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B.A. UMESH

v.

REGISTRAR GENERAL, HIGH COURT OF KARNATAKA

(Criminal Misc. Petition Nos. 4213-4214 of 2016)

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IN

(Review Petition (Criminal) Nos. 135-136 of 2011)

IN

(Criminal Appeal Nos. 285-286 of 2011)

C

OCTOBER 03, 2016

[RANJAN GOGOI, PRAFULLA C. PANT AND A.M. KHANWILKAR, JJ.]

Code of Criminal Procedure, 1973: s.235(2) – Hearing on question of sentence – Plea that no separate date for hearing on sentence was given by trial court as such for violation of s.235(2), sentence of death cannot be affirmed – Held: There is no mandate in s.235(2) to fix separate date for hearing on sentence – It depends on the facts and circumstances as to whether a separate date is required for hearing on sentence or parties feel convenient to argue on sentence on the same day – As such, merely for the reason that no separate date is given for hearing on the sentence, the review petition cannot be allowed.

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Sentence/Sentencing: Death sentence – Petitioner having criminal record – Committed murder and rape – Trial court convicted him u/ss.376, 302 and 392 and passed death sentence – High Court upheld conviction and sentence – Appeal before Supreme Court dismissed – Review petition – Court declined to interfere with conviction and sentence – Petition u/s.235(2) for open hearing – Submission confined only on the point of sentence – Prayer for commutation of sentence – Held: In view of criminal history of the petitioner, the age of 30 years of the petitioner (at the time of incident) cannot be a ground to show any kind of leniency on sentence – Petitioner committed crimes not only before the incident, but also within two days, subsequent to the incident, i.e. another robbery in connection with which he was apprehended by the public

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and handed over to the police – Taken together, the petitioner is a menace and threat to the society – The aggravating circumstances are grave and far more serious as against the mitigating circumstances pointed out on behalf of the petitioner – In view of facts and circumstances of the case, gravity of the offence, and the manner in which the crime is committed and the antecedents of petitioner who is an ex-police official, no sufficient reason made out to modify the order of affirmation of death sentence.

Witness: Child witness – Held: If the statement of the witness, aged seven years, has been found natural, trustworthy and without any chance of being tutored, it cannot be taken lightly as mitigating circumstances.

Disposing of the petitions, the Court

HELD: 1. It is true that the convict has a right to be heard before sentence. There is no mandate in Section 235(2) Cr.P.C. to fix separate date for hearing on sentence. It depends on the facts and circumstances as to whether a separate date is required for hearing on sentence or parties feel convenient to argue on sentence on the same day. Had any party pressed for separate date for hearing on the sentence, or both of them wanted to be heard on some other date, situation could have been different. In the present case, the parties were heard on sentence by both the courts below, and finally by this Court, as is apparent from the judgment under review. As such, merely for the reason that no separate date is given for hearing on the sentence, the Review Petition cannot be allowed. [Para 8] [445-B-D]

2. If the statement of the witness, aged seven years, has been found natural, trustworthy and without any chance of being tutored, it cannot be taken lightly as mitigating circumstances, particularly, in the facts and circumstances of the present case. Therefore, the plea that though the testimony of the child (PW-2) aged about seven years could be sufficient for holding the petitioner guilty of offence for conviction but the death sentence should not be imposed on the basis of testimony of seven years old child cannot be accepted. [Para 13] [447-D]

3. In view of criminal history of the petitioner, age of 30 years of the petitioner (at the time of incident), in the facts and

