

SUNIL DAMODAR GAIKWAD

v.

STATE OF MAHARASHTRA  
(Criminal Appeal Nos. 165-166 of 2011)

SEPTEMBER 10, 2013

[SUDHANSU JYOTI MUKHOPADHAYA AND  
KURIAN JOSEPH, JJ.]

*PENAL CODE, 1860:*

*ss. 302 and 307 – Accused causing death of his wife and 2 sons and attempting to cause death of his daughter – Sentenced to death by counts below u/s. 302 and life imprisonment u/s. 307 – Held: Apart from drawing a 'balance sheet' of mitigating and aggravating factors, socio-economic compulsions such as poverty are also factors that are to be considered by courts while awarding a sentence -- In the instant case, it has come in evidence that accused suffered from economic and psychic compulsions – He had no prior criminal record -- He had, in fact, intended to wipe out the whole family including himself on account of abject poverty - - The possibility of reforming and rehabilitating him cannot be ruled out – He is not likely to be menace or threat or danger to society -- In the facts and circumstances, the case does not fall under the rarest of rare category so as to warrant a punishment of death -- The 'individually inconclusive and cumulatively marginal facts and circumstances' tend towards awarding lesser sentence of life imprisonment – Sentence u/ s. 302 commuted to life imprisonment which would be till the end of his biological life – Sentence u/s 307 reduced to 7 years RI – In case the sentence of imprisonment for life is remitted or commuted to any specified period, the sentence of imprisonment u/s. 307 shall commence thereafter.*

A *CODE OF CRIMINAL PROCEDURE, 1973:*

B *s. 354(3) – Awarding of death sentence in a case of murder – Special reasons to be recorded – Held: This shows the paradigm shift to life imprisonment as the rule and death, as the exception -- Before awarding a sentence of death, in view of s. 354(3), court has to first examine whether it is a case fit for awarding of life sentence and if not and only then, death sentence can be awarded – Code of Criminal Procedure, 1898 – s. 367(5).*

C *Judicial comity – Held: Judicial comity is an integral part of judicial discipline and judicial discipline the cornerstone of judicial integrity -- When there are binding decisions, judicial comity expects and requires the same to be followed.*

D **The appellant was prosecuted for causing the death of his wife and two sons, and attempting to kill his daughter whom he had caused serious stab injuries. After the occurrence the appellant was stated to have gone to the police station and reported that one of his sons had been suffering from Asthama, which required constant medication; that his income was hardly sufficient to maintain his family because of which he was under stress and, therefore, he decided to finish the entire family including himself. In the process he killed his wife and two sons with a pair of scissors and inflicted stab injuries to her daughter (PW 1) and also pressed her mouth with pillow but she did not succumb to death; and leaving the child in that condition and bolting the door from outside he reached the police station. This was corroborated by PW 4 in her deposition. However, the appellant, in his statement u/s. 313 Cr.P.C., simply denied everything and did not lead any evidence. The trial court convicted the appellant u/ss 302 and 307 IPC and sentenced him to death under the first count and life imprisonment under the second one.**

H

In the instant appeal, the sole issue for consideration was that of commutation of the death sentence. A

Allowing the appeals in part, the Court

HELD: 1.1. Before awarding a sentence of death, in view of s. 354(3), Cr.PC, the court has to first examine whether it is a case fit for awarding of life sentence and if not and only then, the death sentence can be awarded. The rule is life imprisonment for murder, and death is the exception for which special reasons are to be stated. The death sentence has been relegated to the 'rarest of rare' cases after Constitution Bench decision in Bachan Singh. The most significant aspect of the decision in that case is the mandate laid down by the Constitution Bench that courts must not only look at the crime but also the offender and give due consideration to the circumstances of the offender at the time of commission of the crime. In Machhi Singh and Shankar Kisanrao Khade, emphasis was laid on drawing a 'balance sheet' of mitigating and aggravating factors. [Para 15, 16, 17 and 19] [307-F-H; 308-A-B; 309-G-H; 310-A; 311-G] B C D E

*Bachan Singh vs. State of Punjab* (1980) 2 SCC 684 – followed.

*Machhi Singh and Others vs. State of Punjab* 1983 (3) SCR 413 = (1983) 3 SCC 470; *Shankar Kisanrao Khade vs. State of Maharashtra* (2013) 5 SCC 546; *Dalbir Singh vs. State of Punjab* 1979 (3) SCR 1059 = AIR 1979 SC 1384 – relied on. F

1.2. Socio-economic compulsions such as poverty are also factors that are to be considered by courts while awarding a sentence, and in appropriate cases, judicial commutation is permissible. [Para 21 and 24] [315-D; 316-H; 317-A] G

*Ediga Anamma vs. State of Andhra Pradesh* 1974 H

A (3) SCR 329 = (1974) 4 SCC 443; *Sushil Kumar vs. State of Punjab* (2009) 10 SCC 434 – relied on.

