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MOFIL KHAN & ANR.
v.
STATE OF JHARKHAND
(Civil Appeal No. 1795 of 2009)

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OCTOBER 9, 2014

[H.L. DATTU, CJI, R.K. AGRAWAL AND ARUN MISHRA, JJ.]

SENTENCE/SENTENCING:

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Murder – Sentencing policy – Held: The most significant aspect of sentencing policy is independent consideration of each case by the Court and extricating a sentence which is the most appropriate and proportional to the culpability of the D accused – Aggregating circumstances and mitigating circumstances, culled out — The doctrine of "rarest of rare" does not classify murders into categories of heinous or less heinous – The difference between two is not in the identity of the principles, but lies in the realm of application thereof to E individual fact situations – Sentences of severity are imposed to reflect the seriousness of the crime, to promote respect for the law, to provide just punishment for the offence, to afford adequate deterrent to criminal conduct and to protect the community from further similar conduct – It serves a three-fold purpose- punitive, deterrent and protective – It is not F only the victims of crime that require soothing balm, but also the incidental victims like the family, the co-sufferers and to a relatively large extent the society too – The judiciary has a paramount duty to safeguard the rights of the victims as diligently as those of the perpetrators — Code of Criminal G Procedure, 1973 – s.354(3).

SENTENCE/SENTENCING:

Murder – Accused person committing murders of 8

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persons of their family – Death sentence by courts below – Held: The time, place and manner of the commission of crime are indicative of the motive of accused-appellants – They have ruthlessly and successively butchered their own kith and kin for obtaining possession of certain pass-book, money and immovable property without any provocation – Being armed with sharp edged weapons, the quick succession with which the accused-appellants proceeded to slaughter the eight members of their family classifies their act as pre-planned and reflects the cold-blooded fashion with which the callous design was executed – Their lack of remorse is reflected from the act of extending threat of life to other members of the family present in the house should they dare to inform the police – The mitigating circumstances enumerated, under which the appellants seek refuge, have failed to convince the Court – In the considered view of the Court, the "rarest of the rare" case exists when an accused would be a menace, threat and anti-thetical to harmony in the society – Especially in cases where an accused does not act on provocation, acting in spur of the moment but meticulously executes a deliberately planned crime inspite of understanding the probable consequence of his act, the death sentence may be the most appropriate punishment – Keeping in view the principle of proportionality of sentence or what it termed as "just-desert" for the vile act of slaughtering eight lives including four innocent minors and a physically infirm child whereby an entire family is exterminated, the depravity of appellant's offence would attract no lesser sentence than the death penalty.

Mahesh v. State of Madhya Pradesh, **1987 (2) SCR 710 = (1987) 3 SCC 80– relied on.**

Sunil Dutt Sharma v. State (Govt. of NCT of Delhi), **2013 (9) SCR 1000 = (2014) 4 SCC 375 – held inapplicable.**

Jagmohan Singh v. The State of U.P. **1973 (2)**

A **SCR 541= (1973) 1 SCC 20 and** *Bachan Singh v. State of Punjab* **(1980) 2 SCC 684,** *Machhi Singh and Ors. v. State of Punjab* **1983(3)SCR 413 = (1983) 3 SCC 470,** *Ajitsingh Harnamsingh Gujral v. State of Maharashtra* **2011 (13) SCR 1000 = (2011) 14 SCC 401,** *State of Uttar Pradesh*
B *v. Sattan @ Satyendra & Ors.* **2009 (3) SCR 643 = (2009) 4 SCC 736;** *Govindasami v. State of Tamil Nadu,* **1998 (2) SCR 1135= (1998) 4 SCC 531,** *Atbir v. Govt. (NCT of Delhi),* **2010 (9) SCR 993 = (2010) 9 SCC 1,** *Ajay Kumar Pal v. State of Jharkhand,* **(2010) 12 SCC 118,** *Shobhit Chamar v. State*
C *of Bihar* **1998 (2) SCR 117 = (1998) 3 SCC 455,** *Sunder Singh v. State of Uttaranchal* **2010 (11) SCR 927 = (2010) 10 SCC 611,** *C. Muniappan v. State of T.N.,* **2010 (10) SCR 262 = (2010) 9 SCC 567,** *Jagdish v. State of M.P.* **2009 (14) SCR 727 = (2009) 9 SCC 495,** *Prajeet Kumar Singh v. State*
D *of Bihar* **2008 (5) SCR 969 = (2008) 4 SCC 434,** *Ram Singh v. Sonia,* **2007 (2) SCR 651 = (2007) 3 SCC 1,** *Holiram Bordoli v. State of Assam* **2005 (3) SCR 406 = (2005) 3 SCC 793,** *Saibanna v. State of Karnataka* **2005 (3) SCR 760 = (2005) 4 SCC 165,** *Karan Singh v. State of U.P.,* **(2005) 6 SCC 342,** *State of Rajasthan v. Kheraj Ram,* **2003**
E **(2) Suppl. SCR 861 = (2003) 8 SCC 224,** *Om Prakash v. State of Uttaranchal,* **2002 (4) Suppl. SCR 623 = (2003) 1 SCC 648,** *Praveen Kumar v. State of Karnataka,* **(2003) 12 SCC 199,** *Suresh v. State of U.P.,* **2001 (2) SCR 263 = (2001) 3 SCC 673,** *Ramdeo Chauhan v.State*
F *of Assam,* **2000 (2) Suppl. SCR 28 = (2000) 7 SCC 455,** *Narayan Chetanram Chaudhary v. State of Mahrashtra,* **2000 (3) Suppl. SCR 104 = (2000) 8 SCC 457,** *State of U.P. v. Dharmendra Singh* **1999 (3) Suppl. SCR 52 = (1999) 8 SCC 325,** *Ronny v. State of Mahrashtra* **1998 (2) SCR 162 =**
G **(1998) 3 SCC 625,** *Surja Ram v. State of Rajasthan,* **1996 (6) Suppl. SCR 783 = (1996) 6 SCC 271,** *Haresh Mohandas Rajput v. State of Maharashtra* **2011 (14) SCR 921 = (2011) 12 SCC 56,** *Rabindra Kumar Pal alias Dara Singh v. Republic of India* **2011 (6) SCR 1104 = (2011) 2 SCC 490,** *Surendra*