A circumstances of the case cannot be a ground to show any kind of leniency on sentence. As far as the fact as to leaving PW-2 (seven years old child) unharmed is concerned, it is apparent that actually the child was left unharmed not because of any compassion on the part of the petitioner. Rather he was on a hasty retreat from the place of incident. The petitioner appears to have committed number of crimes and also escaped from the lawful custody before commission of this crime. The worst is that the petitioner committed crimes not only before the incident, but also within two days, subsequent to the incident, i.e. another robbery in connection with which he was apprehended by the public and handed over to the police. Taken together, the petitioner is a menace and has become threat to the society. On overall analysis of facts and circumstances of the case, gravity of the offence, and the manner in which the crime is committed read with the antecedents of petitioner who is an ex-police official, there is not sufficient reason to review or modify the order of affirmation of death sentence in the present case. The aggravating circumstances are grave and far more serious as against the mitigating circumstances. [Paras 19, 20] [450-D-G]

Tuttu Lodhi @ Pancham Lodhi v. State of Madhya Pradesh Cr A.292-293 of 2014 dated 16.09.2016 – distinguished.

Aftab Ahmad Khan v. *State of Hyderabad* AIR 1954 SC 436 : 1955 SCR 588 – held inapplicable.

Mohd. Arif and others v. *The Registrar, Supreme Court of India and others* 2014 (11) SCR 1009 : (2014) 9 SCC 737; *B.A. Umesh* v. *Registrar General, High Court of Karnataka* 2011 (2) SCR 367 : (2011) 3 SCC 85; *Bachan Singh v. State of Punjab* (1980) 2 SCC 684; *Machhi Singh v. State of Punjab* 1983 (3) SCR 413 : (1983) 3 SCC 470; *Dagdu and others v. State of Maharashtra* 1977 (3) SCR 636 : (1977) 3 SCC 68; *Tarlok Singh* v. *State of Punjab* 1977 (3) SCR 711 : (1977) 3 SCC 218; *Deepak Rai* v. *State of Bihar* 2013 (14) SCR 297 : (2013) 10 SCC 421; *Suthendraraja alias Suthenthira Raja alias Santhan and others* v. *State through DSP/CBI, SIT, Chennai* 1999 (3) Suppl. SCR 540 : (1999) 9 SCC 323 – referred to.

Case Law Reference

2014 (11) SCR 1009	**referred to**	**Para 1**
2011 (2) SCR 367	**referred to**	**Para 6**
(1980) 2 SCC 684	**referred to**	**Para 7**
1983 (3) SCR 413	**referred to**	**Para 7**
1977 (3) SCR 636	**referred to**	**Para 9**
1977 (3) SCR 711	**referred to**	**Para 10**
2013 (14) SCR 297	**referred to**	**Para 11**
1955 SCR 588	**held inapplicable**	**Para 15**
1999 (3) Suppl. SCR 540	**referred to**	**Para 15**

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CRIMINAL APPELLATE JURISDICTION : Criminal Misc. Petition Nos. 4213-4214 OF 2016 in Review Petition (Criminal) Nos. 135-136 of 2011 in Criminal Appeal Nos. 285-286 of 2011.

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Ms. Kiran Suri, Sr. Adv., Amit S. J., Mukesh Kumar Singh, Ankolekar Gurudatta, Advs. for the Appellant.

Ms. Anitha Shenoy, Ms. Srishti Agnihotri, Ms. Surabhi Aggarwal, V. N. Raghupathy, Advs. for the Respondents.

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The Judgment of the Court was delivered by

PRAFULLA C. PANT, J. 1. Review Petition (Criminal) Nos. 135-136 of 2011 are heard in open court, as prayed in Criminal Miscellaneous Petition Nos. 4213-4214 of 2016, in the light of decision of this Court in ***Mohd. Arif and others* v. *The Registrar, Supreme Court of India and others*** (2014) 9 SCC 737. The Review Petitions were earlier dismissed by circulation vide order dated 07.09.2011 affirming the dismissal of Criminal Appeal Nos. 285-286 of 2011, whereby death sentence awarded to the review petitioner, stood affirmed.

