[2025] 7 S.C.R. 550 : 2025 INSC 862

Byluru Thippaiah @ Byaluru Thippaiah @ Nayakara Thippaiah
v.
State of Karnataka

(Criminal Appeal No(s). 2490-2491 of 2023)

16 July 2025

[Vikram Nath, Sanjay Karol* and Sandeep Mehta, JJ.]

Issue for Consideration

Issue arose as regards commutation of the death sentence awarded to the appellant for committing brutal murder of his wife, sister-in-law and his three children.

Headnotes†

Sentence/Sentencing – Death sentence – Commutation of – Brutal murder by the appellant of his wife, sister-in-law and his three children – Motive was that the appellant accused his wife and sister-in-law of being promiscuous and that he had not fathered the three children – Trial court convicted the appellant for the offence punishable u/s.302 and awarded death sentence – Upheld by the High Court – Correctness:

Held: Findings of the courts below regarding the appellant's conviction for the barbaric and ruthless murders of his family members, affirmed – Nothing on record to discredit the prosecution case or expose any gaps, errors, conjectures or surmises in the chain of circumstantial evidence established by the prosecution, beyond reasonable doubt – Act of the appellant came from a place of grave hatred for the deceased persons, however there was no sudden provocation which led to him having taken such a drastic step – His planning and forethought is sufficiently exhibited – Not a shred of evidence either oral or documentary produced to posit appellant's innocence and bringing the possibility of involvement of third party – No reason to take a different view on the appellant's guilt, than the one that has been taken by the courts below, keeping with the principle of adopting a cautionary approach in

* Author

interfering with concurrent findings of guilt – However, as regards sentencing, despite having considerable information before it, the High Court did not consider it appropriately and sufficiently, in view of the findings recorded in the said reports – Probation Report reveals that the appellant has no antecedents, there is mixed opinion on whether he is suitable for reformation or not – Mitigation report reveals difficulties throughout – Considering the sum total of circumstances that drove the appellant to point of committing this crime of a most reprehensible nature, the death penalty not appropriate – He should spend his days in jail attempting to repent for the crimes committed by him – He is released from death row, instead, to await his last breath in prison, without remission – Penal Code, 1860. [Paras 9-17]

Case Law Cited

Khushwinder Singh v. State of Punjab **[2019] 3 SCR 446 : (2019) 4 SCC 415;** *Ishwari Lal Yadav v. State of Chattisgarh* **[2019] 13 SCR 893 : (2019) 10 SCC 423;** *Atley v. State of U.P.,* **AIR 1955 SC 807;** *Ajit Savant Majagvai v. State of Karnataka* **[1997] Supp. 3 SCR 444 : (1997) 7 SCC 110;** *Ramji Singh v. State of Bihar* **(2001) 9 SCC 528;** *Saravanabhavan & Govindaswamy v. State of Madras,* **1965 SCC OnLine SC 176;** *Mekala Sivaiah v. State of Andhra Pradesh* **[2022] 6 SCR 989 : (2022) 8 SCC 253;** *Bachan Singh v. State of Punjab* **[1979] 3 SCR 1193 : (1980) 2 SCC 684;** *Swami Shradhanand v. State of Karnataka* **[2008] 11 SCR 93 : (2008) 13 SCC 767;** *Manoj v. State of M.P.* **[2022] 9 SCR 452 : (2023) 2 SCC 353;** *Ramesh A. Naika v. Registrar General,* **2025 SCC OnLine SC 575 – referred to.**

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Commutation of the death sentence; Brutal murder; Death sentence; Motive; Wife and sister-in-law being promiscuous; Not fathered the children; Barbaric and ruthless murders of family members; Chain of circumstantial evidence; Involvement of third party; Remission; Murder weapon; Grave hatred; Sudden provocation; Paternity of children; Probation Report; Mitigation report; Reformation.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No(s). 2490-2491 of 2023

From the Judgment and Order dated 30.05.2023 of the High Court of Karnataka Circuit Bench at Dharwad in CRLA No. 100170 and CRLRC No. 100002 of 2020

Appearances for Parties

Advs. for the Appellant:
Gopal Sankarnarayanan, Sr. Adv., Ms. Aathma Sudhir Kumar, Ms. Shreya Rastogi, Vishal Sinha, Ms. Trisha Chandran, Aakarsh Kamra.