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Koli v. State of U.P. and Ors. **2011 (2) SCR 939 = (2011) 4 SCC 80 and** *Sudam @ Rahul Kaniram Jadhav v. State of Maharashtra*, **2011 (6) SCR 1104= (2011) 7 SCC 125,** *Birju v. State of M.P.* **2014 (1) SCR 1047= (2014) 3 SCC 421;** *Mahesh Dhanaji Shinde v. State of Maharashtra*, **(2014) 4 SCC 292;** *Sushil Sharma v. The State of N.C.T. of Delhi*, **(2014) 4 SCC 317;** *Anil @ Anthony Arikswamy Joseph v. State of Maharashtra*, **2014 (3) SCR 34 = (2014) 4 SCC 69;** *State of Maharashtra v. Goraksha Ambaji Adsul*, **2011 (9) SCR 41 = (2011) 7 SCC 437;** *Brajendrasingh v. State of Madhya Pradesh*, **2012 (3) SCR 599= (2012) 4 SCC 289,** *Dhananjoy Chatterjee @ Dhanna v. State of West Bengal* **1994 (1) SCR 37 = (1994) 2 SCC 220,** *Rattan Singh v. State of Punjab* **1980 (1) SCR 846= (1979) 4 SCC 719,** *Sevaka Perumal v. State of T.N.* **1991 (2) SCR 711 = (1991) 3 SCC 471 – referred to.**

Case Law Reference:

1973 (2) SCR 541	**referred to**	**para 17**
(1980) 2 SCC 684	**referred to**	**para 17**
1983(3) SCR 413	**referred to**	**para 17**
2011 (13) SCR 1000	**referred to**	**para 21**
2009 (3) SCR 643	**referred to**	**para 22**
1998 (2) SCR 1135	**referred to**	**para 23**
2010 (9) SCR 993	**referred to**	**para 24**
(2010) 12 SCC 118	**referred to**	**para 25**
1998 (2) SCR 117	**referred to**	**para 26**
2010 (11) SCR 927	**referred to**	**para 27**
2010 (10) SCR 262	**referred to**	**para 28**
2009 (14) SCR 727	**referred to**	**para 29**

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2008 (5) SCR 969	referred to	para 30
2007 (2) SCR 651	referred to	para 31
2005 (3) SCR 406	referred to	para 32
2005 (3) SCR 760	referred to	para 33
(2005) 6 SCC 342	referred to	para 34
2003 (2) Suppl. SCR 861	referred to	para 35
2002 (4) Suppl. SCR 623	referred to	para 36
(2003) 12 SCC 199	referred to	para 37
2001 (2) SCR 263	referred to	para 38
2000 (2) Suppl. SCR 28	referred to	para 39
2000 (3) Suppl. SCR 104	referred to	para 40
1999 (3) Suppl. SCR 52	referred to	para 41
1998 (2) SCR 162	referred to	para 42
1996 (6) Suppl. SCR 783	referred to	para 43
2011 (14) SCR 921	referred to	para 44
2011 (6) SCR 1104	referred to	para 44
2011 (2) SCR 939	referred to	para 44
2013 (9) SCR 1000	held inapplicable	para 47
2014 (1) SCR 1047	referred to	para 48
(2014) 4 SCC 292	referred to	para 49
(2014) 4 SCC 317	referred to	para 50
2014 (3) SCR 34	referred to	para 51

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2011 (9) SCR 41	**referred to**	**para 52**	A
2012 (3) SCR 599	**referred to**	**para 53**	
1994 (1) SCR 37	**referred to**	**para 57**	
1980 (1) SCR 846	**referred to**	**para 58**	B
1987 (2) SCR 710	**relied on**	**para 60**	
1991 (2) SCR 711	**referred to**	**para 61**	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1795 of 2009. C

From the Judgment & Order dated 02.07.2009 of the High Court of Jharkhand in Death Reference No. 01 of 2008 with Criminal Appeal No. (DB) No. 1103 of 2008.

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Bimal Roy Jad (A.C.) for the Appellants.

Ratan Kumar Choudhari, Jayesh Gaurav for the Respondent.

The Order of the Court was delivered E

ORDER

1. This appeal is directed against the judgment and order passed by the High Court of Jharkhand at Ranchi in Death Reference No. 01 of 2008 and Criminal Appeal (DB) Nos. 1103 of 2008, dated 02.07.2009. By the impugned judgment and order, the High Court has confirmed the judgment of conviction, dated 01.08.2008 passed by the District and Sessions Judge, Lohardaga in Sessions Trial No. 128 of 2007, whereby and whereunder the learned Sessions Judge has convicted the two accused-appellants and two others for offence under Sections 302 and 449 read with Section 34 of Indian Penal Code, 1860 (for short, "the IPC"). The High Court while confirming the order of death sentence, dated 05.08.2008 passed by the Trial Court

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A in respect of the accused-appellants, has thought it fit to modify the sentence awarded to the other two accused persons, Saddam Khan and Wakil Khan, to life imprisonment.

2. At the outset, the learned *amicus*, Shri Bimal Roy Jad, B appearing for the two accused-appellants has only assailed the order of sentence passed by the Trial Court and confirmed by the High Court and restricted his arguments to the quantum of punishment awarded. Therefore, the scope of this appeal is restricted to the determination of appropriate sentence that C requires to be awarded to the accused-appellants. Further, since other accused persons in the instant case are not in appeal before us, the discussions hereinafter would be confined to the fact relevant for the disposal of present appeal.

