Supreme Court of India
Ajitsingh Harnamsingh Gujral vs State Of Maharashtra on 13 September, 2011
Author: M Katju
Bench: J.M. Panchal, H.L. Gokhale
REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1969 OF 2009

Ajitsingh Harnamsingh Gujral .. Appellant -versus-

State of Maharashtra .. Respondent J U D G M E N T

MARKANDEY KATJU, J.

"Qareeb hai yaaron roz-e-

mahshar,

Chupega kushton ka khoon

kyonkar,

Jo chup rahegi zubaan-e-

khanjar,

Lahu pukaaregaa aasteen

ka"

- Ameer Minai

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1. Heard Shri Jaspal Singh, learned senior counsel for the appellant and learned counsel for the State of Maharashtra for the respondent. This is an appeal by special leave against the judgment of the Bombay High Court dated 26.6.2006, which has confirmed the death sentence of the appellant given by the learned Sessions Judge dated 19.3.2005.

2. The accused is a businessman. He was a married man having one son and two daughters. He was married with the deceased Kanwaljeet Kaur about 25 to 27 years prior to the incident dated 10.4.2003. He had a son Amandeep Singh aged about 20 years and two daughters viz. Neeti and Taniya, aged about 22 years and 13 years respectively. All of them were allegedly killed by the accused in the early hours of the morning of 10.4.2003 by pouring petrol on their persons and setting them on fire.

3. Earlier the accused had lived at Ludhiana. However, it appears that he suffered business losses there, and so he shifted to 3

Mumbai with his family and started residing in Jyotsna Building. Initially he was doing business of catering in the same building, and his son Amandeepsingh was assisting him in that business. After some time, the accused shifted his catering business to Kamlesh building which is situated in the same locality of Shere-Punjab colony, Andheri. There were several employees of the accused to assist him in the business of catering. Those servants used to sleep in front of his flat in the verandah. The accused was having a Maruti Zen Car and his son was having a motorcycle.

4. According to the prosecution, the accused was a hot tempered man. He was like a dictator in the family, and dominated his wife and children in the family, on account of which there was resentment in his family members. Further, it is alleged by the prosecution that the accused was ill-treating his wife and twice he had assaulted her with a leather belt.

5. On the night of 9.4.2003 the accused and all his family members were in their flat. All the servants were sleeping outside. 4

The accused was seen coming to the flat between the night of 9.4.2003 and 10.4.2003 at about midnight. There were two bed rooms in the flat of the accused. Ordinarily the accused and his wife used to sleep in one bed room while the children slept in another. There was a quarrel on the night of 9.4.2003 between the accused and his wife after he had returned back from work. Between 4.00 and 4.30 a.m. some of the servants heard a big noise of something bursting followed by or preceded by someone crying in pain. The servants woke up and found that the flat of the accused was on fire. There was utter confusion and chaos. Somebody phoned to the fire brigade and a fire engine came. The police also followed. The door of the flat was open, and it was smoky inside. Strong smell of petrol was coming from there. The fire was extinguished, and then only could they enter the bed room, where the four bodies of the members of the family of the accused viz. his wife, his son and two daughters were found burnt, and they were dead. The police made an inquiry from the servants and then a report of murder was lodged by PSI Prakash Shivram Kamble. 5

The investigation soon started and inquest Panchanama, spot panchanama etc. were made. The bodies were then sent for post mortem.

6. In their preliminary inquiry, the police found that the Maruti Zen car of the accused was not there and the accused was also not there. Attempts were made to trace and search him, and ultimately the accused was arrested on or near Kishangadh, Madanganj in Ajmer District in Rajasthan on 14.4.2003. The car which the accused was driving was seized, and so also an amount of Rs.7,68,080/- in cash along with about 24 silver coins, 7 safari dresses and 7 turbans. A police officer was deputed from Mumbai and the accused was brought to Mumbai.

7. The statement of the accused was recorded under Section 27 of the Evidence Act and a red bucket from which he had allegedly thrown petrol on the persons of all the four members of his family was recovered at his instance.

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8. All the material recovered by the police from the spot viz. burned clothes, petrol can, bucket, broken glass pieces, etc. were sent to the Chemical Analyzer.

9. In the inquest, it was found that the son of the accused, Amandeepsingh had certain injuries on his body. Because of fire, the glass pieces were shattered in the room and one piece was removed from one of the injuries on the stomach of the son. An expert electrician was called, and he inspected the premises and opined that there was no short circuit. The Air-Conditioner's compressor was intact. Post mortem of all the bodies was conducted and it was found that all the four persons died as a result of burning.

10. During the course of investigation the statements of relatives of the deceased, neighbours, and the servants of the accused were recorded. All the seized property was sent to the Chemical Analyzer for opinion. Thereafter the charge sheet was filed. Separate charges under Section 302 of the Indian Penal Code was 7

framed against the accused for committing murders of his wife Kanwaljeet Kaur, his son Amandeepsingh and two daughters Neeti and Taniya. The accused pleaded not guilty to the charges. Thereafter, the Additional Sessions Judge, recorded the evidence of the prosecution witnesses. In all 19 witnesses were examined as the prosecution witnesses. Thereafter the statement of the accused under Section 313 of the Criminal Procedure Code was recorded. The accused expressed his desire to examine witnesses in defence of his plea of alibi and, accordingly four witnesses were examined by the accused. The Additional Sessions Judge heard the arguments and also took on record the written arguments submitted by the advocate for the accused and, ultimately came to the conclusion that the prosecution had proved its case beyond reasonable doubt that the accused committed murders of all four members of his family. So far as sentence was concerned, the Additional Sessions Judge came to the conclusion, after considering the cases cited before him by both the sides, that this was a rarest of the rare case and imposed penalty of death upon the 8

accused.

11. Two question arise before us (a) is the appellant guilty of murder? (b) if he is, should he be given the death sentence? We shall deal with these separately.

12. The appellant filed an appeal before the Bombay High Court and the matter was also sent for confirmation for the death sentence. By the impugned judgment the High Court dismissed the appeal and upheld the death sentence, and hence this appeal before us.

Is the appellant guilty of murder ?

13. Mr. Jaspal Singh, learned counsel for the appellant, first submitted that the appellant was leading a happy married life for more than 25 years before the incident and hence he had no motive to kill his wife and 3 children. He submitted that the prosecution 9

has not been able to prove any motive, and motive is important in cases of circumstantial evidence like the present one.

14. This is a case relying entirely on circumstantial evidence, as there are no eye witnesses of the crime. It is true that motive is important in cases of circumstantial evidence, but that does not mean that in all cases of circumstantial evidence if the prosecution has been unable to satisfactorily prove a motive its case must fail. It all depends on the facts and circumstances of the case. As is often said, men may lie but circumstances do not.

