SUNDER @ SUNDARARAJAN

v.

STATE BY INSPECTOR OF POLICE

(Criminal Appeal Nos.300-301 of 2011)

FEBRUARY 5, 2013

[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

Penal Code, 1860 – ss.364A, 302 and 201 – Kidnapping for ransom and murder – Of seven year old boy – Circumstantial evidence – Conviction and death sentence by courts below – Held: Conviction as well as the sentence does not call for interference – Kidnapping and demand of ransom proved by witnesses – Factum of kidnapping having been proved, the inference of consequential murder is liable to be presumed in the absence of discharge of onus by the kidnapper to prove the release of the kidnapped – Accused failed to prove the release of the deceased from his custody – Thus in the circumstances of the case, charge of murder also proved – In view of various aggravating circumstances and lack of any mitigating circumstance, award of death sentence justified – Evidence Act, 1872 – s.106 – Sentence/ Sentencing – Death sentence.

Evidence Act, 1872 – s.106 – Burden to prove – Shifting of onus – In kidnapping and murder case – Held: Once factum of kidnapping proved, onus would shift on the kidnapper to establish the release of the kidnapped from his custody.

Appellant- accused alongwith another accused was prosecuted for having kidnapped a 7 year old boy for ransom, and when the ransom was not paid, he killed the child. PWs 2 and 3 was last seen with the appellant-accused. PW-8 deposed that the appellant had called her to take the mobile number of the mother of the deceased

A (PW1) and thereafter he made ransom call on the same number. Appellant-accused was also identified by two witnesses in TI Parade. Trial Court convicted the appellant-accused u/ss.364A, 302 and 201 IPC and awarded death sentence. Another accused was acquitted. B High Court affirmed the conviction and also confirmed the death penalty. Hence the present appeal.

Dismissing the appeals, the Court

HELD: 1.1. The accused-appellant had been identified C through cogent evidence as the person who had taken away the deceased when he disembarked from school van on the date of the incident. The factum of kidnapping of the deceased by the accused-appellant, therefore, stands duly established. [Para 24] [46-G-H; 47-A]

D

1.2. Having proved the factum of kidnapping, the inference of the consequential murder of the kidnapped person, is liable to be presumed. Once the person concerned has been shown as having been kidnapped, E the onus would shift on the kidnapper to establish how and when the kidnapped individual came to be released from his custody. In the absence of any such proof produced by the kidnapper, it would be natural to infer/ presume, that the kidnapped person continued in the F kidnapper's custody, till he was eliminated. The instant conclusion would also emerge from Section 106 of the Evidence Act, 1872. [Para 26] [48-A-C]

1.3. In the facts and circumstances of the present case, there is sufficient evidence on the record on the G basis whereof even the factum of murder of the deceased at the hands of the accused-appellant stands established. In the facts and circumstances of this case, it has been duly established, that the deceased was kidnapped by the accused-appellant; the accused-H appellant was not able to produce any material on the

record to show the release of the deceased from his custody. Section 106 of the Evidence Act, 1872 places the onus on him. In the absence of any such material produced by the accused-appellant, it has to be accepted, that the custody of the deceased had remained with the accused-appellant, till he was murdered. The motive/reason for the accused-appellant, for taking the extreme step was, that ransom as demanded by him, had not been paid. [Para 27] [48-G-H; 49-A-B]

1.4. The accused-appellant had made a confessional statement in the presence of PW13 stating that he had strangulated the deceased to death, whereupon his body was put into a gunny bag and thrown into a particular tank. It was thereafter, on the pointing out of the accused-appellant, that the body of the deceased was recovered from that tank. It was found in a gunny bag, as stated by the accused-appellant. PW12, the doctor concluded after holding the post-mortem examination of the dead body of the deceased, that he had died on account of suffocation, prior to his having been drowned. The instant evidence clearly nails the accused-appellant as the perpetrator of the murder of the deceased. Moreover, the statement of PW13 further revealed that the school bag, books and slate of the deceased were recovered from the residence of the accused-appellant. These articles were confirmed by PW1 as belonging to the deceased. In view of these factual and legal position the prosecution had produced sufficient material to establish not only the kidnapping of the deceased, but also his murder at the hands of the accused-appellant. [Para 28] [49-C-G]

Sucha Singh vs. State of Punjab **2001 (4) SCC 375: 2001 (2) SCR 644 – relied on.**

Sharad Birdhichand Sarda v. State of Maharashtra **1984 (4) SCC 116: 1985 (1) SCR 88;** *Tanviben PankajKumar*

A *Divetia vs. State of Gujarat* **1997 (7) SCC 156: 1997 (1) Suppl. SCR 96; – referred to.**

2. The accused-appellant is guilty of two heinous offences, which independent of one another, provide for the death penalty. The accused caused the murder of child of 7 years. There was no previous enmity between the parties. There was no grave and sudden provocation, which had compelled the accused to take the life of an innocent child. The murder of a child, in such circumstances makes this a case of extreme culpability. On account of the non-payment of ransom, a minor child's murder was committed. This fact demonstrates that the accused had no value for human life. This too demonstrates extreme mental perversion not worthy of human condonation. The manner in which the child was murdered, and the approach and method adopted by the accused, disclose the traits of outrageous criminality in the behaviour of the accused. This approach of the accused reveals a brutal mindset of the highest order. All the aforesaid aggravating circumstances are liable to be considered in the background of the fact that the murder was committed, not of a stranger, but of a child with whom the accused was acquainted. This conduct of the accused-appellant, places the facts of this case in the abnormal and heinous category. The choice of kidnapping the particular child for ransom, was well planned and consciously motivated. Purposefully killing the sole male child, has grave repercussions for the parents of the deceased. Agony for parents for the loss of their only male child, who would have carried further the family lineage, and is expected to see them through their old age, is unfathomable. Extreme misery caused to the aggrieved party, certainly adds to the aggravating circumstances. As against the aforesaid aggravating circumstances, not a single mitigating circumstance was pointed out by the accused. Therefore, the death penalty

imposed upon the accused-appellant by the High Court is affirmed. [Paras 30 and 31] [63-B-C & D-H; 64-B-H]

Vikram Singh and Ors. vs. State of Punjab **2010 (3) SCC 56: 2010 (2) SCR 22 – relied on.**

Haresh Mohandas Rajput vs. State of Maharashtra **2011(12) SCC 56: 2011 (14) SCR 921;** *Ramnaresh and Ors. vs. State of Chhattisgarh* **2012 (3) SCR 630: 2012 (4) SCC 257;** *Brajendra Singh vs. State of M.P.* **2012 (4) SCC 289: 2012 (3) SCR 599 – referred to.**

Case Law Reference:

1985 (1) SCR 88	**referred to**	**Para 19**
1997 (1) Suppl. SCR 96	**referred to**	**Para 19**
2001 (2) SCR 644	**relied on**	**Paras 19, 26**
2011 (14) SCR 921	**referred to**	**Para 29**
2012 (4) SCC 257	**referred to**	**Para 29**
2012 (3) SCR 599	**referred to**	**Para 29**
2010 (2) SCR 22	**relied on**	**Para 31**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 300-301 of 2011.