3. The prosecution case in brief is, on 06.06.2007 at about D 8:30 p.m., one Haneef Khan (referred to as "the deceased" hereafter) was offering Namaz in the mosque at village Makandu, Jharkhand. The accused-appellants and others, who are none other than the deceased's brothers and nephews, approached him and started assaulting him with sharp-edged E weapons such as sword, tangi, bhujali and spade. The deceased succumbed to the injuries inflicted by the accused persons. Leaving the deceased at the spot, the accused-appellants and others proceeded towards the house of deceased where, upon hearing the cries of their father, the F deceased's sons Gufran Khan @ Pala and Imran Khan had come out on the street. The accused-appellants assaulted the two unarmed brothers with the aforesaid weapons due to which the two brothers collapsed and died in front of their house. Thereafter, the accused-appellants and others entered the G house of the deceased and committed murder of Kasuman Bibi, wife of the deceased and his four sons, namely, Anish Khan (aged about 5 years), Danish Khan (aged about 8 years), Yusuf Khan (physically disabled and aged about 18 years) and Maherban Khan (aged about 12 years). After committing murder H of the six persons, the accused-appellants threatened other

members of the household including their mother, Jainub Khatoon (PW-2) of meeting the same fate if they inform the police about the incident and thereafter left the house taking away certain documents relating to the lands, Pass-book, jewellery etc.

4. On 07.06.2007, at about 6:00 a.m., father of the deceased, Gaffar Khan (PW-1) upon being informed reached the village and saw the dead body of the deceased lying at the mosque, the dead bodies of his grand sons, namely, Gufran Khan @Pala and Imran Khan were lying in front of the house and the dead-bodies of his daughter-in-law, Kasuman Bibi and her four sons were lying inside the house. There he was informed by his wife- PW2 of the manner in which the accused-appellants alongwith others had committed the offence. Meanwhile, Chowkidar of Village had informed the Police of the incident telephonically, upon which *sanha* was entered on the station diary and the officer in-charge, Shambhu Nath Singh (PW-13), reached the place of occurrence and recorded the *fardbeyan* of the informant, PW-1. Thereafter, P.S. Case No. 80 of 2007 was registered and an FIR was drawn. The police authorities carried out the investigation and held inquest on the bodies of the eight deceased persons and prepared inquest reports, whereafter, the dead-bodies were sent for post mortem examination. During further investigation, the investigating officer found blood smeared earth at all the three places of occurrence, and recovered a plastic mat smeared with blood at the mosque and blood smeared tangi from the house of another accused person-Kariman Khan @ Kari Khan and seized them as exhibits.

5. The genesis of the incident has been traced to a property dispute between accused-appellants and the deceased.

6. On completion of the investigation, the charges were

A framed against the accused-appellants and others. The accused-appellants had denied their guilt and thus, the case was committed to trial.

7. The prosecution has examined 13 witnesses including B eye-witness, PW-2. They have also tendered by way of documentary evidence Exhibit 1 to 9/5 (sic) and also has marked Material objects 'I' and 'II' while the defence has examined 4 witnesses and marked Exhibit 'A' to 'E' as evidence.

C 8. PW-1 is the father of deceased-Haneef Khan and the accused-appellants. Though not an eye-witness to the incident, he has testified in respect of the genesis of the dispute between parties and supported the version of PW-2. PW-2 is the mother of deceased-Haneef Khan and was present in the D house in another room during the occurrence of the incident and hence is an eyewitness. She has deposed in respect of the sequence of occurrence on the fateful night, the identification of the accused-appellants and genesis of the dispute between parties. PW-3 and PW-6 are independent witnesses who were E offering Namaz at the mosque during the incident and PW-5 is the Imam of the mosque who also witnessed the incident. Their testimony supports the prosecution case in respect of the accused-appellants indiscriminately assaulting the deceased-Haneef Khan with sword and bhujali. PW-4 is a resident of the F same village and has testified that the accused-appellants were present in the village on the fateful night and did not take part in the marriage proceedings held in another village where other villagers including PW-1 were present. PW-7, neighbor of deceased-Haneef Khan, has corroborated the prosecution G version in respect of the accused-appellants assaulting the deceased's two sons in front of his house with sword and bhujali. PW-8, the medical practitioner who conducted post mortem of the dead bodies has testified to the cause of death being shock and hemorrhage of vital organs like brain due to H injuries sustained by the deceased persons.

9. In their defense, the accused-appellants have denied the charges against them.

10. The Trial Court after marshalling of facts and thorough scrutiny of evidence on record has concluded that the accused-appellants, armed with sword and bhujali, alongwith other persons had entered into the mosque and assassinated the deceased, killed his two sons in front of his house and then entered the house where they assaulted his wife and four minors including a physically challenged child leading to their death. The Court has further rejected the defense pleaded by the accused-appellants and established their presence in the village on the fateful night in view of PW-4's testimony. Further, the Court has found the testimony of the sole eye-witness, PW-2, credible and trustworthy. Therefore, in light of the motive of the accused-appellants being clear from the record, the apparent pre-meditation of successive murders and their choice of the day of execution of the said merciless plan when residents of the village had left for another village to attend a wedding, the Court has concluded the guilt of the accused-appellants in killing the eight persons and convicted them for offence under Sections 302 and 449 read with 34 of IPC. While sentencing them, the Trial Court has recorded the aggravating and mitigating circumstances for awarding death sentence.

11. Aggrieved by the aforesaid judgment and order, the accused-appellants along with two others had approached the High Court in Criminal Appeal (D.B.) No. 1103 of 2008.