B 1.3. When there are binding decisions, judicial comity expects and requires the same to be followed. Judicial comity is an integral part of judicial discipline and judicial discipline the cornerstone of judicial integrity. No doubt, in case there are newer dimensions not in conflict with the ratio of larger bench decisions or where there is anything to be added to and explained, it is always permissible to introduce the same. Poverty, socio-economic, psychic compulsions, undeserved adversities in life are thus some of the mitigating factors to be considered, in addition to those indicated in *Bachan Singh* and *Machhi Singh*. Thus, this Court is bound to analyze the facts in the light of the aggravating and mitigating factors indicated in the binding decisions which have influenced the commission of the crime, the criminal, and his circumstances, while considering the sentence. [Para 18] [311-C-F]

E 1.4. In the instant case, it has come in evidence that the appellant suffered from economic and psychic compulsions. The possibility of reforming and rehabilitating the accused cannot be ruled out. He had no prior criminal record. On the facts available to the Court, it can be safely said that the accused is not likely to be menace or threat or danger to society. There is nothing to show that he had any previous criminal background. He had in fact intended to wipe out the whole family including himself on account of abject poverty. This aspect of the matter has not been properly appreciated by both, the Court of Session and the High Court. [Para 25] [317-G-H; 318-A-C]

H 1.5. In the facts of the case and the circumstances of the appellant at the time of commission of the offence, it is clear that the case does not fall under the rarest of

rare category of cases so as to warrant a punishment of death. The 'individually inconclusive and cumulatively marginal facts and circumstances' tend towards awarding lesser sentence of life imprisonment. Therefore, while upholding the conviction of the appellant u/s. 302 and s. 307 of IPC, the sentence is modified as follows:

- (a) For offence punishable u/s. 302 of IPC, the appellant is sentenced to life imprisonment.
- (b) For offence punishable u/s. 307 of IPC, the appellant is sentenced to imprisonment for a period of seven years.

Imprisonment for life of a convict is till the end of his biological life as held by the Constitution Bench in *Gopal Vinayak Godse*. However, it is made clear that in case the sentence of imprisonment for life is remitted or commuted to any specified period (in any case, not less than fourteen years in view of s. 433A, Cr.P.C.), the sentence of imprisonment u/s. 307 shall commence thereafter. [Para 26-28] [318-G-H; 319-A-E]

*Gopal Vinayak Godse vs. The State of Maharashtra and Others* 1961 SCR 440 = AIR 1961 SC 600 – relied on.

**Case Law Reference:**

1974 (3) SCR 329	relied on	para 4	F
1979 (3) SCR 1059	relied on	para 16	
1983 (3) SCR 413	relied on	para 17	
(2013) 5 SCC 546	relied on	para 19	
(2009) 10 SCC 434	relied on	para 24	G
1961 SCR 440	relied on	para 28	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 165-166 of 2011.

A From the Judgment & Order dated 23.09.2010 of the High Court of Judicature at Bombay in Confirmation Case No. 2 of 2009 with Criminal Appeal No. 280 of 2009.

B Ramesh Chandra Mishra, Dr. Meera Agarwal for the Appellant.

Sushil Karanjkar, Asha Gopalan Nair for the Respondent.

The Judgment of the Court was delivered by

C **KURIAN, J.1.** Death and if not life, death or life, life and if not death, is the swinging progression of the criminal jurisprudence in India as far as capital punishment is concerned. The Code of Criminal Procedure, 1898, under Section 367(5) reads:

D “If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed.”

E (Emphasis supplied)

This provision making death the rule was omitted by Act 26 of 1955.

F 2. There have been extensive discussions and studies on abolition of capital punishment during the first decade of our Constitution and the Parliament itself, at one stage had desired to have the views of the Law Commission of India and, accordingly, the Commission submitted a detailed report, Report No. 35 on 19.12.1967. A reference to the introduction to the 35th Report of the Law Commission will be relevant for our discussion. To quote:

H “A resolution was moved in the Lok Sabha on 21st April, 1962, for the abolition of Capital Punishment. In the course of the debate on the resolution, suggestions were made

that a commission or committee should be appointed to go into the question. However, ultimately, a copy of the discussion that had taken place in the House was forwarded to the Law Commission that was, at that time, seized of the question of examining the Code of Criminal Procedure and the Indian Penal Code.

The Law Commission considered it desirable to take up the subject separately from the revision of the general criminal law of the country. This was so, because of the importance of the subject, the voluminous nature of materials that were to be considered, and the large number of questions of detail that were to be examined. The matter had been repeatedly debated in Parliament in some form or other, and the Commission, therefore, thought its consideration to be somewhat urgent. In other countries also, the subject had been evidently treated as one for separate and full-fledged study."