Advs. for the Respondent:
Avishkar Singhvi, A.A.G., V. N. Raghupathy, Vivek Kumar Singh, Naved Ahmed, Ms. Sakshi Raman, Ms. Divya Prabha Singh.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

1. This is the third in an unfortunate line of cases that have travelled up to this Court in a recent past and have become ripe for adjudication where we find all sense of responsibility and propriety to have been given a go by, by the Appellant-convict. In this case, the seed of violence was the suspected infidelity of his wife Pakkeeramma[1]. He suspected that his three-children namely Pavithra[2], Nagraj @Rajappa[3] and Basamma[4] born to D-1 were perhaps not his own.

2. Concurrently, the Appellant-convict has been held guilty of charges framed against him in FIR Cr. No. 23 of 2017 dated 26th February 2017 registered at PS Kampli, Ballari District, Karnataka – by the

1 Hereinafter referred to as D1

2 Hereinafter referred to as D3

3 Hereinafter referred to as D4

4 Hereinafter referred to as D5

III[rd] Additional District and Sessions Judge[5], Ballari *vide* judgment dated 3[rd] December 2019 in Sessions Case No. 5031 of 2017 and by the High Court *vide* impugned judgment dated 30[th] May 2023 in Criminal Appeal No. 100170 of 2020 and Criminal Referred Case No. 100002 of 2020.

3. The facts of the appeals as have been culled out by the Courts below are that on 25[th] February 2017 the Appellant-convict assaulted D1, her sister Gangamma[6] and his children D3-D5 brutally, resulting in the death of D1 to D4 on the spot and D5 on the way to the hospital. Having done so, he stepped out of the house and apparently, proclaimed his satisfaction of having put an end to the life of his wife and sister-in-law who, according to him, was engaged in '*immoral activities*' and also the children born to his wife which, as per him, were a direct consequence of such immoral activities. This statement was witnessed by as many as eight prosecution witnesses, namely, Shankaramma (CW-4); Bandi Basavaraja alias S. Basavaraj (CW-11); Thippeswamy (CW-30); V. Sathyappa (CW-32); K. Abdul Wahid (CW-35); Mehaboob (CW-36); Ragavendra (CW-37); Syed Mehaboob (CW-38); Nagappa (CW-39) and Athaulla (CW-40). Upon hearing such a statement, they rushed to the house of the Appellant-convict and found the abovenamed deceased persons lying there in pool of blood. D-5, at this time, was still alive and was accordingly taken to the Government Hospital, by CWs 35 and 36, where she died. CW-2 Marenna lodged a complaint with the police that his nieces, D-1 and D-2 as also D-1's children had been killed by the Appellant-convict. The latter also went to the Kampili PS and admitted to having killed D-1 to D-5.[7] A First Information Report[8] was registered and forwarded to the Judicial Magistrate, First Class (Sr. Dn.) on the same day at 11:45 pm. The Appellant-convict was formally arrested at 5 a.m., the next morning.

4. After completion of the investigation, challan was presented for trial under Section 302, Indian Penal Code, 1860[9]. To establish its

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5 Hereafter 'Trial Court'

6 Hereinafter referred to as D2

7 Ex. 9(a) at Pg 170 of CC

8 FIR No. 23/2017

9 Abbreviated as 'IPC'

case, the prosecution examined 36 witnesses (*although 66 were cited in the charge-sheet*), marked 51 documents and 22 material objects, as exhibits. The Trial Court, having given its consideration to the evidence produced, concluded that the Appellant-convict had barbarically murdered his family members, D-1 to D-5 and had a '*beast mind*'. The order of sentencing dated 4th December 2019 reveals the consideration of two judgments of this Court, ***Khushwinder Singh v. State of Punjab***[10] and ***Ishwari Lal Yadav v. State of Chattisgarh***[11]***.*** In ***Khushwinder*** (supra) the appellant was convicted by all courts for having killed with premeditation, six people including two children. This he did on the pretext of ridding a close family member of an excessive drinking problem by getting the said family member in touch with an alleged godman, as also sending the father of the deceased children to Canada, for a hefty sum of money. The second case, ***Ishwari Lal Yadav*** (supra) was concerned with the sentence of death imposed upon the appellants therein for the murder of a two-year-old boy in *sacrificium.* Since the child was brought to the house of Ishwari and his wife Kiran Bai by the other co-accused, to further their attempts to gain enlightenment by pleasing God, and, when questioned by the villagers regarding the reason as to why there were freshly dug mounds of earth and blood in their house, they confessed. They were convicted under Section 302 read with Section 34 IPC across fora. Having considered the above two cases, the Trial Court found it fit to impose capital punishment. The conclusions are extracted hereunder:

> "Materials on record indicates that, the accused has chopped off his wife, sister-in-law and 03 helpless children in a barbaric way, that too in a diabolical and dastardly manner one after the other. There is a serial killing within a span of few minutes. The learned Public Prosecutor pointed out that accused has hatched a full proof plan before chopping off 05 person. He has made arrangements that none of them can escape from death. The photographs of scene of crime itself is the mirror of cruelty. The photographs are resembling a rustic butcher shop, where

10 (2019) 4 SCC 415

11 (2019) 10 SCC 423

> the animals were killed inhumanly. The accused has not allowed the other person to see him chopping the rest. The organ on which the cruel assault is made is clear indication that accused has made up his mind not to spare any of them. The Post Mortem report indicates that, the children to whom the accused has chopped off were hardly 06, 07 and 08 years helpless kids. The accused mercilessly chopped off his own small children without a second thought. That itself clearly indicates that accused is not worth to live in the civilized society. It is also to be noted that, even accused has threatened the witnesses to kill them also if they give evidence against him after he released from jail. This fact also clearly indicates that, even now accused has no guilt feeling for committing murder of his own 05 family members. Hence, as rightly pointed out by the learned P.P. If the accused gets an opportunity to come out of jail, he may finish off another dozen or so. Considering the facts and circumstances of this case and keeping in view of the nature of crime committed by the accused, I am of the opinion that, this case squarely fall within the rarest of the rare category. However, as the accused is guilt for the offence punishable under Section 302 of I.P.C., and as the prosecution has established that accused has killed 05 innocent person in a pre-planned murder. In the facts and circumstances of the case, I am of the opinion that there is no alternative punishment suitable, except the death sentence. The crime is committed with extremist brutality and the collective conscious of the society would be shocked. Therefore, I am of the opinion that the capital punishment/death is the only solution to this kind of crime. Hence, I hold that, this is a fit case to impose capital punishment of death penalty…"

5. Given that the sentence awarded by the Trial Court was that of death, the matter made its way to the High Court by way of confirmation proceedings under Section 366 of the Code of Criminal Procedure, 1973[12]. The Appellant-convict also challenged the conviction and sentence.

12 For Short, 'CrPC'.

6. By the common impugned judgment, reference was answered in as much as the sentence and conviction awarded by the Trial Court were confirmed. The criminal appeal at the instance of the Appellant-convict was, accordingly, dismissed. In coming to the conclusions as it did, the High Court is required to have, as the first court of appeal, re-examined the evidence before it, and come to an independent conclusion regarding the correctness or otherwise, of the Trial Court findings. [See: ***Atley v. State of U.P***[13]; ***Ajit Savant Majagvai v. State of Karnataka***[14] and ***Ramji Singh v. State of Bihar***[15]] The High Court has in this case, followed this well-established principle. The findings can be summarized thus:

   6.1 Motive on the part of the Appellant-convict can be established by way of multiple witnesses, PW-2 (Halladamane Marenna), PW-4 (Gangadhar), PW-5 (Thippaiah), PW-8 (Shankramma), PW-9 (Raghavendra), PW-11 (Adbul Wahed), PW-14 (Somakka), PW-16 (Raghavendra), PW-17 (Syed Mehaboob), PW-20 (Ramu), PW-21 (Parashuram), PW-32 (Anjinamma), who have consistently deposed as to the frequent squabbles between the Appellant-convict and D-1. Regarding his suspicion of having not fathered the three children, PW-2, PW-9, PW-14, PW-15 (Nagaraja) have stated that he made categorical statements to that extent.

   6.2 PWs 7, 11, 16 & 17 have deposed that the Appellant-convict told them that he had '*chopped off*' the deceased persons and that he was happy about that.

   6.3 The Appellant-convict's statement to PW-15 that his daughter Rajeshwari would be coming to the village of Yarakullu and that he should pick her up, shows pre-planning. He has also stated that he has only one child of his own.

