

RAVJI @ RAM CHANDRA

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v.

STATE OF RAJASTHAN

DECEMBER 5, 1995

[G.N. RAY AND G.T. NANAVATI, JJ.]

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Indian Penal Code, 1860 : Sections 302 and 307.

Death Penalty—Accused committing five murders including that of his pregnant wife and three minor children while the victims were sleeping—Attempt to murder two persons—Commission of crime established beyond doubt—Relevancy of motive—Crime omitted in a cruel and brutal manner with a conscious state of mind—No sign of remorse—Award of death penalty—Held justified.

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The appellant was prosecuted for committing five murders and attempt to murder two persons. The prosecution case was that he killed his wife, who was in advanced stage of pregnancy, and three minor children with an axe while they were sleeping. From the deposition of the appellant's mother, who later turned hostile, it transpired that at the time of commission of crime the accused, the deceased wife, the minor children and the appellant's mother were present at home and no other person was present. When the appellant's mother tried to prevent the appellant from committing the crime he caused injuries to her in an attempt to kill her by the same axe. Thereafter he went to an adjacent house and attempted to murder his neighbour's wife Smt. 'G', who also was asleep, with the same axe. The appellant was then fleeing away but the father-in-law of Smt. 'G' came on his way and in an attempt to escape from the place, he mercilessly murdered the old man by giving him a number of axe blows. There were eye witnesses who had seen the accused attacking Smt. 'G' and also murdering her father-in-law and when the son of the latter tried to apprehend the accused he fled away from the scene of occurrence. After appellant's arrest recovery of blood stained vest of the accused and the axe was also made at his instance.

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Relying on the evidence of the witness including the injured witnesses the trial court held that the prosecution had established beyond reasonable doubt that the accused was guilty of the offences charged.

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A Further taking into account the fact that murders were committed in a brutal and barbaric manner, the trial court imposed death penalty on the appellant which was affirmed by the High Court.

B In appeal to this Court, counsel for the appellant, confining his submissions on the question of sentence contended that (i) though the evidence do not reveal that the appellant was insane at the time of commission of crime yet in the absence of any evidence suggesting harbouring of hatred, grudge or ill feeling against his wife or neighbour's wife the sudden spree of murderous assault only suggests that he must have been seized of psychic disorder momentarily; this sudden inexplicable
C psychic disorder is an important mitigating factor in awarding the extreme penalty of death; (ii) even if this Court accepts the concurrent finding of the courts below that appellant was guilty of the offences charged the absence of motive requires to be considered for sustaining the death penalty.

D Justifying for the death sentence imposed on the appellant it was contended for the State that (i) when by clear, clinching and reliable evidence the prosecution has established the guilt of the accused it is immaterial that the motive has not been proved; (ii) there is not an iota of evidence regarding sudden psychic disorder of the accused-appellant at
E the time of commission of the crime. Rather the evidence reveals that in a cool and calculated manner and without any provocation whatsoever the appellant committed murders one after the other and that too in a very brutal and ghastly manner; and (iii) the appellant was not remorseful even
F after the incident as he did not attend the funeral of his wife and minor children nor did he go to the hospital to see her ailing mother.

Dismissing the Appeal, this Court

G HELD : 1. The commission of crimes by the appellant has been clearly established beyond reasonable doubt. The evidences adduced in this case are so clear that the courts below had no difficulty in holding that the appellant was guilty of murdering his wife and three minor children and injuring his own mother in an attempt to kill her. Such finding has been made on the basis of the reliable and clinching evidence adduced in the case and there is no reason to take a contrary view.