15. The mother in law of the appellant Smt. Bhagwantkaur Oberoi, PW5 has stated in her deposition :

....."I was having three daughters Kanwaljeetkaur, Harjeetkaur and Harvinderkaur. Accused before the court is my son-in-law. He was married to my daughter Kanwaljeetkaur 25-26 years before. Accused was residing along with his wife and children at Sher-e- Punjab colony, Andheri, Mumbai. Accused came to Mumbai two years before. The relations between my daughter and accused were not cordial and their matrimonial life was unhappy due to very angry nature of the accused. I used to go to the house of my daughter and vice-versa occasionally. There was talk between me and my daughter Kanwaljeetkaur. I used to ask my 10

daughter how she is and how her husband is. At that time, she used to narrate to me that her husband is of very angry nature. She was very unhappy in her matrimonial life. She was subjected to the cruelty by the accused. She further told me that accused was behaving like a dictator. Children of my daughter

Kanwaljeetkaur also used to tell me regarding angry nature of accused. My daughter also told me that accused used to beat her by leather belt. However, my daughter was behaving with the accused by way of adaptive nature. Whenever Kanwaljeetkaur was narrating me regarding ill treatment and harassment, I used to persuade her. I also told my daughter Kanwaljeetkaur that she should leave accused and reside separately along with her children. As I know the nature of the accused I never dared to persuade him. On 19th March, 2003, there was birthday ceremony of my grandson Simarpalsingh. I invited my daughter Kanwaljeetkaur and her family members telephonically to attend the function at Mira road at my residence. Kanwaljeetkaur replied on telephone that she is unable to attend the function as she is busy with some work. After sometime my daughter Kanwaljeetkaur again made a telephone call to me and told that at the time of earlier telephone her husband was present and he quarreled and she along with her children were not allowed to attend the said function. At that time, Kanwaljeetkaur was crying on the telephone and while crying she told that she is very unhappy and she may die. I told my other daughter namely Harjeetkaur to ring Kanwaljeetkaur as there was quarrel between her and the accused. On that very day, at about 7 p.m. I received a telephonic call from Niti and she told that her father agreed and accordingly, we are attending the function. Accordingly, Kanwaljeetkaur and accused and both daughters attended the function. At that time, accused was under the influence of liquor. While leaving my residence after the function accused told Kanwaljeetkaur and her daughters that he will put you all below the running truck to die. 11

On 9th April, 2003, at about 11.30 p.m. I received a telephonic call from the accused from his residence. On 10th April, 2003, at about 6 a.m. I received telephonic call from Phuldeepsingh Marva-PW3 regarding fire on the flat of accused. Accordingly, I went to the place of the incident. When I reached, I did not find the accused present. When I reached, four dead bodies were already kept in front of the flat. I became unconscious noticing the dead bodies. Police recorded my statement."

16. Phuldeepsingh Marva, PW3 also supported the prosecution case. His wife and the wife of the appellant were real sisters. In his deposition he has stated :

....."Before shifting to Mumbai, accused was doing business at Ludhiana, Punjab in automobile spare parts. Accused suffered loss in his business at Ludhiana and that is why he shifted to Mumbai. We were having cordial relations and we family members used to visit his house and vice-versa. The relations between accused and his entire family members were tense. Accused used to behave with his family members as a dictator. He was not having cordial relations with his family members. Son and daughters of the accused did not like the dictatorship of accused and that is why there were always quarrels between accused and his family. Accused used to tell me also that 75% decisions would be mine in my house. I persuaded the accused several times to change his nature. However, the accused never changed his nature and he was not ready to reduce his dictatorship. There was also telephone in the house of accused. On 10th April, 2003, I was at my residence. I received a telephonic call from the landlord and estate agent of the accused at about 5.30 to 5.45 a.m. that there is a fire in the flat of the accused. I along with my wife rushed to 12

the place of incident in my car. At about 6.30 a.m. I reached the place of incident. When I reached I saw fire brigade vehicles, police staff, fire brigade staff and four dead bodies which were kept in front of the flat. I saw all those four dead bodies. I identified four dead bodies i.e. of Kanwaljeetkaur, Amandeepsingh, Niti and Taniya. I noticed that accused along with his car was not present. Accused used to park his Zen car in front of the flat near the gate. I saw four dead bodies who sustained burn injuries on their person. I saw the bangles in the wrist of Kanwaljeetkaur. I also saw a piece of glass in the body of Amandeepsingh near wrist. Article 1 - pair of bangles before the court was in the hands of Kanwaljeetkaur. Police recorded my statement."

17. We see no reason to disbelieve PW3 or PW5. From their testimony it is evident that the appellant was a dictatorial personality, who wanted to dominate over his family and was also hot tempered. He would even beat his wife (deceased) with a leather belt.

18. Mr. Jaspal Singh, learned counsel for the appellant, submitted that if the relations between the accused and his wife were strained why did his wife Kanwaljeetkaur continue to live with him for 25 years. In this connection, we have only to point out that in India many women accept the bad treatment of their husbands and 13

continue living with them because a girl at the time of marriage is told by her parents that after marriage her place is with her husband and she has to accept whatever treatment she gets from her husband and in- laws. She has to `nibhao' all treatment after marriage. Hence she continues living with him even if her husband is a brutish, nasty and loathsome person. However, it is evident that when the children of the accused grew up they often resisted and protested against the dictatorial behaviour of the appellant, and this led to a lot of friction in the family. Hence we are of the opinion that the appellant did not have a happy married life with his wife, rather it was just the reverse.

19. As to what motivated the appellant to commit this gruesome and ghastly act is impossible for us to say because the Court cannot enter into the mind of a human being and find out his motive. We can only speculate.

20. This is a case of circumstantial evidence and in cases of circumstantial evidence the settled law is that the prosecution must 14

establish the entire chain of circumstances which connects the accused to the crime vide Wakkar and Anr. vs. State of Uttar Pradesh 2011(3) SCC 306 = JT 2011(2) SC 502, Krishnan vs. State represented by Inspector of police 2008(15)SCC 430=JT 2008(6) SC 282, Sharad Birdhichand Sarda vs. State of Maharashtra AIR 1984 SC 1622, Mohd. Mannan alias Abdul Mannan vs. State of Bihar 2011(5) SCC 317 (vide para 14), etc.

21. We have, therefore, to see whether the prosecution has been able to establish the chain of circumstances connecting the accused to the crime.

22. The accused was last seen with the deceased. It has come in the evidence of Vinodkumar Gudri Mandal, PW16 that he was working with the accused at Sher-E-Punjab caterers. This witness along with some servants used to sleep near the bedroom of the flat of the accused in the veranda. He has stated that at about midnight when he was in the veranda in front of the flat of the accused he 15

heard loud sound of quarrels from the flat of the accused. He identified the sounds as the voice of the accused and his wife.

