



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

CRIMINAL REFERENCE NO.07 OF 2022

IN REFERENCE

Versus

JITENDRA PURVIYA

Appearance:

Shri Manas Mani Verma – Public Prosecutor for the reference-petitioner.

Shri Atul Anand Awasthy – Senior Advocate assisted by Shri Kaustubh Tiwari and Shri Narendra Sharma – Advocate for the respondent.

CRIMINAL APPEAL NO.9132 OF 2022

JITENDRA PURVIYA

Versus

STATE OF MADHYA PRADESH

Appearance:

Shri Atul Anand Awasthy – Senior Advocate assisted by Shri Kaustubh



Tiwari and Shri Narendra Sharma – Advocate for the appellant.

Shri Manas Mani Verma – Public Prosecutor for the respondent-State.

Reserved on : 24.10.2024

Pronounced on : 17.04.2025

J U D G M E N T

Per: Justice Vivek Agarwal

The criminal appeal and the criminal reference have been filed being aggrieved of the judgment of conviction dated 15.09.2022 and sentence dated 19.09.2022 passed by learned Additional Session Judge, Bareilly, District Raisen in S.T. No.46 of 2019, convicting the accused Jitendra Purviya with Death penalty for offence under Section 302 of IPC (4 counts) and with three years imprisonment under Section 25(1-b)(a) of the Arms Act with fine of Rs.1000/- with default stipulation of R.I. for two months. He is also convicted under Section 27 of the Arms Act with R.I. for five years, fine of Rs.1,000/- with default stipulation of two months R.I.



2. Brief facts of the present case are that the appellant is guilty of causing homicidal death of his wife Sunita, father Jalam Singh, mother Sharda and son Siddhant @ Shivyansh.

3. As per the prosecution story, on 16.05.2019 complainant Ranjana Bai (PW-1) lodged a *Dehati Nalishi* to the effect that on 16.05.2019 at about 1.30 – 2.00 a.m., she along with her son Sourabh and husband Ramji were sleeping in the courtyard of their house. In the neighbourhood, her uncle-in-law Jalam Singh was residing with his family. In that house, Jalam Singh, his wife Sharda Bai, Daughter-in-law Sunita Bai, grandson Siddhant @ Shivyansh and her brother-in-law (Devar) Jitendra Purviya were sleeping. At about 1.30 - 2.00 a.m. she heard sound of fire arm in the courtyard of her uncle-in-law when she and her son Saurabh got up. They heard cries of Sunita Bai for saving them as Jitendra was beating them armed with a gun and an axe. They immediately reached the place of the incident and saw Jalam Singh and Sharda Bai stepping in to save Sunita, then Jitendra had beaten them and caused injuries to them. When complainant stopped Jitendra, then he ran to attack her, she ran for her life along with her son. But in the process Jitendra had hit Sourabh i.e. her son on his left hand with the handle of the axe. Jitendra had hit axe on the head of Shivyansh when neighbourer Ratan Singh was woken up, then on his raising an alarm neighbourers gathered but in the meanwhile Jitendra after concluding the assault



escaped with his gun and an axe. Sharda Bai and Sunita were already dead whereas Jalam Singh and Shivyanish were grievously injured.

4. On the basis of said *Dehati Nalishi*, FIR registering Case Crime No.241 of 2019 was registered under Section 302 and 307 of IPC.

5. Shri Atul Anand Awasthi, learned Senior Advocate for the petitioner, in his turn, submits that appellant is innocent, he has been falsely implicated. Place of the incidence is an open courtyard and in the postmortem report no gunshot injuries were found on the body of any of the injured/deceased persons.

6. It is submitted that all the three witnesses namely, Ranjana Bai (PW-1), informant, is wife of Ramji (PW-11), and mother of Saurabh (PW-2) and they being all related witnesses, their testimony cannot be accepted as such without corroboration.

7. Reading from the spot map Ex.P-2, it is submitted that the place of the incident is on the west of the courtyard of witness Ranjana Bai (PW-1). House of Jalam Singh is also on the west of the house of Ranjana Bai (PW-1). No gate is shown in the spot map to permit Ranjana Bai (PW-1) to witness the incident taking place in the courtyard of Jalam Singh and, therefore, the spot map belies the story of Ranjana Bai (PW-1) being the eye witness. Referring to Ex.P-40, FIR, it is submitted that Ratan Singh is a hearsay witness.



8. It is submitted that, in the present case, firstly, appellant is innocent and secondly, his case is not the rarest of rare cases where death penalty be maintained. It is submitted that learned Additional Sessions Judge overlooked the fact that when accused appellant came back from his fields his father had already died and the wife was in some objectionable position, therefore, the incident took place. There was no motive of causing death of four persons. There was no ill-will of the accused with the deceased persons and it is a case of sudden provocation where witnessing the wife in an objectionable position appellant got provoked and due to sudden provocation incident took place, therefore, the conviction should not be under Section 302 of IPC but under Section 304 Part-II IPC.