From the Judgment & Order dated 30.09.2010 of the High Court of Judicature at Madras in R.T. No. 2 of 2010 and Crl. A. No. 525 of 2010.

K.K. Mani, Abhishek Krishna for the Appellant.

Yogesh Kanna, A. Santha Kumaran, S. Thananjayan for the Respondent.

The Judgment of the Court was delivered by

A **JAGDISH SINGH KHEHAR, J.** 1. On 27.7.2007 Suresh aged 7 years, who lived with his mother Maheshwari (PW1) at Karkudal village in Vridhachalam Taluk, left his residence in the morning as usual, at about 8 a.m. to attend his school at Vridhachalam. Suresh was a class II student at Sakthi B Matriculation School at Vridhachalam. Each morning, he along with other students from the same village, would leave for school, in a school van at about 8.00 a.m. The same school van would bring them back in the afternoon at about 4.30 p.m. On 27.7.2009, Suresh did not return home. Maheshwari (PW1) C his mother got worried and made inquiries. She inquired from Kamali (PW2), and from another student from the same village, who used to travel to school in the same van with Suresh. Kamali (PW2) told Maheshwari (PW1) that a man was waiting alongside a motorcycle when the school van returned to D Karkudal village on 27.7.2009. The man informed Suresh that his mother and grandmother were not well. According to Kamali (PW2), the man told Suresh, that he had been asked by Maheshwari (PW1) to bring Suresh to the hospital. Based on the aforesaid assertions, Suresh had accompanied the man on his motorcycle. After having inquired from Kamali (PW2), E Maheshwari (PW1) sought information from another student Malai, but could not gather any positive information from her. Thereafter, she was informed by Kurinji Selvan (PW3) belonging to the same village, that he had seen Suresh disembarking from the Sakthi school van on 27.7.2009 at F about 4.30 p.m. He also told her, that a man standing alongside a motorcycle, had called out to Suresh and had taken Suresh along with him on his motorcycle. Kurinji Selvan (PW3) advised Maheshwari (PW1) to approach the police. Maheshwari (PW1) accordingly proceeded to Police Station, Kammapuram, to G register a complaint. The said complaint was registered at 7 p.m. on the date of occurrence, i.e., on 27.7.2009 itself. Based thereon, Crime no.106 of 2009 was registered under Section 366 of the Indian Penal Code.

H 2. At about 9.30 p.m. on the same day, i.e., on 27.7.2009

Maheshwari (PW1) received a call on her mobile phone. The caller identified himself as Shankar. The caller demanded a ransom of Rs.5 lakhs for the release of Suresh. Immediately after the receipt of the aforesaid call, Maheshwari (PW1) again rushed to the Police Station Kammapuram, and informed the Station House Officer about the call received by her.

3. The investigating officer called Kasinathan (PW13), the then Village Administrative Officer of village Karkudal, Taluka Vridhachalam, to the Vridhachalam Police Station. Having taken permission from the Tehsildar, Kasinathan (PW13) and his assistant went to Vridhachalam. From there, they went to the house of the accused, and in the presence of Kasinathan (PW13), the two accused were apprehended. In the presence of Kasinathan (PW13), the accused made confessional statements, leading to the recovery of three mobile phone sets, two of which had sim cards. The accused also acknowledged, having strangulated Suresh when ransom was not paid for his release. The accused also confessed, that they had put the dead body of Suresh in a gunny bag, and thereafter, had thrown it in the Meerankulam tank. Based on the aforesaid confessional statement, in the presence of Kasinathan (PW13), and on the pointing out of the accused, the dead body of Suresh was retrieved by personnel belonging to the fire service squad. The dead body of Suresh was found in a gunny bag which had been fished out of the above-mentioned tank. The accused also made statements to the police, whereupon the school bag, books and slate belonging to the deceased Suresh came to be recovered from the residence of the accused, in the presence of Kasinathan (PW13).

4. During the course of the investigation emerging out of the mobile phones recovered from the accused, the police identified Saraswathi (PW8), who affirmed that she had received a phone call from a person who called himself Shankar, on 27.7.2009 at about 9 p.m. She also disclosed, that the caller had enquired from her about the phone number of

A Maheshwari (PW1). Saraswathi (PW8) had required the caller, to ring her up after sometime. She had received another call from Shankar and had furnished the mobile phone number of Maheshwari (PW1) to him. Consequent upon the gathering of the above information, the accused were charged under
B Sections 364-A (for kidnapping for ransom), 302 (murder) and 201 (for having caused disappearance of evidence) of the Indian Penal Code. The trial of the case was committed to the Court of Session, whereupon, the prosecution examined 19 prosecution witnesses. The prosecution also relied on 18
C exhibits and 10 material objects. After the statements of the prosecution witnesses had been recorded, the statements of the accused were recorded under Section 313 of the Code of Criminal Procedure. Despite having been afforded an opportunity, the accused did not produce any witness in their
D own defence.