3. It appears that Parliament finally decided to retain capital punishment in the Indian Penal Code. However, when the new Code of Criminal Procedure was enacted in the year 1973 (hereinafter referred to as 'the Cr.PC'), a paradigm shift was introduced, making it mandatory for Courts to state special reasons for awarding death sentence, under Section 354(3), which reads as follows:

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

(Emphasis supplied)

4. In the words of Krishna Iyer J. in *Ediga Anamma vs. State of Andhra Pradesh*<sup>1</sup>:

1. (1974) 4 SCC 443.

A “20. The unmistakable shift in legislative emphasis is that life imprisonment for murder is the rule and capital sentence the exception to be resorted to for reasons to be stated. ...

B 21. It is obvious that the disturbed conscience of the State on the vexed question of legal threat to life by way of death sentence has sought to express itself legislatively, the stream of tendency being towards cautious, partial abolition and a retreat from total retention.”

C (Emphasis supplied)

D 5. It is interesting to note that the requirement for reasons to be stated for awarding any sentence for a term of years found legislative expression in the Cr.PC for the first time in 1973. In the case of death sentence, there must be special reasons. That shows the paradigm shift to life imprisonment as the rule and death, as the exception.

E 6. The above preliminary discussion on death sentence has special significance as far as facts of the present case are concerned. The appellant before us faced trial under Section 302 read with Section 307 of IPC. The Sessions Court convicted him under both Sections. Under Section 302, he was sentenced to death and under Section 307, to life imprisonment. On reference, the High Court confirmed the death sentence. The appeal filed by the appellant before the High Court was dismissed confirming the conviction and sentence under Section 307. Thus aggrieved, the present appeals.

G 7. In view of the overwhelming evidence, though the learned counsel appearing for the appellant was mainly canvassing for commuting the death sentence, in order to satisfy our conscience, we may refer to the facts, evidence and the contentions briefly, on merits as well.

H



8. The appellant was married to a woman named Sangita. They had three children, one daughter and two sons. They were staying in two rooms in a house belonging to his maternal aunt. He was a tailor by profession and employed as such in a cloth shop. One of his sons, Aakash had been suffering from asthma which required constant medication. The appellant's income was hardly sufficient to maintain his family and he was under stress in that regard. On 08.07.2008, it is stated that during the early hours of the morning while the members of the family were sleeping, he assaulted his wife Sangita and his two sons with the separated parts of a pair of sharp scissors and inflicted multiple stab injuries causing their instantaneous death. On his daughter Gaitri alias Pooja also, he inflicted stab injuries. However, she somehow could speak and asked why her father, the appellant was injuring her. The appellant father told her that the entire family had to go and he would also follow them. However, he gave her water to drink. Thereafter, he took her on his lap and pressed her mouth with a pillow with the intention of suffocating her, and yet the child did not succumb to death. He left the child in that condition, bolted the door from outside and went straight to the police station and reported the incident. An FIR was registered. His statement was recorded. In the meanwhile, the daughter Gaitri got assistance from a neighbour and was immediately treated at a hospital and thus she survived. She is the key witness-PW1. The neighbour is the maternal aunt of the accused and she is PW4.

9. The prosecution examined nine witnesses and based mainly on the version of PW1-Gaitri, the appellant was convicted under Sections 302 and 307. Gaitri alias Pooja was clear and consistent during the investigation as well as before the Sessions Court. In her evidence before the Court, she stated:

"... My father, mother and all we children were in the house. My father assaulted my mother, my two brothers and me with the help of scissor. My two brothers and mother died

A on the spot. I was assaulted over my chest and abdomen  
and to my both hands. I asked my father as to why he was  
assaulting us although we did nothing. My father told me  
that all of us need to go and he would be following us. Then  
my father gave me water to drink. He then took me on his  
B laps and then pressed my mouth with the help of pillow.  
He then went to Police Station. While going out he bolted  
the door from outside. One Sakharbai Sadashiv Sonwane  
was staying in the same house in their neighbourhood. I  
shouted for help. I told her to save us and that we were  
C bleeding. She then opened the door. Then my uncle Anil  
Gaikwad came there and we were taken to Govt. Hospital  
at Gevrai for treatment. From there I was brought to Beed  
in the Civil Hospital by my uncle. Police came to me for  
making inquiry in the Hospital. I narrated the whole incident  
D to them. The accused in the dock is my father. The  
accused was a tailor and he was working in somebody's  
shop owned by one Anil. I can identify the scissor shown  
to me today. (Witness identified Article No. 15 the scissor  
in the Court). I was in the Hospital for about 21 days."