23. This witness has stated that he was on talking terms with the family members of the accused. Since he was known to the accused and his family members he could obviously recognize their voices. Hence we see no reason to disbelieve his evidence that at about midnight of 9.4.2003 there was a quarrel between the appellant and his wife. No reason has been ascribed by the defence counsel as to why this witness should make a false statement.

24. This witness has also stated that on 10.4.2003 at 4.30 a.m. he heard a big sound in the building. He and the other servants saw fire in the flat of the accused. They tried to extinguish the fire with the help of water and sand but were unsuccessful. One member of the society informed the fire brigade telephonically and the fire brigade came and extinguished the fire. This witness identified the 4 dead bodies inside the flat of the accused. He also noticed that 16

the Zen car was not at its parking place and the accused was also not present.

25. This witness has also stated in his evidence that one month before the incident when he returned to the building where the incident took place he went inside the flat of the accused and inadvertently opened a white

color plastic can and he noticed petrol in the said can. The witness identified the said can before the court.

26. We see no reason to disbelieve this witness Vinodkumar Gudri Mandal. No enmity has been shown between him and the accused and no motive shown why he should give a false statement against the accused.

27. PW4, Kamalsingh Mahipatsingh Rawat was working as a cook in the hotel cum catering of the appellant. He has stated in his evidence that after his duty ended at 11.30 p.m. he used to sleep in front of the flat of the accused in Jyotsna building where the 17

accused was residing with his wife and children. He said that he knows all the family members of the accused.

28. In his evidence he has stated that at about 11.30 to 11.45 p.m. he left the hotel and went towards the Jyotsna building where he sleeps in front of the flat of the accused. He has further stated that about half an hour thereafter the accused also returned to his residence. At about 4.00 to 4.30 a.m. he heard a noise of bursting of something and smoke was coming out from the flat which was on fire. He also heard the sound of crying from the said flat. He could not enter the flat as it was too smoky. Thereafter the fire brigade came and extinguished the fire. He entered the flat and saw the dead bodies of the deceased. The accused was not found there, nor his Maruti car. The witness had seen the Maruti car parked in front of the flat when he went to sleep but it was not found in the morning.

29. The evidences of PW3, PW4 and PW 5, which we see no reason to disbelieve, thus fully establish that the appellant was last 18

seen with his wife at about midnight and was in fact quarreling with her at that time.

30. The incident happened at 4 or 4.30 a.m. and hence there was a time gap of only about 4 hours from the time when the appellant was seen with his wife (deceased) and the time of the incident. Thus he was last seen with his wife and there was only a short interval between this and the fire.

31. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were last seen alive and when the deceased is found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible, vide Mohd. Azad alias Samin vs. State of West Bengal 2008(15) SCC 449 = JT 2008(11) SC658 and State through Central Bureau of Investigation vs. Mahender Singh Dahiya 2011(3) SCC 109 = JT 2011(1) SC 545, S.K. Yusuf vs. State of West Bengal, J.T. 2011 (6) SC 640 (para 14).

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32. In our opinion, since the accused was last seen with his wife and the fire broke out about 4 hours thereafter it was for him to properly explain how this incident happened, which he has not done. Hence this is one of the strong links in the chain connecting the accused with the crime.

33. The victims died in the house of the accused, and he was there according to the testimony of the above witnesses. The incident took place at a time when there was no outsider or stranger who would have ordinarily entered the house of the accused without resistance and moreover it was most natural for the accused to be present in his own house during the night.

34. Another link in the chain of circumstances connecting the accused with the crime is his sudden disappearance from the scene after the incident. The version of the accused is that he left the scene as he had received a message that his sister in Delhi who was 20

suffering from cancer had become critical, and hence he rushed from Mumbai to be with her. We are not at all convinced with the story. When a person living in Mumbai receives a message that his relative is critical in Delhi, he would have ordinarily take a flight from Mumbai to Delhi, and would not go by car, which journey would take several days. A flight from Mumbai to Delhi takes two hours. There was no shortage of money with the appellant as he was found with cash of Rs.7,68,080/-.

35. Leaned counsel for the appellant submitted that the appellant first went by car to the Dargah in Ajmer to pray for his sister. We cannot accept this version. When a relative in Delhi is critical, a person in Mumbai would have rushed to Delhi by flight to see her and would have gone to a Dargah only subsequently. Under Section 114 of Evidence Act we have to presume the natural conduct of persons. Section 114 states :

"The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of events, human conduct, and public and private business"

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36. We agree with the High Court which has observed in the impugned judgment :

....."We are not at all in agreement with the submissions made by the advocate for the accused in this regard. There are many reasons for this. The first reason is that there is nothing on record to show that a day or two before the accused left Mumbai on 10th April, 2003, the accused had received any urgent message from the wife of D.W.3 that his presence was imminently and immediately required at Delhi and her condition was critical or that the accused received SOS, that he should immediately rush to Delhi. Secondly, if the accused had earlier planned to go to Delhi in such a case of urgency and exigency, ordinarily he should have and could have traveled by flight or train and would not have driven to Delhi by his car. Thirdly, looking to the age of accused, who was around 50 to 52 years at that time, ordinarily the accused would not have gone alone on such a long journey. He had a number of servants at his disposal, at least 7 were sleeping in front of his flat in the veranda at that very night, he could have taken one of them as assistant on the road. Fourthly, there was no reason for the accused not to have taken a driver for such a long journey. Fifthly, there is no one examined from the hotel to whom the accused had disclosed that he would not be available for looking after the business for at least a couple of weeks or one week. The fact that the accused had with him 7 safari dresses and 7 turbans when he was arrested, clearly shows that the accused had an intention to stay for quite a long time away from his house and away from his business. There is nothing on record to show that prior to this incident the accused was not on talking terms or visiting terms with his mother in law. Not a single suggestion was give to this witness by the 22

accused that they were informed by the accused that he is going to Delhi to see his sister or wife of D.W.3. Next impossibility in the theory of alibi is that there is no earthly reason for the accused to leave his house at odd time of 2.00 a.m. He could have traveled either before mid night or he could have traveled after sunrise. Further there is no explanation from the accused as to why he was carrying such a huge amount of Rs.7,68,080/- and 24 silver coins."

37. We, therefore, agree with the High Court that the plea of alibi was totally false and bogus.

38. It is difficult for us to speculate as to why the accused fled from the scene of the crime carrying cash of Rs.7,68.080/- apart from 7 safari suits and that too without a driver or an assistant, all of whom were easily available to him. It is quite possible that after having committed this horrible crime the accused may have himself realized the gravity of his crime and in this shocked state fled from the scene. However, this is only a speculation and nothing turns on it.

39. It has then been argued that ordinarily the accused and his wife used to sleep in one bedroom, while the 3 children used to 23

sleep in the other bedroom. However, all 4 victims were found burnt in the children's bedroom. This has been explained by the prosecution by pointing that in the night of 9.4.2003 when the accused came from his hotel he had a heated quarrel with his wife and due to this quarrel the wife decided to sleep with the children and not with the accused. This version seems quite probable, and the defence cannot make much out of the fact that all 4 bodies were found in one bedroom.