   6.4 The manner in which the five deceased persons met their death shows barbarity, maliciousness on his part.

   6.5 On the aspect of sentencing, the High Court asked the probation officer concerned to collect certain information which would be

13 AIR 1955 SC 807

14 (1997) 7 SCC 110

15 (2001) 9 SCC 528

relevant to the adjudication of the propriety of the highest form of punishment.

6.6 The conclusions as can be drawn from the reading of paragraph 49 of the impugned judgment are that:

6.6.1 Regarding the early life and background of the Appellant-convict, it was observed that he had lost his parents at an early age and was brought up by his elder sister. Prior to his marriage to D-1, he was married to someone else and had begotten a son as well. There had been accusations of him being responsible for his former father-in-law's death, but no action in law was taken.

6.6.2 He is illiterate. Troubled relations with his former wife, including attempts to take her and her mother's life, resulted in separation. When it comes to D-1, here too, he is without any assets or savings and resided with D-1 in her maternal home.

6.6.3 The Amin, 3rd Additional District and Sessions Court, Hospete, indicated in his report that the people around him do not believe he can be reformed. The probation officer who spoke to the people in his native village, however, said that he could be reformed.

6.6.4 Dharwad Institute of Mental Health and Neurosciences in their report submitted that he had an IQ of 93, a psychiatric score of 29, which is below the cut of score. He does not have any personality disorders but is mildly depressed.

6.6.5 The Court recorded that in their interaction with the Appellant-convict, he only denied the happenings and stated not to know anything about it. He appeared to be divorced from reality, but since the psychiatric analysis report ruled out the said possibility, he appears to have no regard for law.

6.6.6 The gruesome manner of the commission of the murder was taken as an aggravating circumstance. For the opposite, it was held that none of the substance can be found. He has only one daughter; no extreme mental or physical disturbance or provocation.

6.7 The final order is as below:-

"ORDER

i. Criminal Appeal No.100170/2020 stands dismissed.

ii. Criminal R.C.No.100002/2020 stands allowed.

iii. The death sentence awarded by the trial Court is confirmed. The Appellant shall be hung by his neck till death.

iv. The Additional Registrar (Judicial) is directed to forward the above file to the concerned District Legal Service Authority (DLSA) to determine and make necessary arrangements for payment of compensation in terms of Sections 357 and 357A of the Code of Criminal Procedure, to the daughter of the deceased namely Rajeshwari.

v. Registry is directed to furnish a copy of this judgment to the Appellant through Jail Authorities free of cost and inform him of his right to appeal to the Hon'ble Supreme Court and transmit the trial Court records to the trial Court along with a copy of this judgment.

vi. Though the above matter is disposed, re-list on 10.07.2023 at 2.30 p.m. for reporting compliance with the directions issued above.

vii. We place our appreciation for the services rendered by Sri.S.L.Matti, Panel Advocate of Karnataka State Legal Services Authority."

7. The extant appeals are by the Appellant-convict challenging the findings of the High Court. We have heard Mr. Gopal Sankaranarayanan, learned Senior Counsel for the Appellant and Mr. Avishkar Singhvi, learned Additional Advocate General for the State of Karnataka.

8. As we have already noticed, the prosecution examined a total of thirty-six witnesses. A brief overview of the relevant PWs is as under:

8.1 PW-1 is the Medical Officer, Kampili Government Hospital. He conducted the post-mortem of the deceased persons. Having seen the weapon allegedly used by the Appellant-convict, it

was said that the weapon (Ex.7) could have been used to cause the injuries.

8.2 PW-2 stated that the Appellant-convict would repeatedly accuse D-1 and D-2 of being promiscuous. He further stated that the Appellant-convict had called and told him that he had killed the deceased persons. He went to D-1's house to check on them and found all of them dead. He also stated that Appellant-convict threatened to kill him after he leaves the Court.

8.3 PW-4 stated that PW-2 informed him crying over the phone that Appellant-convict had killed D-1 to D-5. He went to the spot of the crime and saw the bodies of the deceased persons there.

8.4 PW-5 stated that PW-2 informed him crying over the phone that Appellant-convict had killed D-1 to D-5. At the time that he reached the spot, D-5 was still alive and was accordingly taken to receive medical attention. PW-7 told him that D-1 had an affair with another person, and that is the reason why the Appellant-convict took such a step. When the latter came out of the house, the chopper which was the alleged murder weapon was in his hand, and he stated that he had killed them.