9. Learned Government Advocate Shri Manas Mani Verma, for the State, submits that there is no illegality in the impugned judgment. It's a gruesome murder of four persons which has been committed by the appellant. Gruesome murder of four close relatives being father, mother, wife and son is nothing but a perverse act which does not call for any leniency.

10. It is also submitted that the theory of witnessing wife in an objectionable position when the appellant came from his fields as put forth by Shri Atul Anand Awasthy is not made out from the record, therefore, impugned judgment of conviction and sentence be maintained as such.



11. After hearing learned counsel for the parties and going through the record, *Dehati Nalishi* was recorded at the instance of Ranjana Bai (PW-1) i.e. Ex.P-1. It was promptly recorded at 5.30 am on 16.05.2019 only. It is a named report against Jitendra s/o Jalam Singh.

12. On the basis of this *Dehati Nalishi*, FIR Ex.P-40, was recorded registering case Crime No.241 of 2019 at 11.51 am. Ex.P-2 is a crime detail form and spot map. Statements of Kamlesh Singh Purviya were recorded vide Ex.P-3, on 16.05.2019 itself. Naksha Panchayatnama is Ex.P-4, in which it is clearly mentioned that in the opinion of the Panch, Sunita Bai, died because of assault in the hands of Jitendra causing injuries on her face and head.

13. Similarly, Naksha Panchayatnama, Ex.P-5, makes a mention of death of Sharda Bai on account of assault by Jitendra on her neck and face.

14. Naksha Panchayatnama of Jalam Singh is Ex.P-10 where it is mentioned that in the opinion on the Panch, death of Jalam Singh took place due to fire arm injury. This is signed by Shiv Kumar (PW-13) and Naveer Singh (PW-14). Postmortem report of Jalam Singh is Ex.P-21, in which it is mentioned that death was due to shock and hemorrhage, as a result of craniofacial and neck injury. Death was antemortem, homicidal in nature and could have been possibly caused by heavy, hard and blunt object/blow/impact. Injury sufficient to cause death in ordinary cause of nature. Pre-MLC of Jalam Singh is Ex.P-17, prepared



by Dr. Sushma Adhikari (PW-16) at Civil Hospital, Bareli, District Raisen wherein again it is mentioned that there is history of gunshot injury on upper mid forehead area at home around 1.30 am.

15. Dr. Sushma Adhikari (PW-16) conducted Pre-MLC of Shivyansh, aged about 7 years, at Civil Hospital, Bareli, District Raisen, and found that there was history of gunshot injury to the right side of head, at home around 1.30 am on 16.05.2019. Patient was referred to Higher Centre. There were lacerated wounds 2 in number (i) 1cm x 0.06 cm x Bone deep, irregular margin, clotted blood present around wound area and face, bleeding absent. Site near right ear tragus, seems to be entry wound; (ii) 1 cm x 0.4 cm x Bone deep. Clotted blood + around wound and body, seems to be exit wound. Both primarily suggestive of gunshot injury. Advice X-ray of skull.

16. In the postmortem report of Sunita, Ex.P-18, proved by Dr. Shajan G. Murugan (PW-17). There was a deep incised wound (like chop wound) 3inch x 0.5 inch x bone deep, clotted blood + near right orbital area due to hard and sharp object with force. Complete disfiguration of orbit, mandible, TM joint, nasal bone, teeth and jaw socket etc. and internal fracture seen on exploration.

(2) Deep incised wound (like chop wound) right side of scalp – tempero parietal area (a) 2.5 x 1.5 inch x bone deep, fracture of skull bone seen, open #,



due to hard and sharp object with force, (b) LW 1 inch x 0.5 inch x bone deep, near by above wound, due to hard and blunt object with force.

(3) On left temporo-parietal area, (i) incised wound 1.5 x 0.5 inch, continuous with incised wound of left pinna 1 inch x 0.4 inch cut, clotted blood present injury due to hard and sharp object.

(4) On left occipito-lateral are 2 LW + NT (a) LW 1.5 inch x 0.5 inch on occipito-lateral area, clotted blood due to hard and blunt object with force, (b) LW 1 inch x 0.5 inch, just 3 inches above 1st LW.. due to hard and blunt object with force.

(5) Bruise on left shoulder area, 0.5 x 0.5 cm HBO simple, mid chest 0.5 x 0.2 cm bluish black bruise HBO simple.

All the injuries were ante mortem in nature and severe enough to cause immediate death. Injuries to head and face was opined to be caused by a hard and sharp object with force. The cause of death is due to injuries to head and face, resulting in severe hemorrhage and injury to brain matter leading to shock and death. Death of deceased was termed to be unnatural and homicidal in nature.