12. The High Court after carefully analyzing the evidence on record has come to the conclusion that the Trial Court has not committed any error in convicting and sentencing the appellants and accordingly has confirmed the judgment and order of the Trial Court insofar as the appellants are concerned. However, the High Court has modified the sentence of other two accused persons from death sentence to imprisonment for life.

A 13. Aggrieved by the aforesaid conviction and sentence, the accused-appellants are before us in this appeal.

14. The learned *amicus* for the appellants would confine his arguments only to the question of sentence. He would submit B that neither do the appellants have any criminal antecedents nor are they hardened criminals. He would contend that the appellants are middle-aged and have a family and old aged parents-PW-1 and PW-2 and sentencing them to death would devastate the said dependents. He would further submit that C there is a possibility of reformation of the appellants and they must not be deprived of their life, but be provided with an opportunity to reform themselves especially when they have a considerable life-span ahead.

15. Learned counsel for the State ably justifies the judgment D and order passed by the High Court.

16. We have given our anxious consideration to the evidence on record and the submissions put forth by both the learned counsel. We have carefully perused the judgments and E orders of the Courts below.

17. The awarding of death penalty has been a matter of serious academic and judicial debate to discern an objective and rational basis for the exercise of the power and to evolve F sound jurisprudential principles governing the exercise thereof. In this regard the Constitution Bench decision of this Court in *Jagmohan Singh v. The State of U.P.* (1973) 1 SCC 20 and *Bachan Singh v. State of Punjab* (1980) 2 SCC 684, a three Judge Bench decision in *Machhi Singh and Ors. v. State of* G *Punjab* (1983) 3 SCC 470, are the leading cases wherein certain principles in the matter of sentencing has been evolved by this Court. The broad principles tailored by this Court in its judgments provide guidelines to ensure that the discretion vested in the Court is not unbridled.

H 18. This Court in the aforesaid decisions has evolved the

doctrine of "rarest of the rare" case and put it to test *via* the medium of charting out the aggravating and mitigating circumstances in a case and then balancing the two in the facts and circumstances of the case. As a norm, the most significant aspect of sentencing policy is independent consideration of each case by the Court and extricating a sentence which is the most appropriate and proportional to the culpability of the accused. It may not be apposite for the Court to decide the quantum of sentence with reference to one of the classes under any one of the head while completely ignoring classes under other head. That is to say, what is required is not just the balancing of these circumstances by placing them in separate compartments, but their cumulative effect which the Court is required to keep in its mind so as to better administer the criminal justice system and provide an effective and meaningful reasoning by the Court as contemplated under Section 354(3) Code while sentencing. The following broad heads have been culled out by the successive judgments of this Court:

"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.

A 5. Hired killings.

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

B 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 C instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 Code of Criminal Procedure.

9. When the crime is enormous in proportion like making D 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 E 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.

F 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 G conscience of the society.

Mitigating Circumstances:

1. The manner and circumstances in and under which the offence was committed, for example, extreme mental or H emotional disturbance or extreme provocation in

contradistinction to all these situations in normal course. A

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. B

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. C

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

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

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7. Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused. While determining the questions relateable to sentencing policy, the Court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence. G

Principles:

1. The Court has to apply the test to determine, if it was H

A the 'rarest of rare' case for imposition of a death sentence.

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

B 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 C and circumstances of the crime and all relevant circumstances.

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

19. We remind ourselves that the doctrine of "rarest of rare" does not classify murders into categories of heinous or less heinous. The difference between two is not in the identity of the E principles, but lies in the realm of application thereof to individual fact situations. Sentences of severity are imposed to reflect the seriousness of the crime, to promote respect for the law, to provide just punishment for the offence, to afford adequate deterrent to criminal conduct and to protect the F community from further similar conduct. It serves a three-fold purpose- punitive, deterrent and protective.

20. Before proceeding to discuss the fact situation in the instant case, it would be expedient to briefly visit the judicial G decisions of this Court on sentencing policy in cases wherein the entire family has been exterminated and where the accused persons plead for lesser sentence on grounds of age, lack of criminal antecedents and existence of dependents such as children or old aged parents or seeks commutation indicating H probability of reformation and rehabilitation.

21. In *Ajitsingh Harnamsingh Gujral v. State of Maharashtra*, (2011) 14 SCC 401, the accused was convicted under Section 302 of IPC for murder of his wife, one son and two daughters by burning. This Court awarded him death sentence classifying the case as rarest of rare. It observed that burning living persons to death is horrible act causing excruciating pain to the victim. The person in the position of trust instead of doing his duty of protecting his family has killed them in a cruel and barbaric manner, thus eliminating possibility of being reformed or rehabilitated.

22. In *State of Uttar Pradesh v. Sattan @ Satyendra & Ors.* (2009) 4 SCC 736, the accused had committed the murder of six members of family including helpless women and children in brutal, diabolic and beastly manner. This Court held that the crime is enormous in proportion and shocks conscience of Court. The Court observed that the depraved acts of accused call for only one sentence, that is the death sentence.

23. In *Govindasami v. State of Tamil Nadu,* (1998) 4 SCC 531, the accused committed five murders for which he was acquitted by the Trial Court but convicted and sentenced to death by the High Court. This Court in appeal confirmed the sentence and held, that, the brutal manner of wiping out the entire family of his uncle (except one son studying in Coimbatore escaping) by appellant to grab his properties shocks judicial conscience and no lesser sentence is appropriate.

24. *Atbir v. Govt. (NCT of Delhi),* (2010) 9 SCC 1, is a case where the accused had committed murder of step relatives to grab entire family property. This Court held that though the accused was 25 years old at the relevant point of time, considering his hunger and lust for property, killing his own (step) family members by trapping them within closed doors when they were helpless and unarmed and had no occasion

A to provoke or resist has brutally and mercilessly caused 37 knife blows on vital parts of all three victims until each one had died; such act of barbarism calls for no sentence lesser than the death sentence.

