REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 314-315 OF 2001

State of U.P. …Appellant

Versus

Sattan @ Satyendra & Ors. …Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Allahabad High Court by which two Criminal appeals filed by accused Sattan, Uppendra, Hari Pal son of Kiran Singh and Hari Pal son of Ram Charan (Criminal Appeal No. 2140 of 1999) and Criminal Appeal No. 2237 of 1999 filed by accused Kripal, Brij Pal, Ram Pal and Devendra. A

reference under Section 366 of the Code of Criminal Procedure, 1973 (in short the 'Code') for confirmation of death sentence in respect of the accused appellants in Criminal Appeal No. 2140 of 1999 before the High Court was made. So far as Sattan, Upendra, Hari Pal son of Kiran Singh and Hari pal son of Ram Charan are concerned they were sentenced to two years R.I. each under Section 148 of the Indian Penal Code, 1860 (in short the 'IPC'), 10 years R.I. under Section 307 read with Section 149 IPC and death sentence in respect of offence punishable under Section 302 read with Section 149 IPC. The appellants in the Criminal Appeal No.2237 of 1999 were convicted and sentenced to life imprisonment under Section 120 B IPC alongwith appellants in Criminal Appeal No. 2140 of 1999 accused Mukesh, Dhirendra, Rakesh, Naresh and Pappu also faced trial. Out of them Pappu and Naresh died during the pendency of trial while Mukesh, Rakesh and Dhirendra absconded and trial so far as they are concerned were separated. One Rajveer was also charged in terms of Section 120B alongwith appellants in Criminal Appeal No. 2237 of 1999. The Criminal Appeal No.2237 of 1999 was allowed and conviction of Brijpal, Ram Pal and Devendra was set aside. So far as Criminal Appeal No.2140 of 1999 is concerned the conviction as recorded was maintained. Death sentence imposed was altered to life sentence. In the present appeals

State has questioned alteration of the death sentence to life sentence in respect of appellant in Criminal Appeal No. 2140 of 1999 and the acquittal as recorded in Criminal Appeal No. 2237 of 1999 as maintained; While upholding the conviction of accused Sattan and Upendra directed acquittal of Hari Pal son of Kiran Singh and Hari Pal son of Ram Charan.

2. According to learned counsel for the State the only appropriate sentence in a case of this nature was death sentence and the High Court erred in altering it to life sentence after upholding the conviction. Similarly, in respect of the acquittal in the case of the appellants in separate Criminal Appeal Nos.2237 and 2140 of 1999 is concerned, it is submitted that the High Court has not indicated any reasons as to why the conviction as recorded by the Trial Court suffered from any infirmity to warrant interference.

3. Mr. M. Karpaga Vinayagam, learned Amicus Curiae supported the judgments of the High Court.

4. The prosecution version as unfolded during trial is as follows:

In the night between August 30 and 31, 1994 at about 12.30 five persons of Sheo Pal's family were gunned down in his house in village Saloni within the area of police station Bahadurgarh, Ghaziabad. Four others were injured, out of whom Neetu also succumbed to his injuries later on. This massacre was reported at the police station on the same night at 2.55 A.M. by one of the survivors, Smt. Bala, PW 1 widow of deceased Shiv Singh. With the registration of case police came into action and the Investigating Officer promptly rushed to the place of occurrence and recorded the statements of Smt. Bala, Neetu and Km. Guddi who all had received injuries in the course of ghastly incident. Inquest proceedings were held in respect of dead bodies of five persons, namely, Sheo Pal Singh, Smt. Kunti Devi, Shiv Singh, Manjeet and Khushal who were reported to have been shot dead by the assailants while asleep inside their house. Their dead bodies were sent for postmortem examination. The investigating Officer Shri Ram Babu Tiwari, P.W.9 also pr-epared site plan, Ex.Ka 48 after making spot inspection of the place of occurrence. Injured Neetu was sent for medical examination. Under the order of the Investigating Officer S.I. Shri D.K. Sharma collected samples of blood through memo Ex. Ka 26 from near the dead body of Kunti Devi. Similarly, samples of blood were collected from near the dead bodies of other deceased persons through

