

SHABNAM

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v.

STATE OF U. P.

(Criminal Appeal Nos. 802-803 of 2015)

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MAY 15, 2015

[H. L. DATTU, CJI., S. A. BOBDE AND  
ARUN MISHRA, JJ.]

*Sentence/Sentencing – Death penalty – For the murder of seven persons of her own family including a 10 months old child – Propriety of – Held: Life Sentence is the rule and death sentence is the exception to be awarded in ‘rarest of rare cases’ – Death sentence is to be awarded only when life imprisonment appears to be an altogether inadequate punishment – The aggravating circumstances in the present case viz. victims of the crime, motive for commission of murder, manner of execution, magnitude of crime and remorseless attitude of the accused, outweigh the mitigating circumstances i.e. young age of the accused and dependence of the minor child on them – The case falls in the rarest of rare case and hence, both the appellants accused have been rightly sentenced to death by courts below – Penal Code, 1860 – s. 302.*

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*Penal Code, 1860 – s.302 – Murder by appellant-accused – Of seven persons of her own family including a ten months old child – Conviction and death sentence by courts below – On appeal conviction as well as sentence upheld.*

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**Dismissing the appeals, the Court**

**HELD: 1. The most significant aspect of sentencing policy in Indian criminal jurisprudence regarding award**

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- A of death penalty is that life sentence is a rule and death sentence is an exception only to be awarded in “rarest of rare cases.” Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant
- B circumstances of the crime, and 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
- C circumstances. The circumstances which should or should not be taken into account, and the circumstances which should be taken into account along with other circumstances, as well as the circumstances which may, by themselves, be sufficient, in the exercise of the discretion regarding sentence cannot be exhaustively
- D enumerated. [Para 23] [958-B-F]

- Jagmohan Singh v. State of U.P.*, (1973) 1 SCC 20; 1973 (2) SCR 541; *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684; 1980 (2) SCC 684 ; *Machhi Singh vs. State of Punjab*, (1983) 3 SCC 470; 1983 (3) SCR 413; *Ramnaresh v. State of Chhattisgarh*, (2012) 4 SCC 257; 2012 (3) SCR 630 – relied on.
- E

- F 2. While determining the questions relateable to sentencing policy, the Court has to follow certain principles and those principles are the loadstar besides the consideration of aggravating and mitigating circumstances in imposition or otherwise of the death
- G sentence. The Court has to apply the test to determine, if it was the ‘rarest of rare’ case; that in the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice; that life imprisonment
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is the rule and death sentence is an exception; that the option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant circumstances; and that the method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime. [Para 23] [961-C-H]

3. The Courts are required to independently consider facts of each case and determine a sentence which is the most appropriate and proportional to the culpability of the accused. It is not sufficient for the Court to decide the quantum of sentence only with reference to one of the classes under any one of the head of circumstances while completely ignoring classes under the other. That is to say, what is required to be considered is not just the circumstances by placing them in separate compartments, but their cumulative effect. The Court ought to be sufficiently cautious and adherent of the same so as to better administer the criminal justice system and provide an effective and meaningful reasoning by the Court as contemplated under Section 354 (3) Cr.P.C. [Para 24] [962-A-D]

*Mohd. Jamiludin Nasir v. State of W.B.*, (2014) 7 SCC 443; *Mofil Khan v. State of Jharkhand* (2015) 1 SCC 67; *Ram Singh v. Sonia*, (2007) 3 SCC 1: 2007 (2) SCR 651; *Ajit Singh Hamamsingh Gujral v. State of Maharashtra*, (2011) 14 SCC 401: 2011 (13) SCR 1000; *Atbir v. Govt. (NCT of Delhi)*, (2010) 9 SCC 1: 2010 (9) SCR 993; *Jagdish v. State of M.P.* 2009 (4) Scale 580; *Saibanna v. State of Karnataka*, (2005) 4 SCC 165: 2005 (3)

A        **SCR 760; *State of Rajasthan v. Kheraj Ram*, (2003) 8 SCC 224; 2003 (2) Suppl. SCR 861; *Suresh v. State of U.P.*, (2001) 3 SCC 673; 2001 (2) SCR 263 – relied on.**