B 25. Similarly, in *Ajay Kumar Pal v. State of Jharkhand,* (2010) 12 SCC 118, the domestic servant had laced the food with pesticide and assaulted the inmates with sharp-edged weapons and thereafter had set the house on fire. This Court held that murder of three persons without sudden provocation C wiping out almost entire family involved preparation and pre-planned execution and thus calls for imposition of death penalty.

26. In *Shobhit Chamar v. State of Bihar*, (1998) 3 SCC 455, two accused were before this Court for committing dacoity D and murder of all six male members of a family including two minor children. While for one accused evidence of wielding any specific weapon could not be produced by the prosecution, use of firearm and presence of motive was proved by the prosecution for the other accused. This Court considering E former accused was not related to latter had commuted the death sentence of former and confirmed the death penalty of the latter accused.

27. In *Sunder Singh v. State of Uttaranchal* (2010) 10 F SCC 611, in the incident five persons lost their lives while the sole surviving lady survived with 70% burn injuries. Therein, the accused had arrived at the spot well prepared carrying jerry cans containing petrol, sword, pistol with two bullets indicating pre-meditation. The murder was committed in a cruel, G grotesque and diabolical manner by closing the door of the house evidencing that the accused actually intended to burn all the persons inside the room. In absence of any mitigating circumstance weighing in favor of the accused, the death sentence was upheld.

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28. In *C. Muniappan v. State of T.N.*, (2010) 9 SCC 567, three helpless, innocent, unarmed, girl students had died and 20 received burn injuries by burning of the bus by three members of an unlawful assembly engaged in road blocking in a public demonstration. This Court held that it was one of the rarest of rare cases, indicating prior planning, lack of provocation and certainly one where the accused would be a menace and threat to the harmonious and peaceful co-existence of the society and hence the death sentence was the most appropriate punishment.

29. In *Jagdish v. State of M.P.*,(2009) 9 SCC 495, the accused had murdered his wife and five children (aged 1 to 16 years) in his own house. The murders were particularly horrifying as the assailant was in a dominant position and a position of trust as the head of the family. This Court held that the balance sheet of aggravating and mitigating circumstances was heavily weighed against the assailant making it a rarest of rare case and hence, the award of death sentence was confirmed.

30. In *Prajeet Kumar Singh v. State of Bihar*, (2008) 4 SCC 434, the accused, who was a paying guest for a continuous period of four years in lieu of a paltry sum of Rs.500/- for food and meals, had brutally killed three innocent and defenseless children aged 8, 15 and 16, attempted to murder the father (informant) and mother who survived the attack with multiple injuries. In lack of provocation or motive for committing this ghastly act at a time when the children were sleeping and presence of several incised wounds caused to the deceased, this Court held that the murders were brutal, diabolic, inhuman in nature and considering the enormity of the crime held that the mindset of the accused could not be said to be amenable to any reformation and sentenced him to death.

31. *Ram Singh v. Sonia*, (2007) 3 SCC 1 involved facts where a married couple murdered the wife's father, mother,

A sister, step brother and his whole family including three young ones of 45 days, 2 ½ years and 4 years with the motive of resisting her father from giving property to her step brother and his family. This Court held that since the murders were committed in a cruel, pre-planned and diabolic manner while B the victims were sleeping, without any provocation from the victim's side, it could be concluded the accused persons did not possess any basic humanity and lacked the psyche or mindset amenable to any reformation and therefore, the case fell within the category or rarest of rare cases for imposition of C death penalty.

32. In *Holiram Bordoli v. State of Assam*, (2005) 3 SCC 793, the accused persons, armed with lathis and other weapons, had come to the house of the victim and started D pelting stones on the bamboo wall of the said house. Thereafter, they closed the house from the outside and set the house on fire. When the son, daughter and the wife of the victim somehow managed to come out of the house, the accused persons caught hold of them and threw them into the fire again. E Thereafter, the elder brother who was staying in another house at some distance from the house of the victim was caught and dragged to the courtyard of the accused where the accused cut him into pieces. It was held that even in absence of any strong motive and lack of provocation, the offence was committed in F the most barbaric manner to deter others from challenging the supremacy of the accused in the village and therefore, imposition of death penalty was found fit.

33. In *Saibanna v. State of Karnataka*, (2005) 4 SCC 165, the accused had pre-planned the murder of his second wife and G daughter aged around one year when the victims were sleeping by using a hunting knife (jambia) which is not ordinarily available in a house at the time when he was out on parole. The Court found no justified reasons for any extenuating circumstances in favour of the accused, thus placing the case under the 'rarest

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of rare case' category and justifying imposition of death sentence. A

34. In *Karan Singh v. State of U.P.*, (2005) 6 SCC 342, the two appellants chased the three deceased persons involved with them in a property dispute and butchered them with axes and other weapons in a barbaric manner. Thereafter, they had entered their house and killed two children with the sole intention to exterminate the entire family. The Court held that it was a 'rarest of the rare' case and sentenced the appellants to death. B

35. *State of Rajasthan v. Kheraj Ram*, (2003) 8 SCC 224 is the unfortunate case where the accused deliberately planned and executed his two innocent children, wife and brother-in-law when they were sleeping at night. The Court noticed that there was no remorse for such a gruesome act which was indicated by the calmness with which he was smoking "chilam" after the commission of the act. The incident being pre-planned, after analyzing the entire chain of events and circumstances, the inevitable conclusion was reached that the accused acted in a most cruel and inhuman manner and the murder was committed in an extremely brutal, grotesque, diabolical, revolting and dastardly manner. C D E

36. In *Om Prakash v. State of Uttaranchal*, (2003) 1 SCC 648, the accused was a domestic servant who killed three members and attempted to kill the fourth member of the family of his employer in order to take revenge for the decision to dispense with his service and to commit robbery. The death sentence was upheld. F

37. In *Praveen Kumar v. State of Karnataka*, (2003) 12 SCC 199, the accused was accommodated in the houseby one of the victims, his aunt, despite her large family, and she gave him an opportunity to make an honest living as a tailor. The accused committed the pre-planned, cold-blooded murders of relatives and well wishers including one young child while they G H

A were asleep. After the commission of the crime the accused absconded from judicial custody for nearly four years, indicating that possibility of any remorse or rehabilitation is none. This Court has held that the extreme penalty of death was justified.

