HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Division Bench : HON'BLE MR. JUSTICE S. C. SHARMA AND
HON'BLE MR. JUSTICE VIRENDER SINGH

Criminal Appeal No.4368/2019
(Kanhaiyalal Vs. State of M. P.)

CRRFC No.17/2018
(State of M. P. Vs. Kanhaiyalal)

Shri Abhinav Malhotra, learned counsel for the appellant – Kanhaiyalal.

Shri R. S. Chhabra, learned Additional Advocate General for the respondent / State.

O R D E R

(Delivered on this 24th day of September, 2019)

Per : S. C. Sharma, J:

The Criminal Appeal No.4368/2019 has been filed by the appellant being aggrieved by judgment of conviction dated 29/11/2018 passed in Sessions Trial No.179/2018 convicting the appellant – Kanhaiyalal under Section 302 of the Indian Penal Code, 1860 (on three counts) along with fine of Rs.500/- and in default of payment of fine to further undergo three months rigorous imprisonment and the Criminal Reference No.17/2018 has been made by the learned Sessions Judge, Mandsaur again arising out of the same judgment dated 29/11/2018 by which for offence under Section 302, a death penalty (to be hanged till death) has been awarded.

02- The prosecution case in short is that the marriage of

Kanhaiyalal took place about 15-17 years prior to the date of incident and his wife gave birth to two daughters. He was residing with his wife namely Guddi and two daughters namely Sapna and Vishnu at Village Daudkhedi. Kanhaiyalal S/o Laxminarayan Meena was a Village *Kotwar*.

03- Gopal Meena (PW-1), who is cousin brother of the appellant Kanhaiyalal, on 16/06/2018 at about 07 – 07:30 AM was informed by the appellant Kanhaiyalal that he has killed his wife Guddi and daughters Sapna and Vishnu by an Axe (*Kulhadi*). The appellant, thereafter, told Gopal Meena that the factum of murder committed by him be informed to his in-laws, who were residing in Village Moriya. Thereafter, Gopal Meena came down to the house of Kanhaiyalal. Gopal Meena also called the brother of the appellant Kailash Meena. The appellant along with Gopal Meena and Kailash Meena went inside the house and inside the house, three dead bodies were lying on the floor in a pool of blood.

04- The bodies were lying on floor with their heads chopped off. Kailash Meena, who is the brother of the appellant, thereafter, informed telephonically his third brother Shambhulal and on mobile the Police Station Y. D. Nagar, Mandsaur was also informed. The police on information reached at spot and on the basis of information given by Gopal Meena, a *Dehati Nalisi* was registered at Crime No.0/2018 for offence under Section 302 of the Indian Penal

Code, 1860. Thereafter, based upon the *Dehati Nalisi* a crime was registered and First Information Report (Ex.-P/30) was lodged.

05- Inspector Vinodsingh Kushwaha (PW-9) in order to prepare *Naksha Panchnama* of dead bodies issued notice (Ex.-P/2) to *Panchas* (witnesses) and a *Panchnama* was prepared in presence of witnesses namely Radheshyam, Dinesh, Shambulal, Gopal and Chandabai. A spot map was prepared in presence of witness Gopal Meena (PW-1) i.e. Ex.-P/6 and an axe was recovered in presence of witnesses Gopal Meena (PW-1) and Radheshyam (PW-3), Blood Soaked Soil and Normal Soil (Ex.-P/7) were also seized from the spot and the appellant was arrested. His arrest memo is on record as Ex.-P/8.

06- The statement of accused Kanhaiyalal was taken down by the police in presence of the Radheshyam and Dinesh and the blood soaked clothes of the accused were also recovered from the bathroom of the house (Seizure Memo Ex.-P/10). A spot map was prepared and all three dead bodies were sent for postmortem to the District Hospital, Mandsaur (Ex.-P/19, 21 and 23).

07- Dr. Viabhav Jain (PW-8) conducted the postmortem and submitted postmortem report (Ex.-P/20, P/22 and P/24). Articles seized were forwarded for forensic examination to Forensic Laboratory, Jhumarghat (Rau). Report received from the Forensic Science Laboratory is Ex.-P/25 and the report establishes presence

of human blood.

08- After completion of investigation, a charge sheet was filed and thereafter, the matter was committed for trial to the Court of Sessions Judge, Mandsaur. The appellant has denied his involvement in the matter.

09- The trial Court has discussed the evidence adduced during the trial and after framing two questions for determination has held the appellant guilty of murder. The questions for determination on the basis of which the entire judgment has been delivered are as under:-

(a) Whether, on 16/06/2018 Guddi Meena, Sapna Meena and Vishnu Meena were murdered and whether, it was a *culpable homicide* amounting to murder?