B        **4. Having regard, however, to the conditions in**  
India, in evaluating a crime and apportioning the most  
appropriate punishment, one of the most important  
functions court performs while making a selection  
C        **between life imprisonment and death is to maintain a link**  
between contemporary community values and the penal  
system. Criminal jurisprudence indicates that society's  
perceptions of a crime with respect to appropriate  
penalties are not conclusive. Concurrently, it also stands  
D        **that the said standards have always been progressive**  
and acquire meaning as public opinion becomes  
enlightened by a humane justice. The scope of  
determining the standards is never precise and rarely  
static. The Courts must thus draw its meaning from the  
evolving standards of public morality and  
E        **consciousness that mark the progress of a maturing**  
society. [Para 28] [964-H; 965-B-D]

5. The aggravating circumstances indicate the  
extreme brutal, calculated and diabolical nature of the  
F        **crime, which suggests that there is little likelihood of**  
reform of these accused and of their abstaining from  
future crime. All these features stench of the apathetic  
attitude of the appellant-accused-daughter towards her  
family and mirrors the extent of her depravity in  
G        **schemingly committing the cold-blooded murder of her**  
own parents, brother, sister-in-law and ten-month old  
nephew. This itself triggers intense indignation in the  
community. It is the combined concoction of all  
H        **aggravating circumstances, that is, victims of the crime,**

motive for commission of murder, manner of execution, magnitude of crime and remorseless attitude of the appellants-accused that stands before this Court. [Para 32] [967-E-H] A

6. The mitigating circumstances regarding young age of the appellants-accused at the time of commission of crime do not bear any significance in terms of the outweighing aggravating circumstances of their wanton act. Though the appellant-accused was pregnant at the time of commission of offence and the accused-couple now has a dependent minor child, such compassionate grounds are present in most cases and are not relevant in considering commutation of death sentence. The principle that when the offence is gruesome and was committed in a calculated and diabolical manner, the age of the accused may not be a relevant factor. It is, however, shocking that at the pink of their youth, the couple indulged in such debased act of multiple murders driven by infatuation and exhibited no remorse. [Para 33] [968-A-D] B C D E

7. The crime is committed in the most cruel and inhuman manner which is extremely brutal, grotesque, diabolical and revolting. Therefore, the extreme culpability of both the appellants-accused makes them the most deserving for death penalty. [Para 34] [968-G-H] F

#### Case Law Reference

1973 (2) SCR 541	relied on	Para 23	G
1980 (2) SCC 684	relied on	Para 23	
1983 (3) SCR 413	relied on	Para 23	
2012 (3) SCR 630	relied on	Para 23	
2014 (7) SCC 443	relied on	Para 25	H

A	2015 (1) SCC 67	relied on	Para 26
	2007 (2) SCR 651	relied on	Para 27
	2011 (13) SCR 1000	relied on	Para 27
	2010 (9) SCR 993	relied on	Para 27
B	2009 (4) Scale 580	relied on	Para 27
	2005 (3) SCR 760	relied on	Para 27
	2003 (2) Suppl. SCR 861	relied on	Para 27
	2001 (2) SCR 263	relied on	Para 27

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 802-803 of 2015

From the Judgment and Order dated 26.04.2013 of the High Court of Judicature at Allahabad in CC No. 5245 of 2010

D in CR No. 8 of 2010.

WITH

CrI A. Nos. 804-805 of 2015

E Dushyant Parashar (AC) for the Appellant.

Gaurav Bhatia, AAG, Garvesh Kabra, Abhishek Chaudhary, Utkarsh Jaiswal for the Respondent.

The Judgment of the Court was delivered by

F H. L. DATTU, CJI.

1. Leave granted in all the Special Leave Petitions.

2. These appeals are directed against the common  
G judgment and order passed by the High Court of Judicature at Allahabad in the two connected appeals- Capital Cases Nos. 5003 and 5245 of 2010 along with Capital Reference No. 8 of 2010, dated 26.04.2013. By the impugned judgment and order, the High Court has confirmed the judgment of conviction, dated  
H 14.07.2010 and order of sentence, dated 15.07.2010, passed

by the learned Sessions Judge in Sessions Trial No. 293 of 2008, whereby and whereunder the learned Sessions Judge has convicted the appellants-accused for offence under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short, "the IPC") and sentenced them to death.

3. At the outset, it would be pertinent to notice that learned *amicus curiae*, Shri Dushyant Parashar, appearing for the two appellants-accused has limited his submissions only to the question of sentence. Therefore, the scope of these appeals stand restricted to the determination of appropriate sentence for the offence committed by the appellants-accused.