B 38. In *Suresh v. State of U.P.*, (2001) 3 SCC 673, the brutal murder of one of the accused's brother and his family members including minor children at night when they were fast asleep with axe and chopper by cutting their skulls and necks for a piece of land was considered to be a grotesque & diabolical act, C where any other punishment than the death penalty was unjustified.

39. In *Ramdeo Chauhan v.State of Assam*, (2000) 7 SCC 455, the accused committed a pre-planned cold-blooded brutal murder of four inmates of a house including two helpless D women and a child aged 2 ½ years during their sleep with a motive to commit theft. The accused also attacked with a spade another inmate of the house, an old woman, and a neighbour when they entered the house. The Court held that the young age (22 years) of the accused at the time of committing the crime E was not a mitigating circumstance, and death penalty was a just and proper punishment.

40. In *Narayan Chetanram Chaudhary v. State of Mahrashtra*, (2000) 8 SCC 457, there was a pre-planned, F calculated, cold-blooded murder of five women, including one pregnant woman and two children of about 2 years of.age, all inmates of a house, in order to wipe out all evidence of robbery and theft committed by two accused in the house at a time when male members of the house were out. It was held that the G young age (20-22 years) of the accused persons cannot serve as a mitigating circumstance.

41. In *State of U.P. v. Dharmendra Singh*, (1999) 8 SCC 325, 5 persons were murdered, an old man of 75 years, a H woman aged 32 years, two boys aged 12 years and a girl aged

15 years, at night when they were asleep by inflicting multiple injuries to wreak vengeance. This Court held that the ghastly and barbaric murder can be termed as rarest of the rare case and death penalty was just for such a diabolic act.

42. In *Ronny v. State of Mahrashtra*, (1998) 3 SCC 625, the accused was the nephew of the deceased, and because of the relationship he gained access inside the house for himself and his friends. The victims were unarmed and the crime was committed for gain *i.e.* to rob the valuables of the deceased family. The accused then killed all three members and then committed rape on the lady who was the wife of his maternal uncle and as old as his mother. Considering the facts of the case this Court held that it cannot be said that the offences were committed under the influence of extreme mental or emotional disturbance as everything was done in a preplanned way, and hence death penalty was upheld.

43. *Surja Ram v. State of Rajasthan*, (1996) 6 SCC 271 was a case where the dispute between the appellant and the deceased only related to erecting a barbed fence on a portion of the residential complex. The appellant in pursuance of the same had murdered his bother, his two minor sons and an aged aunt by cutting their neck with a kassi while they were all sleeping and also attempted to murder his brother's wife and daughter but they survived with serious injuries. The death sentence was held to be justified.

44. In *Haresh Mohandas Rajput v. State of Maharashtra*, (2011) 12 SCC 56, *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 and *Sudam @ Rahul Kaniram Jadhav v. State of Maharashtra*, (2011) 7 SCC 125, this Court has opined that the death sentence must be awarded where the victims are innocent children and helpless women, especially when the crime is committed in a most cruel and

A inhuman manner which is extremely brutal, grotesque, diabolical and revolting.

45. The crime test, criminal test and the "rarest of the rare" test are certain tests evolved by this Court. The tests basically B examine whether the society abhors such crimes and whether such crimes shock the conscience of the society and attract intense and extreme indignation of the community. The cases exhibiting pre-meditation and meticulous execution of the plan to murder by leveling a calculated attack on the victim to C annihilate him, have been held to be fit cases for imposing death penalty. Where innocent minor children, unarmed persons, helpless women and old and infirm persons have been killed in a brutal manner by persons in dominating position, and where after ghastly murder displaying depraved D mentality, the accused have shown no remorse, death penalty has been imposed. Where it is established that the accused is a hardened criminal and has committed murder in a diabolic manner and where it is felt that reformation and rehabilitation of such a person is impossible and if let free, he would be a E menace to the society, this Court has not hesitated to confirm death sentence. Many a time, in cases of brutal murder, exhibiting depravity and callousness, this Court has acknowledged the need to send a deterrent message to those who may embark on such crimes in future. In some cases F involving brutal murders, society's cry for justice has been taken note of by this Court, amongst other relevant factors. While deciding whether death penalty should be awarded or not, this Court has in each case realizing the irreversible nature of the sentence, pondered over the issue many times over. This Court G has always kept in mind the caution sounded by the Constitution Bench in *Bachan Singh case* (supra) that judges should never be blood thirsty but wherever necessary in the interest of society identify the rarest of rare case and exercise the tougher option of death penalty.