(b) Whether, on 16/06/2018 between 04 – 07:00 AM in Village Daudkhedi, the appellant committed murder of his wife Guddi Meena and daughters Sapna Meena and Vishnu Meena?

The trial Court after analyzing the entire statement in respect of both the issue has held that it was the appellant, who has committed murder of his wife and two daughters.

10- As per the evidence on record, Gopal (PW-1), Kailash (PW-2) and Kanhaiyalal (present appellant) reached at the site of the crime. They have stated before the trial Court that they saw the

dead bodies of Guddi, Sapna and Vishnu. Kailash (PW-2) has described the situation in which the dead bodies were lying in a pool of blood and has also stated about the Extra-judicial confession made by the accused before him.

11- The Station House Officer Vinodsingh Kushwaha (PW-9), who has prepared the *Naksha Panchnama* (Ex.-P/3, P/4 and P/5) in respect of the dead bodies has also stated before the trial Court that he saw three dead bodies with their heads chopped off from neck and they were attached with small part of skin with the remaining body.

12- Dr. Vaibhav Jain (PW-8) in his statement before the trial Court has stated that he has conducted postmortem of all the three dead bodies (Ex.-P/20, P/22 and P/24) and he has also stated before the trial Court that the heads were chopped off below the neck and with small piece of skin they were attached to dead bodies. Based upon the aforesaid, the factum of death was proved. Dr. Vaibhav Jain (PW-8) has also stated before the trial Court that there was crush injury over the neck and death was on account of injury as well as on account of hemorrhagic shock, meaning thereby, that the death was on account of *culpable homicide*. Thus, the factum of death on account of *culpable homicide* was established before the trial Court.

13- The another major issue framed by the trial Court,

whether the appellant has committed murder or not, has also been analyzed in depth by the trial Court and based upon the circumstantial evidence, as there was no eye-witness, the appellant has been held guilty of murder.

14- Gopal (PW-1), Kailash (PW-2) and SHO Vinodsingh Kushwaha (PW-9) has categorically stated that the dead bodies of Guddi, Sapna and Vishnu found inside the house, meaning thereby, the incident took place inside the house and it was only the appellant, who was residing with them. A conclusion can safely be drawn that the death has taken place in house where the family was residing and as the murders took place inside the house, no other person has seen the incident, which took place between 04 – 07:00 AM.

15- Gopal (PW-1), who is cousin brother of the appellant Kanhaiyalal has categorically stated that at 07:30 in the morning, he was in house and Kanhaiyalal, who was also a *Kotwar* came to his house. The appellant Kanhaiyalal made an Extra-judicial confession stating that he has killed his wife and two daughters by using an axe. Gopal (PW-1) has also stated that Kanhaiyalal told him to inform other family members about the murder, which he has committed and at that point of time the Gopal (PW-1) called the real younger brother of the appellant and all three of them went to the house of appellant Kanhaiyalal.

16- It has been stated by Gopal (PW-1) that he along with Kailash (PW-2) as well as the appellant Kanhaiyalal saw three dead bodies in a room in the house of the appellant Kanhaiyalal and they immediately called the police. *Dehati Nalisi* (Ex.-P/1) was registered and he has signed the *Dehati Nalisi*. Kailash (PW-2) has supported the prosecution case and the statement made by Gopal (PW-1). A similar version has been narrated by Kailash (PW-2) also.

17- The evidence on record, to be more specific, the testimony of Gopal (PW-1) and Kailash (PW-2) makes it very clear that the appellant has made Extra-judicial confession before them stating categorically that he has killed his wife and two daughters. The appellant in his statement recorded under Section 313 of the Code of Criminal Procedure, 1973 has not given any clarification and has stated that Gopal is having enmity towards him and under the influence of Gopal, his brother has also stated incorrect facts.

18- A ground was also raised before the trial Court that Extra-judicial confession cannot be made to be a basis of convicting the present appellant. There should be some other cogent material / evidence to hold the appellant guilty.

19- The appellant was residing with his wife Guddi and two daughters Sapna and Vishnu and their dead bodies have been recovered from the house in which the appellant was residing. The fact of recovery of dead bodies from the house of the appellant has

been proved by the statement of witnesses namely Gopal (PW-1), Kailash (PW-2) and SHO Vinodsingh Kushwaha (PW-3). The accused in his statement under Section 313 of the Cr.P.C. has stated that he had been to a place called Bhadwa Mata Mandir a day prior to the date of incident and came back about 08:00 AM on the date of incident, however, no such evidence to support the aforesaid contention was brought on record.

