴ (1983) 3 SCC 470



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 has 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."

32. In **Ramnaresh and others Vs. State of Chhattisgarh**¹⁵, the Supreme Court referred to its earlier judgments in the matters of **Bachan Singh** and **Machhi Singh** and held in paras-76 to 79 thus:-

"76. The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in *Bachan Singh*⁷ and thereafter, in *Machhi Singh*⁸. The aforesaid judgments, primarily dissect these principles into two different compartments—one being the "aggravating circumstances" while the other being the "mitigating circumstances". The court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the court. It will be appropriate for the court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the court as contemplated under Section 354(3) CrPC.

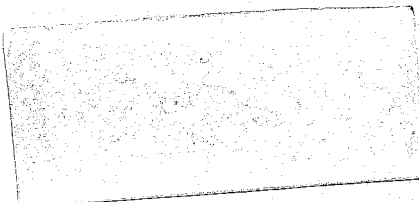
Aggravating circumstances

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

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

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

¹⁵ (2012) 4 SCC 257



- (4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.
- (5) Hired killings.
- (6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.
- (7) The offence was committed by a person while in lawful custody.
- (8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 CrPC.
- (9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.
- (10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.
- (11) When murder is committed for a motive which evidences total depravity and meanness.
- (12) When there is a cold-blooded murder without provocation.
- (13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating circumstances

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

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

286

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

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

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

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

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

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

Principles

(1) The court has to apply the test to determine, if it was the "rarest of rare" case for imposition of a death sentence.

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

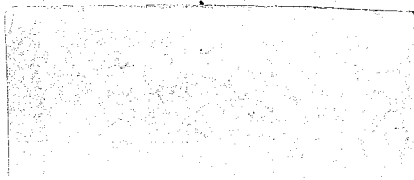
(3) Life imprisonment is the rule and death sentence is an exception.

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

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

78. 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 ²⁸⁷ 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.

79. The court then would draw a balance sheet of aggravating and mitigating circumstances. Both aspects have to be given their respective weightage. The court

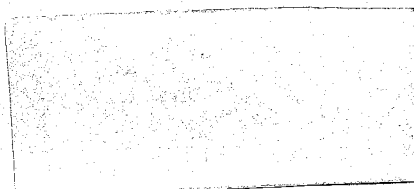


has to strike a balance between the two and see towards which side the scale/balance of justice tilts. The principle of proportion between the crime and the punishment is the principle of "*just deserts*" that serves as the foundation of every criminal sentence that is justifiable. In other words, the "doctrine of proportionality" 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.

33. Applying the principles laid down by the Supreme Court to decide as to whether the case falls within the ambit of 'rarest of rare case' so as to confirm the death penalty imposed by the trial Court, in the state of facts and evidence on record in the present case, this Court shall now cull out the aggravating circumstances and the mitigating circumstances, if any.

Aggravating circumstances

34. The appellant has committed murder of 3 persons namely, Anandram, aged 56 years; Firanteen Bai, wife of Anandram, a women aged 55 years and Ratna Bai, wife of Tulsiram, a woman aged about 35 years.
35. All the three deceased persons have been done to death by causing repeated knife blows over vital part of body like root of nose, forehead, neck, mandible. After causing injuries to Anandram and Ratna in the presence of Ratna's son PW-15 Sonu, aged about 10 years, he came to the house of PW-11 Durga Bai and inflicted grievous injuries on the person of Meera Banchor and when Durga Bai, aged about 70 years, stated that if he wants to kill, he should kill her and not Meera, the appellant said that he would ultimately be hanged, meaning thereby that he knew what he was doing and consequences thereof and thus, he was in his nerves and senses, yet he committed the offence. After some time, he came back to the house of Durga Bai and again assaulted Anandram.
36. Killing Ratna Bai, mother of PW-15 Sonu was with a purpose to create fear psychosis in the family of the deceased. The appellant was earlier charged for committing rape with deceased Ratna and was detained in jail for one year although he was later on acquitted in the said case.

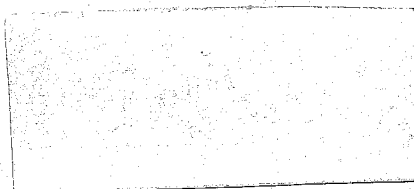


37. In addition to killing three persons, the appellant has attempted on the lives of three injured persons namely, Smt. Meera Banchor, Channu Banchor and Gendlal Verma, causing grievous incised/stab wounds by the same weapon in continuation of the present offence.
38. Two victims are helpless women and one injured namely, Smt. Meera Banchor (PW-6) is also a women aged about 50 years. There is no evidence of immediate provocation by the deceased or any member of their family and thus, the offence appears to be pre-meditated.

Mitigating circumstances

39. The only mitigating circumstance which may fall for consideration is that on the report of deceased Ratna Bai, the appellant was earlier tried for committing offence under Section 376 IPC wherein he was acquitted.
40. In **Brajendra Singh Vs. State of Madhya Pradesh**¹⁶, the Supreme Court has held that statement of accused under Section 313 of the CrPC can be used as evidence against him, insofar as it supports case of the prosecution. Though it is true that statement under Section 313 simpliciter normally cannot be made the basis for conviction of accused, but where statement of accused under Section 313 is in line with case of the prosecution, then certainly the heavy onus of proof on prosecution is, to some extent, reduced. The Supreme Court also relied its earlier judgments on this point in the matters of **Ramnaresh V. State of Chhattisgarh** (Supra) and **Rafiq Ahmad v. State of UP** {(2011) 8 SCC 300}.
41. In the case in hand, the trial Judge put 268 questions while recording the statement of the appellant under Section 313 CrPC. While answering question No.8, he admits that he was tried for committing offence under Section 376 IPC for committing rape with deceased Ratna Bai and remained in jail for one year. However, according to the appellant, he was falsely implicated in the case. For all other questions, the appellant has either feigned ignorance or has denied them. Thus, he has not tried to make a case that offence was committed by him in an emotional circumstance because he was highly disturbed and perturbed on account of

¹⁶ (2012) 4 SCC 289



his false implication in a rape case by deceased Ratna Bai. The appellant did not mitigate the circumstance for not imposing the death sentence.

42. Having drawn the balance sheet of aggravating and mitigating circumstance, as above and after giving respective weightage to the circumstances after scaling the same in the facts and circumstances of the case for proportionating between the crime and the punishment, we reach to the conclusion that the aggravating circumstances outweigh the mitigating circumstances and the case thus falls within the ambit of rarest of rare case. Therefore, the appellant deserves death penalty and the trial Court has not committed any illegality in awarding the death penalty to the appellant.

43. For the foregoing, Criminal Reference No.6/2013 is answered in affirmative and Criminal Appeal No.712/2013 preferred by the appellant is dismissed.

Sd/-
Yatindra Singh
Chief Justice

Sd/-
Prashant Kumar Mishra
Judge

Barve