17. Similarly postmortem report of Sharda Bai is Ex.P-19, proved by Dr. Shajan G. Murugan, (PW-17).

(1) Deep incised wound (like chop wound), injury on left eye orbital area 3 inch x 0.5 inch x bone deep. Blood from both mouth and nostrils (body swab



prepared from site to rule out suspicion of gunshot injury. X-ray skull also done. Injury was caused with hard and sharp object.

(2) On occipital area of scalp – (a) Deep incised wound (like chop wound, 6 inch x inch x bone deep clotted blood around, (b) 3.5 inch x 1.5 inch x bone deep, clotted blood, around just inch below the 1st wound, margins irregular.

(3) Back of nape of neck 3 inch x 0.5 inch x bone deep, left lateral side of neck, clotted blood + around. Due to hard and sharp object.

(4) LW 1 inch x 0.5 inch on left anterior chest.

Doctor found that all the injuries were ante mortem in nature and severe enough to cause immediate death. Injuries to head and neck were caused using a hard and sharp object with force and hard and blunt object with force respectively. Death was caused due to injuries on head, face and neck, resulting in severe hemorrhage and injury to brain matter, leading to shock and death, death was unnatural and homicidal in nature.

18. Postmortem report of Shivyansh is Ex.P-20, proved by Dr. Smt. Kelu Girewal, PW-18, who found the following injuries:-

(1) Surgical stitched wound present on frontal region of length 4 cm x 4 cm above the right eye.

(2) 2 Surgical stitched wound present on right parietal region of length 3 cm x 4 cm x 4 cm to each other.



(3) On opening of surgical stitched wound near ear measuring 4 cm, the head was full of blood and when the parietal eminence of the head was cut and drilled, then fracture in several parts was observed on the head which was moving in the front and towards the left hand side measuring 17cm whereas size of the hole was 7 x 8 cm. Right side of the brain was extremely soft and damaged. Signs of subdural and subarachnoid hemorrhage was present and there was clotting.

Doctor opined that there was history of gunshot injuries. Shivyanish died because of cardio-respiratory failure as a result of head injury and its complications duration of death was within 24 hours since postmortem examination.

19. Dr. Priyamvanda Kurveti (PW-19) has clearly stated that in regard to Jalam Singh no definite opinion could be given as to whether the gunshot injury was there or not and she had asked the authorities to corroborate it with circumstantial evidence. She mentioned that death had occurred due to shock on account of injuries to head, face and neck probably caused with heavy, hard and blunt object with force. This witness stated that during postmortem she did not find any injury of sharp object. In paragraph 9, she stated that it is not possible to definitely say as to whether there was a gunshot injury or not but on her own stated that it can be due to that reason or for other reason because no bullet or 'pellet'(chharra) was recovered inside the body but she still made a mention for



examination of gunpowder on the swab obtained from the wounds on the chin and forehead.

20. Thus, it is evident from the record that the postmortem report of Jalam Singh, Ex.P-21, makes a mention of the fact that his death is homicidal in nature. Similarly, Ex.P-17 is Pre-MLC of Jalam Singh, which makes a mention of history of gunshot injury and, therefore, body swab from area of wound was seized and duly sealed, thereafter, handed over to police concerned for FSL report, as is evident from Ex.P-17 proved by Dr. Sushma Adhikari (PW-16).

21. Similarly for Shivyansh, Dr. Sushma Adhikari (PW-16) recorded that he too had a history of gunshot injury on right side of head, at home, and had preserved a body swab from area of both wounds, seized, duly sealed, handed over to police concerned for FSL report.

22. Postmortem report of deceased Sunita Bai w/o Jitendra Singh is Ex.P-18 and it is mentioned that all the injuries are ante mortem in nature and were severe enough to cause immediate death. It is also mentioned that death of the deceased is unnatural and mode of death seems to be homicidal in nature.

23. Postmortem report of Sharda Bai w/o Jalam Singh is Ex.P-19, in which it is mentioned that all the injuries were ante mortem in nature and were severe enough to cause immediate death. The death of the deceased was unnatural and mode of death seems to be homicidal in nature.



24. Postmortem report of Shivyansh is Ex.P-20 and in the opinion of Doctor, death was due to cardio-respiratory failure, as a result of head injury and its complications. It is further mentioned that duration of death is 24 hours, when postmortem examination was conducted, it was a case of prior hospitalization with signs of surgical intervention, therefore, Dr. Smt. Kelu Girewal (PW-18) opined that primary examination report and report of the treating doctor should also be taken into consideration to finalize the case.

25. Thus, it is evident that death of all the four victims is homicidal in nature and was unnatural as opined by the concerned Doctors.