Facts:

4. The prosecution case in a nutshell is: on the intervening night of 14/15.04.2008, eight persons of the family were present at the residence of Master Shaukat Ali (deceased father), besides himself; his wife Smt. Hashmi (deceased mother), their daughter Shabnam (the appellant-accused), their younger son Rashid (deceased younger brother), their minor niece Rabia (deceased cousin), their elder son Aneesh Ahmad and his wife Anjum (deceased couple) along with their 10 month old son Arsh. At about 02:15 A.M. on the fateful night, upon hearing the cries of appellant-accused Shabnam, their neighbor Lateef Ullah Khan (PW-1) along with other neighbours reached the house. PW-1 entered the house and found Shabnam lying unconscious near the dead body of her deceased father, whose neck was cut and also discovered the dead body of deceased younger brother with slit throat. Further, in another room, PW-1 discovered the dead bodies of the deceased wife, deceased couple and deceased cousin lying in a pool of blood, with their respective necks cut. The dead body of 10 month-old infant, Arsh, was also found between the dead bodies of his parents. Immediately thereafter, PW-1 raised an alarm gathering the neighbours and informed the

A investigating authorities of the incident. Accordingly, Case  
Crime No. 880 of 2008 was recorded on the basis of  
information received from PW-1, and an FIR was registered  
under Section 302 of the IPC against unknown persons for the  
murder of seven members of the family, in Police Station  
B Hasanpur at 03:05 A.M. on 15.04.2008. Neither PW-1 nor  
Hashmat Hussain (PW-2), i.e. the neighbour residing opposite  
to the house of the deceased persons, had conversed with  
the appellant-accused Shabnam before approaching the  
investigative authorities.

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5. The investigative agency reached the spot, prepared  
the inquest report and dispatched the dead bodies for post-  
mortem. Further, blood-stained pillows, mattress, quilt, rope  
of cot, etc. found near the respective dead bodies were duly  
D sealed, marked, taken into possession and sent for further  
analysis to the Forensic Science Laboratory, Moradabad (for  
short, "the FSL"). Dr. Deewan Ram (PW-24) conducted the  
post-mortem on the dead bodies of deceased father, infant and  
the younger brother and Dr. R.P. Sharma (PW-27) conducted  
E the post-mortem on the remaining deceased persons. Upon  
further investigation, both the appellants-accused, namely  
Saleem and Shabnam, were arrested. Recoveries of the  
murder weapon- axe and a blood-stained shirt were made at  
the instance of Saleem. Further, a Nokia mobile phone, one  
F empty wrapper of 10 bio-pose tablets, blood stained cloths,  
mobile SIM of Saleem, etc. were recovered from Shabnam's  
possession. Additionally, the call records and details for  
conversations between the appellants-accused were also  
G obtained.

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6. It is the case of the prosecution that the accused  
persons were involved in a love affair and an illicit physical  
relationship. While appellant-accused Shabnam is the  
educated daughter of the deceased family, working as a  
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Shikshamitra (teacher), the appellant-accused Saleem is an unemployed youth residing in the same village. It is established that the appellant-accused Shabnam was pregnant at the time of commission of the instant gruesome murders. The prosecution has put forth the motive for commission of the offence to eliminate the appellant-accused Shabnam's family who were vehemently opposed to their relationship and secure the entire property of the family creating financial security for themselves.

7. Upon completion of the investigation, the chargesheet was drawn and the appellants-accused were charged with the offence under Sections 302 read with 34 of the IPC, further Shabnam was charged separately under Section 302 of the IPC. The appellant-accused had denied their guilt and thus, the case was committed to trial.

8. The prosecution has examined 29 witnesses, documentary evidence (Exhibit Ka-1 to Ka-101), FSL Reports (Exhibit Ka-102 to Ka-112) and recorded statements of the appellant-accused persons under Section 313 of the Code of Criminal Procedure, 1973 (for short, "the Code").

9. The post-mortem reports have indicated the cause of death of deceased father, mother, younger brother, cousin and the couple as shock and hemorrhage due to ante mortem injuries, namely multiple incised wounds caused by a sharp edge weapon and a cut on the front of neck. Further, inner-linings of the stomach of deceased persons were recorded as red and swollen, concluding that intoxicating substances were ingested before death. The cause of death for deceased infant was recorded as asphyxia and ante-mortem injuries caused by means of throttling and strangulation with hand.