40. When the police party carried out panchanama of the house of the accused, that is, after the fire was fully extinguished and when the FIR was lodged by PW1, PSI Prakash Kamble, he found, as stated by him, that in the bedroom to the northern side of the hall on the bed i.e. on the mattress of the bed a 10 litre white plastic can was seen and it had some petrol in it. It was also found and noticed that the can was new. It is a fact that all the four inmates were burned to death by using petrol. Therefore, the finding of the 10 litre can with some petrol in its clearly shows that 24

petrol, sufficient in quantity to burn and kill all the four persons, was brought by the accused.

41. In addition to this, the prosecution has also tendered one more piece of evidence which is in the form of recovery at the instance of the accused under Section 27 of the Evidence Act. In this regard, the prosecution has examined PW14 Nilesh Kamalakar Aarate the panch witness and proved Exhibit 50 and 50-A. Exhibit 50 is the statement of the accused under Section 27 of the Evidence Act and Exhibit 50-A is recovery panchanama. In his evidence PW14 has stated that on 14th April, 2003 he was called by Meghwadi Police as the accused made a voluntary statement that he will point out the bucket in which he took petrol from the plastic can. This statement was recorded and thereafter the accused led the police party to his flat. The seal of the flat was removed and from the bath room of the said flat the accused pointed out the red bucket. Discovery panchanama was Exhibit 50-A and red bucket was Article 14.

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42. This red bucket was sent to a Chemical Analyzer. The report of the C.A. (Exhibit 67) is that the bucket showed positive result regarding detection of petrol. This means that this bucket was used for pouring petrol on all the four victims.

43. Regarding this piece of evidence, the learned counsel for the appellant contended that this was a fabrication by the police. Learned counsel contended that if on 10th April, 2003 a detailed search of the house of the accused for finding out incriminating articles was made and if a detailed panchanama was prepared and a number of articles were seized, then how was it that the police could not find out this bucket on 10th April, 2003 itself and why they waited for recovery for this bucket till the accused was arrested and brought to Mumbai and made discovery statement on 14th April, 2003.

44. We are not at all convinced by this submission. It is true that on 10th April, 2003 the flat of the accused was searched, but it is quite natural that the investigating officer did not understand the 26

significance of this bucket even if it was seen on that day. They could not visualize or imagine the use of the bucket for splashing or spreading the petrol on the four victims. They came to know about it only after the accused made the disclosure statement, and then they recovered this bucket. The investigating office, regarding other aspects of the matter appears to be truthful and sincere. There is no reason to suspect the bona fide of the investigating officer, and therefore there is nothing on record from which it can be inferred that this bucket was planted by the police to strengthen the case against the accused.

45. Learned counsel for the appellant submitted that the appellant was making phone calls to his mother-in-law after leaving his flat in Mumbai on 10.4.2003. In our opinion nothing turns on that. It has come in evidence that Amandeep Singh, son of the accused, was looking after the business, and if the accused was going away for 3 to 4 days it was natural for him to expect calls from, and 27

make calls to, his son Amandeep Singh and his wife and other relatives, but that was not done.

46. The learned counsel for the appellant then submitted that as per the prosecution case, all the four victims were in one bed room. Two bodies were found on the bed and two were lying on the ground. The learned counsel contended that if all four victims were sleeping on one bed then how were two bodies found on the ground. He also argued that if petrol was splashed on the persons of four victims then why did none of them wake up before the accused set them to fire. In our opinion, the presence of the 10 litre can and using the bucket clearly show that petrol in large quantity was used. Use of the bucket further fortifies the prosecution case because if the petrol was sprinkled from a can it would have taken time to cover all the bodies of four persons, the bed and the surroundings. But use of the bucket clearly shows that splashing of petrol could be achieved within a second and that profuse splashing of petrol could be achieved by using the bucket 28

and then setting the petrol on fire would not even require five seconds. Petrol is a very combustible material. It might be that before the actual death occurred two persons rolled down from the bed and fell on the ground. All this is speculation on which nothing turns. Since there were no eye witnesses, and since presence of the accused a few hours before the crime is proved, it was for the accused to explain all this.

47. Mr. Jaspal Singh submitted that several of the circumstances were not put to the accused under Section 313 Cr.P.C. It is true that circumstances which were not put to the accused in his examination under Section 313 cannot be used against him, vide State of U.P. vs. Mohd. Ikram, J.T. 2011 (6) SC 650 (para 13). However, we have carefully examined the statements of the accused under Section 313 Cr.P.C., and we find that as many as 168 questions were put to him relating to all the relevant circumstances. Hence there is no merit in this submission. 29

48. Mr. Jaspal Singh then submitted that the incised wounds on the son of the appellant, Amandeep, have not been explained by the prosecution. In this connection we wish to say that since there were no eye witnesses and the entire prosecution case rests on circumstantial evidence it is hardly for the prosecution to explain these injuries, rather it was for the appellant, who was present at the time of the incident (as we have found) to explain them. Moreover, the question of explaining the injuries ordinarily arises when the injuries are on an accused, and not on the victim. At any event, the prosecution has explained that these were due to the broken glass pieces found on the spot.

49. Thus, in our opinion the prosecution has been able to establish the entire chain of circumstances which connect the accused to the crime. These are :

1. There were strained relations between the accused and his family members including his wife. He used to beat his wife with a leather belt, and was dictatorial, which attitude was resented by the family members.

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2. The accused came to his flat on 9th April, 2003 at midnight, and was last seen with his wife in his flat where his children also lived.

3. The accused had quarrel with his wife for five or ten minutes on the night of the incident.

4. Ten litre can with petrol residue was found in the house.

5. The bucket showing positive result in the test conducted by the Chemical Analyzer was found to have been used for splashing or throwing the petrol.

6. The incident happened in the flat of the accused where there was no one else inside except his family members. All the deceased were asleep when the petrol was poured over them and their bodies set on fire.

They were killed in a most gruesome, diabolical and cruel manner.

7. It was a pre-planned murder, because the accused had brought sufficient petrol into his flat to kill everyone. Ordinarily no one keeps so much petrol in his residential apartment.

8. The accused absconded from the scene of the offence immediately thereafter, and did not disclose to his family members or servants about his departure.

9. The incident occurred between 4 to 4.30 A.M., and the accused was the person last seen with his wife before the incident.

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10. The accused pointed out the bucket in his statement under Section 27 of the Evidence Act;

11. The accused was arrested at Kisangadh, Madanganj in Ajmer District (Rajasthan) four days thereafter with huge cash of Rs.7,60,080/-, with safari dresses, turbans and 24 silver coins etc..