26. On the basis of the opinion of the Doctor, vide Ex.P-35, Article 'M' is the swab from the face of deceased Sunita, whereas Article 'N' is the swab from the wounds of deceased Shivyansh and, Article 'O' is the swab from the body of deceased Jalam Singh.

27. Vide Ex.P-37, Article 'M' was opened and identified as Ex.SW₁, Article 'N' as Ex.SW₂ and Article 'O' as Ex.SW₃.

28. In Ex.SW₁ which is the swab from the face of deceased Sunita. Presence of lead metal was not found.

29. Similarly in SW₃ which is the swab from the wound of Jalam Singh, on chemical examination, presence of lead was not found. However, in relation



to Ex. SW₂, swab obtained from the body of deceased Shivyansh, presence of lead was found to be positive.

30. Thus, it is evident from Ex.P-37 proved by K.S. Kukati, T.I. (PW-20), it is evident that death of Shivyansh could have been caused due to use of fire arm as presence of lead is found to be positive and this is the opinion of the expert that since swab Ex.SW₂ contains micro particles of lead, therefore, that injury was caused with projectile of lead metal.

31. Similarly, vide Ex.P-38, which is the report of the Regional Forensic Science Laboratory, Bhopal, human blood was found on Articles 'A', 'B', 'C' (sample of soil collected from the spot), 'D' (piece of Niwar), G₁, G₂ and G₃, respectively, saree, blouse and petticoat of deceased Sharda, H₁, H₂ and H₃, saree, blouse and petticoat of deceased Sunita and I₁ and I₂ i.e. pant and shirt of accused Jitendra, on Article 'J' an axe recovered from Jitendra, K₁ is pant of Shivyansh and K₂ shirt of Shivyansh. It has also come on record that blood group on Article D, I₁ and I₂ is of AB blood group.

32. Thus, it is evident that the blood group which was found on the Niwar obtained from the spot where Shivyansh was found, as is evident from Ex.P-36, contained same blood group as was found on pant and shirt of the accused Jitendra.



33. It has also come on record that vaginal swab of deceased Sunita was collected vide Article 'L' and no human sperms were found on Article 'L'.

34. Statement of Shankar Singh Purviya is Ex.P-6, which was taken on 17.05.2019. Recovery of a Katta was made from Jitendra on 20.05.2019 vide Ex.P-7, this recovery was made from under the soil near the tubewell of Tiwari Govind and has been identified as a countrymade gun of 315 bore containing a used cartridge. On the cover of the cartridge it was mentioned as KF-8mm. Statements of Ramji Purviya (PW-11) were recorded on 28.06.2019 vide Ex.P-8, and that of Shiv Kumar Purviya (PW-13) on 18.05.2019.

35. Vide Ex.P-43, K.S. Mokati (T.I.), had sent the seized arm from the possession of the accused Jitendra Purviya for examination in the hands of Armourer Branch, Raisen.

36. Arms Moharrir (PW-23) gave his report Exhibit P-54 and after examining the seized Katta reported that it was functional and it was possible to fire from the said 'Katta' with the cartridge recovered from the said 'Katta' bearing mark of burn and K.F. a cartridge of 315 bore, made up of Brass and Copper, this arm was received in a sealed cover.

37. Vide Ex.P-44, K.S. Mukati (T.I.) had made a communication to the Superintendent of Police, Raisen asking to grant him permission through the District Magistrate, Raisen for prosecution of Jitendra Purviya under Section



25/27 of the Arms Act. Permission was granted by the District Magistrate, Raisen on 27.07.2019 vide Ex.P-45 proved by Shri K.S. Mukati (PW-20).

38. Exhibit P-47, is the spot map prepared by team of FSL experts and proved by IO of the case (PW-20). Shri K.S. Mukati (PW-20) in paragraph 47 has categorically denied the suggestion that house of Jalam Singh is on the other side of the house of Ranjana Singh and there is 'sar' (place to tie up the cattle) in between. It is categorically stated by him that both the houses are adjoining to each other. Thus, suggestion made by Shri Atulanand Awasthy that there is no common place between the two houses is not correct, for Ranjana (PW-1) to approach the house of the accused, is not made from the record. In fact, in his statements under Section 313 of Cr.P.C. appellant Jitendra Purviya while answering question No.3 has admitted that house of Ranjana Bai (PW-1) is adjacent to the house of the accused and, therefore, this suggestion made by Shri Atul Anand Awasthy in terms of the admission of the accused in reply to answer to questions No 2 and 3 put to him by the learned Sessions Judge is not made out.

39. Ranjana (PW-1) and Sourabh (PW-2) have corroborated the prosecution story and have stated that they had seen accused Jitendra causing assault and in fact Sourabh (PW-2) was hit by him with the help of an axe. They have also stated that Jitendra used to consume cannabis and used to be in an intoxicated state. As per Exhibit P-38, report of the FSL, human blood was found



on article I -1 pant, I-2 shirt, recovered from and at the instance of Jitendra. It has also come on record that I-1 and I-2 contained blood of 'AB' blood group so also Article D which is a piece of 'Niwar' recovered from the cot of Shivyansh.