10. It is a case of circumstantial evidence, there being no eye-witness to the incident. The testimony of neighbours,

A namely PW-1 and PW-2, has corroboratively supported the  
prosecution story and established that the main door to the  
house was locked from the inside when they had rushed  
towards the house after hearing the cries of appellant-accused  
Shabnam. They have stated that when they broke into the  
B house, they did not notice any bedcovers on or around the  
roof of the house as alleged by the appellant-accused  
Shabnam in her statement recorded under Section 313 of the  
Code, instead that her bedding was prepared near her  
C mother's bed.

11. Further, Mahendra Singh, Block Head of the village  
(PW-4) and Bilal Ahmad, tea-seller (PW-6) have testified  
regarding confession of appellant-accused Saleem before  
them and corroborated the factum and manner of the  
D commission of the offence as follows: the appellants-accused  
had planned to kill her family and on the fateful day the former  
brought and handed over 10 intoxicating tablets to the latter,  
which she administered to her family members in tea. The  
family members being unconscious, Saleem reached her  
E house with the murder weapon and as Shabnam held the heads  
of her family members, Saleem kept cutting their necks one-  
by-one. Upon commission of crime, Saleem threw away the  
murder weapon in a pond. They have also testified to the fact  
F that appellant-accused Shabnam has herself throttled the  
infant. Rais Ahmad, witness at the pharmacy (PW-8) has stated  
that Saleem, on the fateful morning, had attempted to purchase  
sleeping pills from the pharmacy, but only finally managed to  
acquire the same from one Pappu. His statement has been  
G incontrovertibly supported by Mobil Hussain, the pharmacist  
(PW-11).

12. The statements of other witnesses have confirmed  
the illicit relationship between the appellants-accused which  
was against the wishes of latter's family and that the two lover  
H would meet at night.

13. In their defence, the appellants-accused have denied the charges against them and pleaded false implication. They have, in fact, sought to implicate each other in their defence. Appellant-accused Shabnam, in her Section 313 statement has stated that Saleem had entered the house with a knife through the roof and killed all her family members while she was asleep alone on the roof. To the contrary, Saleem, has stated that he reached the house only at the request of Shabnam where she had confessed commission of crime to him.

14. The Trial Court, after meticulous marshalling of facts and thorough scrutiny of available evidence, has observed that the evidence on record including post-mortem reports and witness statements has established a continuous and consistent link in the chain of events and thoroughly supported the prosecution story. The Trial Court has concluded that the appellants-accused deranged by the opposition to their illicit relationship had hatched a gruesome murder plan which they had executed by *first* rendering the family unconscious by administering sleeping pills through tea at the hands of Shabnam, and *thereafter* slicing their throats by an axe while they lay in a comatose state. Therefore, the Trial Court has concluded that the link in chain of events having been established and corroborated unquestionably confirms the guilt of appellants-accused for the brutal murder of seven persons and thereby, convicted them for offence under Sections 302 read with 34 of the IPC.

15. In the order of sentence, the Trial Court has observed that the crime committed by appellants-accused is enormous in proportion. They are convicted of multiple successive murders of seven persons of co-accused Shabnam's family including her innocent ten month old nephew, old helpless mother, old father, one young couple- her brother and sister-

A in-law, one young boy and a sixteen years old cousin. The Trial  
Court considered the motive behind ruthless murders, pre-  
planned execution, manner of commission of crime, the  
personality of deceased persons who were respectable and  
loved members of the community, the stand of the deceased  
B persons who were only against the marriage of their educated  
daughter, appellant-accused Shabnam with the uneducated  
unemployed co-accused Saleem and the remorseless conduct  
of the appellants-accused after the murder as aggravating  
circumstances and in conclusion, has recorded that the instant  
C case falls in the category of "rarest of the rare" requiring a  
punishment not less than death penalty for the offence  
committed by the appellants-accused. Therefore, the Trial  
Court has sentenced the two appellants to death.

D 16. Aggrieved by the aforesaid judgment and order, the  
appellants-accused had approached the High Court in Capital  
Cases Nos. 5003 and 5245 of 2010. The High Court has  
disposed of the said appeal along with the Capital Reference  
No. 8 of 2010 by a common judgment and order, dated  
E 26.04.2013.