20- Undisputedly, the murder of the wife and daughters took place inside the house the appellant. No signs of any loot or dacoity were present and otherwise also the appellant was a poor person working on the post of *Kotwar*. On the contrary, it was the appellant, who has informed Gopal (PW-1) and has made an Extra-judicial confession and also told Gopal (PW-1) to inform the other family members.

21- The time of incident as per *Dehati Nalisi* (Ex.-P/1) is 07:30 AM and the police was informed at 08:45 AM and in the *Dehati Nalisi* also the factum of Extra-judicial confession finds place, meaning thereby, to the police also it was informed, as reflected from the *Dehati Nalisi* (Ex.-P/1), by Gopal about the Extra-judicial confession.

22- The SHO Vinodsingh Kushwaha (PW-9) has recovered blood soaked soil, normal soil and axe and a Seizure Memo was prepared (Ex.-P/7), Arrest Panchnama (Ex.-P/8) was also prepared

and it was the appellant who informed the place of incident, which is the same house where the blood soaked cloths and axe was kept. Based upon the memorandum (Ex.-P/9) the recovery was made and the seizure witness Radheshyam (PW-3) has also supported the prosecution case.

23- The seized articles were sent to the Forensic Science Laboratory through a memo dated 08/07/2018 (Ex.-P/15) and a report was obtained (Ex.-P/25) in which presence of human blood over the clothes of the deceased, over the clothes of the appellant as well as over the axe (*Kulhadi*) was found. It was the human blood only as reflected from the report. All these circumstances, the chain and events right from the stage of murder making Extra-judicial confession to witnesses, recovery of axe at the instance of the appellant and presence of human blood on the articles makes it very clear that it was the appellant, who has committed murder of his wife and two daughters.

24- Kailash (PW-2) and Devram @ Devilal (PW-4) have stated before the trial Court that the husband and wife used to fight with each other and about 10-15 days prior to the date of incident, the wife had been to her parental home and the dispute between husband and wife was on account of fact that wife used to visit her parental home without the consent of her husband.

25- Devram @ Devilal (PW-4), who is real brother of the

Guddi has stated before the trial Court that her brother-in-law (appellant) used to drink alcohol and used to assault his sister and even the appellant husband was having doubt about the character of her sister, meaning thereby, one of the witness has stated about the strained relationship of husband and wife and the fight which took place between husband and wife. The statement of Devilal (PW-4) supports the prosecution case.

26- Based upon the evidence on record, it can be safely gathered that the deceased Guddi wife of the appellant, daughters Sapna and Vishnu were residing with the appellant. There dead bodies were found in the house of the appellant only. The evidence also establishes that the appellant made an Extra-judicial confession to Gopal (PW-1) and Kailash (PW-2) and Gopal is cousin and Kailash is real brother of the appellant.

27- It was also proved during the trial that from the house of the appellant his blood stained clothes having human blood were recovered for which there was no explanation. It was also proved that an axe was recovered from the house of the appellant based upon his memorandum and the presence of human blood was also establish as per the FSL report. There was no explanation for the same by the appellant.

28- Based upon the evidence, it is also establish that the appellant, who was having doubt about the character of his wife,

used to fight with her and used to drink also. The appellant was also not able to establish that he was not present in the house and therefore, presumption has to be drawn that he was very much present in the house at the time of incident and the possibility of any stranger committing the murder was ruled out.

29- Based upon the evidence trial Court has held the appellant guilty of committing murder of his wife and two minor daughters and capital punishment have been awarded in the matter on three counts. The present case, so far as the guilt of the appellant is concerned, is an open and shut case. There is no reason for disbelieving the Extra-judicial confession.

30- In the case of **Ramlal Vs. State of Himachal Pradesh** (Criminal Appeal No.576/2010, decided on 03/10/2018), the apex Court has held as under:-

> **"**It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. Extra-judicial confession of accused need not in all cases be corroborated. In Madan Gopal Kakkad v. Naval Dubey and Another (1992) 3 SCC 204, this court after referring to Piara Singh and Others v. State of Punjab (1977) 4 SCC 452 held that the law does not require that the evidence of an extra-judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated.**"**

Similarly, the apex Court in the case of **Balvindersingh Vs. State of Punjab** reported in **1995 Suppl. (4) SCC 259**, has held that Extra-judicial confession should be taken in to account with

great care and caution.

In the case of **State of Rajasthan Vs. Rajaram** reported in **(2003) 8 SCC 180** the apex Court has held as under:-

> **"**An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The Court further expressed the view that: 19. ....Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused....**"**

The apex Court in the aforesaid case has held that Extra-judicial confession, if made voluntarily in a fit state of mind, can be relied upon by the trial Court.

In the present case, there is no reason nor there is any material to disbelieve the Extra-judicial confession. Extra-judicial confession in the present case was made firstly to the cousin as well as to the real brother voluntarily by the appellant and therefore, the Extra-judicial confession in the present case cannot be ignored.