12. He raised false defence of alibi

13. There was full opportunity for the accused to kill all the four persons. No one else was present in the flat.

Does the Appellant deserves the death sentence ? Death Penalties Worldwide

50. There is a wide divergence in various countries in the world whether to permit or not permit the death penalty. According to Amnesty International as per 31.12.2010, 96 countries have legally abolished the death penalty, 34 countries have not used it for a considerable period of time while 58 countries have still retained it. Most European countries have abolished the death penalty . The United Kingdom abolished death penalty in 1973, France in 1981, Germany in 1949, Italy in 1947 etc. Canada abolished it in 1976. Russia legally permits death penalty, but has not used it after 1996. Australia last used the death penalty in 1967, and 32

formally abolished it in 2010. China has death penalty for a variety of crimes, e.g. aggravated murder, drug trafficking, large scale corruption etc. China executes more people than all the rest of the world put together. In African and Latin American countries some permit death penalty while others do not. Most Asian and Arab countries permit death penalty. As regards the United States of America, some States permit it while others do not. The US Supreme Court in Furman vs. Georgia 408 US 238 (1972) held the death penalty to be unconstitutional, but this decision was reversed four years later in Gregg vs. Georgia 428 US 153 (1976) which held that the death penalty is not unconstitutional.

51. The UN General Assembly in 2007-08 passed a non binding resolution calling for a global moratorium of execution with a view to eventual abolition. However, 65% of the world population live in countries like China, India, Indonesia and the US which continue to apply death penalty, although both India and Indonesia only use it rarely. Each of these four nations voted against the UN General Assembly resolution. Of the 194 independent States in the world that are members of the United Nations or have UN observer status, 42(22%) maintain the death penalty both in law and practice, 95 (49%) have abolished it, 8(4%) retain it for crimes committed in exceptional circumstances such as in time of war and 49(25%) permit its use for ordinary crimes, but have not used it for 33

at least 10 years and have a policy or established practice of not carrying out an execution or it is under a moratorium.

52. In the present case, we are not going into the validity or otherwise of various theories of criminal penology viz., the retributive, deterrent, preventive and reformative theories. Suffice it to say that there are conflicting views and even conflicting data on this topic (see `Theories of Punishment' edited by Stanley E. Grupp, `Punishment' by Ted Honderich, `Punishment' by Philip Bean, `The Death Penalty' edited by Irwin Isenberg, `The Penalty of Death' by Thorsten Sellen, `The Death Penalty' by Roger Hood, etc.). We shall, therefore, confine ourselves to the case before us. Death Penalty in India

53. Section 302 provides the punishment for murder. It stipulates a punishment of death or imprisonment for life and fine. Once an offender is found by the court to be guilty of the offence of murder under Section 302, then it has to sentence the offender to either death or for imprisonment for life. The court has no power to impose any lesser sentence.

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54. If there is a reasonable doubt about the guilt of the offender, the only proper verdict is to acquit him and not to impose a sentence lesser than imprisonment for life vide Santosh vs. State of MP AIR 1975 SC 654.

55. The Law Commission of India in its 35th Report, after carefully sifting all the materials collected by them, recorded their views regarding the deterrent effect of capital punishment as follows:

"In our view capital punishment does act as a deterrent. We have already discussed in detail several aspects of this topic. We state below, very briefly, the main points that have weighed with us in arriving at the conclusion:

(a) Basically, every human being dreads death. (b) Death, as a penalty, stands on a totally different level from imprisonment for life or any other punishment. The difference is one of quality, and not merely of degree.

(c) Those who are specifically qualified to express an opinion on the subject, including particularly the majority of the replies received from State Governments, Judges, Members of Parliament and Legislatures and Members of the Bar and police 35

officers - are definitely of the view that the deterrent object of capital punishment is achieved in a fair measure in India.

(d) As to conduct of prisoners released from jail (after undergoing imprisonment for life), it would be difficult to come to a conclusion, without studies extending over a long period of years.

(e) Whether any other punishment can possess all the advantages of capital punishment is a matter of doubt. (f) Statistics of other countries are inconclusive on the subject. If they are not regarded as proving the deterrent effect, neither can they be regarded as conclusively disproving it".

56. Prior to 1955, under the old Criminal Procedure Code 1898, Section 367 (5) of the Code stipulated that the Court had to give reasons, if the sentence of death was not imposed in a case of murder. In other words, imposition of death sentence for the offence of murder was the rule, and if the court desired to make a departure from the rule and impose the lesser punishment of imprisonment for life, it was required to give reasons for the same. In 1955, sub- Section 5 of Section 367 was deleted. The result of such deletion was that the discretion available to the Court in the matter of the sentence to be imposed in a case of murder was 36

widened. Several High Courts also interpreted the consequence of the deletion to mean that the sentence of life imprisonment was the normal sentence for murder and the sentence of death could be imposed only if there were aggravating circumstances. The Code of the Criminal Procedure was further amended in 1973, making life imprisonment the normal rule. Section 354 (3) of the new Code provides:

"When the conviction is for an offence punishable with death or, in the alternative, imprisonment for life or imprisonment for a term of years, the judgment shall state reasons for the sentence awarded and, in the case of sentence of death, the special reasons for such sentence".

57. Thus in the new Code, the discretion of the judge to impose death sentence has been narrowed, for the court has now to provide special reasons for imposing a sentence of death. It has now made imprisonment for life the rule and death sentence an exception, in the matter of awarding punishment for murder.

58. In Bachan Singh vs State of Punjab, AIR 1980 SC 898, a Constitution Bench (5 Judge Bench) of this Court, while upholding 37

the constitutional validity of death sentence observed (vide para 207):

" For persons convicted of murder life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed".

59. After Bachan Singh's case (supra) this Court again considered the question as to when death sentence should be imposed in Machhi Singh and others vs State of Punjab AIR 1983 SC 957 (a 3 Judge Bench decision). In that case the accused had methodically in a pre planned manner murdered seventeen persons of a village including men, women and children. The accused were awarded death sentences but the Court held that in order to apply the guidelines of Bachan Singh's case (supra) inter- alia the following questions should be asked: (a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and called for a death sentence? (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 38

in favour of the offender. The Court held that if the answer to the above is in affirmative, then death sentence is warranted.

60. In Macchi Singh's case (supra) this Court further observed: "The reasons why the community as a whole does not endorse the humanistic approach reflected in `death sentence-in-no- case' doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of `reverence for life' principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law endorsed by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others it if suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by killing a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so (in rarest of rare cases) when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission, of the crime, or 39

the anti-social or abhorrent nature of the crime, such as for instance:

I. Manner of Commission of Murder

When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,

(i) when the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.
(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II. Motive for commission of murder

When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-`-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course of betrayal of the motherland.

III. Anti Social or Socially abhorrent nature of the crime (a) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social 40

balance. (b) In cases of 'bride burning' and what are known as 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. Magnitude of Crime

When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.
V. Personality of victim of murder

When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-`- vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons."