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2. Brief facts of the case are that Jayashri (deceased), after death of her husband, used to live with her son PW-2 Suresh, aged seven years, in Bhuvaneshwarinagar, Bangalore, as a tenant of PW-8 Lalitha Jaya. On 28.02.1998 as usual the deceased brought back her son at 1.00 p.m. from the school. After lunch at home, the son went out to play with his friends. When PW-2 Suresh returned home at about 5.00 p.m., he noticed that petitioner B.A. Umesh going out through hall and told

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A him that he was "uncle Venkatesh". He (petitioner) further told him that his mother (deceased) was possessed with some evil spirits, as such, he had tied her hands and was going to bring a doctor. Thereafter, the petitioner left the house with a bag. PW-10 Basvaraju and PW-11 Natesh also saw the petitioner going out of the house with the bag. When Suresh went into the room, he saw his mother lying flat on the ground
B with blood on the floor. She was tied with a saree at one end, and the other end was tied with the window. As the deceased did not respond to call of her son Suresh, he went to the neighbour CW-7 Kusuma Shetty, and told her as to what he had seen. Kusuma Shetty called CW-6 Geetha Hegde and PW-8 Lalitha Jaya and all the three saw through
C window that Jayashri was lying on the ground. Thereafter PW-8 Lalitha Jaya called PW-7 Bylappa, a police constable, who used to live in the locality. In turn, PW-7 Bylappa rang PW-9 Inspector Papanna, who came to the spot with PW-6 Constable Garudappa. The police personnel saw Jayashri lying dead on the floor with genitals exposed and blood
D oozing from her vagina. Articles in the house were lying scattered. The dog squad, a photographer and a finger print expert were called at the place of incident. Crime No. 108 of 1998 was registered at the police station Peenya Circle, Yashvanthpur Sub Division Taluk Bangalore District, Bangalore City and PW-29 Inspector B.N. Nyamagowda took up the investigation. PW-14 A. Kumar, police constable from dog squad,
E PW-16 Jaganath, photographer, and PW-13 R. Narayanappa, finger print expert of the police department prepared their reports. The dead body was sealed and inquest report was prepared in the presence of PW-2 Suresh, PW-3 Lakshmamma, and PW-4 Maare Gowda, and the same was sent for post mortem examination. PW-26 Dr. Somashekar conducted autopsy on the dead body and opined that the deceased was
F smothered after commission of sexual assault. On 02.03.1998 at about 2.30 p.m., petitioner B.A. Umesh was arrested while committing another robbery in the house of Smt. Seeba. On interrogation, he disclosed having committed several crimes at various places. He also made disclosure about the robbed articles. The police took him to the house,
G where he used to live as tenant, to verify the disclosures made by him about the robbed articles kept by him. As many as 191 articles, including 23 items stolen from the house of the deceased, were recovered by the police from said house, and a mahazar (Ext. P-11) was prepared. PW-22 Manjula, sister of the deceased identified the articles seized. The Test Identification Parade was held on 30.03.1998 by PW-24 K.S.
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Ramanjanappa, Taluka Executive Magistrate, whereafter the seized items were sent for examination to Forensic Science Laboratory. On completion of investigation, a charge-sheet was filed against the petitioner for his trial in respect of offences punishable under Sections 376, 302 and 392 of Indian Penal Code (IPC). On committal of case to the Court of Sessions, the charge with three heads was framed against the petitioner/accused who pleaded not guilty and claimed to be tried.

3. Prosecution produced twenty nine witnesses and their evidence was recorded by the trial court whereafter the same was put to the petitioner B.A. Umesh under Section 313 of Criminal Procedure Code (Cr.P.C.) and opportunity was given to him to adduce the evidence in defence. After hearing the parties the trial court (Sessions Judge, Fast Trek Court-VII, Bangalore) vide its judgment and order dated 26.10.2006, convicted the accused/petitioner under Sections 302, 376 and 392 IPC. (We are not discussing the prosecution evidence in detail as the Review Petition is pressed only on the point of sentence.)