31- Not only this, in the present case, as stated earlier dead bodies were recovered from the house of the appellant, blood stained clothes over which the human blood was found were recovered from the same house and on his memorandum an axe was also recovered having human blood. Hence, the Extra-judicial confession taken into account with other corroborative evidence

establishes the guilt of the appellant and therefore, in the considered opinion of this Court crime committed by the appellant has been proved beyond reasonable doubt. It is the appellant, who has committed an offence under Section 302 of the IPC by murdering his wife and two daughters namely Sapna and Vishnu and the same has been proved beyond reasonable doubt.

32- The most important aspect of the case is that the trial Court has awarded capital punishment, meaning thereby, the appellant has been sentenced to death. The only issue which requires consideration is whether, a capital punishment can be awarded in the peculiar facts and circumstance of the case. The trial Court by taking in to account the judgment delivered in the case of **Ediga Anamma Vs. State of Andhra Pradesh** reported in **1974 (4) SCC 443**, **Bachan Singh Vs. State of Punjab** reported in **1980 (2) SCC 684** and **Babu @ Mubarik Hussain Vs. State of Rajasthan** reported in **AIR 2007 SC 697** has arrived at a conclusion that the present case is rarest of rare case warranting a death penalty.

33- The issue of imposing death penalty has been considered by Hon'ble Supreme Court in large number of cases from time to time. The apex Court in the case of **Bachan Singh Vs. State of Punjab** reported in **(1980) 2 SCC 684** while upholding the constitutional validity of death penalty in India, held that under Section 354(3) of the Cr.P.C., imprisonment for life is the rule and

death sentence is the exception. The apex Court emphasized the need for principled sentencing without completely trammeling the discretionary powers of the judges. It also held that the "special reasons" that are required to be recorded while awarding death sentence means "exceptional reasons" founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal.

34- The apex Court in the case of **Santosh Kumar Singh Vs. State through CBI** reported in **(2010) 9 SCC 747** has summarized the underlying philosophy behind rarest of the rare case in following terms:-

> **"98.** Undoubtedly the sentencing part is a difficult one and often exercises the mind of the Court but where the option is between a life sentence and a death sentence, the options are indeed extremely limited and if the court itself feels some difficulty in awarding one or the other, it is only appropriate that the lesser sentence should be awarded. This is the underlying philosophy behind "the rarest of the rare" principle.**"**

35- The apex Court again in the case of **Mohinder Singh Vs. State of Punjab** reported in **(2013) 3 SCC 294**, wherein the accused was held guilty of double murder of wife and daughter, has held that brutality is not the sole criteria for determining whether case falls under "rarest of rare category" in in following words:-

> **"16.** On the other hand, the Sessions Court had attempted to draw a balance of aggravating and mitigating circumstances by stating two mitigating circumstances as follows:
>
> 1. Firstly, his age at the time of commission of crime i.e. 41 years.
>
> 2. Secondly, that the accused is a poor man, who had no

livelihood.

While it is true that the above two circumstances alone will not make good for commuting the death sentence to life sentence, however, before we move on to enumerate the other mitigating circumstances in this case, **it is necessary to consider few case laws which reiterate that brutality is not the sole criterion of determining whether a case falls under the "rarest of rare" categories.**

17. In Panchhi & Ors. vs. State of U.P., (1998) 7 SCC 177, this Court held that brutality is not the sole criterion of determining whether a case falls under the "rarest of rare" categories, thereby justifying the commutation of a death sentence to life imprisonment. This Court observed:

> "20. ..... No doubt brutality looms large in the murders in this case particularly of the old and also the tender age child. It may be that the manner in which a murder was perpetrated may be a ground but not the sole criterion for judging whether the case is one of the "rarest of rare cases" as indicated in Bachan Singh's case."

18. The Constitution Bench of this Court, by a majority, upheld the constitutional validity of death sentence in Bachan Singh vs. State of Punjab, (1980) 2 SCC 684. This Court took particular care to say that death sentence shall not normally be awarded for the offence of murder and that it must be confined to the "rarest of rare" cases when the alternative option is foreclosed. In other words, the Constitution Bench did not find death sentence valid in all cases except in the aforesaid cases wherein the lesser sentence would be wholly inadequate.

19. In Machhi Singh and Ors. vs. State of Punjab, (1983) 3 SCC 470, a three-Judge Bench of this Court while following the ratio in Bachan Singh (supra) laid down certain guidelines amongst which the following is relevant in the present case:

> "38. ..... (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."

20. We have extracted the above reasons of the two courts only to point out that, in a way, every murder is brutal, and the difference between the one from the other may be on account of mitigating or aggravating features surrounding the murder.