40. Appellant Jitendra pleaded his ignorance saying that he has been falsely implicated on account of land dispute but the defence failed to prove existence of a land dispute or that any of the family members were in a compromising position giving rise to a cause for sudden and grave provocation. Admittedly, husband of PW-1 (Ranjana) was not keeping good mental health. Her children were minor and therefore, the land was being looked after by Jitendra only. Suggestion to this witness and PW-2 that report was lodged at the dictates of brother of PW-1 and maternal uncle of PW-2 as they wanted their separate share be carved out for Ranjana Bai (PW-1), could not be proved to be true so to falsely implicate Jitendra. In fact, it has come on record that as husband of Ranjana Bai (PW-1) and father of Sourabh (PW-2) was handicap their land was taken care of by the appellant only.

41. The trial Court has clearly noted that the circumstantial evidence proves the prosecution story and is supported by the evidence of the witnesses who were present there and memorandum of the accused. This piece of evidence both disclosed on memorandum under Section 27 of the Evidence Act and given by the eye witnesses PW-1 and PW-2 is corroborated in the light of the Division



Bench decision of this Court in the case of *Hameer Singh and Other v. State of MP, AIR OnLine 2021 MP 828 (DB)* wherein it is held that there are three species of mens rea in culpable homicide: first, an intention to cause death; second, an intention to cause dangerous injury; and third, knowledge that death is likely to happen.

42. It has come on record that prosecution has proved beyond reasonable doubt, homicidal death of four persons, namely, Jalam Singh, Sharda Bai, Shivyansh and Sunita Bai. It has also come on record that in the ballistic report (Exhibit P-37) in the swab of deceased which was marked as Ex. SW₂ (Article 'N') contained lead metal and it has also come on record that lead which was found on the bullet was found on the head of Shivyansh. Dr. Sushma Adhikari (PW-16) proved that there was a gunshot hole behind the earlobe of Shivyansh.

43. Dr. Sushma Adhikari (PW-16), has clearly mentioned that injury No.1 on the body of Jalam Singh was a lacerated wound measuring 3x2 cm with irregular margins on forehead.

44. Dr. Sushma Adhikari (PW-16) had sealed the body swab for FSL report. She categorically stated that except for injury behind the ear of Shivyansh, there was no other injury and it could not have been said with surety as to whether they were caused due to gunshot or not.



45. Dr. S. Murugan (PW-17) had categorically stated that injuries to Sunita Bai were caused with hard and blunt object with force and were sufficient in normal course to cause death. She died because of hemorrhage and injuries to the brain. The death was unnatural and homicidal in nature.

46. Similarly body of Sharda Bai W/o Jalam Singh was also found to contain deep incised wound (chop wound) on left eye orbital area measuring 3x 0.5 inches caused by hard and sharp object with force. This injury too was unnatural and homicidal in nature.

47. Dr. (Smt.) Kelu Girewal (PW-18) had conducted postmortem on the body of Shivyansh. Surgery Department of Hamidia Hospital had given intimation in regard to gunshot injury. She stated in paragraph 5 of her cross-examination that during postmortem, no bullet was found in the body of Shivyansh but said on her own that it was taken out.

48. Dr. Priyamvanda Kurveti (PW-19) conducted postmortem on the body of Jalam Singh and she had collected remnants on a swab and had given it for forensic examination.

49. Thus, the injuries caused were sufficient in ordinary course of nature to cause death. We have noted that Dr. Shajan G. Murugan (PW-17) in his cross-examination admitted that the injuries which were found on the body of Sunita Bai were caused by hard and sharp object and some were caused by hard and



blunt object and, similarly, Dr. Shajan G. Murugan (PW-17) has also stated that the nature of injuries on the body of Sunita were different from those found on the body of Sharda Bai. But at the same time, Shri Manas Mani Verma, learned Government Advocate submits that axe being used from the sharp side and if used from blunt side will cause the difference and it is not such a material difference to discard the eye witness account and accept the story of the defence that either there was a foreign intervention or to accept the contention that there were elements giving rise to grave and sudden provocation as none of them are corroborated from eye witness account as well as vaginal side of Sunita.

50. Thus, the finding of guilt of accused is proved by the prosecution witnesses beyond reasonable doubt.

51. It is true that as per the evidence available on record, death of all the four persons are homicidal in nature that's come in the category of murder. Now the issue which arises for consideration is whether capital punishment is to be maintained or not.

