REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1008-09 OF 2007

JUDGMENT

Ankush Maruti Shinde and others ....Appellants

Versus

State of Maharashtra ....Respondent

With

Criminal Appeal Nos. 881-882 of 2009
(Arising out of SLP (Crl.) Nos.8457-58 of 2008)

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted in SLP (Crl.) Nos.8457-58 of 2008 which have been filed by the State of Maharashtra questioning alteration of death sentence to life sentence.

2. These appeals are interlinked and are disposed of by this common judgment. By the impugned judgment a Division Bench of the Bombay High Court dispose of the reference made by learned Third Adhoc Additional Sessions Judge, Nasik, under Section 366 of the Criminal Procedure Code, 1973 (in short the 'Code') for confirmation of death sentence. While upholding the conviction and the death sentence of accused Nos.1, 2 & 4, the sentence in respect of the accused Nos. 3, 5 & 6 was altered to life sentence with fine. Accused Nos. 1, 2 & 4 were also convicted for offence punishable under Section 376(2)(g) of the Code and sentenced to suffer rigorous imprisonment for 10 years. The order of

conviction and sentence under Section 376(2)(g) in respect of accused nos.3, 5 & 6 was set aside. The accused persons were convicted for offence punishable under Section 307 read with Section 34 and sentenced to five years' imprisonment each. They were also convicted under Section 397 read with Sections 395 & 396 IPC. The accused persons filed the criminal appeals while the State has filed the appeals for alteration of the life sentence to death and also challenged the acquittal of three of the accused persons for offence punishable under Section 376 IPC.

3. Prosecution version in a nutshell is as follows:

On 5/6/2003 Trambak and all his family members as well as the guest Bharat More were chitchatting after dinner and at about 10.30 p.m. seven to eight unknown persons entered his hut and all of them were wearing banyan and half pant and they started threatening the family members. They demanded money as well as ornaments and Trambak took out Rs.3000/- from his pocket and handed over to one of them. Some of the gang members forcibly took away the mangalsutra as well as ear-tops and dorley from the person of Vimalabai, ear-tops from the person of Savita and silver

rings which were around her feet. From the person of Manoj, they removed a silver chain and a wrist watch. Thereafter they went out of the hut and consumed liquor. After some time they re-entered the hut with weapons like knife, axe handle, sickle, spade with handle and yokpin etc., to rob the house members and collect more money and ornaments etc. They started beating the family members and Trambak was the first person who received assault. Sandeep and other members of the family told the dacoits to take away whatever they could collect from the house, but no family members should be assaulted. At this stage Sandeep was assaulted and so also Shrikant @ Bhurya, Bharat and Manoj. The dacoits did not spare Vimalabai as well. They tied hands and legs of all the family members except Manoj and Vimalabai. As a result of assault Manoj, Trambak, Sandeep, Shrikant and Bharat became unconscious. Three of the dacoits dragged Savita out of the hut and took her to the guava garden. Two of the dacoits then picked up Vimalabai and dragged her towards the well. One of them raped her near the well and then she was taken to the guava garden where Savita was taken. Vimalabai was assaulted and brought back to the hut. After some time, the three dacoits brought Savita back in naked condition and with injuries on her body. When the dacoits had entered the hut at about 10.30 p.m. the light bulb in the hut was burning and TV was

on. The dacoits increased the volume of the tape recorder and after they dropped Savita in the hut, they put on shoes and started walking on the persons lying injured and they thought that all of them were dead. Vimalabai (PW 8) lost her consciousness around 12 O'Clock in the night and till then the dacoits were present in the hut and they left the hut under the belief that all of the victims were dead. However, Manoj (PW1) and his mother Vimalabai (PW 8) survived. They are the eye witnesses to the prosecution case. On the basis of information given, investigation was undertaken.