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[280-B-C]

Denyabhai Chhaganbhai Thakkar v. State of Gujarat, [1964] 7 S.C.R. 361, referred to. A

2. The prosecution case that the appellant attempted to kill Smt. 'G' and had also murdered her father-in-law, has also been established by unimpeachable, convincing and reliable evidences. Smt 'G' who herself was injured has deposed and the wife of old man who has seen the commission of murder of her husband has also deposed in the case. Therefore, the finding that the appellant is guilty of the offence of attempting to kill Smt. 'G' and of murdering 'Gs' father-in-law is wholly justified and no interference is called for with such finding. [208-D-E] B

3. There is no evidence that there was any alteration between the husband and wife either immediately or shortly before the commission of murder of wife and three innocent minor children of the appellant. The appellant in a cool and calculated manner wanted to kill the wife and the three minor children while they were asleep and had no occasion to give any resistance whatsoever. He was fully determined to commit the crime of murder and was conscious of the nature of the crime being committed by him. Precisely for the said reason, when his mother wanted to prevent him from committing such heinous crime he injured her with the axe in an attempt to kill her also. There is no evidence that he was found in a confused state of mind. Rather he silently went to the neighbour's house and attempted to kill Smt. 'G' who was also asleep. Being conscious of the enormity of the crime committed by him, he wanted to flee away from the place of occurrence and when the poor old man came on his way he immediately hacked him to death in an extremely brutal manner and thereafter fled away from the place of occurrence and tried to hide himself. Such facts clearly indicate that he committed all the said heinous crimes in a conscious state of mind and in a calculated manner. Hence, case of temporary psychic disorder cannot be accepted. [209-D-H] C

4. It is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and D
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A brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should respond to the society's cry for justice against the criminal. [211-D-E]

B *Shankar @ Gauri Shankar and Ors. v. State of Tamil Nadu*, [1994] 4 SCC 478; *Tashubha Bharatsingh Gohil and Ors. v. State of Gujarat*, [1994] 4 SCC 353 and *Dhananjay Chatterjee @ Dhanna v. State of West Bengal*, [1994] 2 S.C.C. 220, referred to.

C *Tarseem Kumar v. Delhi Administration*, [1994] Supp. 3 SCC 367; *Jamna and Ors. v. State of U.P.*, [1994] Supp 1 SCC 185 and *Kuriakose and Anr. v. State of Kerala*, [1994] Suppl. 1 SCC 602, cited.

D 5. The brutality and cruelty with which the crimes have been perpetrated cannot but shock the conscience of the society. All the said heinous crimes were committed without any provocation. The appellant was not even remorseful after the said incident of successive five murders. If for such heinous crimes the most deterrent punishment for wanton and brutal murders is not given, the case of deterrent punishment will lose its relevance. Therefore, there is no justification to commute the death penalty to imprisonment for life. [211-A, C, F]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1595 of 1995.

From the Judgment and Order dated 22.3.95 of the Rajasthan High Court in D.B. CrI. Murder Reference No. 3 of 1994.

F N. Natarajan, A.C. and Vimal Dave for the Appellant.

K.S. Bhati, H.G.R. Khatter, M.K. Singh and Ms. Kusum Sharma for the Respondent.

The Judgment of the Court was delivered By

G G.N. RAY, J. Leave granted.

H This appeal is directed against judgment dated March 22, 1995 passed by the Division Bench, Rajasthan High Court (Jodhpur Bench). By the impugned judgment, the High Court affirmed the death sentence passed by the learned Additional Sessions Judge, Banswara, in Sessions

Case No. 122/93 against the appellant in D.B. Criminal Murder Reference No. 3/94 and dismissed D.B. Criminal (Jail) Appeal No. 602/94 referred by the appellant before the High Court against the conviction under Section 302 I.P.C. and sentence of death awarded against him by the learned Additional Sessions Judge in the said Sessions Case No. 122/93.

The appellant sent a special leave petition from the Jail where he is lodged. Initially a learned counsel of this Court was appointed as Amicus Curiae to represent the case of the appellant. Later on, the appellant wrote a letter to the Registry of this Court expressing his intention that one of the three advocates mentioned by him in his letter may be engaged to represent his case before this Court. Pursuant to such request, Mr. Natarajan, a senior advocate of this Court agreed to appear as amicus curiae in deference to the desire of the appellant. We appreciate such gesture on the part of Mr. Natarajan, for accepting the case of the appellant as amicus curiae.