E (Emphasis supplied)

In cross, she stated thus:

F "... We are financially poor. My father used to work in the  
shop for whole day and even for late nights during festival  
season. It is true that sometimes he remained in the shop  
for whole night and return back in the next day. He used  
to earn money by working in the shop for us. ... It is not  
true to say that I am not able to tell who killed my mother  
and brothers as I was in sleep. ... It is not true that I am  
G deposing false that my father assaulted us. ... It is not true  
to say that I am deposing against the accused only on the  
say of my uncle and the Police."

(Emphasis supplied)

H

10. PW2 is the panch witness. PW3 is the doctor - Dr. Kranti Raut, who performed the autopsy. In the case of all the three deceased, the doctor has given the opinion that the death was caused due to hemorrhagic shock with heamothorax on account of multiple stab injuries to the vital organs. FSL report has confirmed that the blood on the clothes of the appellant and that of his deceased wife was of the same group. The doctor has also treated PW1 Gaitri alias Pooja and has referred in detail to the multiple injuries inflicted upon her. It is also deposed that injury no. 4-which is a stab wound is sufficient to cause death in the ordinary course of nature if timely treatment is not given. The doctor stated that all the injuries to the deceased persons as well as to the injured PW1-Gaitri are possible by the weapon-Article No. 6, scissors. PW4-Sakharbai is the aunt of the appellant. She has stated that the elder son of the appellant was suffering from asthma. She also deposed as follows:

“... When I was sleeping in my house I got at about 5.30 a.m. I was washing utensils. I heard a sound from Gaitri asking me to open the door and that her father had assaulted them. I went near the room and found that the door was bolted from outside which I opened and went inside the room. I saw Sangita, Omkar, Aakash were lying in a pool of blood and they were dead. Gaitri had also bleeding injuries to her chest, stomach and chin. She told me that her father assaulted all of them with a scissor in that night. I shouted and went to Baban, Anil and called them. The said Anil took Gaitri to Hospital. Gaitri is also known by name Pooja. ...”

(Emphasis supplied)

In cross, she submitted that “the accused was a tailor. It is true that his financial condition was poor”.

11. PW5 is the one who sold the scissors to the appellant. PW6 is the panch witness to the recovery of weapon of offence

A and other dress worn by the accused. PW7 is the Police Sub-Inspector. According to him, the appellant had told him at around 5.30 a.m. that he had committed the murder of his wife and two sons and had injured his daughter Gaitri. The statement-Exhibit No.29 was recorded by him and appellant  
B signed the same. PW8 is the Police Inspector who conducted the investigation. PW9 is the Police Inspector who prepared the inquest and spot panchnama. He collected the blood from the spot and the pillow cover soaked in blood. He also made the recovery of the scissors as disclosed by the accused.  
C Photographs were also taken. We may also refer to the statement made by the appellant himself before the police on the basis of which the FIR was registered:

D “... In my family my son Omkar is constantly ill due to asthma. For the treatment of his ailment money was required which I had to borrow and hence I had become debt ridden. Due to the tension I could not concentrate on my work and I had to go on leave frequently. ... Since I was fed up, I decided to leave the house, my wife and children would have died of hunger and ailment. Therefore, I had  
E thought to relieve them myself.”

(Emphasis supplied)

F Then he has narrated the manner in which he killed his wife and two sons. As far as assault on the daughter is concerned, he stated as follows:

G “... Thereafter I dealt 2-3 blows on chest of my daughter due to which she woke up and having seen me dealing blows she asked weepingly earnestly “papa why did you do so”. At that time I replied “we all have to go, I am also coming”. By saying so, I gave her water to drink and took her head on my lap. In order to kill her I pressed her mouth and nose but she was not dying. I waited for some time. Due to the incident which had happened I was terrified.  
H Then I kept water near her and left her in injured condition.

Thereafter I removed my clothes worn by me at the time of commission of the crime. I wrapped the scissors used for the crime in a cloth and went to the police station and presented myself and informed the incident.” A

(Emphasis supplied) B

12. Under Section 313 statement, however, he flatly denied everything but did not lead any evidence in defence.

13. The Sessions Court and the High Court have discussed in detail the conduct of the appellant. The courts have also considered his main contention that he was not involved in the incident. Both the Courts have found that it was not at all possible to appreciate his contentions since the normal conduct of a father in such circumstances would be first to help the child to obtain treatment either by himself or with the assistance of those residing in the neighbouring rooms and nearby. Suffice it to say that the evidence available on record, some of which we have referred to above, would establish beyond doubt that accused alone was involved in the commission of the offences. C D

14. We shall, hence, consider the question of sentence. The Sessions Court and the High Court are of the view that the case falls under the rarest of the rare category and the appellant did not deserve any mercy. E