5. On the culmination of the trial, the accused-appellant Sunder @ Sunderajan was found guilty and convicted of the offences under Sections 364-A, 302 and 201 of the Indian Penal Code by the Sessions Judge, Mahila Court, Cuddalore.
E For the first two offences, the accused-appellant was awarded the death penalty along with fine of Rs.1,000/- each. For the third offence, the accused-appellant was awarded 7 years rigorous imprisonment along with a fine of Rs.1,000/-. Vide RT no.2 of 2010, the matter was placed before the High Court of
F Judicature at Madras (hereinafter referred to as, the High Court), for confirmation of the death sentence imposed on the accused-appellant. The accused-appellant independently of the aforesaid, filed Criminal Appeal no.525 of 2010 before the High Court, for assailing the order of his conviction. Vide its
G common judgment dated 30.9.2010, the High Court confirmed the death sentence imposed on the accused-appellant and simultaneously dismissed the appeal preferred by Sunder @ Sundararajan. Thus viewed, the judgment rendered by the Sessions Judge, Mahila Court at Cuddalore dated 30.7.2010
H was affirmed by the High Court vis-à-vis the accused-appellant.

6. The Court of Session acquitted Balayee, accused no. 2. It is not a matter of dispute before us, that the acquittal of Balayae, was not contested by the prosecution by preferring any appeal. It is therefore apparent, that for all intents and purposes accused no.2 stands discharged from the matter on hand.

7. It is not necessary to deal with the statements of all the witnesses, in so far as the instant controversy is concerned. Even though the prosecution had rested its case, on circumstantial evidence alone, it would be necessary to refer to the statements of a few witnesses so as to deal with the submissions advanced on behalf of the accused-appellant. The deposition of the relevant witnesses is accordingly being summarized hereinafter.

8. Maheshwari (PW1) was the mother of the deceased Suresh. It was Maheshwari (PW1) who had lodged the First Information Report at Police Station, Kammapuram, on 27.7.2009. In her statement before the trial court, she asserted that she had four children, three daughters and one son. Suresh was her only son. She deposed, that she was running all domestic affairs of her household at Village Karkudal in Taluk Vridhachalam by herself, as her husband had gone abroad to earn for the family. She affirmed, that she was also engaged in agriculture. She also asserted, that her son Suresh was studying in Class II at the Sakthi Matriculation School, Vridhachalam. He used to go to school, by the school van, and used to return along with other children from school, at about 4.30 p.m. As usual, on 27.7.2009, he had gone to school in the school van at about 8.00 a.m. but since he had not returned at 4.30 p.m., she had gone out to search for him. She had enquired from other students who used to travel in the same school van along with her son. Kamali (PW2) informed her that her son Suresh had got down from the school van on 27.7.2009, in her company. Kamali (PW2) also informed her, that as soon as Suresh got down from the school van on

A 27.7.2009, the accused-appellant who was standing near the neem tree along side his motorcycle, called Suresh by his name, and told him that his mother and grandmother were ill, and had required him to bring Suresh to them, on his motorcycle. At the man's asking, according to Kamali (PW2), B Suresh sat on the man's motorcycle, and was taken away. Maheshwari (PW1) then enquired from Malai, another student who used to travel by the same school van. Malai, however, did not remember about the presence of Suresh. Finally, Maheshwari (PW1) was told by Kurinji Selvan (PW3), a co- C villager living in Karkudal village, that he had seen Suresh getting down from the school van and being taken away by a man on his motorcycle. Kurinji Selvan (PW3) advised Maheshwari (PW1), to report the matter to the police. Based on the aforesaid inputs, Maheshwari (PW1) deposed, that she D had immediately gone to Police Station, Kammapuram, and had lodged a report at 7.00 p.m. Having returned to her village, Maheshwari (PW1) claims to have received a call on her mobile phone at about 9.30 p.m. According to her, the caller was the accused-appellant. The accused-appellant demanded a sum of Rs.5,00,000/- for the safe release of her son Suresh. E Consequent upon the receipt of the aforesaid phone call, Maheshwari (PW1) deposed, that she had returned to the Police Station, Kammapuram, to apprise the police of the aforesaid development. According to Maheshwari (PW1), the police informed her on 30.7.2009, that the body of her son had F been recovered from a lake and had been brought to Vridhachalam Hospital. In her statement, she affirmed having identified the clothes, shoes and socks as also neck tie of her son Suresh. She also identified his school bag which had the inscription 'JAYOTH'. She also identified his books as also the G black colour slate having a green colour beeding around it, as that of her son Suresh. She also identified the body of her son when she set her eyes on him at Vridhachalam Hospital. During her cross-examination, she deposed that she had not approached Kurinji Selvan (PW3). It was Kurindi Selvan H (PW3), who had approached her on seeing her crying. When

she disclosed to Kurinji Selvan (PW3) about her missing son, he had informed her that he had seen her son Suresh disembarking from the school van whereafter, Suresh had gone away with a man on a motorcycle.

9. Kamali entered appearance before the trial court as PW2. She asserted that she was (at the time of her deposition) studying in the 6th standard at Sakthi Matriculation School, Vridhachalam. She affirmed that Suresh, the deceased, was known to her. She deposed that on 27.7.2009, she had gone to her school in the school van, wherein there were other children from the village including Suresh. She also deposed that she along with Suresh returned to Karkudal Village on 27.7.2009, at about 3.00 p.m. in the school van. Suresh had got down from the school van, along with the other children. When the van had arrived at the village, she had seen a man standing along side a motorcycle. After Suresh got down from the school van, the man beckoned at Suresh. He informed Suresh, that his mother and grandmother were ill, and that Suresh's mother had asked him, to bring Suresh to the hospital. She deposed that when she reached her house, Maheshwari (PW1) had inquired about the whereabouts of her son, from her. She had informed Maheshwari (PW1) the factual position as narrated above. She also asserted, that she was questioned by the police during the course whereof she had informed the police, that she could identify the accused. She acknowledged that an identification parade was conducted by the Judicial Magistrate at Cuddalore Central Prison, where she had identified the accused-appellant, namely, the man who had taken Suresh on the motorcycle on 27.7.2009, when they had returned from school.