The appellant was committed to a Sessions Trial in Sessions Case No. 122/93 before the learned Additional Sessions Judge, Banswara, on the charge of committing murder of five persons including the wife and three minor sons of the appellant and attempting to murder his own mother and the wife of a neighbour. The trial court after relying on the evidences of witnesses including injured eye-witnesses inter alia came to the finding that the prosecution had established by leading cogent evidence that the appellant was guilty of murdering five persons and he was also guilty for attempting to murder his mother Smt. Mangi (PW 12) and a neighbour's wife Smt. Galal (PW 4). Considering the fact that the commission of the said murders was committed in a brutal and barbaric manner, the trial court after convicting the appellant under Sections 302 IPC sentenced him to death penalty. Such sentence of death was referred to the Rajasthan High Court for confirmation. The reference for confirmation of death sentence was numbered as D.B. Criminal Murder Reference No. 3/94. The appellant also preferred an appeal against his conviction and sentence passed by learned Additional Sessions Judge in Sessions Case No. 122/93. Such appeal was numbered as D.B. Criminal (Jail) Appeal No. 602/94. Both the said Murder Reference No. 3/94 and Jail Appeal No. 602/94 were disposed of by the High Court by a common judgment dated March 22, 1995, dismissing the Criminal Appeal No 602/94 and confirming the death sentence by allowing Murder Reference No. 3/94.

A Mr. Natarajan, the learned senior counsel appearing as amicus curiae for the appellant, has submitted that in the instant case there is no direct evidence regarding the allegation of murdering four persons by the appellant namely his wife and three minor children. Admittedly, besides the said dead persons, only mother of the appellant was present in the house at the time of murdering wife and minor children of the appellant. The mother of the appellant herself was injured by the assailant who had murdered appellant's wife and three minor children. But the mother who was examined as PW 12 did not support the prosecution case. She has deposed that some unknown person murdered her daughter-in-law and three grand children and also injured her. She was declared hostile by the prosecution.

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C Hence, there is no direct evidence that the appellant had murdered his wife and three minor sons. The prosecution case has been sought to be proved by circumstantial evidence. But motive for murdering wife and three minor sons is totally absent. In a case of circumstantial evidence, motive assumes considerable significance. Mr. Natarajan has submitted that even if this court accepts the concurrent finding of the courts below that appellant is guilty of murdering his wife and three minor children besides murdering another man Gulabji the absence of motive requires to be considered for sustaining the death penalty. Mr. Natarajan has submitted that there are eye-witnesses to prove the prosecution case of murdering Gulabji and attempting to Murder Smt. Galal. The wife of Gulabji before whose eyes Gulabji was murdered and Smt. Galal herself has deposed in support of the prosecution case. The finding by the Courts below that the appellant has murdered Gulabji cannot be said to be without any basis and he fairly concedes that an attempt to assail such finding may be an exercise in futility. Mr. Natarajan has, therefore, submitted that in the facts of the case, it will be only appropriate for him to confine his submission on the question of sentence to be passed against the appellant.

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Mr. Natarajan has submitted that unfortunately in this case, the prosecution has failed to lead any evidence as to why the appellant suddenly killed his wife who was in advanced stage of pregnancy and three minor children when his wife and his three minor children were asleep in his house. Mr. Natarajan has also submitted that the prosecution has also failed to lead any evidence to indicate or even to suggest as to what was or could be the motive that impelled the appellant immediately after murdering his wife and three minor children and injuring his own mother when she tried to prevent him from committing such crime, to rush to his

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neighbour's house and to attempt to kill the wife of the neighbour Smt. Galal (PW 4) who was admittedly then sleeping with her daughter in their house. He has also submitted that unfortunately, there is also no evidence from which any motive can even remotely be inferred as to why the appellant thereafter killed another neighbour, an elderly man with whom appellant had no enmity, when the said old man Gulabji was coming towards the house of Smt. Galal after hearing her shrieks on being injured by the appellant.