The clothes from the dead bodies of five deceased persons as well as the clothes on the person of Manoj and Vimalabai were seized. From the spot some weapons like wooden handle, spade with handle, yokpin and sickle were also seized. The seized articles were sent for chemical analysis and CA reports from Exhibit 58 to Exhibit 72 were received. In view of the gravity of the incidence, the police machinery was obviously under tremendous pressure and it sought assistance from the neighbouring districts like Ahmednagar, Aurangabad, Jalgaon and Dhule etc. The first breakthrough came on 23/6/2003 when accused nos.1 and 2 came to be arrested under arrest panchanamas (Exhibits 44 and 45) by the Crime

Branch. The police during the course of investigation also got information that some other accused were also involved in a separate crime registered with the police station at Bhokardhan in Jalna district on 19/6/2003 and the police,, therefore, filed an application before the competent Court seeking transfer of the accused in Crime No.74 of 2003 registered with the Bhokardhan police station and finally accused nos.3 to 5 came to be arrested on 27.6.2003 under arrest panchanamas (Exhibits 53, 54 and 55) after their custody was transferred from the police station at Bhokardhan. On the arrest of accused nos.1 to 5 their clothes were seized and they were subjected to medical examination. Dr. Satish Vasant Shimpi (PW 16) examined accused nos.3, 4 and 5 on 27/6/2003 and issued medical certificates at Exhibits 133 to 135. Of these three accused, accused No.4 - Raju Mhasu Shinde was seen to have sustained injuries within three weeks. Accused nos.1 and 2 were examined by Dr.Vilas Patil (PW 24) on 23/6/2003. Both the accused were seen to have sustained injuries within three weeks and the medical certificates were issued at Exhibits 195 and 196. During the course of investigation and it is evident that the statement of Sunita wife of Raja Shinde was recorded at Exhibit 77A in the presence of Ibrahim Wazir Shaikh (PW 7) on 25/6/2003. Test identification parade of the accused nos.1 to 5 was held on 25/7/2003 in the jail premises and Manoj (PW 1) identified

the five accused as the unknown persons who had entered their hut and assaulted the family members Vimalabai (PW8) also identified Accused Nos. l, 3, 4 and 5 as the unknown persons who had entered the hut and assaulted the family members. She however, could not identify accused No.2 Raja Appa Shind. Accused no.6 came to be arrested on 7/10/2004 and his TI parade was held on 9/10/2004. Both PW 1 and PW 8 identified the said accused as one of the unknown persons who entered their hut and assaulted the family members. The test identification report at Exhibit 120 was proved through the evidence of the Special Executive Magistrate, Ramesh Sonawane (PW 13).

The Trial Court convicted the accused persons as noted above. Because of the award of death sentence, reference was made to the High Court. Accused persons also filed appeals. Basic question related to evidence relating to Test Identification Parade (in short 'TI Parade'). High Court found the same to be credible.

4. The basic question raised by learned counsel for the accused-appellant is that T I Parade as held and so called dying declarations have no relevance.

5. Learned counsel for the State on the other hand supported the judgments of the trial court as confirmed by the High Court. In the appeals filed by the State it is submitted that no plausible reason has been indicated not to award death sentence in respect of accused persons whose TI Parade was held.

6. It is to be noted that TI Parade of A1 to A5 was held on 25.7.2003. PW1 had identified all the five accused persons, PW 8 had identified A1, A3, A4 and A5. Subsequently A6 was arrested on 7.10.2004 and the TI Parade was held immediately thereafter where PWs 1& 8 identified him. It is to be noted that first TI Parade was held on 25.7.2003 in the jail premises where all the five accused persons were made to stand in a queue in the parade hall. PW 25 who was the Magistrate and conducted the TI Parade clearly stated that he found the dummies to be acceptable and respectable persons selected by the police was assessed by him and found to be reliable. In his explanation report Ext.229 he has clearly stated that no police personnel or any of the employees of the jail was allowed to stand in the parade hall when each of the witnesses was brought for identification of the accused. He has further stated that the accused persons were asked to

change their clothes on every time and the accused could not be seen any of the witnesses prior to such witnesses being called for identifying the accused. As rightly observed by the trial court and the High Court, in the cross examination of PW 25 nothing material has been brought out to discredit his evidence.

7. If potholes were to be ferreted out from the proceedings of the Magistrate holding such parades possibly no T I Parade can escape from one or two lapses. If a scrutiny is made from that angle alone and the result of the parade is treated as vitiated every TI Parade would become unusable. T I Parades are not primarily meant for the Court. They are meant for investigation purposes. The object of conducting TI Parade is two fold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence.

8. PWs. 1 & 8 are the two eye witnesses to the occurrence. Few discrepancies of trivial and minor nature cannot be a reason to discard their evidence.