4. The trial court heard the parties on the quantum of sentence, and considering gravity of offence and criminal history of the accused and other aggravating and mitigating circumstances, vide order dated 27.10.2006, the convict/petitioner (B.A. Umesh) was sentenced to death under Section 302 IPC and he was directed to be hanged by neck till he is dead. The trial court further awarded sentence of rigorous imprisonment for a period of seven years to the convict and directed him to pay fine of Rs.25,000/- under Section 376 IPC. He was further sentenced to rigorous imprisonment for a period of ten years and was directed to pay fine of Rs.25,000/- under Section 392 IPC. The record was sent to the High Court of Karnataka under Section 366 Cr.P.C. for confirmation of death sentence. The Reference was registered as Reference No. 3 of 2006. The convict filed Criminal Appeal No. 2408 of 2006 under Section 374(2) Cr.P.C. against his conviction and sentence recorded by the trial court.

5. The High Court heard the parties on the Criminal Reference No. 3 of 2006 and Criminal Appeal No. 2408 of 2006, and disposed of the same vide common judgment and order dated 04.10.2007. The conviction of the petitioner was affirmed by the High Court on all the three counts, i.e. under Sections 302, 376 and 392 IPC. However, on the point of sentence, one of the Hon'ble Judges (Hon'ble Mr. Justice R.B. Naik) while agreeing with sentence on other counts, directed the sentence of imprisonment for life on the charge of murder with the

A observation that the convict shall not be entitled to any remission, and his imprisonment shall remain until the term of his natural life. The another Hon'ble Judge, who was part of the Bench (Hon'ble Mr. Justice V.G. Sabhahit) confirmed the conviction and sentence of the petitioner on all the three counts, as awarded by the trial court, including the sentence of death under Section 302 IPC. In view of difference of opinion, the B matter was heard by the third Judge (Hon'ble Mr. Justice S.R. Bannurmath) under Section 392 Cr.P.C. After hearing the parties, the third Judge agreed with Hon'ble Mr. Justice V.G. Sabhahit that it is a case of "rarest of rare" category and, vide judgment and order dated 18.2.2009, confirmed the sentence of death, and dismissed the criminal C appeal.

6. Aggrieved by the above mentioned judgment and order of the High Court, Criminal Appeal Nos. 285-286 of 2011 were filed before this Court on behalf of the petitioner, and after hearing the parties, the same were dismissed vide judgment and order dated 01.02.2011 (reported D in (2011) 3 SCC 85 as ***B.A. Umesh* v. *Registrar General, High Court of Karnataka***). Thereafter, the petitioner filed Review Petition (Crl.) Nos. 135-136 of 2011. After consideration of the same (by circulation), opining again that it is a case of rarest of rare, this Court declined to interfere with the judgment and order dated 01.02.2011 passed in the criminal appeals. Consequently, these Criminal Miscellaneous Petitions E were filed, for open hearing, after law laid down by this Court in 2014 dealing with the matter of death sentence in ***Mohd. Arif*** (supra).

7. At the time of open hearing Ms. Kiran Suri, learned senior counsel appearing for the petitioner, submitted that she is confining her submissions only on the point of sentence of death, and pleaded for F commutation of sentence to imprisonment for life. Referring to law laid down in ***Bachan Singh* v. *State of Punjab*** [(1980) 2 SCC 684] and ***Machhi Singh* v. *State of Punjab*** [(1983) 3 SCC 470], following mitigating circumstances are pointed out on behalf of the petitioner: -

(i) The accused was young (aged about 30 years) at the time of G alleged incident.

(ii) The petitioner/accused left seven years boy (PW-2) unharmed.

(iii) The murder was not premeditated.

(iv) One of the Judges of the High Court, on sentence opined that the convict be sentenced to imprisonment for life.

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(v) The case is of circumstantial evidence. A

(vi) Previous criminal history is not of rape and murder.

