

developed illicit relationship with two women which caused differences in his family. The wife of the appellant started taking half of the salary of the appellant directly from the office of the appellant. On account of this, the appellant became determined to cause death of his wife and all four children. On the fateful day, the appellant took his wife and four children to the market on the pretext to do shopping for the marriage of elder daughter. On return from the market, the appellant stopped the van and came out with the driver. After locking the van, he poured kerosene on the van and set it ablaze. Thereafter, the appellant and the driver fled from the said place. Meanwhile two police officers saw the van burning. They broke open the doors of the burning van and removed the people inside to hospital. The wife and two daughters of the appellant died. Based on their dying declarations, the trial court convicted the appellant under Sections 302, 307 and 436 IPC and passed death sentence. The High Court confirmed the conviction and death sentence. The instant appeal was filed challenging the order of the High Court.

Disposing of the appeal, the Court

HELD:1. The facts brought out in the dying declarations of the wife and the two daughters of the accused-appellant has corroborated the statements of injured eye-witnesses, PW-5 and PW-6. There was no room but to suggest that the accused caused the death of the deceased. The dying declarations clearly implicated the accused. There were no suspicious features which affected the credibility of the dying declarations particularly the deceased being related to the accused. There was no apparent reason as to why the deceased wife, and daughters would falsely connect their husband/father with the murderer attack. Mere fact that Doctor in whose presence the dying declaration was recorded and/or who endorsed it, was not examined, did

A not affect the evidentiary value of the dying declaration. The evidence of Inspector (PW-4) was also corroborated by the evidence of eye-witnesses PW-5 and PW-6. There was no discrepancy in the statements of the eye-witnesses to disbelieve them. The trial court rightly
 B convicted the appellant for the offence under Section 302, 307 and 436 IPC as affirmed by the High Court. [Para 18] [1050-D-G]

2.The prosecution had proved the guilt of the
 C accused beyond all reasonable doubt, the accused committed the crime in a most cruel and inhuman manner. The helpless wife and young children, who fell victims to the avaricious conduct and lust of the appellant still the case did not fall within the four corners of the principle of "the rarest of the rare case", though
 D no leniency can be shown to the appellant. There was 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. In the instant case, taking into the facts and
 E circumstances of the case in hand, the imposition of death sentence to the accused was not warranted. Accordingly the sentence is commuted to life imprisonment. Further, the accused must serve a minimum of 30 years in jail without remissions before
 F consideration of his case for premature release. The accused Amar Singh Yadav as one of the life and he should undergo sentence for a fixed period of 30 years without any remissions. [Paras 26, 27 and 30] [1065-B-F; 1066-B-C]

G *Bachan Singh vs. State of Punjab* 1980 (2) SCC 684: 1980 AIR 898; *Machhi Singh and Ors. vs. State of Punjab* 1983 (3) SCC 470: 1983 (3) SCR 413; *Ronny alias Ronald James Alwaris and Ors vs. State of Maharashtra* 1998 (3) SCC 625: 1998 (2) SCR 162 ; *Allauddin Mian & Ors. Vs.*
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State of Bihar (1989) 3 SCC 5: 1989 (2) SCR 498 ; A
Ramnaresh and Ors. vs. State of Chattisgarh 2012 (4) SCC
 257: 2012 (3) SCR 630; *Shankar Kisanrao Khade vs. State*
of Maharashtra 2013 (5) SCC 546: 2013 (6) SCR 949;
Haresh Mohandas Rajput vs. State Of Maharashtra 2011 (12)
 SCC 56: 2011 (14) SCR 921; *Sandeep vs. State of Uttar* B
Pradesh (2012) 6 SCC 107: 2012 (5) SCR 952; *Swamy*
Shraddananda vs. State of Karnataka (2008) 13 SCC
 767:2008 (11) SCR 93 ; *Ramraj v. State of Chhattisgarh*
 (2010) 1 SCC 573: 2009 (16) SCR 367 - relied on.

Case Law Reference: C

1980 AIR 898	Relied on	Para 20	
1983 (3) SCR 413	Relied on	Para 20	
1998 (2) SCR 162	Relied on	Para 21	D
1989 (2) SCR 498	Relied on	Para 21	
2012 (3) SCR 630	Relied on	Para 22	
2013 (6) SCR 949	Relied on	Para 23	E
2011 (14) SCR 921	Relied on	Para 24	
2012 (5) SCR 952	Relied on	Para 25	
2008 (11) SCR 93	Relied on	Para 28	F
2009 (16) SCR 367	Relied on	Para 28	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
 No. 967-968 of 2010

From the Judgment and Order dated 16.02.2010 of the G
 High Court of Judicature at Allahabad in Crl. A. No. 1942 of
 2009 & Reference No. 5 of 2009.