15. Before awarding a sentence of death, in view of Section 354(3) of the Cr.PC, the court has to first examine whether it is a case fit for awarding of life sentence and if not and only then, the death sentence can be awarded. At the risk of redundancy, we may note that the rule is life imprisonment for murder, and death is the exception for which special reasons are to be stated. F G

16. The death sentence has been relegated to the ‘rarest of rare’ cases after the landmark decision of the Constitution H

A Bench in *Bachan Singh vs. State of Punjab*<sup>2</sup>. The most significant aspect of the decision in Bachan Singh's case (supra) is the mandate laid down by the Constitution Bench that Courts must not only look at the crime but also the offender and give due consideration to the circumstances of the offender at the time of commission of the crime. This decision rules the field even today and no discussion on the subject of death penalty is complete without a reference to *Bachan Singh's* case (supra). To quote:

C "201. ... As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be

D given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because 'style is the man'. In many cases, the

E extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the

F circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and, therefore, all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist.

G xxx xxx xxx

209. There are numerous other circumstances justifying the

H <sup>2</sup>. (1980) 2 SCC 684.

passing of the lighter sentence; as there are countervailing  
circumstances of aggravation. "We cannot obviously feed  
into a judicial computer all such situations since they are  
astrological imponderables in an imperfect and undulating  
society." Nonetheless, it cannot be over-emphasized that  
the scope and concept of mitigating factors in the area of  
death penalty must receive a liberal and expansive  
construction by the courts in accord with the sentencing  
policy writ large in Section 354(3). Judges should never  
be bloodthirsty. Hanging of murderers has never been too  
good for them. Facts and figures, albeit incomplete,  
furnished by the Union of India, show that in the past,  
Courts have inflicted the extreme penalty with extreme  
infrequency – a fact which attests to the caution and  
compassion which they have always brought to bear on the  
exercise of their sentencing discretion in so grave a matter.  
It is, therefore, imperative to voice the concern that courts,  
aided by the broad illustrative guide-lines indicated by us,  
will discharge the onerous function with evermore  
scrupulous care and humane concern, directed along the  
highroad of legislative policy outlined in Section 354(3),  
viz., that 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."

(Emphasis supplied)

17. The three-Judge Bench decision in *Machhi Singh and Others vs. State of Punjab*<sup>3</sup> culled out the guidelines indicated  
in *Bachan Singh's* case (supra), which would be required to  
be applied to the facts of each case while imposing a sentence  
of death. Emphasis was laid in the decision in *Machhi Singh's*  
case (supra) on drawing a 'balance sheet' of mitigating and

3. (1983) 3 SCC 470.

A aggravating factors. To quote:

“38. xxx xxx xxx

- B (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.
- (ii) Before opting for the death penalty the circumstances of the ‘offender’ also require to be taken into consideration along with the circumstances of the ‘crime’.
- C (iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.
- D (iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.
- E
- F

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

- G (a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?
- H (b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even



after according maximum weightage to the mitigating circumstances which speak in favour of the offender?"

A

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

B

(Emphasis supplied)

C

18. When there are binding decisions, judicial comity expects and requires the same to be followed. Judicial comity is an integral part of judicial discipline and judicial discipline the cornerstone of judicial integrity. No doubt, in case there are newer dimensions not in conflict with the ratio of larger bench decisions or where there is anything to be added to and explained, it is always permissible to introduce the same. Poverty, socio-economic, psychic compulsions, undeserved adversities in life are thus some of the mitigating factors to be considered, in addition to those indicated in Bachan Singh and Machhi Singh cases. Thus, we are bound to analyze the facts in the light of the aggravating and mitigating factors indicated in the binding decisions which have influenced the commission of the crime, the criminal, and his circumstances, while considering the sentence.

D

E

F

19. In a recent decision in *Shankar Kisanrao Khade vs. State of Maharashtra*<sup>4</sup>, this Court has scanned almost all the post Bachan Singh (supra) decisions rendered by this Court on death sentence and the principles laid down therein have been restated. Referring to the recent decisions (fifteen years), the principal reasons considered as aggravating factors for conferring death penalty have been summarized with reference

G

4. (2013) 5 SCC 546.