8. In addition to above, it is contended on behalf of the petitioner (Review Applicant) that since no separate date for hearing on sentence was given in the present case by the trial court, as such for violation of Section 235(2) Cr.P.C., the sentence of death cannot be affirmed. We B have considered the argument of Ms. Suri. It is true that the convict has a right to be heard before sentence. There is no mandate in Section 235(2) Cr.P.C. to fix separate date for hearing on sentence. It depends on the facts and circumstances as to whether a separate date is required for hearing on sentence or parties feel convenient to argue on sentence C on the same day. Had any party pressed for separate date for hearing on the sentence, or both of them wanted to be heard on some other date, situation could have been different. In the present case, the parties were heard on sentence by both the courts below, and finally by this Court, as is apparent from the judgment under review. As such, merely for the reason that no separate date is given for hearing on the sentence, D the Review Petition cannot be allowed.

9. In ***Dagdu and others* v. *State of Maharashtra***[1] Goswami, J. observes as under: -

> "90. I would particularly emphasise that there is no mandatory direction for remanding any case in *Santa Singh* v. *State of* E *Punjab* [(1976) 4 SCC 190] nor is remand the inevitable recipe of Section 235(2), Code of Criminal Procedure, 1973. Whenever an appeal Court finds that the mandate of Section 235(2), Cr P C for a hearing on sentence had not been complied with, it, at once, becomes the duty of the appeal Court to offer to the accused an F adequate opportunity to produce before it whatever materials he chooses in whatever reasonable way possible. Courts should avoid laws' delay and necessarily inconsequential remands when the accused can secure full benefit of Section 235(2), Cr P C even in the appeal Court, in the High Court or even in this Court. We have unanimously adopted this very course in these appeals." G

10. In another Three Judge Bench case in ***Tarlok Singh* v. *State of Punjab***[2], at para 4, Krishna Iyer, J. writes: -

[1] (1977) 3 SCC 68 (para 90)

[2] (1977) 3 SCC 218 H

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"4. In *Santa Singh* v. *State of Punjab* this Court considering Section 235(2), Cr PC held that the hearing contemplated by that sub-section is not confined merely to hearing oral submissions but extends to giving an opportunity to the prosecution and the accused to place before the Court facts and materials relating to the various factors bearing on the question of sentence and, if they are contested by either side, then to produce evidence for the purpose of establishing the same. Of course, in that particular case this Court sent the case back to the Sessions Court for complying with Section 235(2), Cr PC. It may well be that in many cases sending the case back to the Sessions Court may lead to more expense, delay and prejudice to the cause of justice. In such cases it may be more appropriate for the appellate Court to give an opportunity to the parties in terms of Section 235(2) to produce the materials they wish to adduce instead of going through the exercise of sending the case back to the trial court. This may, in many cases, save time and help produce prompt justice."

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11. In ***Deepak Rai* v. *State of Bihar***[3], yet another Three Judge Bench case, Dattu, J. observes in paragraph 54 as under: -

"**54.** Herein, it is not the case of the appellants that the opportunity to be heard on the question of sentence separately as provisioned for under Section 235(2) of the Code was not provided by the courts below. Further, the trial court has recorded and discussed the submissions made by the appellants and the prosecution on the said question and thereafter, rejected the possibility of awarding a punishment less harsh than the death penalty. However, the High Court while confirming the sentence has recorded reasons though encapsulated. The High Court has noticed the motive of the appellants being non-withdrawal of the case by the informant and the ghastly manner of commission of crime whereby six innocent persons as young as 3 year old were charred to death and concluded that the incident shocks the conscience of the entire society and thus deserves nothing lesser but death penalty."

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12. In the same case (***Deepak Rai* v. *State of Bihar***) quoting Lord Denning, this Court further observes: -

"**98.** On the question of striking a delicate balance between the proportionality of crime to the sentencing policy, Lord Denning

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[3] (2013) 10 SCC 421

has observed[4] as follows on the very purpose of imposition of a punishment: A

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

13. It is further submitted on behalf of the petitioner that though the testimony of the child (PW-2) aged about seven years could be sufficient for holding the petitioner guilty of offence for conviction but the death sentence should not be imposed on the basis of testimony of seven years old child. We are unable to accept this proposition. If the statement of the witness, aged seven years, has been found natural, trustworthy and without any chance of being tutored, it cannot be taken lightly as mitigating circumstances, particularly, in the facts and circumstances of the present case. D