Mr. Natarajan has submitted that there is no evidence to suggest that the appellant had ever suspected the fidelity of the wife or any extra marital relationship of his wife with anybody or with the neighbour, namely the husband of Smt. Galal. There is not even any whisper by the prosecution witnesses that Smt. Galal had in any manner caused annoyance to the appellant and had ever attempted to disturb the conjugal life of the appellant so that there might be an occasion for the appellant to entertain some wrath or hatred against PW 4 Smt. Galal.

Mr. Natarajan has submitted that commission of crime is perpetrated for some reason which may be even ill founded or ill-conceived. Sudden fit of passion, anger etc. actuated by various considerations like hatred, wrath, a sense of revenge etc. often induce an accused to commit murder.

Mr. Natarajan has submitted that motive constituting *mens rea* is a very relevant factor in the process of delicate balancing between the gravity of the crime and consequential sentence to be passed against an accused on consideration of mitigating factors.

Mr. Natarajan has further submitted that there is no material on record to justify a finding that the appellant was insane at the time of commission of crime and he failed to understand the implication of his misdeeds. The appellant has also not taken any such plea. Even then, sudden impulse, without any plausible motive to kill his wife in advanced stage of pregnancy and three minor children with whom love was not lost and attempt to kill innocent old mother who only tried to prevent the commission of crime of murder of his own wife and children and above all taking a made rush to a neighbour's house and attempting to kill the neighbour's wife while she was asleep and thereafter killing another old neighbour Gulabji on the way, remains absolutely inexplicable. Such wild behaviour of the appellant having a fair standard of education and upbringing

A ing and exposure to teachers training, only suggests that he was temporarily seized of a gigantic psychic disorder. Why and how this wretched transformation had happened remains a mystery. The investigating officer, unfortunately, did not make any sincere effort to cause enquiries in this regard. Mr. Natarajan has submitted that this inexplicable sudden psychic disorder as an important mitigating factor on the question of awarding the extreme penalty of death has been last sight of both by the learned Additional Sessions Judge and by the High Court.

C Mr. Natarajan has referred to a decision of this Court in *Danyabhai Chhaganbhai Thakkar v. State of Gujarat*, [1964] 7 SCR 361 for the purpose of contending that it is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and therefore the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide should prove beyond reasonable doubt that the accused death with the requisite intention described in Section 299 of the Indian Penal Code. This general burden never shifts and always rests on the prosecution. Mr. Natarajan has submitted that it has been indicated in the said decision that although primarily an accused has a burden to satisfy the existence of circumstances to satisfy the test of a 'prudent man' that at the time of commission of offence, by reason of unsoundness of mind, the accused was incapable of understanding the nature of his act. but if the materials placed before the Court raise a reasonable doubt in the mind of a Judge whether the accused had requisite intention as laid down in Section 299 I.P.C., he has to acquit the accused because in that event, the prosecution will have failed to prove conclusively the guilt of the accused. There is on conflict between general burden which is always on the prosecution and which never shifts and the special burden that rests on the accused to make out a defence of insanity.

G Mr. Natarajan has submitted that although no plea of unsoundness of mind at the time of commission of offence has been taken by the accused and no material in support of such plea has been placed by the accused, but even then if on the materials placed by the prosecution, a lurking doubt is reasonably raised in the mind of the Judge about the temporary psychic disorder of the accused thereby making him incapable to understand the effect of his act, the accused is entitled to the benefit of absence of *mens rea* under Section 299 I.P.C. Mr. Natarajan has submitted that even if the materials on record may not justify inference of such complete incapacity

of the accused to understand the implication of his action but if the materials at least justify probability of existence of some degree of psychic imbalance at the time of commission of offence, the Court must address to itself the probability of existence of such factor in awarding the extreme penalty of death. Mr. Natarajan has submitted that in the absence of any material which might have thrown light on the mysterious behaviour of the accused in perpetrating the crime alleged against him, the court may reasonably hold that for the inexplicable reason, not attempted to be unearthed, the accused had been suffering from a psychic disorder for which the extreme penalty of death for knowingly perpetrating a brutal and ghastly crime, shocking the conscience of the society, is not warranted.