memos Ex. Ka. 27 to Ex. Ka.3. The bed sheet lying on the cot of deceased Shiv Singh was also taken into possession through memo Ex. Ka. 3. The electric bulbs which are alleged to be giving light at the time of incident were also inspected and Memo Ex. Ka. 32was prepared. The Kurta of Injured Guddi which was stained with blood and had pellet marks was taken into possession through memo Ex. Ka.33. The pieces of blood stained bandh of cot of deceased Manjeet and Khushal were also taken into possession through memo Ex. Ka. 34. The Investigating Officer also found empty cartridges, bullet and wads at the scene of occurrence. They were also taken into police custody through EX. Ka.35. He also interrogated Madhu and Rikku and other villagers. A raid was made on the house of accused Mukesh, Sattan and Guddu but they were not found. During investigation complicity of other accused persons also came to light that they had hatched conspiracy for the commission of the crime in question. Some of the accused persons were arrested while others surrendered in court and after completion of investigation charge sheet was prepared against all the accused persons who had been either arrested by him or has surrendered in court and also against Upendra alias Guddu, Pappu, Dheeraj and Devendra who were then still absconding. Later on accused Pappu alias Amarjeet and Rajveer were also arrested. It was also revealed that accused Upendra alias

Guddu was in jail after having been arrested in a case under Gangster Act. Similarly, accused Dheeraj was in jail in connection with case Crime No. 628 of 1993 under Section 307 I.P.C.

Smt. Bala (PW.1) who is alleged to have herself received injuries during the course of incident got the first information report Ex. Ka. I scribed by Km. Guddi, her niece. Km. Guddi is also alleged to have sustained injuries during the course of the same incident but she was murdered before she could be examined in the trial court as a witness.

The case as set out in the first information report in short was that some incident had occurred in the year 1986 between family members of complainant and accused Mukesh and Guddu sons of Rajveer and the matter was reported at the police station from complainant's side. A case was proceeding in court at Hapur some time before the present incident and the police had raided the house of accused Mukesh. Mukesh and Guddu, came to the house of Sheo Pal Singh and gave threats to them saying that they had not done good by getting his house raided. The accused persons were thus bearing enmity with Sheo Pal and others.

It was further alleged in the report lodged by Smt. Bala that in the night between 30/31 August, 1994 at about 12.30 A.M. Mukesh and Guddu of her own village carrying country made pistols with them and accused Sattan of village Lohari also having a country made pistols alongwith 4-5 unknown persons who were also having weapons like pistols, Dalkati, Lathi etc. entered into her house. At that time electric bulbs were emitting light inside and out side the house. The family members of her Jeth, Sheo pal Singh were sleeping on cots outside the house. She herself (Smt. Bala) was resting inside the house, while her husband Shiv Singh was sleeping on the roof. The accused persons after making entry into the house immediately started hurling abuses by name to her Jeth Sheo Pal Singh saying that he was acting as an informer to police, hence he and his family would be eliminated completely. Hearing it Sheo Pal got up and started running but he was chased by accused Mukesh and Sattan and was shot dead in the Gher of Devendra. Mukesh and Sattan then said that entire family should be finished and thereafter accused persons killed Kunti Devi, wife; of Sheo Pal, Khushal son of Sheo Pal and Manjeet son of Shiv Singh. They also injured Neetu son of Sheo Pal, Guddi, daughter of Sheo Pal Singh and baby Kapil about 3 years old son of' Shiv Singh. Mukesh and Sattan with his associates climbed over the roof and murdered her husband Shiv Singh on the cot on

which he was sleeping. On hearing the sound of firing, villagers were awakened and when they tried to come near the first informant's house, accused persons made indiscriminate firing and said that if any one dared to come nearer he would be shot dead and further that if anyone of them would give evidence he would meet the same fate as that of deceased persons. On the threats given by accused persons villagers retreated to their houses and closed their doors. The firing incident caused a panic in the village and the miscreants left the scene of occurrence brandishing their weapons.

Before adverting further it may be relevant to place the following pedigree in order to show that all the deceased and injured persons were members of same family.

HUKUM SINGH
!
!