9. In Amitsingh Bhikamsing Thakur v. State of Maharashtra [2007(2) SCC 310] it was observed as follows:

"14. It is trite to say that the substantive evidence is the evidence of identification in Court. Apart from the clear provisions of Section 9 of the Indian Evidence Act, 1872 (in short the 'Evidence Act') the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in Court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong

to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration."

11. The evidence of PWs 1 & 8 have been analysed in great detail of the trial court and the High Court to find their evidence to be cogent and credible. Apart from that, the evidence of medical officer PWs. 9 & 15 clearly established the allegation of rape. It is stated that Savita had suffered bleeding injury on her private part and her hymen was ruptured. She was found to be of the age of 15 years and Vimalabai stated that she (Savita) was dragged out of hut by three accused and was brought back naked and dead by the very same accused and thrown in the hut.

12. The injuries externally noted on the body of Savita provide further sustenance to the prosecution version that she was subjected by sexual assault by the accused when she would fall a victim to their hunger of flesh and the empowerment exercised by all of them, multiple blows were given on and around her skull. Injuries were sustained by PWs. 1 & 8. It is to be noted that Manoj (PW1) regained his consciousness around 7.30 am while Vimlabai (PW 8) regained consciousness at about 9.30 on 6.6.2003. It is clear from the evidence that had the medical treatment not been provided, both of them would have died. They had suffered grievous injuries and were under medical treatment for 1 and 1½ months. They had suffered several injuries which were caused by blunt and hard objects.

13. It was vehemently urged by learned counsel for the accused appellants that this is not a case to be fall under the rarest of rare category.

14. The law regulates a social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross cultural conflict where living law must find answer to the new challenges and the courts are required to

mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a corner-stone of the edifice of "order" should meet the challenges confronting the society. Friedman in his "Law in Changing Society" stated that, "State of criminal law continues to be – as it should be – a decisive reflection of social consciousness of society". Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. For instance a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. But an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence. In Mahesh v. State of M.P. (1987) 2 SCR 710), this Court while refusing to reduce the death sentence

observed thus:

> "It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon."

15. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. This position was illuminatingly stated by this Court in Sevaka Perumal etc. v. State of Tamil Naidu (AIR 1991 SC 1463).

16. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the

special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.

17. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime,

uniformly disproportionate punishment has some very undesirable practical consequences.

18. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle McGautha v. State of Callifornia: 402 US 183: 28 L.D. 2d 711 that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

19. In Jashubha Bharatsinh Gohil v. State of Gujarat (1994 (4) SCC 353), it has been held by this Court that in the matter of death sentence, the Courts are required to answer new challenges and mould the sentencing system to meet these challenges. The object should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Even though the principles were indicated in the background of death sentence and life sentence, the logic applies to all cases where appropriate sentence is the issue.

20. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of

such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

21. In Dhananjoy Chatterjee v. State of W.B. (1994 (2) SCC 220), this Court has observed that shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminals and in the ultimate making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

22. Similar view has also been expressed in Ravji v. State of Rajasthan, (1996 (2) SCC 175). It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will

be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance.

23. These aspects have been elaborated in State of M.P. v. Munna Choubey [2005 (2) SCC 712].

24. In Bachan Singh v. State of Punjab [1980 (2) SCC 684] a Constitution Bench of this Court at para 132 summed up the position as follows: (SCC p.729)

> "132. To sum up, the question whether or not death penalty serves any penological purpose is a difficult, complex and intractable issue. It has evoked strong, divergent views. For the purpose of testing the

constitutionality of the impugned provision as to death penalty in Section 302, Penal Code on the ground of reasonableness in the light of Articles 19 and 21 of the Constitution, it is not necessary for us to express any categorical opinion, one way or the other, as to which of these two antithetical views, held by the Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion on this issue, is a ground among others, for rejecting the petitioners' argument that retention of death penalty in the impugned provision, is totally devoid of reason and purpose. If, notwithstanding the view of the Abolitionists to the contrary, a very large segment of people, the world over, including sociologists, legislators, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of society, if in the perspective of prevailing crime conditions in India, contemporary public opinion channelised through the people's representatives in Parliament, has repeatedly in the last three decades, rejected all attempts, including the one made recently, to abolish or specifically restrict the area of death penalty, if death penalty is still a recognised legal sanction for murder or some types of murder in most of the civilised countries in the world, if the framers of the Indian Constitution were fully aware — as we shall presently show they were — of the existence of death penalty as punishment for murder, under the Indian Penal Code, if the 35th Report and subsequent reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code and the insertion of the new Sections 235(2) and 354(3) in that Code providing for pre-sentence hearing and sentencing procedure on conviction for murder and other capital offences were before Parliament and presumably considered by it when in 1972-73 it took up revision of the Code of 1898 and replaced it by the Code of Criminal Procedure, 1973, it is not possible to hold that