Mr. Bhati, learned counsel appearing for the State of Rajasthan has refuted the contentions of Mr. Natarajan and has submitted that the charge of murder perpetrated on the appellant's pregnant wife and three minor children and also attempt to murder his own mother by the accused when she tried to prevent the appellant from committing the said heinous crime, has been established beyond reasonable doubt. Unfortunately, the mother of the appellant (PW.12) who herself was injured, did not support the prosecution case for which she was declared hostile. There are very strong reliable and clinching evidence which clearly indicates that it is the appellant and none else who was guilty of murdering the wife and three minor children and injuring his mother. From the deposition of the mother of the appellant though declared hostile, it transpires that accused and the deceased wife and minor children and the mother were present at home at the time of commission of the murder and no other person was present at home at that time. Both the mother and the deceased wife and the minor children suffered injuries caused by an axe and immediately after the said incident, the accused also attempted to murder the neighbour's wife Smt. Galal (PW 4) by an axe and also murdered Gulabji, father-in-law of Smt. Galal by the axe. There are eye-witnesses who had seen the accused attempting to kill Smt. Galal and also murdering Gulabji by the axe. There is clear evidence by the eye-witnesses that when the son of Gulabji tried to apprehend the accused he fled away from the scene of occurrence. Although murder of the wife and minor children and attempt to murder his mother, further attempt to murder Smt. Galal and the murder of Gulabji had happened at three different places, all the said incidents had happened in a quick succession and entire chain of incidents really constitute one continuous course of action.

A The learned Additional Sessions Judge has found the evidences in support of the prosecution case as convincing and reliable and by giving cogent reasons, has clearly come to the finding that the entire prosecution case had been established beyond reasonable doubt. Mr. Bhati has submitted that the motive for the crime is undoubtedly an important factor for appreciating the correctness of testimony vis-a-vis complicity of the accused with the crime alleged against him. But human mind is so complex that at time it is not always possible to precisely comprehend as to why and how a man has reacted in a particular manner for committing a crime. The learned counsel has submitted that law is well-settled that if there is clear, clinching and reliable evidence establishing the guilt of the accused, it is immaterial that the motive for the commission of crime has not been established.

Mr. Bhati has also submitted that the facts and circumstances revealed from the depositions of the witnesses, do not support the contention that the appellant has been suffering from any psychic disorder for which he momentarily failed to appreciate as to what he had been doing at the time of committing the heinous crimes one after the other. The learned counsel has submitted that it is true that evidence has not been led as to what was or could be the probable motive for committing the crime. But it has been clearly established that the appellant in a cool and calculated manner killed his wife who was in advanced stage of pregnancy and being asleep could not offer any resistance. The appellant similarly killed the three minor children while they were sleeping in their house. The only other person present at that time in the house was his mother. The mother has not indicated that there was any quarrel or altercation between the husband and the wife immediately or shortly before the murders has taken place. The facts revealed from the evidences adduced only indicate that there was no occasion for any sudden provocation or a fit of impulse which had impelled or could impel the appellant to commit the said ghastly murder of his helpless wife and there minor children. On the contrary, the evidences point out that such heinous crime had been perpetrated in a cool and calculated manner. When the poor mother tried to prevent the appellant from committing such barbaric act, the appellant even did not spare his own mother and also caused injuries on her person in an attempt to kill her by the same axe with which the wife and the three minor children had been murdered. The learned counsel for the State has further submitted that the appellant thereafter went to the house of his neighbour and

attempted to kill the neighbour's wife Galal who also asleep in her house. There is no evidence on record to suggest that there was any occasion for the appellant to harbour any ill feeling, hatred or wrath against Smt. Galal which might have promoted him to murder her. The learned counsel for the State has further submitted that the appellant was quite keep in fleeing away the place of commission of crime and only when the father-in-law of Smt. Galal, namely, Shri Gulabji came on his way and enquired of him as to what had happened, the appellant, in an attempt to escape from the place, mercilessly murdered the old man by giving a number of axe blows on his person. The son of Gulabji and others on hearing the shouts came to the place where Gulabji was murdered and tried to apprenend the appellant but could not do so because the appellant succeeded in escaping from the place and went to the next village.