61. In Macchi Singh's case (supra) this Court further observed that in determining the culpability of an accused and the final decision as to the nature of sentence, a balance sheet of the aggravating and mitigating circumstances vis-a-vis the accused had to be drawn up and in doing so the mitigating circumstances had to be given full weight so that all factors were considered before the option is exercised.

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Some decisions where death penalty has been affirmed by this Court

62. We may now consider some decisions where death penalty has been given by the court holding the crimes to belong to the `rarest of the rare cases'.

63. In Sunder Singh vs. State of Uttaranchal, (2010) 10 SCC 611 the accused had gone to the place of occurrence well prepared carrying jerry cans containing petrol, sword, pistol with two bullets, which showed his pre-meditation and cold blooded mind. In the incident five persons lost their lives while the sole surviving lady survived with 70% burn injuries. The murder was committed in a cruel, grotesque and diabolical manner, and closing of the door of the house was the most foul act by which the accused actually intended to burn all the persons inside the room and precisely that happened. There were no mitigating circumstances, and hence it was one of the rarest of rare cases. Consequently, the death sentence was justified.

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64. In C. Muniappan vs. State of T. N., (2010) 9 SCC 567 three members of an unlawful assembly engaged in road blocking (in a public demonstration against a court verdict), committed planned murder by burning a bus carrying helpless, innocent, unarmed, girl students in a totally unprovoked situation. Three girls died and 20 got burn injuries in the incident. This Court held that it was one of the rarest of rare cases, one where the accused would be a menace and threat to the harmonious and peaceful co-existence of the society. The accused deliberately indulged in a planned crime without any provocation and meticulously executed it, and hence the death sentence was the most appropriate punishment. There being aggravating circumstances and no mitigating circumstance death sentence imposed on the three members of the unlawful assembly was upheld.

65. In M. A. Antony vs. State of Kerala, (2009) 6 SCC 220 all six members of a family were murdered at their residence at night. The motive was money, and the absence of the accused from his 43

own residence during the corresponding periods i.e on the night of the occurrence till next morning, and recovery of clothes under Section 27 of Evidence Act 1872, finger prints on the door steps of the house matching with those of accused, and recovery of scalp hair of accused from place of occurrence were damning circumstantial evidence. Having regard to the chain of circumstances the death sentence was upheld.

66. In Jagdish vs. State of M. P., (2009) 9 SCC 495 the assailant murdered his wife and five children (aged 1 to 16 years) in his own house. The murders wee particularly horrifying as the assailant was in a dominant position and a position of trust as the head of the family. The assailant betraying the trust and abusing his position assailant murdered his wife and minor children (youngest being the only son just 1 year old ). This Court held that the balance sheet of aggravating and mitigating circumstances was heavily weighted against the assailant making it a rarest of rare case. Consequently the award of death sentence was just. 44

67. In Prajeet Kumar Singh vs. State of Bihar, (2008) 4 SCC 434 the accused was a paying guest for a continuous period of four years in lieu of a sum of Rs. 500/- for food and meals. He brutally executed three innocent defenseless children aged 8, 15 and 16, attempted to murder the father (informant) and mother who survived the attack with multiple injuries. There was no provocation or reason for committing this ghastly act at a time when the children were sleeping. There were several incised wounds (muscle deep or bone deep) caused to the deceased. Considering the brutality, diabolic, inhuman nature and enormity of the crime (multiple murders and attacks), this Court held that the mindset of the accused could not be said to be amenable to any reformation. Therefore it came under the rarest of rare category where not awarding a death sentence would have resulted in failure of justice.

68. In Ram Singh vs. Sonia, (2007) 3 SCC 1 the wife in collusion with her husband murdered not only her step brother and 45

his whole family including three tiny tots of 45 days, 2 and = years 4 years, but also her own father, mother and sister so as to deprive her father from giving property to her step brother and his family. The murders were committed in a cruel, pre-planned and diabolic manner while the victims were sleeping, without any provocation from the victim's side. It was held that the accused persons did not possess any basic humanity and completely lacked the psyche or mindset amenable to any reformation. It was a revolting and dastardly

act, and hence the case fell within the category or rarest of rare cases and thus death sentence was justified.

69. In State of U.P. vs. Satish (2005) 3 SCC 114 the victim was a six year old girl who lost her life on account of the bestial acts of the respondent who raped and murdered her. The body was found in a sugarcane field and blood was oozing from her private parts and there were marks of pressing on her neck (suggesting death by strangulation). It was held that this diabolic, iniquitous, flagitious act reached the lowest level of humanity when the rape 46

was followed by brutal murder. Hence death sentence was justified.

70. In Holiram Bordoli vs. State of Assam (2005) 3 SCC 793 the accused persons were armed with lathis, and various other weapons. They came to the house of the victim and started 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. 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 there was absence of any strong motive and the victims did not provoke or contribute to the incident. The accused was the leader of the gang, and the offence was committed in the most barbaric manner to deter others from challenging the supremacy of the 47

accused in the village. Held, that no mitigating circumstances to refrain from imposing death penalty were found.

71. In Saibanna vs. State of Karnatka (2005) 4 SCC 165 the accused was out on parole in the case of murder of his first wife, in which he was already convicted and sentence to life imprisonment. He pre-planned the murder of his second wife and daughter (aged 1 to 1 = years) when the victims were sleeping by using a hunting knife (jambia) which is not ordinarily available in a house. There were no justified reasons for any extenuating circumstances in favour of the accused. Putting the case under the `rarest of rare case' category death sentence was upheld.

72. In Karan Singh vs. State of U.P. (2005) 6 SCC 342 the two appellants chased the deceased persons and butchered them with axes and other weapons in a very dastardly manner. After killing three adults, the appellants entered their house and killed two children who in no way were involved with the alleged property dispute with the appellants. It was held that the sole intention here 48

was to exterminate the entire family. Thus, it was a `rarest of the rare' case.

73. In Gurmeet Singh vs. State of U.P. (2005) 12 SCC 107, appellant G, along with his friend L killed thirteen members of his family including small kids for a flimsy reason (objection of family of G to the visits and stay of L at their house) while they were asleep. Award of death sentence was held proper.

74. In Sushil Murmu vs. State of Jharkhand (2004) 2 SCC 338, the accused sacrificed a child of another person before Goddess Kali in a most brutal and diabolic manner for personal gain and to promote his fortunes by appeasing the deity with blood. It was held that superstition can not and does not provide justification for any killing, much less a planned and deliberate one.

75. In State of Rajasthan vs. Kheraj Ram (2003) 8 SCC 224, the accused deliberately planned and executed his two innocent 49

children, wife and brother-in-law when they were sleeping at night. 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. As it was pre-planned and after the entire chain of events and circumstances were

comprehended, the inevitable conclusion, was 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.