21. In the instant case, as already mentioned, the accused had earlier committed rape on his deceased daughter-Geetu Verma in 1999 and in that case, his deceased wife - Veena Verma was a witness wherein the accused was convicted under Sections 376 and 506 IPC and sentenced to RI for 12 years. It is also subsequently taken on record that his deceased wife sent

the accused out of his house and as a consequence, he had to live separately in a rented house with no means of livelihood. It was thirst for retaliation, which became the motivating factor in this case. **In no words are we suggesting that the motive of the accused was correct rather we feel it does not come within the category of "rarest of rare" case to award death penalty.**

37.2. The expression 'special reasons' obviously means ('exceptional reasons') founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal.

37.4. Public opinion is difficult to fit in the 'rarest of rare' matrix. People's perception of crime is neither an objective circumstance relating to crime nor to the criminal. Perception of public is extraneous to conviction as also sentencing, at least in capital sentencing according to the mandate of Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580]. (Santosh Kumar Satishbhushan Bariyar Case [(2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150], SCC at p. 535, para 80.)

37.6. The Apex Court as the final reviewing authority has a far more serious and intensive duty to discharge and the Court not only has to ensure that award of death penalty does not become a perfunctory exercise of discretion under Section 302 after an ostensible consideration of 'rarest of rare' doctrine, but also that the decision-making process survives the special rigours of procedural justice applicable in this regard. (Mohd. Farooq Abdul Gafur case [(2010) 14 SCC 641 : (2011) 3 SCC (Cri) 867] , SCC at p.692, para 155.)

37.7. The 'rarest of rare' case comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of "the rarest of the rare case". There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. (Haresh Mohandas Rajpur case [(2011) 12 SCC 56: (2012) 1 SCC (Cri) 359].**"**

In view of the elaborate discussion by the Hon'ble Supreme Court on the contours of doctrine of rarest of rare case in the aforestated cases amongst other case laws, it is needless to say that the present case does not fall within the category of rarest of the rate case and as such, the death sentence is unwarranted in the

present case.

36- In the considered opinion of this Court, the socio-economic circumstances leading up to the commission of crime are relevant factor while determining the award of sentence which has been completely overlooked by the Court below. The apex Court in the case of **M. A. Antony @ Antappan Vs. State of Kerala** reported in **2018 SCC Online SC 2800** has discussed at length the relevancy of socio-economic circumstances of the accused while deciding quantum of punished as under:-

> **"15.** There is no doubt that the socio-economic factors relating to a convict should be taken into consideration for the purposes of deciding whether to award life sentence or death sentence. One of the reasons for this is the perception (perhaps misplaced) that it is only convicts belonging to the poor and disadvantaged sections of society that are awarded capital sentence while others are not. Although Bachan Singh v. State of Punjab2 does not allude to socio-economic factors for being taken into consideration as one of the mitigating factors in favour of a convict, the development of the law in the country, particularly through the Supreme Court, has introduced this as one of the factors to be taken into consideration. In fact, in Bachan Singh this Court recognised that a range of factors exist and could be taken into consideration and accepted this (1980) 2 SCC 684 position. In paragraph 209 of the Report it is rather felicitously stated as follows:
>
> > "209. There are numerous other circumstances justifying the 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-emphasised 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 by us).

16. Following the view laid down by the Constitution Bench of this Court, we endorse and accept that socio-economic factors must be taken into consideration while awarding a sentence particularly the ground realities relating to access to justice and remedies to justice that are not easily available to the poor and the needy.

17. The consideration of socio-economic factors is tied up with another important issue (which need not necessarily or always be taken into consideration for sentencing purposes, but could be relevant in a given case) and that is whether the convict has had adequate legal representation. Several accused persons belonging to the weaker sections of society cannot afford defence counsel and they are obliged to turn to the National Legal Services Authority, the State Legal Services Authority or the District Legal Services Committee for legal representation. While these authorities provide the best legal assistance possible at their command, it sometimes falls short of expectations resulting in the conviction of an accused and, depending upon the facts of the case and the sentencing process followed, a sentence of death follows.

18. That the poor are more often than not at the receiving end in access to justice and access to the remedies available is evident from a fairly recent report prepared by the Supreme Court Legal Services Committee4 which acknowledges, through Project Sahyog, enormous delays in attending to cases of the poor and the needy. Quality legal aid to the disadvantaged and weaker sections of society is an area that requires great and urgent attention and we hope that a vigorous beginning is made in this direction in the new year.