52. The trial Court has taken into consideration aggravating and mitigating circumstances and has noted the judgments in cases of *Machhi Singh and Others v. State of Punjab* (1983) 3 SCC 470; *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684; *Devendra Pal Singh v. State of NCT of Delhi*; (2002) 5 SCC 234; *Dhananjay Chatterjee v. State of West Bengal*, (1994) 2



SCC 220 so also the judgment of the Supreme Court in the case of *Vasanta Sampat Dupare v. State of Maharashtra, (2017) 6 SCC 631* and has mentioned that rarest of rare cases can be tested on the touchstone of manner in which murders have been caused and the method is so heinous that it may generate rebellion in the society or the nature of offence be such that it may cause animosity in the society or against the interest of the society. Such other conditions are also to be taken note of, such as dimensions of offence, personality of the victim like, a toddler, a helpless woman, helpless senior citizen or a circumstance where the assailant may be a person on which the victim had faith or under his control. It has considered the following circumstances to be aggravating circumstances:

- “(a) if the murder has been committed after previous planning and involves extreme brutality; or
- (b) if the murder involves exceptional depravity; or
- (c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed—
 - (i) while such member or public servant was on duty; or
 - (ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such



member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.”

53. The mitigating circumstances as narrated in *Bachan Singh (supra)* are as follows:

“(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated.

The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.



(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.”

54. The trial Court has also referred to Shlok No.63 from Second Chapter of *Shrimad Bhagwat Geeta* to say that “ Anger kills a man’s heart, that is,it becomes foolish, which confuses memory due to memory illusion, the human intellect is destroyed and when the intellect is destroyed, man himself destroy his own.”

55. But, in our opinion, one important aspect has escaped the notice of learned trial Judge as has come in evidence of PW-1 that one minor son of the appellant had gone to the house of his maternal uncle (Mama) and he is surviving. Another circumstance which should have been appreciated and taken into consideration, as has come in the evidence of PW-1 (Ranjana) that the appellant was in an intoxicated state and he was habitual of consuming cannabis (ganja). At the time of the incident also he was under influence of these intoxicants.

56. Similarly, Sourabh (PW-2) has stated in para 3 of his cross-examination that appellant was a regular consumer of alcohol and ganja. Thus, it is evident that Ranjana Bai (PW-1) has admitted that at the time of the incident



accused was intoxicated, a fact which is corroborated by Sourabh (PW-2) and when this aspect is taken into consideration, demonstrates that appellant at the time of the offence was not having sound state of mind and it cannot be said that all his faculties were intact. When this aspect is taken into consideration, then in case of **Bachan Singh (supra)** one of the mitigating circumstance mentioned is that “the offence was committed under the influence of extreme mental or emotional disturbance.” Another circumstance which has been discussed by the Supreme Court in **Bachan Singh (supra)** is the probability of the accused not committing criminal acts of violence as would constitute a continuing threat to society and, thirdly that the probability of reformation and rehabilitation of the accused.

57. In the case of **Santosh Kumar Satishbhushan Bariyar v State of Maharashtra [(2009) 6 SCC 498]**, Two-Part Test is prescribed qua for commutation of death sentence to life imprisonment, namely, whether the case falls under “rarest of rare” doctrine; and consideration of life imprisonment as initial alternative.

58. Then, in the case of **Shankar Kisanrao Khade Vs. State of Maharashtra [(2013) 5 SCC 546]**, Supreme Court has laid down Three-Pronged, namely, Crime Test (Aggravating Circumstances) : Brutality of crime, manner of commission, motive, impact on society, nature of victims (vulnerable/multiple).



Secondly, Criminal Test (Mitigating Circumstances): Age of accused, background and socio-economic status, mental/emotional state, possibility of reformation, no prior criminal record, conduct in prison and Family circumstances.

Thirdly, R-R Test (Rarest of Rare): Whether alternative option of life imprisonment is unquestionably foreclosed, society's perspective and whether case shocks collective conscience.

59. Then, in the case of **Manoj Vs. State of Madhya Pradesh [(2023) 2 SCC 353]**, Supreme Court has held that Mandatory Information Gathering: Courts must collect: Psychiatric and psychological evaluation reports, family background details, educational history, employment records, prison conduct reports, medical/mental health records.

60. Then, Special Consideration - Additional factors that can lead to commutation: Inordinate delay in execution (**Shatrughan Chauhan Vs. Union of India [(2014) 3 SCC 1]** case), post-conviction mental illness ('X' v. **State of Maharashtra [(2019) 7 SCC 1]**, young/old age of accused (**Bachan/Machhi** guidelines), good conduct in prison (**Madan Vs. State of Uttar Pradesh** case), evidence is circumstantial rather than direct, Multiple accused with varying roles



(Ronny Alias Ronald James Alwaris & Ors. Vs. State of Maharashtra [(1998) 3 SCC 625] case).