H 46. Having noticed the decisions of this Court on the said

aspect, we would consider other decisions of this Court on which reliance has been placed by the learned *amicus*. A

47. The case of *Sunil Dutt Sharma v. State (Govt. of NCT of Delhi)*, (2014) 4 SCC 375 has been relied upon by the learned *amicus* to bring home the point that the lack of criminal antecedents and existence of dependents of the accused would be considered as mitigating circumstances warranting award of a lesser sentence. In the said case, the accused-husband was convicted under Section 304-B of the IPC for dowry death of the wife within two years of the marriage and was awarded the sentence of life imprisonment. His sentence was modified to ten years of rigorous imprisonment by this Court considering that his age at the time of commission of the offence-21 years and that he had a young son. In our considered view, the aforesaid mitigating circumstances considered by this Court while modifying the sentence of the accused-husband therein would not be relevant in the instant case. *Firstly*, the said case did not involve testing the culpability of the accused on the balance sheet of mitigating and aggravating circumstances to determine whether the offence committed was "rarest of rare". B C D E

48. In the case of *Birju v. State of M.P.*, (2014) 3 SCC 421, this Court has dealt with the question of chances of the accused not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated. This case relates to the killing of a child aged one year who was in the arms of the grand-father when the accused shot him in the head with a country made pistol for which the accused was awarded death sentence by the Trial Court which was affirmed by the High Court and modified to rigorous imprisonment for 20 years by this Court on grounds that though the accused person had criminal antecedents, the depravity of the crime was not such so as to fall under the category of the "rarest of rare" cases. Learned amicus has relied on paragraph 20 of the judgment to buttress the argument that sentencing F G

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policy requires the Court to balance the probability of the accused committing crime again and being a menace to the society if let free.

49. The learned *amicus* seeks to draw strength from the decision of this Court in *Mahesh Dhanaji Shinde v. State of Maharashtra*, (2014) 4 SCC 292. In the said decision, this Court has held that since the core of criminal case lies in facts and the facts differ in each case, there cannot be tailored a formula whereby the cases could be compartmentalized as rarest of rare or otherwise. Considering the facts of the said case, this Court observed that since the probability of award of life imprisonment was not "unquestionably foreclosed", death penalty could not be awarded and therefore, commuted the sentence.

50. In *Sushil Sharma v. The State of N.C.T. of Delhi,* (2014) 4 SCC 317, the evidence on record had established the position that though both the accused-appellant and deceased therein were married and living together, their relations were strained as the appellant suspected her fidelity and the murder was the result of this possessiveness. This Court considered that the appellant had no criminal antecedents and was not a confirmed criminal. This Court observed that no evidence was led by the State to indicate that he is likely to revert to such crimes in future and the appellant being the only son of his parents who are old and infirm, the mitigating circumstances weighed in his favor and the death sentence was commuted to life imprisonment.

51. *Anil @ Anthony Arikswamy Joseph v. State of Maharashtra*, (2014) 4 SCC 69 was a case where the accused was in a dominating position and the victim was an only innocent boy. This Court applied the crime test, criminal test and also weighed the mitigating and aggravating circumstances in light of "rarest of the rare" doctrine and concluded that the murder was committed in an extremely brutal manner which

pricks not only judicial conscience but also conscience of society. This Court considered that the accused has no previous criminal history and is 42 years of age alongwith the fact that the boy had voluntarily come to the accused and was not kidnapped. Further, since the entire case rests on circumstantial evidence and generally in the absence of ocular evidence death sentence is seldom awarded, this Court opined that incarceration of further period of 30 years without remission in addition to sentence already under-gone will be an adequate sentence.

52. *State of Maharashtra v. Goraksha Ambaji Adsul*, (2011) 7 SCC 437 arose out of brutal and diabolical killing of three innocent family members due to their resistance to the accused person's demands for partition of the land and other property and allotment of shares. This Court observed that the circumstances and manner of committing crime should pricks judicial conscience of Court to extent that only and inevitable conclusion should be awarding of death penalty. This Court considered that though the manner of committing crime was deplorable but attendant circumstances and fact that (i) the accused administered sweets containing sedatives/poisonous substance even to his own wife, shows that his frustration, and probably greed, for property had attained volcanic dimensions; (ii)the intensity of bitterness between members of the family had exacerbated thoughts of revenge and retaliation and (iii) constant nagging by his wife as mitigating circumstance in commission of crime and consequently, held that awarding death sentence amounting to taking away life of an individual would not be appropriate as the case does not fall in category of 'rarest of rare cases'.

53. In *Brajendrasingh v. State of Madhya Pradesh*, (2012) 4 SCC 289, a man suspecting his wife of having illicit relations with his neighbor, had killed his three young children who were asleep, sprinkled kerosene oil on his wife and put her on fire. This Court considered that the incident occurred in spur of the

A moment, was not premeditated and the accused attempted suicide after committing the crime and concluded that circumstances examined cumulatively would suggest the existence of a mental imbalance in the accused at the moment of committing the crime and therefore, commuted the death B sentence to imprisonment for life.

54. Having considered the case laws relied on by the learned *Amicus*, we would now revert back to the factual situation of this case. In the instant case, the time, place and C manner of the commission of crime are indicative of the motive of the accused-appellants. The accused-appellants have ruthlessly and successively butchered their own kith and kin for obtaining possession of certain pass-book, money and immovable property without any provocation. They chose a day D when most of the residents of the village including PW-1 had went out to attend a wedding at an adjacent village and ensured that their despicable act did not suffer any resistance from them. At first, they entered the Mosque where the deceased was offering Namaz and indiscriminately attacked him with the sword E and bhujali. Thereafter, they proceeded towards his house and slained the deceased's two sons- Gurfan Khan and Imran Khan, who had come out of the house hearing their father's cries for help. Committed to their pre-meditated object, the accused-appellants forced themselves into the deceased's house and F killed Kasuman Bibi and her four minor children including a physically disabled child. Being armed with sharp edged weapons such as sword, tangi, bhujali and spade, the quick succession with which the accused-appellants proceeded to slaughter the eight members of their family classifies their act G as pre-planned and reflects the cold-blooded fashion with which the callous design was executed.