76. In Om Prakash vs. State of Uttaranchal (2003) 1 SCC 648 the accused, a domestic servant killed three innocent 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.

77. In Gurdev Singh vs. State

of Punjab, AIR 2003 SC 4187,

the appellants, having known that on the next day a marriage was to take place in the house of the complainant and there would be 50

lots of relatives present in her house, came there on the evening when a feast was going on and started firing on the innocent persons. Thirteen persons were killed on the spot and eight others were seriously injured. The appellants thereafter went to another place and killed the father and brother of PW 15. Out of the thirteen persons, one of them was a seven-year old child, three others had ages ranging between 15 and 17 years. The death sentence was held justified.

78. In Praveen Kumar vs. State of Karnataka (2003) 12 SCC 199 the accused was accommodated by one of the victims (who was 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 were sleeping. After the commission of the crime the accused absconded from judicial custody for nearly four years, which indicates the fact that 51

the possibility of any remorse are rehabilitation is nil. Held the extreme penalty of death was justified.

79. In Suresh vs. State of U. P. AIR 2001 SC 1344 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, where any other punishment than the death penalty was unjustified.

80. In Molai vs. State of M.P. AIR 2000 SC 177, the Jail officer sent to his quarter a guard and a prisoner to work in the house. The 16 year old daughter of the said officer was at that time alone in the quarter and was preparing for her class 10th examination. Taking advantage of her loneliness, both the guard and the prisoner raped her, strangulated her and stabbed her. Thereafter with an intention to hide their crime they threw her dead body into a septic tank. This Court held that death was a fit punishment. 52

81. In Ramdeo Chauhan vs. State of Assam AIR 2000 SC 2679, the accused committed a pre-planned cold-blooded brutal murder of four inmates of a house including two helpless women and a child aged 2 = 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 was not a mitigating circumstance, and death penalty was a just and proper punishment.

82. In Narayan Chetanram Chaudhary vs. State of Mahrashtra AIR 2000 SC 3352 there was a pre-planned, calculated, cold-blooded murder of five women, including one pregnant woman and two children aged 1 = years and 2 = years, 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 young 53

age (20-22 years) of the accused persons cannot serve as a mitigating circumstance.

83. In State of U.P. vs. Dharmendra Singh AIR 1999 SC 3789, 5 persons were murdered, an old man of 75 years, a 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.

84. In Ronny vs. State of Mahrashtra AIR 1998 SC 1251, 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 54

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.

85. In Surja Ram vs. State of Rajasthan AIR 1997 SC 18, the appellant murdered his bother, his two minor sons and an aged aunt by cutting their neck with a kassi while they were all sleeping. He also attempted to murder his brother's wife and daughter but they survived with serious injuries. The dispute between them only related to putting a barbed fence on a portion of their residential complex. The death sentence was held to be justified.

86. In Umashankar Panda vs. State of M.P AIR 1996 SC 3011, the accused and his wife and five children took dinner together and went to bed in the same room. At midnight the accused started to attack his wife with a sword and on hearing the shouting the children woke up. On being questioned by the wife as to why he was trying kill her he did not give an answer but rather 55

inflicted on her head, hand and foot more injuries. When the eldest daughter intervened, he did not spare her either. The wife and two children died but three others escaped death. On being asked, the accused confessed to a witness that he had slaughtered all of them but he did not know how three others had escaped the death. This attitude of the accused clearly showed that he had purposely caused injuries to all his family members in order to liquidate them and was not happy that even the three children had escaped from death. There was no provocation or other circumstances to suggest that there was any quarrel between the accused and his wife or the children. The way in which the crime was executed showed that it was pre-meditated and not on account of sudden provocation.

87. In Ravji vs. State of Rajasthan AIR 1996 SC 787, the accused in a cool and calculated manner wanted to kill his wife and three minor children while they were asleep. When his mother intervened he injured her with an axe with an intention to kill her. He then silently went to the neighbour's house and attempted to 56

kill his neighbour's wife who was also asleep. When his neighbour intervened he killed him too and fled from the place of occurrence and tried to hide himself. The accused had a solemn duty to protect his family members and maintain them but he betrayed the trust reposed in him in a very cruel and calculated manner without any provocation whatsoever. Hence the death penalty had to be upheld.

88. In Suresh Chandra Bahri vs. State of Bihar AIR 1994 SC 2420, the wife of accused wanted to sell her house and migrate to USA with her children against the wishes of her husband. Hence, the accused killed his wife after torturing her by truncating her body into two parts in a devilish style evincing total depravity only to gain control over the property. Further he killed his own two innocent children making them believe that they were being taken on a pleasure trip to the farm, killing them by inflicting severe injuries on their neck and other parts of the body and throwing them in the river.

57

89. In Bheru Singh vs. State of Rajasthan (1994) 2 SCC 467, the accused slaughtered his own wife and five children for no fault of theirs but only on mere suspicion that his wife was having an affair. This deserved a death sentence.

90. In Sevaka Perumal vs. State of T. N. AIR 1991 SC 1463, the accused indulged in illegal business of purchase and sale of "ganja". They conspired to entice innocent boys from affluent families, took them to far flung places where the dead body could not be identified. Letters were written to the parents purporting to be by the deceased to delude the parents that the missing boys would one day come home alive and that they should not give any report to the police so that the crime would go undetected. Four murders in a span of five years were committed for gain in cold- blooded, premeditated and planned way. This Court held that any other penalty except the death penalty would amount to a miscarriage of justice.

58

91. In Sudam @ Rahul Kaniram Jadhav vs. State of Maharashtra (Criminal Appeal Nos. 185-186 of 2011 decided on 4.7. 2011 this Court held that where an accused was found guilty of committing murder of four children and a woman with whom he was living with as husband and wife, the death penalty was justified. In that decision Hon'ble C. K. Prasad, J. observed : "Now we proceed to consider as to whether the case in hand falls in the category of rarest of the rarest cases. The appellant had chosen to kill the woman with whom he lived as husband and wife, a woman who was in deep love with him and willing to pay Rs. 15,000/- to PW. 6, Muktabai, to save the relationship. Appellant had not only killed the two children of the deceased who were born from the first husband but also killed his own two children. He projected himself to be single and changed his name to dupe a woman and in fact succeeded in marrying her. However, when the truth came to light, he killed five persons. The manner in which the crime has been committed clearly shows it to be premeditated and well planned. It seems that all the four children and the woman were brought near the Pod in a planned manner, strangulated to death and dead bodies of the children thrown in the pond to conceal the crime. He not only killed Anita but crushed her head to avoid identification. Killing four children, tying the dead bodies in bundles of two each and throwing them in the pond would not have been possible, had the appellant not meticulously planned the murders. It shows that the crime has been committed in a beastly, extremely brutal, barbaric and grotesque manner. It has resulted in intense and extreme indignation of the community and shocked the collective 59

conscience of the society. We are of the opinion that the appellant is a menace to the society who cannot be reformed. Lesser punishment in our opinion is fraught with danger as it may expose the society to peril once again at the hands of the appellant. We are of the opinion that the case in hand falls in the category of the rarest of the rare cases and the trial court did not err in awarding the death sentence and the High Court confirming the same."