8.5 PW-7 who had been declared a hostile witness, deposed that upon receipt of information regarding the commission of murders, he went to the spot. He was the one who informed the complainant. He had however, not seen the Appellant-convict coming out of the house. In the cross-examination he stated that he had gone to the spot having heard sounds of quarrelling.

8.6 PW-8 in her examination in chief, made a positive identification of the weapon allegedly used by the Appellant-convict. She also deposed that he came out of the house and declared that he had killed D-1 to D-5. In her cross-examination, she denied the suggestion that she had not seen the incident.

8.7 PW-11 in his testimony deposed regarding a particular quarrel which happened a few months prior to the incident and that PW-2 had told him that it was a fairly regular occurrence. Part of his testimony reads as under:

> "On the date of incident i.e. 25.02.2017 I saw the accused holding M.O-1 chopper in his hand. He was coming out of his house holding M.O-1. It was fully

> blood stained. Accused was abusing his wife and declaring that "-sic-". When I rush to the house of accused it was fully blooded there were five human bodies found laying in the pool of blood. Out of which four person were already dead, One girl found to be alive I immediately shifted her to the Hospital there she was declared dead. Thippeswamy, Basavaraja and Satyappa also accompanied me."

8.8 PW-14 stated that the Appellant-convict was quarrelsome and often he had asked the latter to mend his ways to no avail. He got information of the occurrence the next day morning. He also deposed that the Appellant-convict often cast aspersions on the fidelity of D-1 and the children, D-3 to D-5, that's why he killed them.

8.9 PW-15 is the person who had housed the Appellant-convict's daughter Rajeshwari, upon the latter's request, when he had planned to kill D-1 to D-5. He states that the only reason she was spared was that he believed her to be his child.

8.10 PW-16 deposed as follows:-

> "…At about 8.00 p.m. the accused came out of his house holding a chopper, which was blood stained, his clothes were also stained with blood. I have enquired him about the blood stains, he reported that he chopped off five person and abused them as prostitutes. The accused moved to Police Station alongwith chopper. Immediately we rush to the house of accused. Where we noticed that five persons were lying in the pool of blood, sustaining chopper injuries out of which three women died and a boy also no more. A girl aged five years was alive sustaining grievous head injury. Immediately we shifted the injured girl to the hospital, where she also passed away…"
>
> **Cross-examination by Sri C.M.S.P. advocate for accused**
>
> ...It is false to suggest that on the date of incident also it was informed by others, witness voluntaries

> that myself saw the accused. M.O-1 is the same chopper which was held by accused on that day. It is false to suggest that I have not seen M.O-1. It is true that I didn't enquire the accused about the cause of this incident. Accused moved away with courage..."

We have extracted the aforesaid, for as we notice the testimony of this important witness remains unimpeachable, clearly establishing the guilt of the Appellant-convict.

8.11 PW-22 is Rajeshwari, the daughter of Appellant-convict. She was not present at the time of the incident and did not know how the deceased persons died. She stated that D-1 and the Appellant-convict would never fight and were cordial with one-another.

Well, she is the only one who had supported the Appellant-convict. In view of overwhelming evidence to the contrary, her testimony cannot be said to have rendered the prosecution case to be doubtful of the Appellant-convict's involvement in the crime.

8.12 PWs 23 and 24 both stated that they reached the spot upon hearing a commotion. There they found out that the Appellant-convict had put an end to five of his family members.

8.13 PW-29 deposed that he is the Appellant-convict's immediate neighbour and upon hearing a commotion, he stepped out of his house to see a throng of people gathering there. He also saw the Appellant-convict stepping away from his house with the blood-stained weapon in his hand. It was then he found out what had transpired.

8.14 PW-33 was the CPI at Kampili Circle. He stated that the Appellant-convict having committed the crime, surrendered. He recorded the voluntary confession statement given by the Appellant-convict. He also recovered the murder weapon and shirt worn by the Appellant-convict at the time of the crime. He identified the various objects recovered by him in the course of investigation and also stated the names of various persons whose statements were recorded by him. Nothing could be elicited in the cross-examination to discredit his testimony or the investigation process.