17. The High Court has examined the evidence on record  
strand by strand in light of the observations made by the Trial  
Court and the submissions put forth by learned counsel  
F appearing for the parties and confirmed the judgment of  
conviction passed by the Trial Court. The High Court has  
concluded that the scale of aggravating and mitigating  
circumstances is heavily tilted towards the aggravating  
circumstances in the present case and observed as under:

G "... we find that in the present case, the aggravating  
circumstances would include the diabolical and  
calculated nature of the crime which was committed  
after *methodical planning*. Biopose sedative  
H tablets appear to have been obtained by the

appellant Shabnam with the help of Saleem, and were mixed in some food substance which was given to all the 6 grown up family members, all of whom were *murdered with an axe in their sleep*. Their bodies were found in their beds, with no injuries on the arms or hands of any deceased. All the injuries were on the neck, face or trunk regions which supports the hypothesis that the *murders were committed when the deceased had been strongly sedated*. The viscera of all these 6 grown up deceased indicated the presence of diazepam tranquilizer. The *axe which was got discovered by the appellant Saleem* contained human blood. *No mercy was even showed to the 10 month old child Arsh* who was strangled, and thus the only other person from the household who could have inherited the property was also eliminated. ...The *subsequent conduct* of the accused Shabnam in removing all signs of the crime, by changing her clothes, removing any signs, and finger prints etc. and then raising an alarm for help and thereafter pretending to be unconscious for creating an impression that some outsiders had committed this crime, all indicate the *cold blooded planning before, during and after the commission of the crime.*"

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(emphasis supplied)

18. Further, the High Court has refused to accept the submission that the appellant-accused Shabnam was under great mental stress due to the opposition from her family to the relationship between her and the other co-accused and the same is a fit mitigating circumstance. The High Court has noticed that there was no evidence of any threat or any incident of attack on the lives or person of the two appellants-accused

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- A by the deceased persons and that the elimination of all seven members of Shabnam's family, including the ten month old child was a grossly disproportionate and uncalled for reaction to any apprehensions that the appellants-accused may have received regarding their proposed alliance. The High Court
- B has further noticed that features of the criminal mind of appellants-accused can be inferred from the pre-planned *finesse* with which the crime is committed, manner of commission of crime and remorseless attitude of the appellants-accused persons both- before and after the crime.
- C The High Court has thus concluded that the aforesaid conduct of the appellants-accused persons renders them beyond reformation and observed as under:

- D "Shabnam's pregnancy and subsequent delivery of child, no ground for reducing sentence. It was also contended that Shabnam was carrying a child in her womb whom she has delivered in jail and who would be orphaned if the appellants are executed.
- E In most murder cases the accused have minor children, or aged parents or a spouse who would be bereaved if the convict is executed. This according to the Supreme Court in *Sevaka Perumal v State of Tamil Nadu*, 1991 Cri.L.J. 845 (SC) cannot provide a legitimate reason for not
- F awarding the death penalty, if the case is one, where looking to the heinous nature of the crime and the criminal a death penalty is the only appropriate sentence."

- G Thus, in light of the aforesaid considerations, the High Court has thought it fit to classify the present case as "rarest of rare" and award death penalty to the appellate-accused persons.

- H 19. Aggrieved by the aforesaid conviction and sentence, the accused-appellants are before us in this appeal.

Submissions

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20. The learned *amicus* for the appellants would restrict his arguments only to the question of sentence. He would submit that instant case is based entirely on circumstantial evidence and the prosecution case garners support from no eye-witnesses and therefore, the same could not have been relied upon by the Trial Court to sentence the appellants-accused to irreversible consequence of death. He would further submit that the mitigating circumstances of the appellants-accused, that is, them being young at the time of incidence, the mental stress undergone by them due to opposition of their alliance from the deceased family and the factum of appellant-accused Shabnam being pregnant at the time of the offence ought to be considered in context of the offence committed by the two appellants-accused and lenient approach be adopted in determining and awarding appropriate sentence to them.

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21. Learned counsel for the State would oppose the request of learned *amicus* in respect of adoption of lenient approach in sentencing the appellants-accused persons and supporting the reasons recorded in the judgment(s) and order(s) passed by the Courts below, submit that the present case is a fit case to be classified as "rarest of rare" and hence, the appellants-accused deserve nothing but death penalty for the dastardly crime committed by them.

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22. We have given our anxious consideration to the evidence on record in its entirety and the submissions put forth by both the learned counsel. We have carefully perused the judgments and orders of the Courts below.