92. In Ranjeet Singh vs. State of Rajasthan (1988) 1 SCC 633, the entire family was murdered when they were fast asleep and this Court observed as under:

"With regard to the sentence of death, there cannot be two opinions. The manner in which the entire family was eliminated indicates that the offence was deliberate and diabolical. It was pre-determined and cold blooded. It was absolutely devilish and dastardly".

93. In Atbir vs. Govt. of NCT Delhi AIR 2010 SC 3477 this Court confirmed the death sentence given to the appellant who had committed multiple murders of members of his family, who are none other than step-mother, brother and sister in order to inherit the entire property of his father. The appellant, in consultation with his mother planned to eliminate the entire family of his step- 60

mother, and with this intention went to her house, closed the doors and mercilessly inflicted 37 knife injuries on the vital parts of the victims' bodies.

94. In Surendra Koli vs. State of U.P. AIR 2011 SC 970, the accused was a serial killer who used to lure small girls inside a house, strangulate them, have sex with their bodies, cut off their body parts, and eat them. This Court held that no mercy could be shown to his horrifying and barbaric deeds, and upheld the death sentence.

Present Case

95. Having considered the law on the point and several decisions of this Court where death sentence was affirmed, we may now consider whether this case deserves the death sentence. This Court held in Bachan Singh vs. State of Punjab (Supra) that death sentence should only be given in the rarest of rare cases. In our opinion this is one of such cases. Burning living persons to death 61

is a horrible act which causes excruciating pain to the victim, and this could not have been unknown to the appellant.

96. In our opinion, a person like the appellant who instead of doing his duty of protecting his family kills them in such a cruel and barbaric manner cannot be reformed or rehabilitated. The balance sheet is heavily against him and accordingly we uphold the death sentence awarded to him.

97. In the present case the accused did not act on any spur of the moment provocation. It is no doubt that a quarrel occurred between him and his wife at midnight, but the fact that he had brought a large quantity of petrol into his residential apartment shows that he had pre-planned the diabolical and gruesome murder in a dastardly manner.

98. In our opinion a distinction has to be drawn between ordinary murders and murders which are gruesome, ghastly or horrendous. While life sentence should be given in the former, the latter 62

belongs to the category of rarest of rare cases, and hence death sentence should be given.

99. This distinction has been clarified by a recent judgment of my learned brother Hon'ble C. K. Prasad, J. in Mohd. Mannan @ Abdul Mannan vs. State of Bihar (2011) 5 SCC 317 (vide paras 23 and 24), wherein it has been observed:

"23. It is trite that death sentence can be inflicted only in a case which comes within the category of the rarest of rare cases but there is no hard-and-fast rule and parameter to decide this vexed issue. This Court had the occasion to consider the cases which can be termed as the rarest of rare cases and although certain comprehensive guidelines have been laid to adjudge this issue but no hard-and-fast formula of universal application has been laid down in this regard. Crimes are committed in so different and distinct circumstances that it is impossible to lay down comprehensive guidelines to decide this issue. Nevertheless it is widely accepted that in deciding this question the number of persons killed is not decisive.

24. Further, the crime being brutal and heinous itself does not turn the scale towards the death sentence. When the crime is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community and when collective conscience of the community is petrified, one has to lean towards the death sentence. But this is not the end. If these factors are present the court has to see as to whether the accused is a menace to the society and would continue to be so, threatening its peaceful and harmonious coexistence. The court has to further enquire and believe that the accused condemned cannot be reformed or rehabilitated and shall continue with the criminal acts. In this way a balance sheet is to be prepared while considering the imposition of penalty of death of aggravating and mitigating circumstances and a just balance is to be struck. So long the death sentence is provided in the

statute and when collective conscience of 63

the community is petrified, it is expected that the holders of judicial power do not stammer dehors their personal opinion and inflict death penalty. These are the broad guidelines which this Court had laid down for imposition of the death penalty".

We fully agree with the above view as it has clarified the meaning of the expression `rarest of the rare cases'. To take a hypothetical case, supposing `A' murders `B' over a land dispute, this may be a case of ordinary murder deserving life sentence. However, if in addition to murdering `B', `A' goes to the house of `B' and wipes out his entire family, then this will come in the category of rarest of the rare cases' deserving death sentence. The expression `rarest of the rare cases' cannot, of course, be defined with complete exactitude. However, the broad guidelines in this connection have been explained by various decisions of this Court. As explained therein, the accused deserves death penalty where the murder was grotesque, diabolical, revolting or of a dastardly manner so as to arouse intense and extreme indignation of the community, and when the collective conscience of the community is petrified, or outraged. It has also to be seen whether the accused is a menace to society and continues to do so, threatening its peaceful and 64

harmonious coexistence. The Court has to further enquire and believe that the accused cannot be reformed or rehabilitated and shall continue with his criminal acts. Thus a balance sheet is to be prepared in considering the imposition of death penalty of the aggravating and mitigating circumstances, and a just balance is to be struck.

100. We fully agree with the above view and we are of the opinion that all the requisites for death penalty as noted above are satisfied in the present case for the reasons given above. Abolition of Death Sentence

101. It is only the legislature which can abolish the death penalty and not the courts. As long as the death penalty exists in the statute book it has to be imposed in some cases, otherwise it will tantamount to repeal of the death penalty by the judiciary. It is not for the judiciary to repeal or amend the law, as that is in the domain of the legislature vide Common Cause vs. Union of 65

India 2008(5) SCC 511 (vide paragraphs 25 to 27). The very fact that it has been held that death penalty should be given only in the rarest of the rare cases means that in some cases it should be given and not that it should never be given. As to when it has to be given, the broad guidelines in this connection have been laid down in Macchi Singh's case (supra) which has been followed in several decisions referred to above. This Court has also held that honour killing vide Bhagwan Dass vs. State (NCT) of Delhi AIR 2011 SC 1863, fake encounter by the police vide Prakash Kadam vs. R.V. Gupta AIR 2011 SC 1945 and dowry death vide Satya Narayan Tiwari vs. State of U.P. (2010) 13 SCC 689 comes within the category of `rarest of rare cases'. Hired killing would also ordinarily come within this category.

102. In view of the foregoing, there is no merit in this appeal which is accordingly dismissed.

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103. Before parting with this case, we would like to mention that we are not dealing with mercy petitions under Article 72 and 161 of the Constitution, but are confining ourselves to the question of imposing death penalty on the judicial side.

.....J.

(Markandey Katju)

.....J.

(Chandramauli Kr. Prasad)

New Delhi;

September 13, 2011