Mr. Bhati has therefore, submitted that the appellant was quite conscious as to what he had been doing and he was neither confused nor stupified for what he had done but being fully conscious of the gravity of the offence committed by him, wanted to flee away from the place of occurrence. Mr. Bhati has also submitted that the appellant was not remorseful even after the incident. He did not attend the funeral of his wife and minor children who had been brutally murdered by him. The appellant did not go to the hospital to see her ailing mother. There is recovery at the instance of the accused, of the blood stained vest of the accused and the axe with which the murders had been committed. There are eye-witnesses in support of the prosecution case of attempting to murder Smt. Galal and murdering Gulabji. In the aforesaid circumstances, both the learned Additional Sessions Judge and the High Court had no hesitation in finding that the appellant had committed the murder of five persons and attempted to kill two others in a brutal and cruel manner.

Mr. Bhati has submitted that the evidences adduced in the case clearly establish that the appellant had murdered his helpless wife and three minor children without any provocation whatsoever in a very cruel manner. The said helpless wife and the minor children had been murdered by a person who had a duty to protect them. Such dastardly crime perpetrated in a brutal manner cannot but shock the conscience of the society. Mr. Bhati has also submitted that it is an act of gravest unkindness that the appellant even attempted to kill his own mother who only tried to prevent him from committing the said heinous crime. Mr. Bhati has submitted that

A the appellant even then did not become remorseful but attempted to kill the neighbour's wife while she was sleeping and also killed another elderly neighbour, Gulabji without any provocation whatsoever. Gulabji was hacked to death by the appellant by giving successive blows with the axe thereby killing him on the spot, before the eyes of his wife. Mr. Bhati has submitted that both the learned Additional Sessions Judge and the High Court very carefully considered the question of sentence after being fully alive to mitigating circumstance if any in favour of the appellant. As in the instant case, the appellant without any provocation committed murder of five persons in a very cruel and barbaric manner in a cool and calculated manner and also attempted to kill two others including his own mother,

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C the enormity and brutality of the crime had been taken note of by the courts below and in the absence of any mitigating factor the extreme penalty of death has been awarded against him. In this connection Mr. Bhati has referred to a decision of this Court in *Shankar @ Gauri Shankar and others v. State of Tamil Nadu*, [1994] 4 SCC 478. After referring to a number of decisions of this Court on the question of sentence and in particular the death sentence to be awarded in a case of murder, it has been indicated in the said decision that :

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E "the choice as to which one of the two punishments provided for murder is the proper one in a given case will depend upon the particular circumstances of that case and the Court has to exercise its discretion Judicially and on well recognised principles after balancing all the mitigating and aggravating circumstances of the crime. The Court also should see whether there is something uncommon about the crime which renders sentence of imprisonment of life inadequate and calls for death sentence. The nature of the crime and the circumstances of the offender should be so revealing that the criminal is a menace to the society and the sentence of imprisonment of life would be inadequate. The sentence of death should be reserved for the rarest of rare cases after a due consideration of both mitigating and aggravating circumstances. What circumstances bring a particular case under the category of rarest of rare cases vary from case to case depending upon the nature of the crime, weapons used and the manner in which it is perpetrated etc."

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H Mr. Bhati has also referred to another decision of this Court in

Jashubha Bharatsingh Gohil and Others v. State of Gujarat, [1994] 4 SCC 353. It has been indicated in the said decision that the protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing appropriate sentence. The change in the legislative intendment relating to award of capital punishment notwithstanding the opposition by the protagonist of abolition of capital sentence, shows that it is expected of the Courts to so operate the sentencing system as to impose such sentence which reflects the social conscience of the society. The sentencing process has to be stern where it should be.