H

A to the decisions in support of the same. To quote paragraph 122 of *Shankar Kisanrao's* case (supra):

"122. The principal reasons for confirming the death penalty in the above cases include:

B (1) the cruel, diabolic, brutal, depraved and gruesome nature of the crime (*Jumman Khan*<sup>5</sup>, *Dhananjoy Chatterjee*<sup>6</sup>, *Laxman Naik*<sup>7</sup>, *Kamta Tewari*<sup>8</sup>, *Nirmal Singh*<sup>9</sup>, *Jai Kumar*<sup>10</sup>, *Satish*<sup>11</sup>, *Bantu*<sup>12</sup>, *Ankush Maruti Shinde*<sup>13</sup>, *B.A. Umesh*<sup>14</sup>, *Mohd. Mannan*<sup>15</sup> and *Rajendra Pralhadrao Wasnik*<sup>16</sup>);

D (2) the crime results in public abhorrence, shocks the judicial conscience or the conscience of society or the community (*Dhananjoy Chatterjee* (supra), *Jai Kumar* (supra), *Ankush Maruti Shinde* (supra) and *Mohd. Mannan* (supra));

- 
- E 5. *Jumman Khan vs. State of U.P.*, (1191) 1 SCC 752: (1991) SCC (Cri) 283.  
 6. *Dhananjoy Chatterjee vs. State of W.B.*, (1994) 2 SCC 220: (1994) SCC (Cri) 358.  
 7. *Laxman Naik vs. State of Orissa*, (1994) 3 SCC 381: (1994) SCC (Cri) 656.  
 8. *Kamta Tiwari vs. State of M.P.*, (1996) 6 SCC 250: (1996) SCC (Cri) 1298.  
 9. *Nirmal Singh vs. State of Haryana*, (1999) 3 SCC 670: (1999) SCC (Cri) 472.  
 F 10. *Jai Kumar vs. State of M.P.*, (1999) 5 SCC 1: (1999) SCC (Cri) 638.  
 11. *State of U.P. vs. Satish*, (2005) 3 SCC 114: (2005) SCC (Cri) 642.  
 12. *Bantu vs. State of U.P.*, (2008) 11 SCC 113: (2009) 1 SCC (Cri) 353.  
 13. *Ankush Maruti Shinde v. State of Maharashtra*, (2009) 6 SCC 667: (2009) 3 (Cri) 308.  
 G 14. *B.A. Umesh vs. State of Karnataka*, (2011) 3 SCC 85: (2011) 1 SCC (Cri) 801.  
 15. *Mohd. Mannan vs. State of Bihar*, (2011) 5 SCC 317: (2011) 2 SCC (Cri) 626.  
 16. *Rajendra Pralhadrao Wasnik vs. State of Maharashtra*, (2012) 4 SCC 37: (2012) 2 SCC (Cri) 30.

H

(3) the reform or rehabilitation of the convict is not likely or that he would be a menace to society (*Jai Kumar* (supra), *B.A. Umesh* (supra) and *Mohd. Mannan* (supra));

(4) the victims were defenseless (*Dhananjay Chatterjee* (supra), *Laxman Naik* (supra), *Kamta Tewari* (supra), *Ankush Maruti Shinde* (supra), *Mohd. Mannan* (supra) and *Rajendra Pralhadrao Wasnik* (supra));

(5) the crime was either unprovoked or that it was premeditated (*Dhananjay Chatterjee* (supra), *Laxman Naik* (supra), *Kamta Tewari* (supra), *Nirmal Singh* (supra), *Jai Kumar* (supra), *Ankush Maruti Shinde* (supra), *B.A. Umesh* (supra) and *Mohd. Mannan* (supra)) and in three cases the antecedents or the prior history of the convict was taken into consideration (*Shivu*<sup>17</sup>, *B.A. Umesh* (supra) and *Rajendra Pralhadrao Wasnik* (supra)).”

(Emphasis added)

20. The mitigating factors governing the award of life sentence in a murder case, have been summarized at paragraph 106. To quote:

“106. A study of the above cases suggests that there are several reasons, cumulatively taken, for converting the death penalty to that of imprisonment for life. However, some of the factors that have had an influence in commutation include:

(1) the young age of the accused [*Amit v. State of Maharashtra*<sup>18</sup> aged 20 years, *Rahul*<sup>19</sup> aged 24 years, *Santosh Kumar Singh*<sup>20</sup> aged 24 years, *Rameshbhai*

17. *Shivu vs. High Court of Karnataka*, (2007) 4 SCC 713; (2007) 2 SCC (Cri) 686.

18. (2003) 8 SCC 93 : (2003) SCC (Cri) 1959.

19. *Rahul vs. State of Maharastra*, (2005) 10 SCC 322 : (2005) SCC (Cri) 1516.

20. *Santosh Kumar Singh vs. State*, (2010) 9 SCC 747 : (2010) 3 SCC (Cri) 1469.