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Discussion

23. We would not lumber the discussion by tracing the entire death penalty jurisprudence as it has evolved in India, but only limit the exercise to cull out the determinants which

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- A would weigh large in our mind to award appropriate sentence while balancing the mitigating and aggravating circumstances. We are be mindful of the principles laid down by this Court in *Jagmohan Singh v. State of U.P.*, (1973) 1 SCC 20, *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 and *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470 as followed by
- B this Court upto the present. The aforesaid decisions indicate that the most significant aspect of sentencing policy in Indian criminal jurisprudence regarding award of death penalty is that
- C life sentence is a rule and death sentence is an exception only to be awarded in "rarest of rare cases." Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant
- D circumstances of the crime, and 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. The
- E circumstances which should or should not be taken into account, and the circumstances which should be taken into account along with other circumstances, as well as the circumstances
- F which may, by themselves, be sufficient, in the exercise of the discretion regarding sentence cannot be exhaustively enumerated. The guidelines and principles for classification of circumstances and determination of the culpability indicia as laid down by this Court in the aforesaid cases have been succinctly summarized in *Ramnaresh v. State of Chhattisgarh*, (2012) 4 SCC 257. The said are extracted as under:

"Aggravating Circumstances:

- G 1. The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a
- H substantial history of serious assaults and criminal convictions.



2. The offence was committed while the offender was engaged in the commission of another serious offence. A
3. The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person. B
4. The offence of murder was committed for ransom or like offences to receive money or monetary benefits.
5. Hired killings. C
6. The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim. D
7. The offence was committed by a person while in lawful custody.
8. The murder or the offence was committed, to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 Code of Criminal Procedure. E
9. When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community. F
10. When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person. G

A 11. When murder is committed for a motive which evidences total depravity and meanness.

12. When there is a cold blooded murder without provocation.

B 13. The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

C Mitigating Circumstances:

1. The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

D 2. The age of the accused is a relevant consideration but not a determinative factor by itself.

E 3. The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

F 4. The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

G 5. The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

H 6. Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a pre-

ordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime. A

7. Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused. B

While determining the questions relateable to sentencing policy, the Court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence. C

Principles:

1. The Court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence. D

2. In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice. E

3. Life imprisonment is the rule and death sentence is an exception.

4. The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant circumstances. F

5. The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime." G

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A        24. It is now settled law that where maximum punishment  
that could be awarded under a provision is death penalty, the  
Courts are required to independently consider facts of each  
case and determine a sentence which is the most appropriate  
and proportional to the culpability of the accused. It is not  
B        sufficient for the Court to decide the quantum of sentence only  
with reference to one of the classes under any one of the head  
of circumstances while completely ignoring classes under the  
other. That is to say, what is required to be considered is not  
C        just the circumstances by placing them in separate  
compartments, but their cumulative effect. The Court ought to  
be sufficiently cautious and adherent of the same so as to better  
administer the criminal justice system and provide an effective  
and meaningful reasoning by the Court as contemplated under  
D        Section 354(3) of the Code while sentencing.

25. The aforesaid principles also find reference in  
observations of this Court in *Mohd. Jamiludin Nasir v. State  
of W.B.*, (2014) 7 SCC 443:

E        “173. Sentencing is a delicate task requiring an  
interdisciplinary approach and calls for special skills  
and talents. A proper sentence is the amalgam of  
many factors, such as, the nature of offence,  
circumstances—extenuating or aggravating—of the  
F        offence, prior criminal record of the offender, age  
and background of the offender with reference to  
education, home life, sobriety, social adjustment,  
emotional and mental condition, the prospects for  
his rehabilitation, etc. The above passage can be  
G        found in *Ratanlal & Dhirajlal’s Law of Crimes*, 26th  
Edn. at p. 185 on the topic “Of Punishments”.”

26. *Mofil Khan v. State of Jharkhand*, (2015) 1 SCC  
67 is a case where the appellants-accused had  
H        committed brutal and cold blooded murders of eight

persons of their own family successively due to discord over property. This Court while awarding death penalty to the accused persons noted that the scope of reformation of the perpetrators of the crime has been obliterated given the manner of execution of cold blooded murder of the kin and their conduct after commission of the crime. This Court observed as follows:

"46. The Crime Test, Criminal Test and the "Rarest of the Rare" Test are certain tests evolved by this Court. The Tests basically examine whether the society abhors such crimes and whether such crimes shock the conscience of the society and attract intense and extreme indignation of the community. *The cases exhibiting premeditation and meticulous execution of the plan to murder by levelling a calculated attack on the victim to annihilate him, have been held to be fit cases for imposing death penalty. Where innocent minor children, unarmed persons, helpless women and old and infirm persons have been killed in a brutal manner by persons in dominating position, and where after ghastly murder displaying depraved mentality, the accused have shown no remorse, death penalty has been imposed. Where it is established that the accused is a hardened criminal and has committed murder in a diabolic manner and where it is felt that reformation and rehabilitation of such a person is impossible and if let free, he would be a menace to the society, this Court has not hesitated to confirm death sentence.* Many a time, in cases of brutal murder, exhibiting depravity and callousness, this Court has acknowledged the need to send a deterrent

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A message to those who may embark on such crimes in future. *In some cases involving brutal murders, society's cry for justice has been taken note of by this Court, amongst other relevant factors.*"

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(emphasis supplied)

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27. In *Ram Singh v. Sonia*, (2007) 3 SCC 1, a married couple had murdered the wife's father, mother, sister, stepbrother and his whole family including three young ones of 45 days, 2½ years and 4 years with the motive of resisting her father from giving property to her stepbrother and his family. Therein, this Court has held that since the murders were committed in a cruel, pre-planned and diabolic manner while the victims were sleeping, without any provocation from the victim's side, it could be concluded the accused persons did not possess any basic humanity and lacked the psyche or mind-set amenable to any reformation and therefore, the case fell within the category of the rarest of rare cases for imposition of death penalty. Further, in similar cases where the accused persons had committed murders of their own kith and kin in a pre-planned brutal manner, without any remorse or for self-defense, this Court has thought it fit to uphold their death penalty observing that the manner of commission of crime being grotesque and diabolical, the accused persons deserved nothing but death penalty.

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(*Ajitsingh Harnamsingh Gujral v. State of Maharashtra*, (2011) 14 SCC 401, *Atbir v. Govt. (NCT of Delhi)*, (2010) 9 SCC 1, *Jagdish v. State of M.P.* (2009) 12 Scale 580, *Saibanna v. State of Karnataka*, (2005) 4 SCC 165, *State of Rajasthan v. Kheraj Ram*, (2003) 8 SCC 224 and *Suresh v. State of U.P.* (2001) 3 SCC 673.)

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28. Having regard, however, to the conditions in India, to the variety of social upbringing of its citizens, to the disparity

in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, in evaluating a crime and apportioning the most appropriate punishment, one of the most important functions Court performs while making a selection between life imprisonment and death is to maintain a link between contemporary community values and the penal system. Criminal jurisprudence indicates that society's perceptions of a crime with respect to appropriate penalties are not conclusive. Concurrently, it also stands that the said standards have always been progressive and acquire meaning as public opinion becomes enlightened by a humane justice. The scope of determining the standards is never precise and rarely static. The Courts must thus draw its meaning from the evolving standards of public morality and consciousness that mark the progress of a maturing society.

29. Familial relations play a vital role in describing and highlighting the qualities of our society. The Indian legal system today does not differentiate between a son and a daughter—they have equal rights and duties. Indian culture has been witness to for centuries, that daughters dutifully bear the burden of being the caregivers for her parents, even more than a son. Our experience has reflected that an adult daughter places greater emphasis on their relationships with their parents, and when those relationships go awry, it takes a worse toll on the adult daughters than the adult sons. The modern era, led by the dawn of education, no longer recognizes the stereotype that a parent would want a son so that they have someone to look after them and support them in their old age. Now, in an educated and civilized society, a daughter plays a multifaceted and indispensable role in the family, especially towards her parents. She is a caregiver and a supporter, a gentle hand and responsible voice, an embodiment of the cherished values

A of our society and in whom a parent places blind faith and trust.

30. Of all the crimes that shock the souls of men, none has ever been held in greater abhorrence than parricide, which is by all odds the most complete and terrible inversion, not alone of human nature but of brute instinct. Such a deed would be sufficiently appalling were the perpetrator and the victims are uneducated and backward, but it gains a ghastly illumination from the descent, moral upbringing, and elegant respectful living of the educated family where the father and daughter are both teachers. Here is a case where the daughter, appellant-accused Shabnam, who has been brought up in an educated and independent environment by her family and was respectfully employed as a *Shikshamitra* (teacher) at the school, influenced by the love and lust of her paramour has committed this brutal parricide exterminating seven lives including that of an innocent child. Not only did she forget her love for and duty towards her family, but also perpetrated the multiple homicide in her own house so as to fulfill her desire to be with the co-accused Salim and grab the property leaving no heir but herself. The appellant-co-accused Salim hatched the intricate plan with her, slayed the six deceased persons with an axe, escaped the crime scene, hid the murder weapon and supported the false story of occurrence. Both the appellants-accused wrench the heart of our society where family is an institution of love and trust, which they have disrespected and corrupted for the sake of their love affair.