Sheo Pal (Deceased)	Shiv Singh (Deceased)
Wife Kunti Devi (Deceased)	Wife Smt. Bala (PW1) (Injured)

1	Manjeet	Kapil
1	(Deceased)	(Injured)
1		
1		
1		

Khushal	Guddi	Neetu
(Deceased)	(Injured)	(Injured and died later on)

From the above pedigree it would be evident that all the nine members of family of Hukum Singh were present and sleeping in their houses when this ghastly incident occurred. Four were of Shiv Singh's family and rest belonged to Sheo Pal's family. All of them sustained injuries. Smt. Bala, Baby Kapil and Km. Guddi survived but before statement of Guddi could be recorded at the trial she was also murdered. Baby Kapil was a child of about three years old. Thus the prosecution was left with no alternative except to examine at the trial Smt. Bala, the sole surviving member of the above two families.

At the trial from the prosecution side in all nine witnesses were produced. Smt. Bala (PW 1) widow of deceased Shiv Singh corroborated the facts stated by her in the FIR and further added that the assailants were

ten in number, out of whom she identified Mukesh, Guddu, Rakesh, Naresh, Pappu, Sattan, Haripal son of Kiran Singh, Haripal son of Ram Charan, Dhirendra alias Dheeraj. She further stated that Rakesh and Dhirendra were having Balkati and rest had country made pistols. She also testified that Sheo Pal, his wife Kunti Dcvi, his son Khushal, her Husband Shiv Singh and her son Manjeet were murdered on the spot by the assailants with their respective weapons, Neetu son of Sheo Pal, Km. Guddi, Baby Kapil and she herself also suffered injuries at the hands of the accused persons. She further stated that had the matter between accused and deceased persons been not got compromised by accused Kripal, Rajveer, Devendra, Brij Pal and Ram Pal, the incident in question would not have occurred. In this way it was suggested that the aforesaid accused persons hatched a conspiracy with the actual assailants to get the entire family of Sheo Pal and Shiv Singh wiped out. She is the only eye witness examined at the trial.

As noted above, the trial court found the evidence of the witnesses to be credible and cogent and directed conviction and imposed death sentence, so far as the Sattan, Upendra, Hari Pal son of Kiran Singh and Hari pal son of Ram Charan are concerned. It also found that the accusations relating to Section 120B of the Act have been established so far as the Kripal, Brij Pal,

Devendra are concerned. The High Court analysed the evidence to hold that the accusations so far as the Sattan, Upendra, are concerned have been established. But further held that this was a case where there were certain mitigating circumstances which warranted alteration of the death sentence to life sentence.

The mitigating and extenuating circumstances pointed out to take the view are as follows:

"(i) that number of casualties cannot be sole criterion for awarding death sentence;

(ii) that though in a criminal case compromise was filed, the police however at the instance of deceased Sheo Pal raided the house of accused Mukesh and Guddu alias Upendra and this excited the accused to commit the alleged crime;

(iii) that PW 1(smt. Bala) the sole eye witness did not assign specific role to each of the two accused-respondents;

(iv) that according to FIR story, the three named accused persons along with 4-5 others committed the crime and therefore, possibility of unknown persons having taken the active part could not be ruled out;

(v) that there is nothing on record to show that accused-respondents Sattan alias Satyendra and Guddu alias Upendra acted in a brutal and cruel manner while committing the crime;

(vi) that there is nothing on record to show that K. Guddu was murdered during pendency of the case by the present accused-respondents, so that there could be no evidence against them;

(vii) that the assailants did not do away with Smt. Bala (PW 1) Km. Guddi (17 years), baby Kapil (3 years) and a child to screen the offence;

(viii) that the assailants showed mercy on Smt. Bala and did not cause any harm to her; and

(ix) that respondent Sattan alias Satyendra was a young boy of 20 years of age at the time of incident."

5. It is submitted by learned counsel for the appellant that taking into consideration the aforesaid circumstances the High Court came to an abrupt conclusion that on consideration of aggravating and mitigating circumstances the case does not fall within the category of rarest of rare cases.

6. Learned amicus Curiae appearing for the accused persons on the other hand submitted that six circumstances were highlighted by the High Court.