A *Chandubhai Rathod* (2)<sup>21</sup> aged 28 years and *Amit v. State of U.P.*<sup>22</sup> aged 28 years];

B (2) the possibility of reforming and rehabilitating the accused (in *Santosh Kumar Singh* (supra) and *Amit v. State of U.P.* (supra) the accused, incidentally, were young when they committed the crime);

C (3) the accused had no prior criminal record (*Nirmal Singh* (supra), *Raju*<sup>23</sup>, *Bantu* (supra), *Amit v. State of Maharashtra* (supra), *Surendra Pal Shivbalakpal*<sup>24</sup>, *Rahul* (supra) and *Amit v. State of U.P.* (supra));

D (4) the accused was not likely to be a menace or threat or danger to society or the community (*Nirmal Singh* (supra), *Mohd. Chaman*<sup>25</sup>, *Raju* (supra), *Bantu* (supra), *Surendra Pal Shivbalakpal* (supra), *Rahul* (supra) and *Amit v. State of U.P.* (supra));

E (5) a few other reasons need to be mentioned such as the accused having been acquitted by one of the courts (*State of T.N. v. Suresh*<sup>26</sup>, *State of Maharashtra v. Suresh*<sup>27</sup>, *Bharat Fakira Dhiwar*<sup>28</sup>, *Mansingh*<sup>29</sup> and *Santosh Kumar Singh* (supra));

21. (2011) 2 SCC 764 : (2011) 1 SCC (Cri) 883.

F 22. (2012) 4 SCC 107: (2012) 2 SCC (Cri) 590.

23. *Raju vs. State of Haryana*, (2001) 9 SCC 50: (2002) SCC (Cri) 408.

24. *Surendra Pal Shivbalakpal vs. State of Gujarat*, (2005) 3 SCC 127: (2005) SCC (Cri) 653.

25. *Mohd. Chaman vs. State (NCT of Delhi)*, (2001) 2 SCC 28 : (2001) SCC (Cri) 278.

G 26. (1998) 2 SCC 372 : (1998) SCC (Cri) 751.

27. (2000) 1 SCC 471 : (2000) SCC (Cri) 263.

28. *State of Maharashtra vs. Bharat Faikra Dhiwar*, (2002) 1 SCC 622: (2002) SCC (Cri) 217.

H 29. *State of Maharashtra vs. Man Singh*, (2005) 3 SCC 131: (2005) SCC (Cri) 657.

(6) the crime was not premeditated (*Kumudi Lal*<sup>30</sup>, *Akhtar*<sup>31</sup>, *Raju* (supra) and *Amrit Singh*<sup>32</sup>);

(7) the case was one of circumstantial evidence (*Mansingh* (supra) and *Bishnu Prasad Sinha*<sup>33</sup>).

In one case, commutation was ordered since there was apparently no “exceptional” feature warranting a death penalty (*Kumudi Lal* (supra)) and in another case because the Trial Court had awarded life sentence but the High Court enhanced it to death (*Haresh Mohandas Rajput*<sup>34</sup>).

(Emphasis added)

21. At this juncture, it might be useful to refer also to the decision in *Ediga Anamma’s* case (supra). In that case, this Court has held that where the offender suffers from socio-economic, psychic or penal compulsions insufficient to attract a legal exception or to downgrade the crime into a lesser one, judicial commutation is permissible. To quote:

“26. ...Where the offender suffers from socio-economic, psychic or penal compulsions insufficient to attract a legal exception or to downgrade the crime into a lesser one, judicial commutation is permissible. Other general social pressures, warranting judicial notice, with an extenuating impact may, in special cases, induce the lesser penalty. Extraordinary features in the judicial process, such as that the death sentence has hung over the head of the culprit excruciatingly long, may persuade the court to be

30. *Kumudi Lal vs. State of U.P.*, (1999) 4 SCC 108 : (1999) SCC (Cri) 491.

31. *Akhtar vs. State of U.P.*, (1999) 6 SCC 60 : 1999 SCC (Cri) 1058.

32. *Amrit Singh vs. State of Punjab*, (2006) 12 SCC 79 : (2007) 2 SCC (Cri) 397.

33. *Bishnu Prasad Sinha vs. State of Assam*, (2007) 11 SCC 467 : (2008) 1 SCC (Cri) 766.

34. *Haresh Mohandas Rajput vs. State of Maharashtra*, (2011) 12 SCC 56 : (2012) 1 SCC (Cri) 359.

A compassionate. Likewise, if others involved in the crime and similarly situated have received the benefit of life imprisonment or if the offence is only constructive, being under Section 302 read with Section 149, or again the accused has acted suddenly under another's instigation, without premeditation, perhaps the court may humanely opt for life, even like where a just cause or real suspicion of wifely infidelity pushed the criminal into the crime. ...”

(Emphasis supplied)

C 22. *Ediga Anamma's* case (supra) was given the stamp of approval in a subsequent decision by a three-Judge Bench in *Dalbir Singh vs. State of Punjab*<sup>35</sup> holding also that “undeserved adversities of childhood or later” would also be a mitigating factor.