10. Kurinji Selvan deposed before the trial court as PW3. He stated that Maheshwari (PW1), Kamali (PW2), as also the deceased Suresh, were known to him. He stated that on 27.7.2009 at about 4.30 p.m. when he was going towards his paddy field on his motorcycle, the Sakthi School van had

A dropped the school children of his village, at the corner of the river path. He had also stopped his motorcycle, there. He had seen the accused-appellant standing near the neem tree along side a motorcycle. He identified the nature, as also, the colour of the clothes worn by the accused-appellant. He confirmed, that B the accused–appellant had called out to Suresh by his name, whereupon, Suresh had gone up to him. He deposed, that he had seen Suresh being taken away by the man, on his motorcycle. He further deposed, that when he was returning from his paddy field at about 5.30 p.m., he had seen C Maheshwari (PW1) weeping. When he enquired from her, she told him, that her son was missing. Kurinji Selvan (PW3) affirmed that he had informed her, that a man had taken her son away on a motorcycle. He also advised Maheshwari (PW1) to lodge a report with the police. He further deposed, that the D body of a child was recovered on 30.7.2009 and he was informed about the same at about 8.00 a.m. The body had been recovered from Meerankulam tank in Vuchipullaiyar Vayalapadi village. Having received the aforesaid information, he had proceeded to the Meerankulam tank where he identified Suresh, to the Inspector. He further deposed, that an E identification parade was conducted at the Cuddalore Central Prison, in presence of the Judicial Magistrate. He affirmed, that he had identified the accused-appellant as the person who had taken Suresh, when Suresh had disembarked from the school van on 27.7.2009. He also asserted, that he had identified the F motorcycle, when he was shown two motorcycles, as the one on which the accused-appellant had taken Suresh away on 27.7.2009.

11. The statement of M. Santhanam was recorded as G PW6. He affirmed that he was the Correspondent and Principal of Sakthi Matriculation School. He also affirmed that Suresh was studying in his school in the 2nd standard. He confirmed that Suresh had attended the school on 27.7.2009. He produced the attendance register, wherein the presence of Suresh was H duly recorded.

12. Saraswathi (PW8) appeared before the trial court and deposed, that on 27.7.2009, she had received a call on her mobile phone bearing No.9943020435 at about 9.00 p.m. The caller identified himself as Sankar and asked for the phone number of Maheshwari (PW1). She stated that she had informed the caller, to ring her after a little while, by which time she would retrieve the phone number of Maheshwari (PW1). Accordingly, the caller again spoke to her on her mobile phone, whereupon, she had conveyed the phone number of Maheshwari (PW1), to him.

13. A. Bashir, Judicial Magistrate No.1 appeared before the trial court as PW10. He deposed that he had gone to the Cuddalore Central Prison on 25.8.2009 to conduct the identification parade. He had taken his office assistant along with him. He had selected co-prisoners similar to the accused-appellant to participate in the identification parade. Persons selected by him were of the same height, weight, colour and beared. Out of these eight persons selected by him, both Kamali (PW2) and Kurinji Selvan (PW3) had identified the accused-appellant, in three different combinations.

14. Sunil (PW11), working as legal officer of the Vodafone Company, during the course of his deposition before the trial court affirmed, that he was required by the Inspector of Police, Vridhachalam, to provide him with the details of Vodafone cell phone numbers 9946205961 and 9943020435 for the period from 25.7.2009 to 28.7.2009. He affirmed that he had taken the aforesaid details from the computer and given them to the Inspector of Police. He confirmed that three calls had been made from sim number 9946205961, upto 9.39 p.m. on 27.7.2009. He also affirmed, that phone number 9943020435 was in the name of Saraswathi (PW3).

15. Dr. Kathirvel appeared before the trial court as PW12. He had conducted the post mortem on the dead body of Suresh on 30.7.2009. The dead body was identified by the police Constable, in the mortuary. He asserted that the body

A was in a decomposed state. According to his analysis, the child had died within 36 to 48 hours prior to the post mortem examination. According to the opinion tendered by him, suffocation was the cause of the death of the child. And that, the child, in his opinion, had died prior to his being drowned in
B the water.

16. Kasinathan (PW13), the Village Administrative officer, Karkudal, while appearing before the trial court confirmed, that he was known to the accused-appellant. He deposed that on 30.7.2009, he was summoned from his residence by the
C Inspector of Police, Vridhachalam at about 4.30 p.m. Thereupon, he had gone to the Vridhachalam Police Station. The Inspector of Police had required Kasinathan (PW13) to be a police witness, whereupon, he had obtained permission from the Tahsildar, for being a police witness. He was taken to the
D house of the accused-appellant in a police jeep. They reached his house at 7.00 a.m. on 30.7.3009. As soon as the accused saw the police jeep, both of them fled from the spot. Whilst running away, the accused-appellant had fallen down, and thereupon, the police personnel had apprehended him. Women
E constables had apprehended Balayee (A-2). The accused-appellant had made a confessional statement to the police in the presence of Kasinathan (PW13). The accused-appellant had handed over three mobile phones to the Police Inspector in his presence. Only two of the said phones had sim cards.
F The accused-appellant had also produced the motorcycle, on which he had taken away Suresh, when he had got down from the school van at village Karkudal on 27.7.2009. The accused-appellant also produced a school bag containing a slate and two books from his residence in his presence. Kasinathan
G (PW13) admitted having signed the "mahazar" when recoveries of the aforesaid articles were made from the accused-appellant on 30.7.2009. Based on the information furnished by the accused-appellant, Kasinathan (PW13) acknowledged, that he had gone to the Meerankulam tank in Vayalapadi village, in the
H police jeep, along with the other police personnel. When the

gunny bag containing the dead body of the child was retrieved from the tank, the accused-appellant had identified the same as Suresh. He had also signed on the "mahazar" prepared on the recovery of the gunny bag, containing the dead body of Suresh.

17. It is not necessary to refer to the statement of other witnesses except the fact that the call details produced by Sunil (PW11) indicate that two calls were made from the Mobile Phone recovered from the accused- appellant to Saraswathi (PW8). The said calls were made at 9.22 p.m. and 9.25 p.m. respectively. The call details further indicate that from the same number, a call was made to Maheshwari (PW1) at 9.39 p.m.

18. It is on the basis of the aforesaid oral and documentary evidence that we shall endeavour to determine the issues canvassed at the hands of the learned counsel for the appellant.