31. The appellants-accused have put an end to seven innocent lives while they lay asleep defenseless and unsuspecting, in safety of their own house, absolutely unaware of the gory scheme of their daughter and her paramour. The appellants-accused driven by the opposition to their alliance from the deceased family and alive to the conception of their



illegitimate child, had hatched the depraved plan to first administer them sedatives mixed in tea prepared by appellant-accused Shabnam, who the family would not raise suspicion at, and thereafter, bleeding them to death by slitting the vital blood vessels in their throats. The appellants-accused couple did not even spare the ten month old infant, who could not have protested to their liaison, and ruthlessly throttled him to death so as to leave no survivors for claiming share in the family's property in the future. As soon as the family members were rendered dead, while appellant-accused Saleem fled from the spot disposing of the murder weapon and other evidence of crime, the appellant-accused Shabnam feigned unconsciousness and laid by the side of deceased father's mutilated body, to callously insinuate that the crime had been committed by an outsider while she was asleep on the rooftop. The appellant-accused lovers have consistently denied their guilt throughout the trial and, on the prosecution case being proved, stooped down to implicate each other in the commission of offence so as to exonerate themselves from the consequences of their obnoxious act.

32. The aggravating circumstances indicate the extreme brutal, calculated and diabolical nature of the crime, which suggests that there is little likelihood of reform of these accused and of their abstaining from future crime. All these features stench of the apathetic attitude of the appellant-accused daughter towards her family and mirrors the extent of her depravity in schemingly committing the cold blooded murder of her own parents, brother, sister-in law and ten-month old nephew. This itself triggers intense indignation in the community. It is the combined concoction of all aggravating circumstances, that is, victims of the crime, motive for commission of murder, manner of execution, magnitude of crime and remorseless attitude of the appellants-accused that stands before us in this case.

A        33. The mitigating circumstances regarding young age  
of the appellants-accused at the time of commission of crime  
do not bear any significance in terms of outweighing the  
aggravating circumstances of their wanton act. Further, it has  
B        also been pointed out before us that the appellant-accused  
Shabnam was pregnant at the time of commission of offence  
and the couple now has a dependent minor child. While the  
said circumstances stand as such, it is pertinent to notice that  
C        this Court has consistently held that such compassionate  
grounds are present in most cases and are not relevant in  
considering commutation of death sentence. The principle that  
when the offence is gruesome and was committed in a  
calculated and diabolical manner, the age of the accused may  
D        not be a relevant factor, was further affirmed by this Court in  
*Mofil Khan* case(supra). It is however shocking that at the pink  
of their youth, the couple indulged in such debased act of  
multiple murders driven by infatuation and exhibited no  
remorse.

E        34. Death penalty is not proportional if the law's most  
severe penalty is imposed on one whose culpability or  
blameworthiness is diminished, to a substantial degree, by  
reason of youth and immaturity. This however does not seem  
to be the case herein. The appellant-accused persons'  
F        preparedness, active involvement, scheming execution and  
subsequent conduct reeks of calculated and motivated  
murders. The act of slaughtering a ten month old child by  
strangulation in no chance reflects immature action but  
evidence for the lack of remorse, kindness and humanity. The  
G        crime is committed in the most cruel and inhuman manner which  
is extremely brutal, grotesque, diabolical and revolting.  
Therefore, as the instant case requires us to award a  
punishment that is graduated and proportioned to the crime,  
we have reached the inescapable conclusion that the extreme  
H        culpability of both the appellants-accused makes them the most  
deserving for death penalty.

35. In the result, we concur with and confirm the reasons recorded by the Trial Court and approved by the High Court while awarding and confirming the death sentence of the appellants-accused, respectively. In our considered view, the judgment(s) and order(s) passed by the courts below do not suffer from any error whatsoever which would call for our interference in the sentence awarded to the appellant-accused persons.

36. Accordingly, the appeals stand dismissed. The Registry is directed to pay a sum of Rs. 10,000/- (Rupees Ten Thousand Only) to the learned *amicus curiae* in each case.

Kalpana K. Tripathy

Appeals dismissed.