61. In the case of **Swamy Sharddananda Vs. State of Karnataka [(2008) 13 SCC 767]**, Supreme Court has held that Alternative Sentencing Options: If death penalty is excessive but regular life imprisonment inadequate, courts can: Award life imprisonment without possibility of remission, fix specific term beyond 14 years without remission, 20-35 years based on circumstances and most common periods: 25-30 years.

62. Then, Final Determination - Courts must: Prepare balance sheet of aggravating and mitigating factors, give full weightage to mitigating circumstances, record special reasons if choosing death penalty, explain why reformation is impossible if opting for death, where two views possible and prefer life imprisonment. Life imprisonment is the rule, death penalty the exception, burden on State to prove accused cannot be reformed, individual circumstances must be considered over strict guidelines, must assess possibility of reformation and rehabilitation, even in brutal murders, consider emotional disturbance as mitigating.

63. In the case of **Rajendra Prasad v State of U.P. (1979) SCC (Cri) 749**, the Court held that unless it was shown that the individual is a terrible and



continuing threat to social security, capital punishment would not be justified. Justice Krishna Iyer opined that the death penalty should be inflicted in the case of three categories of criminals:

- for white-collar offences,
- for social offences, and
- for eradicating a person who is a threat to society, that is, a seasoned killer.

The Court also held that the death penalty for the offence of murder, which is awarded pursuant to Section 302 of the IPC, 1860, would not be a violation of the constitutional provisions. In grave cases of extreme culpability, capital punishment can be awarded, and the convict's condition must be taken into consideration.

64. *Rarest of the rare doctrine* established in the **Bachan Singh Vs. State of Punjab [(1982) 3 SCC 24]**, in para 224, Hon'ble Supreme Court observed:-

“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.”

It is obvious from the provision enacted in Section 354(3) of the CrPC that death sentence is legislatively regarded as disproportionate and excessive in most cases of murder and it is only in exceptional cases what Sarkaria, J. speaking on behalf of the majority, describes as “the rarest of rare” cases, that it can at all be contended that death sentence is proportionate to the offence of murder. But, then the legislature does not indicate as to what are those exceptional cases in which death sentence may be regarded as proportionate to the offence and, therefore, reasonable and just. Merely because a murder is heinous or horrifying, it cannot be said that death penalty is proportionate to the offence when it is not so for a simple murder. (Para 266)

Relied on *Gregg v. Georgia* for **Proportionality principle**. (Para 264)

The nature and magnitude of the offence or the motive and purposes underlying it or the manner and extent of its commission cannot have any relevance to the proportionality of death penalty to the offence.” (Para 67)

65. In this background the guidelines indicated in **Bachan Singh’s case (supra)** will have to be culled out and applied to the facts of each individual case



where the question of imposing of death sentences arises. The following propositions emerge from Bachan Singh's case:

- (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 alongwith the circumstances of the 'crime'.
- (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.
- (iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has 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.



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

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

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

(Para 13)

67. In the case of **Swamy Shraddananda v. State of Karnataka**, Circumstances mentioned by the Court in the *Machhi Singh & Ors. Vs. State of Punjab* case that are required to be considered while deciding on the death penalty must not be taken as absolute because the Court in the *Bachan Singh* case intended to make this flexible. Thus, made the guidelines flexible and discretion to the Court.

(Para 28 & 33)

Courts can create a special category of cases where death penalty can be substituted with either life imprisonment without possibility of remission or imprisonment for a specific term beyond 14 years without remission.



(Para 66)

68. In the case of **Santosh Kumar Satishbhushan Bariyar v State of Maharashtra**, to impose the death penalty, the courts must apply a **two-part test**. First, the courts have to determine whether the case falls under the doctrine of the 'rarest of the rare'. Second, the courts must consider life imprisonment as the initial alternative. If they still choose to opt for the death penalty, they must give reasons for this decision and explain why the convict cannot be reformed.

69. It is also now well settled that, age of accused, criminal history/background, possibility of reformation, whether accused are professional criminals, nature of crime and motive, quality of evidence (circumstantial vs direct) is to be examined. Special reasons must be recorded for death penalty under Section 354(3) CrPC and where two views are possible, death sentence should not be imposed. Also, discretion must be exercised cautiously due to irrevocable nature of death penalty.

70. In the case of **Manoj v State of Madhya Pradesh**, the Supreme Court of India reasserted the principles laid down by the Court in the Bachan Singh judgement. The Court noted that all the mitigating circumstances must be considered by the judges while finally awarding the death sentence; the parameters given in the Bachan Singh judgement and the scope for reformation



and rehabilitation of the accused person must be assessed. The courts must check if there is something uncommon about the crime that would render the punishment of imprisonment for life inadequate.