the provision of death penalty as an alternative punishment for murder, in Section 302, Penal Code is unreasonable and not in the public interest. We would, therefore, conclude that the impugned provision in Section 302, violates neither the letter nor the ethos of Article 19."

25. Similarly, in Machhi Singh v. State of Punjab [1983 (3) SCC 470] in para 38 the position was summed up as follows: (SCC p. 489)

"38. 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 sentence arises. The following propositions emerge from Bachan Singh's case (supra):

(*i*) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(*ii*) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(*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 have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised."

26. The position was again reiterated in Devender Pal Singh v. State of NCT of Delhi [2002 (5) SCC 234] : (SCC p. 271, para 58)

> "58. From Bachan Singh's case (supra) and Machhi Singh's case (supra) the principle culled out is that when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, the same can be awarded. It was observed:
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> > The community may entertain such sentiment in the following circumstances:
> >
> > (*1*) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.
> >
> > (*2*) When the murder is committed for a motive which evinces total depravity and meanness; e.g.

> murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.
>
> (*3*) When murder of a member of a Scheduled Caste or minority community, etc. is committed not for personal reasons but in circumstances which arouse social wrath; or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.
>
> (*4*) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.
>
> (*5*) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-à-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community."

27. If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the rarest of rare cases, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.

28. What is culled out from the decisions noted above is that while deciding the question as to whether the extreme penalty of death sentence is to be awarded, a balance sheet of aggravating and mitigating circumstances has to be drawn up.

29. Lord Justice Denning, Master of the Rolls of the Court of Appeals in England said to the Royal Commission on Capital Punishment in 1950:

> "Punishment is the way in which society expresses its denunciation of wrong doing; and, in order to maintain respect for the law, it is essential that the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishments as being a deterrent or reformative or preventive and nothing else... The truth is that some crimes are so outrageous that society insists on adequate punishment, because the wrong doer deserves it, irrespective of whether it is a deterrent or not."
>
> In J.J. Rousseau's The Social Contract written in 1762, he says the following:
>
> Again, every rogue who criminously attacks social rights becomes, by his wrong, a rebel and a traitor to his fatherland. By contravening its laws, he ceases to be one of its citizens: he even wages war against it. In such circumstances, the State and he cannot both be saved: one or the other must perish. In killing the criminal, we destroy not so much a citizen as an enemy. The trial and

> judgments are proofs that he broken the Social Contract, and so is no longer a member of the State.

30. The case at hand falls in the rarest of rare category. The depraved acts of the accused call for only one sentence that is death sentence.

31. The above position was highlighted in Bantu v. The State of U.P. [2008(10) SCALE 336]

32. The murders were not only cruel, brutal but were diabolic. The High Court has held that those who were guilty of rape and murder deserve death sentence, while those who were convicted for murder only were to be awarded life sentence. The High Court noted that the whole incident is extremely revolting, it shocks the collective conscience of the community and the aggravating circumstances have outweighed the mitigating circumstances in the case of accused persons 1, 2 & 4; but held that in the case of others it was to be altered to life sentence. The High Court itself noticed that five members of a family were brutally murdered, they were not known to the accused and there was no animosity towards them. Four of the witnesses were of tender age, they were defenseless and the attack was

without any provocation. Some of them were so young that they could not resist any attack by the accused. A minor girl of about fifteen years was dragged in the open field, gang raped and done to death. There can be no doubt that the case at hand falls under the rarest of rare category. There was no reason to adopt a different yardstick for A2, A3 and A5. In fact, A3 was the main person. He assaulted PW1 and took the money from the deceased.

33. Above being the position, the appeal filed by the accused persons deserves dismissal, which we direct and the State's appeal deserves to be allowed. A2, A3 and A5 are also awarded death sentence. In essence all the six accused persons deserve death sentence.

……..J.
(Dr. ARIJIT PASASYAT)

……..J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
April 30, 2009