14. It is further argued by Ms. Suri that the probability that the accused would commit further criminal acts of violence and the probability that the accused cannot be reformed are the two factors which the State has not proved. It is further submitted that in the present case if the life sentence is commuted to imprisonment for natural life of the petitioner, the above two factors would lose their significance since the petitioner is going to remain in jail for the rest of his life. It is further argued that it is not the accused who has to prove the mitigating factors but it is for the prosecution to prove that the extreme penalty of death needs to be inflicted. It is contended that the reasons given in the order sought to be reviewed are not sufficient as to why life imprisonment is an inadequate punishment. E F

15. Ms. Kiran Suri, learned senior counsel for the petitioner referred to the case ***Aftab Ahmad Khan* v. *State of Hyderabad***[5], and submitted that since two of the Hon'ble Judges hearing the matter of G

[4] **Ed.**: Lord Denning, Master of the Rolls of the Court of Appeal in England, speaking to the Royal Commission on Capital Punishment in 1950

[5] AIR 1954 SC 436 H

A confirmation of death sentence, in the High Court, differed, as such on this ground alone, sentence of death can be commuted to imprisonment for life. However, in our opinion the case of ***Aftab Ahmad Khan*** (supra), is of little help to the petitioner for the reason that in the present case the Hon'ble Judge, who opined that the convict be awarded the sentence of imprisonment for life, himself observed that it is a case of rarest of rare B category, and it was further observed by him that by making the petitioner to serve imprisonment for natural life, it will be more painful for him to serve the same. Our attention is also drawn to the case of ***Suthendraraja alias Suthenthira Raja alias Santhan and others* v. *State through DSP/CBI, SIT, Chennai***[6]. We have gone through the same and it is sufficient to say that the majority view in said case does not support the C argument advanced on behalf of the petitioner. The learned counsel for the petitioner also invited our attention to a recent unreported decision of this Court in Tuttu Lodhi @ Pancham Lodhi Vs. State of Madhya Pradesh in Criminal Appeals Nos.292-293 of 2014 decided on September 16, 2016. In that case, the Court opined that the facts of the case did not make out a "rarest of rare" case to confirm the death sentence. On that D basis, the Court proceeded to award sentence of imprisonment for total actual period of 20 years. But the facts of present case are different. And now we would discuss the aggravating circumstances of this case.

16. Ms. Anitha Shenoy, learned counsel appearing for the respondent, pointed out following aggravating circumstances in support E of maintaining the death sentence: -

(i) The murder was committed by strangulating a defenseless woman, after raping her violently.

(ii) The petitioner committed robbery in addition to committing rape and murder.

F (iii) The petitioner is not illiterate rustic villager, rather he is an ex-police official.

(iv) The convict/petitioner has a criminal history of 21 cases, with seven convictions.

(v) After the incident, the emboldened accused-petitioner has committed another robbery within just two days and was arrested G by the police, as proved by PW-18 Siddagangaiah and PW-20 Lakshminarasappa.

(vi) Not only the antecedents of the accused are alarming, it is also a case where the accused fled twice from lawful custody which shows no chances of his reformation.

H [6] (1999) 9 SCC 323

17. Ms. Shenoy further submitted that the petitioner was a police constable who was dismissed from service on 15.02.1997 after he was found guilty of misconduct. It is further stated that the petitioner, after escaping from judicial custody on 18.07.1997, has committed the crime in question on 28.02.1998. It is further submitted that the petitioner who committed yet another crime of robbery on 02.03.1998, i.e. within two days after the present incident, was convicted in the subsequent case also on 17.05.1999, and said conviction was affirmed by the appellate court, and finally Special Leave Petition (Crl.) No. .... Of 2011 (Crl. M.P. No. 23691) was dismissed on 09.12.2011, by this Court.