Mr. Bhati has also submitted that although the motive of the heinous crime committed by the appellant has not been established but such motive loses its importance when the prosecution case is totally proved beyond reasonable doubt. When there is a direct evidence, it is not necessary to find out the motive for the offence. For the said contention Mr. Bhati has referred to the decisions of this Court in *Tarseem Kumar v. Delhi Administration*, [1994] Suppl. 3 SCC 367, *Jamna and Others v. State of U.P.*, [1994] Suppl. 1 SCC 185 and *Kuriakose and Another v. State of Kerala*, [1994] Suppl. 1 SCC 602. Mr. Bhati has submitted that although Mr. Natarajan, the learned counsel appearing for the appellant, has very strongly contended that it was quite likely that the appellant was suffering from psychic disorder otherwise such acts, without any motivation could not have been perpetrated and likelihood of sudden psychic disorder ought to be considered as a mitigating factor in awarding the extreme penalty of death, there is not an iota of evidence regarding sudden psychic disorder of the accused appellant at the time of commission of the said crime. The evidences on the contrary reveal that in a cool and calculated manner, and without any provocation whatsoever, he committed one after the other the said dastardly crime in a very brutal and ghastly manner. Mr. Bhati has submitted that the number of murders in one continued course of action and attempt to kill two others including the mother of the appellant cannot but shock the conscience of the society. The offence committed by the appellant is one of the rarest and there is no mitigating circumstances which warrant punishment of life imprisonment instead of capital punishment. He has, therefore, submitted that the order of death sentence is wholly justified in the facts of the case and no interference is called for.

After giving our anxious consideration to the facts and circumstances of the case and the evidence on record through which we have been taken

A and after considering the judgments passed by the courts below, it appears to us that the commission of crimes by the appellant, namely, murdering five persons including the wife and three minor children of the appellant and attempt to murder two others has been clearly established beyond reasonable doubt. Although the mother of the appellant who herself was injured while attempting to prevent her son from committing the murder of wife and three minor children, has not supported the prosecution case has been declared as a hostile witness, the evidences adduced in this case are so clear that the courts below had no difficulty in holding that the appellant was guilty of murdering his wife and three minor children and injuring his own mother in an attempt to kill her. In our view, such finding has been made on the basis of the reliable and clinching evidence adduced in the case and find no reason to take a contrary view. The prosecution case that the appellant had murdered Gulabji and also attempted to kill Smt. Galal has also been established by unimpeachable, convincing and reliable evidences. Smt. Galal who herself was injured has deposed and the wife of Shri Gulabji who has seen the commission of murder of Gulabji has also deposed in the case. Therefore, the finding that the appellant is guilty of the offence of attempting to kill Smt. Galal and he is also guilty of murdering Gulabji is wholly justified and no interference is called for with such finding.

E Mr. Natarajan, the learned counsel appearing as amicus curiae for the appellant has ingenuously contended that no evidence has been led in the case which may suggest that there was some occasion for the appellant to bear suspicion, hatred or grudge against his wife or Smt. Galal or her husband which might have induced the appellant to commit the offences.

F Mr. Natarajan has submitted that normally for every crime there is some motive and even though conviction can be based if there is reliable evidence about the commission of crime without establishing any motive for such crime, such motive, according to Mr. Natarajan, assumes significance in awarding the sentence particularly in a murder case.

G Mr. Natarajan has contended that the appellant appears to have suddenly lost the equilibrium of his mind and behaved in a strange manner thereby committing murder of his wife and three minor children apparently without any provocation and even attempting to kill his own mother when she tried to restrain him. Mr. Natarajan has submitted that in the absence of any evidence suggesting harbouring of hatred, grudge or ill feeling

against the wife or Smt. Galal, the sudden spree of murderous unusual to the social and educational background of the appellant, becomes inexplicable and such strange behaviour only suggests that he must have been seized of psychic disorder momentarily. Mr. Natarajan has also submitted that the evidences do not reveal that the appellant was insane at the time of commission of the crime and such plea of insanity also not been taken by the appellant. Hence, the appellant may not claim the benefit of absence of *mens rea*. But the possibility of temporary psychic disorder requires to be considered in awarding the extreme penalty of death. Such contention of Mr. Natarajan though ingenuous does not appeal to us.