71. The evolution of death sentence commutation in India represents a progressive journey toward a more nuanced and humanitarian approach to capital punishment. The journey began in 1976 with *Rajendra Prasad v State of U.P.*, which established initial criteria for capital punishment, limiting it to white-collar offenses, social offenses, and cases involving seasoned killers who posed a continuing threat to society. The framework was further developed in *Jagmohan Singh v. State of Uttar Pradesh*, which established that the death penalty doesn't violate constitutional rights and introduced the concept of balancing aggravating and mitigating circumstances, emphasizing individualised sentencing over rigid guidelines. A watershed moment came with *Bachan Singh v. State of Punjab*, which established the “rarest of rare” doctrine and provided a comprehensive list of aggravating and mitigating circumstances. This was followed by *Machhi Singh v. State of Punjab*, which built upon the Bachan Singh framework by introducing the “collective conscience” test and formalising the concept of preparing a “balance sheet” of factors. A significant development occurred in 2008 with *Swamy Shraddananda v. State of Karnataka*, which created a middle ground in sentencing by introducing life imprisonment without the possibility of remission



and allowing courts to fix specific terms beyond 14 years. The framework became more structured with *Santosh Kumar Bariyar v State of Maharashtra*, which established a mandatory two-part test for death penalty and required courts to consider life imprisonment first. The scope of commutation grounds expanded with *Shatrughan Chauhan v Union of India*, which recognised inordinate delay in execution as grounds for commutation. The same year, *Manoj v State of MP* introduced mandatory information gathering requirements, including psychiatric evaluations and prison conduct reports. *Shankar Kisanrao Khade v. State of Maharashtra* formalised a three-pronged test considering the crime, criminal, and rarest of rare aspects. Recent developments have further refined this framework. The case of 'X' v. *State of Maharashtra* expanded mitigating factors to include post-conviction mental illness and established a “test of severity” for mental health considerations. More recent cases like *Madan v State of UP* have emphasised the importance of considering reformatory conduct in prison, while *State of Maharashtra v Pradeep Kokade* reinforced delay in execution as grounds for commutation. The *Navas v State of Kerala* case provided a detailed analysis of sentencing periods under the Shraddananda principle. Throughout this evolution, there has been a consistent move toward greater standardisation of the commutation process, expanding consideration of mitigating factors, and increased emphasis on reformation possibilities. The framework has evolved from



simple guidelines to a comprehensive system that considers both pre and post-conviction factors, with growing emphasis on detailed information gathering about the accused and their potential for reformation. This progression reflects a judicial system increasingly focused on balancing societal protection with humanitarian considerations and rehabilitation potential.

72. When all these circumstances are taken into consideration, then it is evident that faculties of the accused were not intact and he was intoxicated and these mitigating circumstances are to be taken into consideration. Shri Manas Mani Verma on instructions of the superintendent of Central Jail, informs that conduct of the appellant is good.

73. In this backdrop it is noted that “Once a defendant is found guilty of aggravated murder with at least one of seven specified aggravating circumstances, the death penalty must be imposed unless, considering “the nature and circumstances of the offence and the history, character and condition of the offender,” the sentencing judge, determines that at least one of the following mitigating circumstances is established by preponderance of the evidence:

“(1) The victim of the offence induced or facilitated it.

(2) It is unlikely that the offence would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation.



(3) The offence was primarily the product of the offender's psychosis or mental deficiency, though such condition is insufficient to establish the defence of insanity."

74. Thus, when the present case is tested on the aforesaid touchstone, it is evident that there is no criminal record of the appellant, he is not a habitual offender, there is no past history of the appellant and it cannot be said that there are no chances of reformation, since atleast one of the mitigating circumstances is established in terms of the evidence of PW-1 and PW-2, to apparently demonstrate that offence was primarily the product of the offender's psychosis or mental deficiency, as he was intoxicated at the time of the incident. Consequently, we are of the opinion that facts and circumstances, namely, intoxicated condition of the appellant at the time of the incident as well as existence of a surviving minor son of the appellant is to be taken care of complied with fair chances of his information outweighs the justification for death penalty and there are sufficient mitigating circumstances to commute the death penalty to life imprisonment.

75. Accordingly, the appeal filed by the appellant is allowed in part and the criminal reference is answered in the following terms:

- (i) The conviction of the appellant for offence punishable under Section 302 of IPC (four counts) and Sections 25 (1-b) (a) and 27 of the Arms Act is upheld. However sentence awarded to him is modified by setting aside the death penalty.



(ii) The death sentence awarded to the appellant - Jitendra Purviya for offence punishable under Section 302 of the IPC (four counts) is commuted into that of imprisonment for life on four counts for actual incarceration of 20 years and all four sentences to run concurrently.

(iii) The other terms of sentence awarded to the appellant including amount of fine and default stipulations, etc. to remain intact.

(VIVEK AGARWAL)
JUDGE

(DEVNARAYAN MISHRA)
JUDGE