Chachal Kumar Ganguli, Souni Kundu, Anurag Rana for
 the Appellant. H

A Ratnakar Dash, Adarsh Upadhyay for the Respondent.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J : 1. These appeals are directed against the common judgment dated 16th February, 2010 passed by the High Court of Judicature at Allahabad in Criminal Appeal No.1942 of 2009 and Reference No.5 of 2009. By the impugned common judgment, the High Court dismissed the appeal and confirmed the conviction and sentence for the offence punishable under Section 302, 307 and 436 IPC and thereby answered the Reference in confirming the death sentence.

2. The case of the prosecution in short is that Urmila Devi was married to accused Amar Singh Yadav, who was posted as Constable in Police Chowki Gurdev Palace, Kanpur. Three daughters, Mamta, aged 24 years; Pooja aged 22 years; and Sudha 18 years and one son, Pankaj Yadav, aged 13 years were born from their wedlock. Amar Singh had developed illicit relationship with two other women, namely, Shashi of Kanpur and Rani of Bharthana, causing differences in the family. Urmila got effected deduction of half salary of the accused from the Department directly to pull on the expenses of the family. On account of such deductions of salary and illicit relationship, the accused became determined to cause the death of his wife, Urmila and all four children. Pursuant to that determination, accused along with companion driving the Maruti Van No.UP 78 C 8262 came to his wife Urmila and he had taken away his wife and four children in Maruti Van on the pretention of doing shopping for the marriage of one of the daughters. Further case of the prosecution is that when the sun had set, at the time of return the accused got Maruti Van stopped 25-30 metres ahead of Udharanpur bridge on Jahanganj road and he along with the driver came out of the Van. They sprinkled the petrol all around the Van after locking the doors thereof. The accused along with companion then set the Maruti Van ablaze, with intention of

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burning all occupants of the Maruti Van to death. Thereafter, the accused and the driver tried to push the vehicle down in the pit so that the occupants might not escape but meanwhile Inspector, Police Station Chhibramau along his companion Police Constables luckily arrived there and he without caring of his life broke open the doors of the burning vehicle and took out accused's wife and all four children from the burning car. He immediately removed them to the Hospital for treatment. The complainant having received the information, rushed to Lohia Hospital, Farrukhabad where sister of the complainant i.e. Urmila and four children briefed the entire incident to him.

3. Dhruv Narain, Constable Police No.286 (PW-14), registered the First Information Report at 1.30 a.m. being Crime No.310/2005 under Section 436, 307 IPC. He received direction from Inspector Uma Shankar Yadav on R.T. Set to depute the additional force. On this, Sub-Inspector Pramod Kumar Katiyar along with other Constables proceeded to the spot. The next day at about 7.20 a.m., Sub-Inspector Pramod Kumar Katiyar returned to the Police Station; vide General Diary it is reported that he got admitted all the injured of the incident in Ram Manohar Lohia Hospital on the direction of Inspector, Uma Shankar Yadav.

4. After registration of the case, its investigation was entrusted to Pramod Kumar Katiyar, Sub-Inspector (PW-13), He proceeded to the spot and prepared site plan Ext.Ka-20. He then proceeded to Lohia Hospital, Farrukhabad and recorded the statement of Urmila Devi, Ext.Ka-18; Mamta, Ext.Ka-15; Pooja, Ext.Ka-17; Sudha, Ext.Ka-16 and Pankaj Singh, Ext.Ka-19. Out of injured persons Urmila Devi, Mamta and Pooja died. The case of the accused was forwarded for trial under Section 307/302/436 IPC.

5. In support of prosecution case, as many as 15 witnesses were examined by the prosecution, out of them Sudha(PW-5) and Pankaj Singh(PW-6) are injured witnesses. In the defence statement under Section 313 Cr.P.C. accused denied the

A allegation. Total 17 exhibits including dying declarations of
Urmila Devi, Ext.Ka-18; Mamta, Ext.Ka-15; Pooja, Ext.Ka-17
were produced.