7. Motive was not clearly established. No specific roles have been ascribed. Ocular and medical evidence did not fit in. There is no crime record of any of the accused persons and it cannot be said that they cannot be reformed. Two views are possible. There was considerable lapse of time. It is to be noted that according to the High Court the mitigating circumstances show there is no criminal record of any of the accused persons. There was no overt act attributed to each of the accused persons and the number of deaths cannot be a criteria to decide as to whether death sentence or life sentence to be imposed.

8. According to learned Amicus Curiae, incident was of the year 1992, the death sentence was awarded in 1999 and by the impugned judgment which is of the year 2000, alteration have been directed and at this length of time there should not be any interference.

9. Before dealing with the position in law as highlighted by this Court relating to rarest of rare categories where death sentence can be awarded,

submissions made by learned Amicus Curiae to show existence of mitigating circumstances need to be noted. It is stated by learned Amicus Curiae that motive is not clearly established. This is contrary to the conclusions of the High Court. In fact, the High Court has treated that an entire family was eliminated and if the evidence of Smt. Bala (PW 1) is considered reliable and trustworthy, the inadequacy and insufficiency of motive pales into significance and recedes behind the curtain. So far as the specific overt acts are concerned, it is to be noted that apart from the accused persons who faced trial three of these persons, namely, absconding accused Mukesh Dhirendra and Rakesh were described as accused. Six persons were killed. It is not expected that a lady witnessing such a massacre would note the details.

10. This court has observed in Sahdeo v. State of U.P. [2004 SCC (Crl.) 1873] that though in the particular facts of the case the death sentence was converted to imprisonment for life, yet it cannot be said that accused persons cannot be awarded death sentence in cases where the conviction was recorded under Section 302 read with Section 149 IPC. So far as the alleged discrepancy between medical evidence and ocular evidence is concerned, it is to be noted as rightly done by the High Court that the

incident occurred around mid night when six murders were committed one after another. In such circumstances it was practically not possible for any witness to ascribe pin pointed role or the kind of weapons with which blows were given. In an incident when killing of so many persons took place, it would be difficult for a witness to remember with precision the kind of weapon used by a particular accused. It is to be noted that evidence of the witnesses are not liable for rejection on the hypothetical so called medical discrepancy. It is submitted by learned counsel for the respondent that when number of death is not the determinative factor and since the High Court about eight years back has altered the conviction, the life sentence may be clarified to be one for 20 years as have been done in some cases for example in Ram Anup Singh v. State of Bihar [2002(6) SCC 686].

11. 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."

12. 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).

13. 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.

14. 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.

15. 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 MCG Dautha 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.

16. 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.

17. 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.

18. 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.

19. 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.

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

21. 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."

22. 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."

23. 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:

> 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."

24. 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.

25. 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.

26. 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.

27. 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.

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

29. Murder of six members of a family including helpless women and children having been committed in a brutal, diabolic and bristly manner and the crime being one which is enormous in proportion which shocks the conscious of law, the death sentence as awarded in respect of accused Sattan and Guddu was the appropriate sentence and the High Court ought not to have altered it. So far as the acquittal of the Hari Pal son of Kiran Singh and Hari Pal son of Ram Charan are concerned, the High Court has noted that the evidence so far as their involvement is concerned was not totally free from doubt. The High Court have analysed the factual scenario in detail to direct the acquittal. We find no reason to differ from the conclusions of the High Court. The acquittal as directed stands affirmed. So far as other four respondents i.e. appellants in Criminal Appeal No.2237 of 1999 is concerned they were charged under Section 120 B. It has been recorded by the High Court that except the suspicion which the informant was having in her mind about the involvement of these four accused persons there was neither any direct or circumstantial evidence to fasten the charge of criminal conspiracy. That being so the High Court was justified in

directing their acquittal. Criminal Appeal No. 314 is allowed. The State's appeal so far as Sattan and Upendra are concerned is allowed to the extent that the death sentence as was awarded by the trial court is restored so far as they are concerned. The appeal fails so far as respondents Hari Pal son of Kiran Singh and Hari Pal son of Ram Charan are concerned.

30. We record our appreciation for the able assistance rendered by Mr. M. Karapaga Vinayagam, learned Amicus Curae.

…….J.
(Dr. ARIJIT PASAYAT)

…….J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
February 27, 2009