9. We have given our anxious consideration to the testimonies, referred *supra* and also all other evidence brought on record by the prosecution. We find that numerous witnesses have testified to Appellant-convict's quarrelsome nature and repeated clashes with D-1. Further, quite a few witnesses have deposed that they saw the Appellant-convict with the murder weapon as also he himself was drenched in blood. Still further, other witnesses such as PW-10 testified that he came out of the house and in front of all the people that had gathered there due to *gatala* stated openly that due to the promiscuous nature of D-1 and D-2 and the fact that D-3 to D-5 were not his children, he murdered them. It cannot be questioned that the act of the Appellant-convict came from a place of grave hatred for the deceased persons. It has, however been recorded that there was no sudden provocation which led to him having taken such a drastic step. His planning and forethought is sufficiently exhibited by the fact that he sent away the only child he considered to be his own that is Rajeshwari. He also phoned up PW-15 and asked him to collect her from the bus station displaying that he had love and care for her in his heart. To doubt upon the paternity of D-3 to D-5 is not substantiated by any evidence nor have any of the witnesses lent credence to this hypothesis. Therefore, only on a hunch and as a matter of belief, he chose to end the lives of three young children. Regarding D-2, his sister-in-law, the only statement that can be found is that she aided and abetted the alleged misdeed and wrongdoings of D-1. We ask ourselves a question – is belief simpliciter sufficient enough to drive a person to a point of no return where ending the life of the deceased is the only rational outcome that can be perceived. We think, not. It is true that Appellant-convict is illiterate, but he is most certainly not irrational. He had a plan in mind which he executed, achieving his desired goal. There is nothing on record which would discredit the case of the prosecution or expose any gaps, errors, conjectures or surmises in the chain of circumstantial evidence established by the prosecution, beyond reasonable doubt. Not a shred of evidence either oral or documentary has been produced to posit Appellant-convict's innocence and bringing the possibility of involvement of third party.

10. In that view of the matter, we find no reason to take a different view on the Appellant-convict's guilt, than the one that has been taken by the Courts below. This is keeping with the well-established principle of this Court adopting a cautionary approach in interfering with

concurrent findings of guilt. Hidayatullah J. (as his Lordship then was) writing for the majority in ***Saravanabhavan & Govindaswamy v. State of Madras***[16], captured this principle in the following terms:

> "It has been ruled in many cases before, that this Court will not reassess the evidence at large, particularly when it has been concurrently accepted by the High Court and the court or courts below. In other words this Court does not form a fresh opinion as to the innocence or the guilt of the accused. It accepts the appraisal of the evidence in the High Court and the court or courts below. Therefore, before this Court interferes something more must be shown, such as: that there has been in the trial a violation of the principles of natural justice or a deprivation of the rights of the accused or a misreading of vital evidence or an improper reception or rejection of evidence which, if discarded or received, would leave the conviction unsupportable, or that the court or courts have committed an error of law or of the forms of legal process or procedure by which justice itself has failed."

[See also**: *Mekala Sivaiah v. State of Andhra Pradesh*[17]]**.

11. On the aspect of sentencing, the test to be applied is as to whether the conduct of the Appellant-convict meets the standard of '*rarest of rare cases*'. This has been the consistent position in confirmation of sentences of death imposed by the trial courts, ever since ***Bachan Singh v. State of Punjab***[18]. ***Swami Shradhanand v. State of Karnataka***[19], introduced a new position wherein the Courts were able to impose sentences that fall short of death but at the same time, keeping in mind the heinousness of the crime by the accused persons, ensure that the society is not put in danger with the possibility of such an accused walking free. In para 10 thereof, it was observed: *"The absolute irrevocability of the death penalty renders it completely incompatible to the slightest hesitation on the part of the Court."*

16 1965 SCC OnLine SC 176

17 (2022) 8 SCC 253

18 (1980) 2 SCC 684

19 (2008) 13 SCC 767

With the judgment in ***Manoj v. State of M.P.***[20] came a watershed moment in the criteria of sentencing. This judgment ensured that if and when a person is finally sent to the gallows he is only so sent after due consideration of the entire background of facts and circumstances that have landed the accused person at the precipice of death. Under the direction issued therein, the Court is required to call for reports that detail the social and psychological backdrop of the Appellant-convict. It was held by the three-Judge Bench as follows :

> "**249.** To do this, the trial court must elicit information from the accused and the State, both. The State, must—for an offence carrying capital punishment—at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in *Bachan Singh* [*Bachan Singh* v. *State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580]. Even for the other factors of (3) and (4)—an onus placed squarely on the State—conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison i.e. to evaluate the progress of the accused towards reformation, achieved during the incarceration period.
>
> **250.** Next, the State, must in a *time-bound manner*, collect *additional* information pertaining to the accused. An illustrative, but not exhaustive list is as follows:
>
> (*a*) Age
>
> (*b*) Early family background (siblings, protection of parents, any history of violence or neglect)
>
> (*c*) Present family background (surviving family members, whether married, has children, etc.)