D 23. This Court in *Ediga Anamma's* case (supra) has referred to a few other aggravating factors as well. To quote:

E “26. ... On the other hand, the weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim, and the like, steal the heart of the law for a sterner sentence. We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society. A legal policy on life or death cannot be left for ad hoc mood or individual predilection and so we have sought to objectify to the extent possible, abandoning retributive ruthlessness, amending the deterrent creed and accenting the trend against the extreme and irrevocable penalty of putting out life.”

G (Emphasis supplied)

24. Socio-economic compulsions such as poverty are also

H <sup>35.</sup> AIR 1979 SC 1384.

factors that are to be considered by Courts while awarding a sentence. This view has been taken in the decision in *Sushil Kumar vs. State of Punjab*<sup>36</sup> where this Court refrained from awarding the death sentence because of the extreme poverty of the accused. The facts in the case of *Sushil Kumar* (supra) are very similar to the present case. In that case also, the accused had committed the murder of his wife and two young children due to extreme poverty. Later, he allegedly attempted to take his own life by consuming some tablets. The accused had been sentenced to death by the trial court and the sentence was confirmed by the High Court. This Court, while reducing the sentence to life imprisonment observed:

“46. Extreme poverty had driven the appellant to commit the gruesome murder of three of his very near and dear family members - his wife, minor son and daughter. There is nothing on record to show that appellant is a habitual offender. He appears to be a peace-loving, law abiding citizen but as he was poverty-stricken, he thought in his wisdom to completely eliminate his family so that all problems would come to an end. Precisely, this appears to be the reason for him to consume some poisonous substances, after committing the offence of murder.”

47. No witness has complained about the appellant's bad or intolerable behaviour in the past. Many people had visited his house after the incident is indicative of the fact that he had cordial relations with all. He is now about thirty-five years of age and there appear to be fairly good chances of the appellant getting reformed and becoming a good citizen.”

(Emphasis supplied)

25. In the case before us, it has come in evidence that the appellant suffered from economic and psychic compulsions.

36. (2009) 10 SCC 434.

A The possibility of reforming and rehabilitating the accused cannot be ruled out. The accused had no prior criminal record. On the facts available to the Court, it can be safely said that the accused is not likely to be menace or threat or danger to society. There is nothing to show that he had any previous

B criminal background. The appellant had in fact intended to wipe out the whole family including himself on account of abject poverty. This aspect of the matter has not been properly appreciated by both the Sessions Court and the High Court which held that the appellant had the intention to only wipe out

C others and had not even attempted, and he was not prepared either, for suicide. We are afraid the Courts have not appreciated the evidence properly. Had his daughter not interrupted him asking the question why he was killing her, his intended conduct would have followed, as is evident from his

D response that all of them needed to go from the world. The crucial and turning point of the change of heart is the conversation she had with him. It is significant to note that he had not permitted, in the way he executed the murder of his wife and two sons to let them even scream, let alone ask any

E question. It so happened by chance that despite the stab injuries inflicted on the daughter, she managed to weepingly question her father why he was acting in such a manner. The change of heart is also discernible from the fact that he had given water to the injured daughter. After this, he no longer used the weapon for finishing her. He tried once again by taking her

F to his lap and stifling her with the aid of a pillow. However, as can be seen from his own statement, he could not finish killing her. Thereafter, he went straight to the police station and gave a statement of what he had done.

G 26. If we analyse the facts of the case in the backdrop of the circumstances of the appellant at the time of commission of the offence and on applying the crime test and the criminal test, it is fairly clear that the case does not fall under the rarest of rare category of cases so as to warrant a punishment of

H death. The 'individually inconclusive and cumulatively marginal



facts and circumstances' tend towards awarding lesser sentence of life imprisonment. A

27. In the above facts and circumstances of the case, while upholding the conviction of the appellant under Section 302 and Section 307 of IPC, we modify the sentence as follows: B

(a) For offence under Section 302 of IPC, the appellant is sentenced to life imprisonment.

(b) For offence under Section 307 of IPC, the appellant is convicted to imprisonment for a period of seven years. C

28. Imprisonment for life of a convict is till the end of his biological life as held by the Constitution Bench in *Gopal Vinayak Godse vs. The State of Maharashtra and Others*<sup>37</sup> case (supra). Hence, there is no point in saying that the sentences would run consecutively. However, we make it clear that in case the sentence of imprisonment for life is remitted or commuted to any specified period (in any case, not less than fourteen years in view of Section 433A of the Cr.PC.), the sentence of imprisonment under Section 307 of IPC shall commence thereafter. D E

29. The appeals are allowed as above.

R.P.

Appeals partly allowed.

---

37. AIR 1961 SC 600.