19. The solitary contention advanced by the learned counsel for the appellant on the merits of the case was, that the prosecution had ventured to substantiate the allegations levelled against the appellant only on the basis of circumstantial evidence. It was sought to be pointed out, that in the absence of direct evidence, the slightest of a discrepancy, depicting the possibility of two views would exculpate the accused of guilt, on the basis of benefit of doubt. Before dealing with the circumstantial evidence relied upon against the appellant, learned counsel invited our attention to the legal position declared by this Court, on the standard of proof required for recording a conviction, on the basis of circumstantial evidence. In this behalf, learned counsel for the appellant first of all placed reliance on *Sharad Birdhichand Sarda Vs. State of Maharashtra,* (1984) 4 SCC 116. It was pointed out, that in the instant judgment this Court laid down the golden principles of standard of proof, required in a case sought to be established on the basis of circumstantial evidence. In this behalf reliance was placed on the following observations:-

A "152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt
B is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be
C proved' and 'must be or should be proved as was held by this Court in *Shivaji Sahebrao Bobade v. State of Maharashtra* : 1973CriLJ1783 where the following observations were made:

D Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict, and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

E (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

F (3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

G (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

H

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence." A

Learned counsel for the appellant thereafter placed reliance on thedecision rendered in *Tanviben Pankajkumar Divetia Vs. State of Gujarat,* (1997) 7 SCC 156. He placed reliance on the following observations recorded therein:- B

"45. The principle for basing a conviction on the basis of circumstantial evidences has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to make the place of legal proof for some times, unconsciously it may happen to be a short step between moral certainty and legal proof. C D E F G H

A It has been indicated by this Court that there is a long mental distance between 'may be true' and 'must be true' and the same divides conjectures from sure conclusions. (*Jaharlal Das v. State of Orissa :* 1991 3 SCC 27)

B 46. We may indicate here that more the suspicious circumstances, more care and caution are required to be taken otherwise the suspicious circumstances may unwittingly enter the adjudicating thought process of the Court even C though the suspicious circumstances had not been clearly established by clinching and reliable evidences. It appears to us that in this case, the decision of the Court in convicting the appellant has been the result of the suspicious circumstances D entering the adjudicating thought process of the Court."

Learned counsel also placed reliance on *Sucha Singh Vs. State of Punjab,* (2001) 4 SCC 375. The instant judgment was E relied upon in order to support the contention, that circumstantial evidence could not be relied upon, where there was any vacuum in evidence. It was pointed out therefrom, that this Court has held, that each aspect of the criminal act alleged against the accused, had to be established on the basis of F material of a nature, which would be sufficient to lead to the inference that there could be no other view possible, than the one arrived at on the basis of the said circumstantial evidence. In this behalf, learned counsel for the appellant placed reliance on the following observations recorded in the afore-cited G judgment.

"19. Learned senior counsel contended that Section 106 of the Evidence Act is not intended for the purpose of filling up the vacuum in prosecution evidence. He invited our attention to the H observations made by the Privy Council in *Attygalle*

Vs. R AIR 1936 PC 169, and also in *Stephen Seneviratne vs. The King* : AIR 1936 PC 289. In fact the observations contained therein were considered by this Court in an early decision authored by Vivian Bose, J, in *Shambhu Nath Mehra vs. State of Ajmer,* AIR 1956 SC 404. The statement of law made by the learned Judge in the aforesaid decision has been extracted by us in *State of West Bengal vs. Mir Mohammad Omar,* 2000 (8) SCC 382. It is useful to extract a further portion of the observation made by us in the aforesaid decision:

"33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case."

20. We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where prosecution has succeeded in proving facts for which a reasonable inference can be

A drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference."

B

20. Based on the aforesaid judgments, the first contention advanced on behalf of the accused-appellant was, that there was no material produced by the prosecution to establish the factum of the commission of the murder of the deceased Suresh (at the hands of the accused-appellant). According to C the learned counsel, the aforesaid vacuum could not be filled up on the basis of any presumption.

21. We have considered the first contention advanced by the learned counsel for the appellant, on the basis of the D contention noticed in the foregoing paragraph. In the veiled submission advanced in the hands of the learned counsel for the appellant, we find an implied acknowledgement, namely, that learned counsel acknowledges, that the prosecution had placed sufficient material on the record of the case to E substantiate the factum of kidnapping of the deceased Suresh, at the hands of the accused-appellant. Be there as it may, without drawing any such inference, we would still endeavour to determine, whether the prosecution had been successful in establishing the factum of kidnapping of the deceased Suresh, F at the hands of the accused-appellant. In so far as the instant aspect of the matter is concerned, reference may first be made to the statement of Saraswathi, PW-8 wherein she affirmed that on 27.7.2009, at about 9 p.m., when she was at her residence, she had received a call on her mobile phone bearing number G 9943020435. The caller identified himself as Shankar. She deposed, that the caller had inquired from her about the phone number of Maheshwari (PW1). She stated, that she had responded to the said Shankar by asking him to call her after sometime, and in the meanwhile, she (Saraswathi) would gather the phone number of Maheshwari (PW1). Soon after the first H

call, Saraswathi (PW8) testified, that she received a second call from the same person. On this occasion, Saraswathi (PW-8) acknowledged having provided the caller with the mobile phone number of Maheshwari (PW1). Through independent evidence the prosecution was in a position to establish that the first of the aforesaid two calls, were received by Saraswathi (PW8) at 9.22 p.m., and the second one at 9.25 p.m. The caller, on having obtained the mobile phone number of Maheshwari (PW1) then called her (Maheshwari – PW1) on the mobile phone number supplied by Saraswathi (PW8). On the basis of independent evidence the prosecution has also been able to establish, that Maheshwari, (PW1) received the instant phone call at 9.39 p.m., from the same phone number from which Saraswathi, PW-8 had received two calls. In her statement, Maheshwari (PW1) asserted, that the caller demanded a ransom of Rs.5,00,000/- for the safe return of her son, Suresh. At this juncture, as per her statement, Maheshwari (PW1) again visited the police station to apprise the police of the said development. The aforesaid material, was one of the leads, which the police had adopted in identifying the accused-appellant.