B 6. On appreciation of the oral and documentary evidence
and hearing the parties, the Sessions Judge, Kanpur held the
appellant-accused guilty for the offences under Section 302,
307 and 436 IPC. The accused was convicted and sentenced
to rigorous imprisonment for life on count of Section 307 IPC.
C He was further convicted and sentenced to rigorous
imprisonment for seven years on count of Section 436 IPC. The
accused was further convicted and sentenced to death and
Rs.10,000/- fine on count of Section 302 IPC and it was
D directed that he shall be hanged by the neck till death. All
sentences shall run concurrently. The High Court by the
impugned judgment dated 16th February, 2010 upheld the
conviction and death sentence of the accused. The Reference
was answered accordingly.

7. Learned counsel for the appellant while assailing the
impugned judgment submitted as follows:

E (i) *Deduction of 50% salary of the appellant for paying
to his wife by the Department cannot be a motive to ruin
the entire family.*

F (ii) *Due to extra marital relationship with two other women
the appellant has been implicated.*

G (iii) *If at all there was any motive to kill his wife but there
was no reason to ruin the life of two daughters specially
the elder daughter who was going to be married and for
that purpose articles were purchased.*

(iv) *The person who informed PW-4 that the vehicle was
set on fire was not produced by the prosecution.*

H (v) *Dying declaration cannot be relied because the Doctor
who examined, who gave the certificate of fitness was not*

examined. Statements of PW-5 and PW-6 injured witnesses are contradictory to the dying declaration. A

(vi) That no one has deposed that they saw the appellant spreading the petrol. Hence, there is doubtful of identity of such person. B

(vii) The driver of the van was not arrested and examined nor the two women who had an extra marital affair with the appellant were examined.

(viii) The alleged incident does not fall within the category of "rarest of the rare case", and, therefore, death penalty was uncalled for. This is not a fit case to impose a death penalty. C

8. Complainant, Satendra Singh (PW-1), brother of the deceased-Urmila, has proved the contents of the FIR. He is not the eye-witness of the incident in question. He deposed that on 29th April, 2005, he received the information from the Police Station at 9 p.m. that his sister and four children were put to fire while confined in the Maruti Van. He arrived at Lohia Hospital at 11 a.m. and found all the persons in burn condition. His sister recognised him and briefed the entire incident. He reported the same to the Police. The accused-Amar Singh Yadav and driver straightaway ran away from the scene. The Police had taken them out of the burn Maruti Van after breaking open the door. D
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9. This witness has told the motive of Amar Singh to cause the incident that his sister obtained the order of half of salary of Amar Singh payable to him by the order of the Superintendent of Police, Kanpur because Amar Singh was maintaining the illicit affairs with two women. The marriage of Mamta was settled on 11th May, 2005 and on pretend of purchase for marriage of Mamta accused Amar Singh had taken his wife and all the children to the market. G
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A 10. *Uma Shankar Yadav*, Inspector (PW-4), has testified
 in the Court that on 29th April, 2005 at about 8.30 p.m. when
 he was in search the wanted accused, he noticed a Maruti Van
 being blown near Udharanpur bridge. He immediately arrived
 there. Two persons standing there who immediately fled away
 B from the scene. He and accompanying Home Guard, tried to
 extinguish the fire by throwing sand on fire and as soon as the
 fire receded, he broke open the window panes and had taken
 all the five occupants out of the Maruti Van. This witness further
 informed that all the injured were removed to Primary Health
 C Centre, Chhibramau for treatment by him. Urmila then had
 briefed the matter to him about the accused maintaining illicit
 relationship with two women and she also told that in what
 manner the accused had pretended to take them away to the
 market and blew up the Maruti Van.

D 11. *Sudha* (PW-5), aged 18 years deposed on oath that
 on the day of the incident, i.e., 29th April, 2005, her father
 (accused) had taken her mother Urmila, elder sister Mamta,
 younger sister Pooja and brother Pankaj in Maruti Van to
 Chhibramau for purchasing material for the marriage of sister
 E Mamta. No purchase was made from Chhibramau. They
 started returning to the house; at about 6.30 p.m. The vehicle
 was being driven at very slow speed. Her father stopped the
 vehicle at Chhibramau bus stand where he passed on time for
 one hour. In between 7.15 p.m. to 7.30 p.m. all of them driven
 F towards the village, the Maruti Van was caused to be stopped
 where a board containing the information, "stop there is a
 school here". The driver stopped the vehicle saying that "the
 car has become hot". Her father then told that, "Let him bring
 the wet cloth so that the engine may be cooled down". The Van
 G was again made to drive and ultimately her father and driver
 had come out of the Van after locking the windows. Her father
 had already sprinkled the petrol in the Van. He torched the Van
 at once and the Van started burning. Meanwhile, the Police had
 arrived there to their rescue and they were taken out of the

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vehicle by the Police after breaking open the window. She also proved the fact of her father having maintained extra marital relationship with two other women due to which, her mother got deduction of half salary from the salary of her father.