55. The accused-appellants in their unquenched thirst for land and money extirpated eight innocent lives. The soured relations between the brothers did not restrict them from H eliminating the family of Haneef Khan, thereby killing his two

young sons, his wife and his four minor sons aged one 5, 8, 12 and 18 approximately, respectively, one of who was physically disabled. Their lack of remorse is reflected from the act of extending threat of life to other members of the family present in the house should they dare to inform the police.

56. It is heart wrenching to fathom the plight of an old mother who witnessed her own sons kill their brother and his family. PW-2, the sole eye-witness, despite being the mother of both the accused-appellants has supported the prosecution case and testified against them. Her testimony has been unassailed, corroborated by her statement under Section 164 of the Code and other witness to the incident. No oblique motive has surfaced from the record which would impregnate her statement with suspicion against her own sons. Usually a brother, a sister or a parent who has seen the commission of crime, may resile in the Court from a statement recorded during the course of investigation. It happens instinctively, out of natural love and affection, not out of persuasion by the accused person. The witness has an obvious stake in the innocence of the accused and therefore tries to save him from the guilt. Here, PW-2 has not only come forward by testifying for the prosecution but has also stood unshaken by the family ties in her tryst for justice to the slain half of her family. It would be the paramount duty of the Court to provide justice to the incidental victims of the crime- the family members of the deceased persons. Therefore, appropriate and proportional sentence requires to be imposed. On one hand, such sentencing would demonstrate respect to those most personally affected by the grief and horror of murder, on the other it would also be in accordance with the goals of the victims' rights and the principles of restorative justice.

57. In *Dhananjoy Chatterjee @ Dhanna v. State of West Bengal*, (1994) 2 SCC 220, this Court has observed that the measure of punishment in a given case depends upon the atrocity of the crime, the conduct of the criminal and the

A defenseless and unprotected state of the victim. Further that imposition of the appropriate punishment is the manner in which the Courts respond to the society's cry for justice against the criminal and justice demands that Court should impose such punishment which reflects public abhorrence of the crime. This B Court highlighted the Court's duty to view the rights of the victims of crime and the society while considering imposition of appropriate punishment.

58. In *Rattan Singh v. State of Punjab*, (1979) 4 SCC 719 C this Court lamenting the unfortunate state of victims' right protection in India observed that "it is a weakness of our jurisprudence that victims of crime and the dependents of the victims do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our law. This is the D deficiency in the system, which must be rectified by the legislature."

59. In the context of these turbulent social times, we cannot remain oblivious to the substantial suffering of the victims. It stands as a fact that criminal justice reform and civil rights E movement in India has historically only paid considerable attention to the rights of the accused and neglected to address to the same extent the impact of crime on the victims. It is not only the victims of crime only that require soothing balm, but also the incidental victims like the family, the co-sufferers and F to a relatively large extent the society too. The judiciary has a paramount duty to safeguard the rights of the victims as diligently as those of the perpetrators.

60. In *Mahesh v. State of Madhya Pradesh*, (1987) 3 SCC G 80, this Court has deprecated the lenient approach in imposition of the appropriate punishment and observed that it would be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with clear evidence and diabolic acts. This Court held that to award the lesser punishment would be H to render the justice system of this country suspect due to which

the common man would lose faith in courts. This Court approved the harshest punishment in such cases as here adopting the approach that the accused understands and the society appreciates the language of deterrence more than the reformative jargon.

61. In *Sevaka Perumal v. State of T.N.*, (1991) 3 SCC 471, this Court stated that undue sympathy to impose inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of law. The society could not long endure under such serious threats and therefore, it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc.

62. In the instant case, the mitigating circumstances under which the appellants seek refuge have failed to convince us. The age of the appellants is not a relevant circumstance in the present case. They were middle aged at the time of commission of the offence and their faculties were ripe enough to comprehend the implications of their actions and therefore, do not warrant pardon of this Court. *Secondly*, the circumstance that the appellants have a family and old aged parents etc. does not convinces us, especially in light of the fact that the parents themselves have testified against the appellant's act of uprooting their brother's family and their utter disregard for blood relations. *Thirdly*, the mere fact that some of the accused persons of young age have been awarded a lesser sentence than death sentence can not be made a ground for commuting the sentence of death to imprisonment for life. The manner in which the crime was committed on the helpless members of a family including children of tender age and child with locomotive disability and design of the accused-appellants to eliminate the whole family justifies the grant of death sentence. *Lastly*, the manner of the commission of crime, the diabolic murder of the young and innocent children of deceased-Haneef Khan for property and choice of the day

A of commission of crime by the appellants belittles the argument with respect to possibility of reformation of the appellants and their possible rehabilitation.

63. In our considered view, the "rarest of the rare" case B exists when an accused would be a menace, threat and anti-thetical to harmony in the society. Especially in cases where an accused does not act on provocation, acting in spur of the moment but meticulously executes a deliberately planned crime inspite of understanding the probable consequence of his act, C the death sentence may be the most appropriate punishment. We are mindful that criminal law requires strict adherence to the rule of proportionality in providing punishment according to the culpability of each kind of criminal conduct keeping in mind the effect of not awarding just punishment on the society. D Keeping in view the said principle of proportionality of sentence or what it termed as "just-desert" for the vile act of slaughtering eight lives including four innocent minors and a physically infirm child whereby an entire family is exterminated, we cannot resist from concluding that the depravity of the appellant's offence E would attract no lesser sentence than the death penalty.

64. In the result, we are in agreement with the reasons recorded by the Trial Court and approved by the High Court while awarding and confirming the death sentence of the accused-appellants. In our considered view, the judgment(s) F and order(s) passed by the Courts below does not suffer from any error whatsoever.

65. The appeal stands dismissed, accordingly.

G 66. The Registry is directed to pay Rs.10,000/- (Rupees Ten Thousand Only) to the learned *Amicus Curiae*.

Ordered accordingly.

Rajendra Prasad Appeal dismissed.

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