22. Beside the aforesaid, the prosecution placed reliance on the deposition of Kamali (PW2), for identifying the appellant as the kidnapper of the deceased, Suresh. In her statement Kamali (PW-2) affirmed, that she along with the deceased Suresh had returned to their village Karkudal on 27.7.2009 at about 4.30 p.m. in the school van. When they alighted from the school van, as per the deposition of Kamali (PW2), the accused- appellant was seen by her, standing besides his motor-cycle. The accused- appellant, as per the testimony of Kamali (PW2), had gestured towards Suresh with his hand. The deceased Suresh and Kamali (PW2) had accordingly gone to the accused-appellant. The accused-appellant had told Suresh, that his mother and grandmother were unwell, and he had been asked by his mother to bring him (Suresh) to the hospital. Thereafter, according to Kamali (PW2), the accused-appellant

had taken away the deceased Suresh, on his motor-cycle. It would be relevant to indicate that Kamali (PW2) duly identified the accused-appellant in an identification parade, conducted under the supervision of A. Bashir, Judicial Magistrate (PW10), on 25.8.2009 at Cuddalore Central Prison. According to the testimony of A. Bashir, Judicial Magistrate, Kamali PW-2 correctly identified the accused- appellant. The aforesaid evidence was the second basis of identifying the accused-appellant as the person, who had kidnapped the deceased Suresh.

23. The deposition of Kurinji Selvan (PW3) has already been narrated hereinabove. Kurinji Selvan (PW3) had seen Suresh disembarking from the school van on 27.7.2009 at about 4.30 p.m., when the said van had returned to village Karkudal. Kurinji Selvan (PW3) affirmed, that he had also seen the accused-appellant waiting for the arrival of the school van under a neem tree alongside his motorcycle. Kurinji Selvan (PW3) also deposed, that he had seen the accused-appellant taking away Suresh, on his motorcycle. On the date of the incident itself, he had informed Maheshwari (PW1), that Suresh had been taken away by a man on his motorcycle. In the same manner as Kamali (PW2) had identified the accused-appellant in an identification parade, Kurinji Selvan (PW3) had also participated in the identification parade conducted at Cuddalore Central Prison on 25.8.2009. He had also identified the accused-appellant in the presence of the Judicial Magistrate. The statement of Kurinji Selvan (PW3) constitutes the third basis of identifying the accused-appellant as the man who had taken away Suresh on his motorcycle on 27.7.2009.

24. Based on the evidence noticed in the three preceding paragraphs, there can be no doubt whatsoever, that the accused-appellant had been identified through cogent evidence as the person who had taken away Suresh when he disembarked from school van on 27.7.2009. The factum of

kidnapping of Suresh by the accused-appellant, therefore, stands duly established.

25. The material question to be determined is, whether the aforesaid circumstantial evidence is sufficient to further infer, that the accused- appellant had committed the murder of Suresh. According to the learned counsel for the appellant, there is no evidence whatsoever, on the record of the case, showing the participation of the accused-appellant in any of the acts which led to the death of Suresh. It was, therefore, the submission of the learned counsel for the appellant, that even though the accused-appellant may be held guilty of having kidnapped Suresh, since it had not been established that he had committed the murder of Suresh, he cannot be held guilty of murder in the facts of this case.

26. Having given our thoughtful consideration to the submission advanced at the hands of the learned counsel for the appellant, we are of the view, that the instant submission is wholly misplaced and fallacious. Insofar as the instant aspect of the matter is concerned, reference may be made to the judgment rendered by this Court in *Sucha Singh's* case (supra), wherein it was held as under:-

> "21. We are mindful of what is frequently happening during these days. Persons are kidnapped in the sight of others and are forcibly taken out of the sight of all others and later the kidnapped are killed. If a legal principle is to be laid down that for the murder of such kidnapped there should necessarily be independent evidence apart from the circumstances enumerated above, we would be providing a safe jurisprudence for protecting such criminal activities. India cannot now afford to lay down any such legal principle insulating the marauders of their activities of killing kidnapped innocents outside the ken of others."

A A perusal of the aforesaid determination would reveal, that having proved the factum of kidnapping, the inference of the consequential murder of the kidnapped person, is liable to be presumed. We are one with the aforesaid conclusion. The logic for the aforesaid inference is simple. Once the person B concerned has been shown as having been kidnapped, the onus would shift on the kidnapper to establish how and when the kidnapped individual came to be released from his custody. In the absence of any such proof produced by the kidnapper, it would be natural to infer/presume, that the kidnapped person C continued in the kidnapper's custody, till he was eliminated. The instant conclusion would also emerge from Section 106 of the Indian Evidence Act, 1872 which is being extracted hereunder :

> **"106 - Burden of proving fact especially within** D **knowledge—**.When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.
>
> **Illustrations**
>
> E
>
> (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
>
> (b) A is charged with travelling on a railway without a ticket. F The burden of proving that he had a ticket is on him."

27. Since in the facts and circumstances of this case, it has been duly established, that Suresh had been kidnapped by the accused-appellant; the accused-appellant has not been G able to produce any material on the record of this case to show the release of Suresh from his custody. Section 106 of the Indian Evidence Act, 1872 places the onus on him. In the absence of any such material produced by the accused-appellant, it has to be accepted, that the custody of Suresh had H remained with the accused-appellant, till he was murdered. The

motive/reason for the accused-appellant, for taking the extreme step was, that ransom as demanded by him, had not been paid. We are therefore, satisfied, that in the facts and circumstances of the present case, there is sufficient evidence on the record of this case, on the basis whereof even the factum of murder of Suresh at the hands of the accused-appellant stands established.

28. We may now refer to some further material on the record of the case, to substantiate our aforesaid conclusion. In this behalf, it would be relevant to mention, that when the accused-appellant was detained on 30.7.2009, he had made a confessional statement in the presence of Kasinathan (PW13) stating, that he had strangulated Suresh to death, whereupon his body was put into a gunny bag and thrown into the Meerankulam tank. It was thereafter, on the pointing out of the accused-appellant, that the body of Suresh was recovered from the Meerankulam tank. It was found in a gunny bag, as stated by the accused-appellant. Dr. Kathirvel (PW12) concluded after holding the post mortem examination of the dead body of Suresh, that Suresh had died on account of suffocation, prior to his having been drowned. The instant evidence clearly nails the accused- appellant as the perpetrator of the murder of Suresh. Moreover, the statement of Kasinathan (PW13) further reveals that the school bag, books and slate of Suresh were recovered from the residence of the accused-appellant. These articles were confirmed by Maheshwari (PW1) as belonging to Suresh. In view of the factual and legal position dealt with hereinabove, we have no doubt in our mind, that the prosecution had produced sufficient material to establish not only the kidnapping of Suresh, but also his murder at the hands of the accused-appellant.