It has been clearly revealed from the evidences adduced in the case that the appellant was in his house with his wife, mother and three minor children. There is no evidence that there was any altercation between the husband and wife either immediately or shortly before the commission of murder of wife and three innocent minor children of the appellant. From the evidence it clearly transpires that the appellant in a cool and calculated manner wanted to kill the wife and the three minor children while they were asleep and had no occasions to give any resistance whatsoever. It is also revealed from the evidence that he was fully determined to commit the crime of murder and was conscious of the nature of the crime being committed by him. Precisely for the said reason, when his mother wanted to prevent him from committing such heinous crime he even did not spare his mother and also injured her with the axe in an attempt to kill her also. There is no evidence that the appellant was found in a confused state of mind. On the contrary, it transpires from the evidence that he silently went to the neighbour's house and attempted to kill Smt. Galal who was also asleep. It appears to us that in a cool and calculated manner the appellant wanted to kill Smt. Galal who being asleep was not capable of giving any resistance. It is also quite apparent that the appellant being conscious of the enormity of the crime committed by him, wanted to flee away from the place of occurrence and when the poor old man Gulabji came on his way and enquired as to what had happened, he immediately hacked Gulabji to death in an extremely brutal manner and thereafter fled away the place of occurrence and tried to hide himself. Such facts, in our view, clearly indicate that the appellant committed all the said heinous crimes in a conscious state of mind and in a calculated manner. Hence, case of temporary psychic disorder as sought to be canvassed by Mr. Natarajan cannot be accepted in the facts and circumstances of the case.

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A In *Dhananjoy Chatterjee @ Dhana v. State of West Bengal*, [1994] 2, SCC 220 it has been indicated by this Court that :

B "some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished thereby encourage the criminal and in the ultimate making, justice suffer by weakening the system's credibility."

It has also been indicated that :

C "In imposing sentences in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration. The measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminal. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment."

F In our view, in the facts of the case, it has been very clearly established that the appellant has committed one of the most heinous crimes by killing his poor wife who was in advanced stage of pregnancy and three minor children for no fault on their part. The appellant had a solemn duty to protect them and to maintain them but he has betrayed the trust reposed on him in a very cruel and calculated manner without any provocation whatsoever. The appellant did not even spare his mother who very rightly tried to prevent him from committing such unpardonable crime. The appellant also attacked his mother with the axe which he had used to kill his wife and minor children and caused injuries on her person with an intention to kill her. The brutality and cruelty with which the crimes

G

H have been perpetrated cannot but shock the conscience of the society.

After killing the wife and three minor children and injuring the mother he did not become remorseful and desist from committing any further crime. But like a blood thirsty demon, in a cool and calculated manner he went to one of the neighbour's house and attempted to kill the wife of the neighbour while she was asleep and as such utterly helpless to give any resistance. When in his attempt to flee away from the place of occurrence, the poor old Gulabji came on his way, the appellant did not hesitate to kill him in extremely brutal manner before the eyes of his wife. All the said heinous crimes were committed without any provocation. The appellant was not even remorseful after the said incident of successive five murders and attempt to kill two others including the appellant's mother. The appellant did not go to see the ailing mother injured by him and did not also attend the funeral or his wife and even his three innocent minor children. The crimes had been committed with utmost cruelty and brutality without any provocation, in a calculated manner. It is the nature and gravity of the crime out not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should respond to the society's cry for justice against the criminal. In our view, if for such heinous crime the most deterrent punishment for wanton and brutal murders is not given, the case of deterrent punishment will lose its relevance. we, therefore, do not find any justification to commute the death penalty to imprisonment for life. The appeal therefore must fail and is dismissed.

T.N.A.

Appeal dismissed.