18. We have considered the mitigating and aggravating circumstances mentioned above. The following chart of history of seven convictions recorded against the petitioner is placed before us which shows that there is little hope of rehabilitation and reformation of the petitioner: -

S. No.	Police Station	Crime No.	Sessions cases	Conviction /Acquittal	Offences	Remarks
1.	Peenya P.S. B'lore City	301/97	9th ACMM Court CC No.1358/97	Convicted	454-380 IPC	RI for 4 years and fine of Rs.5000/-
2.	Gandhinagar P.S.	115/97	Principal JMFC Court, Bellary CC No.68/98	Convicted	224 IPC	S.I. for 2 years and fine of Rs.1000/-
3.	Peenya P.S. B'lore City	108/98	FTC 7, B'lore City SC No. 725/99	Convicted	376-392-302 IPC	Death sentence
4.	Peenya P.S. B'lore City	111/98	FTC 1, B'lore City SC No.417/01	Convicted	394-511 IPC	RI for 7 years and fine of Rs.2000/-
5.	Brucept P.S. Bellary	349/98	JMFC Court Bellary	Convicted	224 IPC	RI for 3 months
6.	Yeshwanthapur P.S. B'lore City	296/02	3rd Tr. Court B'lore City	Convicted	41 Cl.(d) 102 Cr.P.C. & 379-411-224 IPC	RI for 90 days
7.	Yelahanka P.S. B'lore City	09/99	CMM Court B'lore City CC No.393/03	Convicted	379 IPC	RI for 6 months and fine of Rs.1000/-

A (We have not taken note of cases in which the petitioner was acquitted. However, it is also pointed out by learned counsel for the State of Karnataka that the cases in which the petitioner was acquitted includes Sessions Case No. 40 of 2000 relating to offences punishable under Sections 366A, 379, 376, 302 and 201 read with Section 34 IPC, in which case victim was pushed into a car, and after snatching her earrings, B her legs were tied, and rape was committed before committing murder. In said case, which related to the incident of 06.12.1996, petitioner was acquitted vide judgment and order dated 07.08.2004. It is further submitted by the learned counsel that after arrest of the petitioner on 17.07.1997, during custody in said case, on 18.07.1997 the petitioner C escaped from jail for which he was convicted on the charge under Section 224 IPC.)

19. Having gone through the criminal history of the petitioner, we are of the view that age of 30 years (at the time of incident), in the present facts and circumstances of the case cannot be a ground to show D any kind of leniency on sentence. As far as the fact as to leaving PW-2 Suresh (seven years old child) unharmed is concerned, it is apparent that actually the child was left unharmed not because of any compassion on the part of the petitioner. Rather he was on a hasty retreat from the place of incident. The petitioner appears to have committed number of crimes and also escaped from the lawful custody before commission of E this crime. The worst is that the petitioner has committed crimes not only before the incident, but also within two days, subsequent to the incident, i.e. another robbery in connection with which he was apprehended by the public and handed over to the police. Taken together, all the above, reveals that the petitioner is a menace and has become F threat to the society. On overall analysis of facts and circumstances of the case, gravity of the offence, and the manner in which the crime is committed read with the antecedents of petitioner who is an ex-police official, we do not find sufficient reason to review or modify the order of affirmation of death sentence in the present case.

G 20. Therefore, on careful comparison of aggravating and mitigating circumstances in the present case, as above, and keeping in view the principle of law laid down by this Court on the point, we are of the firm opinion that the aggravating circumstances are grave and far more serious as against the mitigating circumstances pointed out on behalf of the petitioner. As such, even after open hearing, we are not inclined to

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allow the Review Petitions or modify the judgment and order passed by this Court in Criminal Appeal Nos. 285-286 of 2011 dismissed by this Court on 01-02-2011. Accordingly the Review Petition (Criminal) Nos. 135-136 of 2011 stand dismissed. The Criminal Miscellaneous Petitions stand disposed of.

Devika Gujral Petitions disposed of.