29. Besides the submission advanced on the merits of the controversy, learned counsel for the accused-appellant also assailed the confirmation by the High Court of the death sentence imposed by the trial court. During the course of

A hearing, it was the vehement contention of the learned counsel for the accused-appellant, that infliction of life imprisonment, in the facts and circumstances of this case, would have satisfied the ends of justice. It was also the contention of the learned counsel for the accused- appellant, that the facts and
B circumstances of this case are not sufficient to categorize the present case as a 'rarest of a rare case', wherein only the death penalty would meet the ends of justice. In order to support the aforesaid contention, learned counsel for the accused-appellant, in the first instance, placed reliance on a recent
C judgment rendered by this Court in *Haresh Mohandas Rajput Vs. State of Maharashtra,* (2011) 12 SCC 56, wherein, having taken into consideration earlier judgments, this Court delineated the circumstances in which the death penalty could be imposed. Reliance was placed on the following observations recorded
D therein:-

"Death Sentence – When Warranted:

"18. The guidelines laid down in *Bachan Singh v. State of Punjab,* (1980) 2 SCC 684, may be culled out
E as under:

(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
F *circumstances of the 'offender' also require to be taken into consideration alongwith the circumstances of the 'crime'.*

(iii) Life imprisonment is the rule and death sentence
G *is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of*
H

imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating circumstances have to be accorded full weightage and just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

19. In *Machhi Singh and Ors. v. State of Punjab,* (1983) 2 SCC 684, this Court expanded the "rarest of rare" formulation beyond the aggravating factors listed in Bachan Singh to cases where the "collective conscience" of a community is so shocked that it will expect the holders of the judicial powers centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, such a penalty can be inflicted. But the Bench in this case underlined that full weightage must be accorded to the mitigating circumstances in a case and a just balance had to be struck between aggravating and mitigating circumstances.

20. "The rarest of the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful co-existence of the society. The crime may be heinous or brutal but may not be in the category of "the rarest of the rare case". There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. The accused may be a menace to the society and

A would continue to be so, threatening its peaceful and harmonious co-existence. The manner in which the crime is committed must be such that it may result in intense and extreme indignation of the community and shock the collective conscience of
B the society. Where an accused does not act on any spur-of-the-moment provocation and indulges himself in a deliberately planned crime and meticulously executes it, the death sentence may be the most appropriate punishment for such a ghastly
C crime. The death sentence may be warranted where the victims are innocent children and helpless women. Thus, in case the crime is committed in a most cruel and inhuman manner which is an extremely brutal, grotesque, diabolical, revolting and dastardly manner, where his act
D affects the entire moral fiber of the society, e.g. crime committed for power or political ambition or indulging in organized criminal activities, death sentence should be awarded. (See: *C. Muniappan and Ors. v. State of Tamil Nadu,* AIR 2010 SC
E 3718; *Rabindra Kumar Pal alias Dara Singh v. Republic of India,* (2011) 2 SCC 490; *Surendra Koli v. State of U.P. and Ors.,* (2011) 4 SCC 80; *Mohd. Mannan (supra); and Sudam v. State of Maharashtra,* (2011) 7 SCC 125).

F

21. Thus, it is evident that for awarding the death sentence, there must be existence of aggravating circumstances and the consequential absence of mitigating circumstances. As to whether death
G sentence should be awarded, would depend upon the factual scenario of the case in hand."

Reliance was also placed, on the decision of this Court in *Ramnaresh & Ors. Vs. State of Chhattisgarh,* (2012) 4 SCC 257. Insofar as the instant judgment is concerned, learned
H counsel relied on the following observations:-

"The death sentence and principles governing its conversion to life imprisonment

56. Despite the transformation of approach and radical changes in principles of sentencing across the world, it has not been possible to put to rest the conflicting views on sentencing policy. The sentencing policy being a significant and inseparable facet of criminal jurisprudence, has been inviting the attention of the Courts for providing certainty and greater clarity to it.

57. Capital punishment has been a subject matter of great social and judicial discussion and catechism. From whatever point of view it is examined, one undisputable statement of law follows that it is neither possible nor prudent to state any universal formula which would be applicable to all the cases of criminology where capital punishment has been prescribed. It shall always depend upon the facts and circumstances of a given case. This Court has stated various legal principles which would be precepts on exercise of judicial discretion in cases where the issue is whether the capital punishment should or should not be awarded.

58. The law requires the Court to record special reasons for awarding such sentence. The Court, therefore, has to consider matters like nature of the offence, how and under what circumstances it was committed, the extent of brutality with which the offence was committed, the motive for the offence, any provocative or aggravating circumstances at the time of commission of the crime, the possibility of the convict being reformed or rehabilitated, adequacy of the sentence of life imprisonment and other attendant circumstances. These factors

A cannot be similar or identical in any two given cases.

59. Thus, it is imperative for the Court to examine each case on its own facts, in light of the enunciated principles. It is only upon application of these principles to the facts of a given case that the Court can arrive at a final conclusion whether the case in hand is one of the 'rarest of rare' cases and imposition of death penalty alone shall serve the ends of justice. Further, the Court would also keep in mind that if such a punishment alone would serve the purpose of the judgment, in its being sufficiently punitive and purposefully preventive.

xxx xxx xxx xxx

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

73. Most of the heinous crimes under the IPC are punishable by death penalty or life imprisonment. That by itself does not suggest that in all such offences, penalty of death alone should be awarded. We must notice, even at the cost of repetition, that in such cases awarding of life imprisonment would be a rule, while 'death' would be the exception. The term 'rarest of rare' case which is the consistent determinative rule declared by this Court, itself suggests that it has to be an exceptional case.

74. The life of a particular individual cannot be taken away except according to the procedure established by

law and that is the constitutional mandate. The law contemplates recording of special reasons and, therefore, the expression 'special' has to be given a definite meaning and connotation. 'Special reasons' in contra-distinction to 'reasons' simpliciter conveys the legislative mandate of putting a restriction on exercise of judicial discretion by placing the requirement of special reasons.