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12. *Likewise, Pankaj (PW-6)* corroborated the statement of Sudha. He stated that on 29th April, 2005 his father Amar Singh and the driver took all of them to Chhibramau to purchase materials. At the time of return near the river Kali, the car was stopped then petrol was poured on them and set on fire. They tried to come out but their father and the driver just watched the fire. He further stated his father was working in Police and posted at Kalyanpur in Kanpur. He stated that his father and driver set all of them on fire.

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13. *Anil Kumar Katiyar (PW-12)*, Nayab Tehsildar, having received the instruction from the District Magistrate, recorded the dying declaration of injured Sudha, Pooja, Mamta, Urmila and Pankaj, out of whom, Urmila and Pooja died. Mamta, whose dying declaration was recorded by Sub-Divisional Magistrate(PW-10) also died. The dying declaration of Urmila, which is Ext.Ka-18, is reproduced in English version as under:

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"My husband-Amar Singh is in Police department and is posted at Police Station-Kalyanpur in Kanpur. My husband has soleminsed two marriages after me. My children and I had started getting half of his salaries and by which allowance (we were) maintaining. Due to all these reasons, my husband was angry with me and the children. But yesterday on 29.04.2005 by saying that articles were to be purchased for the marriage of daughter, all of us were taken to Chhibramau. Deliberately (we were) taken to Chhibramau and despite of our repeated requests delay was caused and (we) left late. While coming back the driver and my husband-Amar Singh stopped the car near the bridge of river Kali by saying that the car had become hot. After that oil was sprinkled on all of us and set on fire. When we tried to

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A *leave the car, then again we were pushed into the car. They kept on watching at us in flames from outside. I do not know the name of the driver, my husband set me and my children on fire and the driver fully co-operated in it."*

B 14. The dying declaration of the deceased-Pooja made to PW-12, which is Ext.Ka-17, in English version is as under:

C *"Yesterday on 29.04.05 my father-Amar singh and the driver took me, my mother and both the sisters and brother with them to Chhibramau by Maruti by saying this that articles were to be purchased for the marriage of 'Didi' (elder sister) and clothes etc. were to be got purchased for us. Some articles were purchased for 'Didi' at Chhibramau and much delay was caused there. Left Chhibramanu in the evening and stopped the car near the river Kali while saying that the car had become hot and was to be cooled down. By stopping the Maruti, father-Amar Singh and the driver put oil upon us and set us on fire and when (we) tried to come out of the car, then again we were pushed into the car. Do not know the name of the driver who was with the father. Mother had started getting half amount of the salary of father and due to this reason father was angry from all of us. Father and the driver after setting us on fire ran away. After sometime the Police got us admitted here."*

F 15. The verbatim reproduction of dying declaration of deceased-Mamta made to City Magistrate (PW-10), Raj Pal singh, which is Ext.Ka-15, is as under:

G *"I, Mamta daughter of Amar Singh, resident of Vida, village-Mohammadabad, Farrukkhabad, age about 20 years, am in full senses and state of mind, my father-Amar Singh along with the driver was taking me, mother-Urmila, Shobha and Pankaj to Chhibramau as articles(relating to) my marriage were to be purchased*

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from there. At about 7.30 p.m. on 29.04.05 while coming back from Chhibramau I, my mother-Urmila, Shobha, Pankaj and Pooja were closed in Maruti Van near the river Kali, before closing the car father said that car had become hot up and on the pretext of sprinkling water, sprinkled the petrol inside the car and set on fire. The door was closed from outside, my father set on fire, the driver was helping him. My father was desiring to kill me and as well as to all those who were closed inside by setting on fire. My father had soleminsed second marriage. My mother had got made his salary half and since then he used to quarrel."