20 (2023) 2 SCC 353

(*d*) Type and level of education

(*e*) Socio-economic background (including conditions of poverty or deprivation, if any)

(*f*) Criminal antecedents (details of offence and whether convicted, sentence served, if any)

(*g*) Income and the kind of employment (whether none, or temporary or permanent, etc.);

(*h*) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc.

This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.

251. Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e. Probation and Welfare Officer, Superintendent of Jail, etc.). If the appeal is heard after a long hiatus from the trial court's conviction, or High Court's confirmation, as the case may be — *a fresh report* (rather than the one used by the previous court) from the jail authorities is recommended, for a more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will *further* evidence the reformative progress, and reveal post-conviction mental illness, if any."

12. The High Court did, in accordance with ***Manoj*** (supra), call for the reports. However, we are of the considered view, that the said reports have not been considered to their full extent. The Probation Report reveals that the Appellant-convict has no antecedents; there is mixed opinion on whether he is suitable for reformation or not. The "*Conduct and Behavioural Report*" submitted by the Government of Karnataka, Prisons and Correctional Services records that he has "*good moral character*" and "*good conduct*" with co-prisoners and

prison officials. He has also attempted to mend one of the gaps in the fabric of his life i.e., literacy by participating in the Basic Literacy Program organized by the Zilla Lok Shiksha Samiti and passing the same with good rank.

13. The mitigation report reveals difficulties throughout- lack of paternal/ maternal love and care which later became extreme protectiveness after the death of his brother, difficulties in learning in school leading to him dropping out, making impulsive decisions in business often leading to losses, breakdown of the marriage with his first wife for the reason that neither quite comprehended issues with substance dependence.

14. Once incarcerated, it appears that mental health struggles have been a constant and unwelcome companion. He considered making an attempt to take his own life on two occasions, one when he found out about the deaths of his entire family and two, when he himself was sentenced to death.

15. The report further concludes that:

    (a) the Appellant-convict has the ability to adapt, engage in constructive activities, pursue an education despite past difficulty, continued worry about his daughter (Rajeshwari's) future, shows a notable capacity for reform and personal growth;

    (b) the Appellant-convict's continued incarceration has had a negative impact on Rajeshwari, who is really struggling to cope with life. Interactions with her, threw light on a gentle, loving side of the Appellant-convict. She has also reported experiencing auditory hallucinations which is a direct impact of loneliness she has been enduring.

16. Recently, this Court undertook a detailed examination of the past cases wherein the sentence of death has been modified to that of imprisonment for the remainder of natural life. [***See: Ramesh A. Naika v. Registrar General***[21]***]*** A perusal of the factors elucidated therein show that ***(a)*** lack of criminal antecedents; ***(b)*** satisfactory conduct in prison; ***(c)*** possibility of reformation; as a criteria, apply to the instant case. Regarding the last one, it can be said that given

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there is mixed opinion on whether he shall or shall not be able to reform his way, the Court will err on the side of caution just as when there are two possible interpretations of a given set of facts or circumstances, the one that favours the accused is to be adopted.

17. While we affirm the findings of the Courts below regarding the Appellant-convict's conviction for the barbaric and ruthless murders of his family members, D-1 to D-5. However, on the aspect of sentencing, we hold that despite having considerable information before it, the High Court did not consider it appropriately and sufficiently, in view of the findings recorded in the said reports. Considering the sum-total of circumstances that drove the Appellant-convict to this point of committing this crime of a most reprehensible nature, the death penalty may not be appropriate. We are of the view that he should spend his days in jail attempting to repent for the crimes committed by him. As such, these appeals are partly allowed to the extent that he is released from death row. Instead, he shall await his last breath in prison, without remission.

Result of the case: Appeals partly allowed.

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