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

76. The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in the case of *Bachan Singh* (supra) and thereafter, in the case of *Machhi Singh* (supra). The aforesaid judgments, primarily dissect these principles into two different compartments - 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) Cr.P.C.

A Aggravating Circumstances:

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

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

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

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

(5) Hired killings.

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

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

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

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

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

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

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

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

Mitigating Circumstances:

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

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

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

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

A (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
B 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
C 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.
D

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

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

F 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.

G (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.

H

(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 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

A 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 B accused deserves keeping in view the impact on the society at large.

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

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

F Last of all, reliance was placed on the judgment rendered by this Court in *Brajendra Singh Vs. State of Madhya Pradesh,* (2012) 4 SCC 289, wherein, this Court having followed the decision rendered in *Ramnaresh & Ors. Vs. State of Chhattisgarh* (cited supra), further held as under:-

G

"38. First and the foremost, this Court has not only to examine whether the instant case falls under the category of 'rarest of rare' cases but also whether any other sentence, except death penalty, would be

H

inadequate in the facts and circumstances of the present case. A

39. We have already held the Appellant guilty of an offence under Section 302, Indian Penal Code for committing the murder of his three children and the wife. All this happened in the spur of moment, but, of course, the incident must have continued for a while, during which period the deceased Aradhna received burn injuries as well as the fatal injury on the throat. All the three children received injuries with a knife similar to that of the deceased Aradhna. But one circumstance which cannot be ignored by this Court is that the prosecution witnesses have clearly stated that there was a rift between the couple on account of her talking to Liladhar Tiwari, the neighbour, PW10. Even if some credence is given to the statement made by the accused under Section 313 Cr.P.C. wherein he stated that he had seen the deceased and PW10 in a compromising position in the house of PW10, it also supports the allegation of the prosecution that there was rift between the husband and wife on account of PW10. It is also clearly exhibited in the FIR (P-27) that the accused had forbidden his wife from talking to PW10, which despite such warning she persisted with and, therefore, he had committed the murder of her wife along with the children." B C D E F

30. We are one with the learned counsel for the accused-appellant, on the parameters prescribed by this Court, for inflicting the death sentence. Rather than deliberating upon the matter in any further detail, we would venture to apply the parameters laid down in the judgments relied upon by the learned counsel for the accused-appellant, to determine whether or not life imprisonment or in the alternative the death penalty, would be justified in the facts and circumstances of the present G H

case. We may first refer to the aggravating circumstances as under:-

(i) The accused-appellant has been found guilty of the offence under Section 364A of the Indian Penal Code. Section 364A is being extracted hereunder:-

> "364A. Kidnapping for ransom, etc.—Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organization or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

A perusal of the aforesaid provision leaves no room for any doubt, that the offence of kidnapping for ransom accompanied by a threat to cause death contemplates punishment with death. Therefore, even without an accused actually having committed the murder of the individual kidnapped for ransom, the provision contemplates the death penalty. Insofar as the present case is concerned, there is no doubt, that the accused-appellant has been found to have kidnapped Suresh for ransom, and has also actually committed his murder. In the instant situation therefore, the guilt of the accused-appellant (under Section 364A of the Indian Penal Code) must be considered to be of the gravest nature, justifying the harshest punishment prescribed for the offence.

(ii) The accused-appellant has also been found guilty

of the offence of murder under Section 302 of the Indian Penal Code. Section 302 of the Indian Penal Code also contemplates the punishment of death for the offence of murder. It is, therefore apparent, that the accused-appellant is guilty of two heinous offences, which independently of one another, provide for the death penalty.

(iii) The accused caused the murder of child of 7 years. The facts and circumstances of the case do not depict any previous enmity between the parties. There is no grave and sudden provocation, which had compelled the accused to take the life of an innocent child. The murder of a child, in such circumstances makes this a case of extreme culpability.

(iv) Kidnapping of a child was committed with the motive of carrying home a ransom. On account of the non-payment of ransom, a minor child's murder was committed. This fact demonstrates that the accused had no value for human life. The instant circumstance demonstrates extreme mental perversion not worthy of human condonation.

(v) The manner in which the child was murdered, and the approach and method adopted by the accused, disclose the traits of outrageous criminality in the behaviour of the accused. The child was first strangulated to death, the dead body of the child was then tied in a gunny bag, and finally the gunny bag was thrown into a water tank. All this was done, in a well thought out and planned manner. This approach of the accused reveals a brutal mindset of the highest order.

(vi) All the aforesaid aggravating circumstances are liable to be considered in the background of the

A fact, that the child was known to the accused-appellant. In the examination of the accused under Section 313 of the Code of Criminal Procedure, the accused acknowledged, that he used to see the child whenever the child was taken by his mother B to her native village. Additionally, it is acknowledged in the pleadings, that the accused had developed an acquaintance with the child, when his mother used to visit her native place along with her son. Murder was therefore committed, not of a C stranger, but of a child with whom the accused was acquainted. This conduct of the accused-appellant, places the facts of this case in the abnormal and heinous category.

(vii) The choice of kidnapping the particular child for D ransom, was well planned and consciously motivated. The parents of the deceased had four children – three daughters and one son. Kidnapping the only male child was to induce maximum fear in the mind of his parents. Purposefully killing the sole E male child, has grave repercussions for the parents of the deceased. Agony for parents for the loss of their only male child, who would have carried further the family lineage, and is expected to see them through their old age, is unfathomable. Extreme F misery caused to the aggrieved party, certainly adds to the aggravating circumstances.

31. As against the aforesaid aggravating circumstances, learned counsel for the accused-appellant could not point to us G even a single mitigating circumstance. Thus viewed, even on the parameters laid down by this Court, in the decisions relied upon by the learned counsel for the accused- appellant, we have no choice, but to affirm the death penalty imposed upon the accused-appellant by the High Court. In fact, we have to record the aforesaid conclusion in view of the judgment H

rendered by this Court in *Vikram Singh & Ors. Vs. State of Punjab,* (2010) 3 SCC 56, wherein in the like circumstances (certainly, the circumstances herein are much graver than the ones in the said case), this Court had upheld the death penalty awarded by the High Court. A

32. In view of the above, we find no justification whatsoever, in interfering with the impugned order of the High Court, either on merits or on the quantum of punishment. B

33. Dismissed.

K.K.T. Appeals dismissed. C