16. In the initial stage dying declarations of Sudha and Pankaj were also recorded by Nayab Tahseeldar (PW-12), but as both of them survived so their statements were only treated as exhibits. The statement of Sudha, which is Ext.Ka-16, is as under:

"Yesterday on 29.04.05 in the evening at about 7.00 hours, my father and the driver closed my mother, me and my two sisters and my brother in the car and set on fire. Before closing the car firstly the oil was poured on us. Father took all of us on the pretext of purchasing goods for the marriage of sister-Mamta and clothes etc. for all of us, from Chhibramau. In chhibramau only some cream and powder etc. were purchased for sister. After that left Chhibramau very late. At the time of coming back stopped the car near the bridge that the car had become hot and it was to be cooled down and suddenly set us on fire. When we started burning at that time father and the driver kept on looking at us from outside and when sister tried to go out of the car, then father once again pushed me inside the car. My father is in Police department. He is posted at Kalyanpur in Kanpur. I was set on fire by my father and the driver. All of us have been set on fire by these people only."

A 17. The statement of Pankaj Singh, which is Ext.Ka-19, is reproduced as under:

B *"Yesterday on 29.04.05 my father-Amar Singh and the driver took me and my three sisters and mother in Maruti to Chhibramau for purchasing. While coming back, the car was stopped near the river Kali, oil was poured on us and set on fire. We tried to come out, then again (we were) pushed inside the car. My father and driver kept on watching us while standing outside and we kept on crying and screaming, but that did not put any effect on them.*

C *My father is in Police department and is posted at Kalyanpur in Kanpur. Father and the driver set all of us on fire."*

D 18. The facts brought out in the dying declarations of Urmila, Ext.Ka-18; Pooja, Ext.Ka-17 and Mamta,Ka-15 has corroborated the statements of injured eye-witnesses, Sudha (PW-5) and Pankaj Singh (PW-6).There is no room but to suggest that the accused caused the death of the deceased. The dying declarations clearly implicate the accused. There are

E no suspicious features which affect the credibility of the dying declarations particularly the deceased being related to the accused. There is no apparent reason as to why the deceased Urmila(wife), Mamta(daughter), Pooja (daughter) were connecting their husband/father with the murderer attack. Mere

F fact that Doctor in whose presence the dying declaration was recorded and/or who endorsed it, is not examined, does not affect the evidentiary value of the dying declaration. The evidence of Uma Shankar Yadav, Inspector (PW-4) is also corroborated by the evidence of eye-witnesses Sudha (PW-5) and Pankaj (PW-6). There is no discrepancy in the statements

G of the eye-witnesses to disbelieve them. The Trial Court rightly convicted the appellant for the offence under Section 302, 307 and 436 IPC as affirmed by the High Court.

H 19. The next question is whether the death sentence

awarded to the appellant is excessive, disproportionate on the facts and circumstances of the case, i.e. whether the present case can be termed to be a "rarest of the rare case".

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20. The Guidelines emerged from Bachan Singh vs. State of Punjab, 1980 (2) SCC 684 were followed in Machhi Singh and others vs. State of Punjab, 1983 (3) SCC 470. In the said case the Court observed:

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"38. In this background the guidelines indicated in Bachan Singh case, 1980 (2) SCC 684 will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh case (supra):

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

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

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

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

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A 39. *In order to apply these guidelines inter alia the following questions may be asked and answered:*

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

C (b) *Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?*

D 40. *If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."*

E 21. In *Ronny alias Ronald James Alwaris and others vs. State of Maharashtra*, 1998 (3) SCC 625, this Court noted the law laid-down in *Allauddin Mian & Ors. Vs. State of Bihar*, (1989) 3 SCC 5, that unless the nature of the crime and circumstances of the offender reveal that criminal is a menace to the society and the sentence of life imprisonment would be altogether inadequate, the Court should ordinarily pass a lesser punishment and not punishment of death which should be reserved for exceptional cases only. Considering the cumulative effect of all the factors, like the offences committed under the influence of extreme mental or emotional disturbance, the young age of the accused, the possibility of reform and rehabilitation, etc. the Court may convert the sentence into life imprisonment.

H 22. This Court noticed the aggravating and mitigating circumstances in *Ramnaresh and others vs. State of Chattisgarh*, 2012 (4) SCC 257, and held as follows:

"76. The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in *Bachan Singh*, (1980) 2 SCC 684, and thereafter, in *Machhi Singh*, (1983) 3 SCC 470. The aforesaid judgments, primarily dissect these principles into two different compartments-one being the "aggravating circumstances" while the other being the "mitigating circumstances". The court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the court. It will be appropriate for the court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the court as contemplated under Section 354(3) CrPC.