19. Reverting to the issue of socio-economic factors, we are not sure when this was introduced as a mitigating factor for consideration in deciding whether life imprisonment or death sentence should be awarded. Be that as it may, the earliest

decision to which our attention was drawn is State of U.P. v. M.K. Anthony5 in which this Court cautioned against being overwhelmed by the gravity or brutality of the offence. As held in Bachan Singh, it is not only the crime that is of importance in the sentencing process but it is also the criminal. With this in view, this Court considered the plight of the have-not and commuted the death sentence into one of imprisonment for life. This is what this Court said in paragraph 23 of the Report:

> "23. The last question is what sentence should be imposed upon the respondent. The learned Sessions Judge has imposed maximum penalty that could be imposed under the law, namely, sentence of death. The murder of near and dear ones including two innocent kids is gruesome. We must however be careful lest the shocking nature of crime may induce an instinctive reaction to the dispassionate analysis of the evidence both as to offence and the sentence. One circumstance that stands out in favour of the respondent for not awarding capital punishment is that the respondent did not commit murder of his near and dear ones actuated by any lust, sense of vengeance or for gain. The plight of an economic have-not sometimes becomes so tragic that the only escape route is crime. The respondent committed murder because in his utter helplessness he could not find few chips to help his ailing wife and he saw the escape route by putting an end to their lives. This one circumstance is of such an overwhelming character that even though the crime is detestable we would refrain from imposing capital punishment. The (1985) 1 SCC 505 respondent should accordingly be sentenced to suffer imprisonment for life."
>
> (Emphasis supplied by us).

20. In Surendra Pal Shivbalakpal v. State of Gujarat6 this Court considered the socio-economic condition of the appellant therein, namely that he was a migrant labourer and was living in impecunious circumstances and therefore it could not be said that he would be a menace to society in future. The sentence of death was converted into one of imprisonment for life. This is what this Court said in paragraph 13 of the Report:

> ".....The appellant was aged 36 years at the time of the occurrence and there is no evidence that the appellant had been involved in any other criminal case previously and the appellant was a migrant labourer from U.P. and was living in impecunious circumstances and it cannot be said that he would be a menace to society in future and no materials are placed before us to draw such a conclusion. We do not think that the death penalty was warranted in this case....."

21. Similarly, in Sushil Kumar v. State of Punjab7 the

poverty of the convict was taken into consideration as a factor for sentencing. This Court in paragraph 46 of the Report held as follows:

> "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." (Emphasis supplied by us).

22. In Mulla v. State of Uttar Pradesh8 this Court specifically noted in paragraph 80 of the Report that one of the factors that appears to have been left out in judicial decision-making on the issue of sentencing, is the socio- economic factor which is a mitigating factor although it may not dilute the guilt of the convict. This is what this Court held:

> "80. Another factor which unfortunately has been left out in much judicial decision-making in sentencing is the socio- economic factors leading to crime. We at no stage suggest that economic depravity justify moral depravity, but we certainly recognise that in the real world, such factors may lead a person to crime. The 48th Report of the Law Commission also reflected this concern. Therefore, we believe, socio-economic factors might not dilute guilt, but they may amount to mitigating circumstances. Socio-economic factors lead us to another related mitigating factor i.e. the ability of the guilty to reform. It may not be misplaced to note that a criminal who commits crimes due to his economic backwardness is most likely to reform. This Court on many previous occasions has held that this ability to reform amounts to a mitigating factor in cases of death penalty."
>
> (Emphasis supplied by us).

23. In Kamleshwar Paswan v. Union Territory of Chandigarh9 this Court noted the fact that the convict was a rickshaw puller and a migrant with psychological and economic pressures. The socio-economic condition of the convict was therefore taken into consideration for the purposes of sentencing him. It was held in paragraph 8 of the Report as follows:

> "8. We cannot also ignore the fact that the appellant was a rickshaw-puller and a migrant in Chandigarh with the attendant psychological and economic pressures that so often overtake and overwhelm such persons. Village Kishangarh is a part of the Union Territory of Chandigarh

> and at a stone's throw from its elite sectors that house the Governors of Punjab and Haryana, the Golf Club, and some of the city's most important and opulent citizens. It goes without saying that most such neighbourhoods are often the most unfriendly and indifferent to each others' needs. Little wonder his frustrations apparently came to the fore leading to the horrendous incident."
>
> (Emphasis supplied by us).

24. Finally, in Mahesh Dhanaji Shinde v. State of Maharashtra10 it was noted that the convicts were living in acute poverty. However, their conduct in jail was heartening inasmuch as they had educated themselves and has shown that if given a second chance, they could live a meaningful and constructive life. This Court noted as follows:

> "38. At the same time, all the four accused were young in age at the time of commission of the offence i.e. 23-29 years. They belong to the economically, socially and educationally deprived section of the population. They were living in acute poverty. It is possible that, being young, they had a yearning for quick money and it is these circumstances that had led to the commission of the crimes in question. Materials have been laid before this Court to show that while in custody all the accused had enrolled themselves in Yashwantrao Chavan Maharashtra Open University and had either completed the BA examination or are on the verge of acquiring the degree…….. There is no material or information to show any condemnable or reprehensible conduct on the part of any of the appellants during their period of custody. All the circumstances point to the possibility of the appellant-accused being reformed and living a meaningful and constructive life if they are to be given a second chance……."
>
> (Emphasis supplied by us).