Aggravating circumstances

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

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

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

(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.*

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

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

E (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.*

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

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

G (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

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(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.*

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

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(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.*

C

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

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

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

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

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While determining the questions relating to sentencing policy, the Court laid down the Principles at paragraph 77 which reads as follows:

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

B *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.*

C *(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.*

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

E *(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.*

F *(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."*

23. In *Shankar Kisanrao Khade vs. State of Maharashtra*, 2013 (5) SCC 546, dealing with a case of death sentence, this Court observed:

G *"52. Aggravating circumstances as pointed out above, of course, are not exhaustive so also the mitigating circumstances. In my considered view, the tests that we have to apply, while awarding death sentence are "crime test", "criminal test" and the "R-R test" and not the*

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"balancing test". To award death sentence, the "crime test" has to be fully satisfied, that is, 100% and "criminal test" 0%, that is, no mitigating circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc. the "criminal test" may favour the accused to avoid the capital punishment. Even if both the tests are satisfied, that is, the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the rarest of the rare case test (R-R test). R-R test depends upon the perception of the society that is "society-centric" and not "Judge-centric", that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of intellectually challenged minor girls, suffering from physical disability, old and infirm women with those disabilities, etc. Examples are only illustrative and not exhaustive. The courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the Judges."

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24. On the question of sentence of death the principle in nutshell has been stated in Haresh Mohandas Rajput vs. State Of Maharashtra, 2011 (12) SCC 56, which reads as under:

"The rarest of the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful coexistence 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

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A *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 would continue to be so, threatening its peaceful and harmonious coexistence. 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 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 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 affects the entire moral fibre of the society e.g. crime committed for power or political ambition or indulging in organised criminal activities, death sentence should be awarded. (See C. Muniappan v. State of T.N.(2010) 9 SCC 567, Dara Singh v. Republic of India. (2011) 2 SCC 490, Surendra Koli v. State of U.P. (2011) 4 SCC 80, Mohd. Mannan, (2011) 5 SCC 317 and Sudam v. State of Maharashtra, (2011) 7 SCC 125.)*

F 25. *In Sandeep vs. State of Uttar Pradesh, (2012) 6 SCC 107, this Court observed:*

G *"72. It is, therefore, well settled that awarding of life sentence is the rule, death is an exception. The application of "the rarest of the rare case" principle is dependent upon and differs from case to case. However, the principles laid down earlier and restated in the various decisions of this Court referred to above can be broadly stated that a deliberately planned crime, executed meticulously in a diabolic manner, exhibiting inhuman*

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conduct in a ghastly manner, touching the conscience of everyone and thereby disturbing the moral fibre of society would call for imposition of capital punishment in order to ensure that it acts as a deterrent."

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26. Though we are convinced that the prosecution has proved the guilt of the accused beyond all reasonable doubt, the accused committed the crime in a most cruel and inhuman manner. The helpless wife and young children, who fell victims to the avaricious conduct and lust of the appellant still the case does not fall within the four corners of the principle of "the rarest of the rare case", though no leniency can be shown to the appellant.

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27. There is 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.

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28. In *Swamy Shraddananda vs. State of Karnataka*, (2008) 13 SCC 767, even while setting aside the sentence of death penalty and awarding life imprisonment in order to serve the ends of justice, the Court ordered that the appellant should not be released from the prison till the end of his life. Likewise, in *Ramraj v. State of Chhattisgarh*, (2010) 1 SCC 573, this Court, while setting aside the death sentence, directed that the appellant therein should serve a minimum period of 20 years including the remissions and would not be released on completion of 14 years of imprisonment.

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29. In *Sandeep's (supra)* taking into note the aforesaid decisions and facts and circumstances of the case, this Court while holding that the imposition of death sentence to the accused Sandeep was not warranted and while awarding life imprisonment, the Court held that the accused Sandeep must serve a minimum of 30 years in jail without remissions before consideration of his case for premature release.

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A 30. In the present case taking into the facts and circumstances of the case in hand and reasons stated above, we hold that the imposition of death sentence to the accused Amar Singh Yadav was not warranted. Accordingly we commute the sentence to life imprisonment. Further, we hold
B that the accused Amar Singh Yadav must serve a minimum of 30 years in jail without remissions before consideration of his case for premature release. Criminal Appeals and Reference thus stand disposed of, modifying the sentence of the accused Amar Singh Yadav as one of the life and he should undergo
C sentence for a fixed period of 30 years without any remissions.

31. The criminal appeals stand disposed of with the aforesaid observations.

Devika Gujral

Appeal disposed of.