25. There is, therefore, enough case law to suggest that socio-economic factors concerning a convict must be taken into consideration while taking a decision on whether to award a sentence of death or to award a sentence of imprisonment for life.**"**

37- The apex Court Court again in the case of **Mulla Vs. State of U. P.** reported in **(2010) 3 SCC 508** has deliberated upon the need of taking into consideration the socio-economic factors leading up the crime as under:-

> **"80.** Another factor which unfortunately has been left out in much judicial decision-making in sentencing is the socio-economic factors leading to crime. We at no stage suggest that economic depravity justify moral depravity, but we certainly recognize that in the real world, such factors may lead a person to crime. The 48th report of the Law Commission also reflected this concern. Therefore, we believe, socio-economic factors might not dilute guilt, but they may amount to mitigating circumstances. Socio-economic factors lead us to another related mitigating factor, i.e. the ability of the guilty to reform. It may not be misplaced to note that a criminal who commits crimes due to his economic backwardness is most likely to reform. This court on many previous occasions has held that this ability to reform amount to a mitigating factor in cases of death penalty.
>
> **81.** In the present case, the convicts belong to an extremely poor background. With lack of knowledge on the background of the appellants, we may not be certain as to their past, but one thing which is clear to us is that they have committed these heinous crimes for want of money. Though we are shocked by their deeds, we find no reason why they cannot be reformed over a period of time.**"**

38- The apex Court in the case of **Kamleshwar Paswan Vs. UT, Chandigarh** reported in **(2011) 11 SCC 564** while dealing with the socio-economic circumstances as a mitigating factor has observed as under:-

> **7.** Ms. S. Usha Reddy, the Legal Aid Counsel for the appellant, has however pointed out that the present case did not fall under the category of the rarest of the rare cases in the light of the fact that the appellant was a young man of 28 years on the date of the incident and that the offence had been committed by him (as per the prosecution story) while he was in an inebriated condition and after a quarrel with his wife.
>
> **8.** We cannot also ignore the fact that he was a rickshaw puller and a migrant in Chandigarh with the attendant psychological and economic pressures that so often overtake and overwhelm such persons. Village Kishangarh is a part of the Union Territory of Chandigarh and a stone throw from its elite Sectors that house the Governors of Punjab and Haryana, the Golf Club, and some of the cities most important and opulent citizens. It goes without saying that most such neighbourhoods are often the most unfriendly and indifferent to each others needs. Little wonder his frustrations apparently came to the fore leading to the horrendous incident.

> **9.** Nevertheless keeping in view the overall picture and in the light of what has been mentioned above, we feel that the ends of justice would be met if the appeal is allowed to the extent that the death sentence is substituted by a term of life imprisonment. We accordingly dismiss the appeals but commute the sentence from death to life.**"**

This Court has carefully gone through the judgment passed by the trial Court and the Court below has not taken into account the probability that the convict can be reformed and rehabilitated and it is a valid consideration for deciding whether he should be awarded capital punishment or life imprisonment. The apex Court in the case of **Prakash Dhawal Khairnar (Patil) Vs. State of Maharashtra** reported in **(2002) 2 SCC 35** has considered the probability of reform and rehabilitation of the convict. It was held that the convict did not have any criminal tendency and was gainfully employed. Though the crime was heinous, the Hon'ble Supreme Court did not arrive at the conclusion that it was the rarest of rare case. Accordingly, the death penalty was converted into imprisonment for 20 years.

39- The apex Court again in the case of **Lehna Vs. State of Haryana** reported in **(2002) 3 SCC 76** has held that the special reasons for awarding the death sentence must be such that compel the Court to conclude that it is not possible to reform and rehabilitate the offender. Paragraph No.14 of the aforesaid judgment reads as under:-

> **"14. .....** Death sentence is ordinarily ruled out and can

> only be imposed for 'special reasons', as provided in Section 354(3). There is another provision in the Code which also uses the significant expression 'Special reason'. It is Section 361. Section 360 of the 1973 Code re-enacts, in substance, Section 562, of the Criminal Procedure Code, 1898 (in short 'old Code'). Section 361 which is a new provision in the Code makes it mandatory for the Court to record 'special reasons' for not applying the provisions of Section 360. Section 361 thus casts a duty upon the Court to apply the provisions of Section 360 wherever, it is possible to do so and to state 'special reasons' if it does not do so. In the context of Section 360, the 'special reasons' contemplated by Section 361 must be such as to compel the Court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed. This is some indication by the Legislature that reformation and rehabilitation of offenders and not mere deterrence, are now among the foremost objects of the administration of criminal justice in our country. Section 361 and Section 354(3) have both entered the Statute Book at the same time and they are part of the emerging picture of acceptance by the legislature of the new trends in criminology. It would not, therefore, be wrong to assume that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors.**"**
>
> (Emphasis supplied by us)

Further in the case of **Mohinder Singh Vs. State of Punjab** (Supra) the apex Court in paragraph No.23 has held as under:-

> **"**..... As discussed above, life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second aspect to the "rarest of rare" doctrine, the Court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme."
>
> (Emphasis supplied by us)"

40- In the case of **Birju Vs. State of Madhya Pradesh** reported in **(2014) 3 SCC 421**, the apex Court explained the necessity of considering the probability of reform and rehabilitation

of the convict by referring to the provisions of the Probation of Offenders Act, 1958 where a convict is placed under probation in a case where there is possibility of reform. Paragraph No.20 of the aforesaid judgment reads as under:-

> **"20.** In the instant case, the Court took the view that there was no probability that the accused would not commit criminal acts of violence and would constitute a continuing threat to the society and there would be no probability that the accused could be reformed or rehabilitated. ..... Courts used to apply reformative theory in certain minor offences and while convicting persons, the Courts sometimes release the accused on probation in terms of Section 360 Cr.P.C. and Sections 3 and 4 of the Probation of Offenders Act, 1958. Sections 13 and 14 of the Act provide for appointment of Probation Officers and the nature of duties to be performed. Courts also, while exercising power under Section 4, call for a report from the Probation Officer. In our view, while awarding sentence, in appropriate cases, while hearing the accused under Section 235(2) Cr.P.C., Courts can also call for a report from the Probation Officer ..... Court can then examine whether the accused is likely to indulge in commission of any crime or there is any probability of the accused being reformed and rehabilitated.**"**
>
> (Emphasis supplied by us)

In view of the aforesaid, it can be safely gathered, whether an accused can be reformed and rehabilitated in society must be seriously and earnestly considered by the Court before awarding the death sentence. This is one of the mandates of the "special reasons" requirement of Section 354(3) of the Cr.P.C. and ought not to be have been taken lightly, since it involves ending the life of a person. To effectuate this mandate, it is the obligation on the prosecution to prove before the Court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated. This can be achieved by bringing on record, *inter-alia* material about

his conduct in jail, his conduct outside the jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the convict can produce evidence on these issues as well. However, the same was completely overlooked by the Court below while awarding the capital punishment available under the statute.

41- Resultantly, the appellant – Kanhaiyalal S/o Laxminarayan Meena is sentenced to undergo Life Imprisonment for committing the offence under Section 302 of the Indian Penal Code, 1860 (Three Counts) along with fine of Rs.5,000/- (Rupees Five Thousand Only) and in default of payment of fine to further undergo 03 months additional rigorous imprisonment. With the aforesaid appeal stands partly allowed.

42- In light of the aforesaid, connected reference i.e. Criminal Reference No.17/2018 also stands disposed of.

Certified copy as per rules.

(S. C. SHARMA)
J U D G E

(VIRENDER SINGH)
J U D G E

Tej

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Division Bench : HON'BLE MR. JUSTICE S. C. SHARMA AND HON'BLE MR. JUSTICE VIRENDER SINGH

Criminal Appeal No.4368/2019

Kanhaiyalal Vs. State of M. P.

CRRFC No.17/2018

State of M. P. Vs. Kanhaiyalal

Counsel for the Parties	:	Shri Abhinav Malhotra, learned counsel for the appellant – Kanhaiyalal. Shri R. S. Chhabra, learned Additional Advocate General for the respondent / State.
Whether approved for reporting	:	Yes
Law laid down	:	(1) Death sentence brings an end to human life and the 'rarest of rare' case comes when a convict would be a menace and threat to harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of “the rarest of the rare case”. Death sentence should be awarded only when it is rarest of rare case and has established that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence and would be a continuing threat to the society. (2) While awarding the death sentence socio-economic factors concerning a convict must be taken in to consideration. The socio-economic factors do not dilute the guilt but they may amount to mitigating circumstances.
Significant paragraph numbers	:	30 to 40

O R D E R

(Delivered on this 24th day of September, 2019)

(S. C. SHARMA)
J U D G E

(VIRENDER SINGH)
J U D G E

Tej