REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 680 OF 2007

Mohan Anna Chavan ..Appellant

Versus

State of Maharashtra ..Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Death sentence awarded by learned Sessions Judge, Satara having been affirmed in appeal and in the reference made under Section 366 of the Code of Criminal Procedure, 1973 (in short the 'Code') by a Division Bench of the Bombay High Court this appeal has been filed. Appellant was

convicted for offences punishable under Sections 363, 376, 302 and 201 of the Indian Penal Code, 1860 (in short the 'IPC').

2. Two young girls who had not even seen ten summers in life were the victims of the sexual assault and animal lust of the accused appellant. They were not only raped but were murdered by the accused appellant. This is not the first occasion when the appellant has been convicted for rape of minor girls. Earlier in Sessions Case No.145 of 1990, the appellant was convicted by Learned IIIrd Additional Sessions Judge, Thane by judgment dated 12th June, 1989 for kidnapping a minor girl and committing rape on her. Strangely in that case the trial court had sentenced him to imprisonment for two years in each count. Thereafter accused was again convicted in Sessions Case No.162 of 1989 for having raped a minor girl of less than nine years on 28.7.1989. He was convicted by learned IIIrd Additional Sessions Judge, Satara and sentenced to ten years rigorous imprisonment. He was released after completion of said

sentence and thereafter continued his degraded acts. Two girls; one was aged about five years and the other about ten years were raped which formed the subject matter of consideration in this appeal.

3. Prosecution version as unfolded during trial is as follows:

The family of the complainant Jaysing Dinkar Jadhav (P.W.10) lived at Gulamb in the locality of homeless people. He is the brother of the grandfather of deceased Neelam and Gauri. The complainant has one brother named Vinayak. Ramdas Vinayak Jadhav (P.W.13) is the son of Vinayak. He and his family members lived jointly at Gulumb at the time of the incident. Deceased Gauri was the daughter of Ramdas Jadhav. At the relevant time, the complainant and other son of Vinayak i.e. Chandrakant were living at Khandala. Neelam is the daughter of Chandrakant but she was staying at Gulumb for the purpose of education. She was studying in Ist standard, whereas, Gauri was studying in 4th standard. They

were all residing in Beghar Vasti i.e. area of homeless people at Gulumb. Accused Mohan Anna Chavan was also residing alongwith his wife Manda Chavan (P.W.7) and daughter Reshma (P.W.8) in the said locality of homeless people at Gulumb. His house was next to the house of Ramdas Jadhav and Tanaji Jadhav.

Tanaji Jadhav (P.W.5} was the cousin brother of both Neelam and Gauri. He was also residing in Beghar vasti. On the night intervening in between 12.12.1999 to 13.12.1999 at about 2.a.m. Tanaji (P.W.5) had accompanied his wife for answering nature's call. At that time, the accused arrived at Gulumb from Bombay. He asked Tanaji to go home and told Tanaji that he will wait there. Thereupon, there was a quarrel between the two. Then accused left from there. On the next day i.e. on 14.12.1999 at about 1.30 p.m. there was quarrel between the accused and his wife Manda (P.W. 7). At that time Tahaji had peeped into the house and thereafter there was a quarrel between the accused and Tanaji. There

was a scuffle between the two. At that time, the accused told Tanaji that he would settle the matter in the evening.

On the same day in the evening at about 6.00 p.m. Reshma (P.W.8) and accused had gone to the grocery shop of Sunil (P.W. 6) for purchase of grocery articles, Reshma as noted above is the daughter of the accused. Similarly, at the same time Neelam and Gauri were also sent to the grocery shop for purchase of dry coconut, by their family members. The girls met the accused and Reshma and Gauri asked him to give sweets (Khau) to them. The accused said that he did not have change and the accused asked Gauri and Neelam to accompany him. So saying, he took both the girls with him. He thereafter committed rape on both the girls and murdered them. He threw the dead body of Neelam in the well which is situated in the field of the father of Sakhrarn Bhiku Yadav (PW11). He concealed the dead body of Gauri in a 'Kalkache Bet' after strangulating her. The accused thereafter arrived at village Gulumb on 14.12.1999 in the morning and at that time, the villagers including the prosecution witness Ramdas

Jadhav (P.W. 13), Tanaji Jadhav (P.W. 5) Sakharam Yadav (PW11) and Rajendra Sakhpal (PW12) had caught hold of the accused and tied him to a pillar of a water-tank in the locality of Homeless people, as they suspected that he would run away, because on interrogation, the accused told them to search in the hilly area of Chandak. The said information was given to police on telephone. Some of the villagers had gone in search of both the girls in the hilly area but the girls could not be found and ultimately, the accused made an extra judicial confession that he had murdered Neelam and thrown the dead body of Neelam into a well. Meanwhile, the police had arrived. The accused led the police to the well and the dead-body of Neelam was found floating in the water of the well and it was taken out. Thereafter, the inquest panchnama (Exhibit-15) was prepared in presence of panchas by PSI Deshpande (PW.15). He had also prepared the panchnama of the well (Exhibit-34). The dead-body of Neelam was forwarded to the Medical Officer, for the purpose of post-mortem examination. The accused was taken to the police station as panchnama of

his arrest and seizure of blood stained clothes which were on his person at the time of arrest was prepared. He was interrogated in the presence of panch witnesses including panch witness (PW1), Mohammed Rafik Sayyed Mulla. At about 2.00 p.m accused stated that he had concealed the dead body of Gauri near Kalkache-Bet near Chauyndi stream and he was ready to point out the same and he also stated that he would show the spots where he had molested the two girls. Accordingly this information was reduced into writing in the form of memorandum (Exh.31) and then the accused led the police party and panch witnesses and the accused had showed the places where he had committed rape on Neelam and Gauri. At the spot where he committed rape on Neelam, the earth was found disturbed and the earth was found bloodstained, pieces of green bangles and half burnt Bidis, were also found on the spot, which were duly seized by the Police. At the spot where he committed rape on Gauri, the earth and some leaves of hybrid plant were found stained with blood. Thereafter, the accused led them to one Kalkache-Bet

and showed the dead body of Gauri which was concealed in the "Kalkache-bet" i.e. a place where bamboo trees and bushes had grown thickly together. Accordingly the discovery panchnama (Exh.32) was prepared and inquest panchnama of the dead body of Gauri was prepared as per panchnama (Exhibit-16). Ligature marks were seen on the neck of Gauri which were noted in the inquest panchnama. Thereafter, the dead body of Gauri was forwarded to the medical officer for the purpose of post mortem examination. After the arrest the accused was sent for medical examination. And his nail clippings and blood sample was obtained and that was sent to the Chemical Analyser. On 25.12.1999, the accused was again interrogated in presence of the panch witnesses including Shivaji Nalawada (P.W.3) and the accused had furnished information that he had concealed the frocks of both the girls in the bushes near Chaundi stream and he was ready to point out the same. This information was reduced into writing in the form of memorandum (Exh. 37). Pursuant to the said information, two frocks came to be recovered at the instance

of the accused. After the investigation was over the charge sheet came to be filed.

15 witnesses were examined to further the prosecution version. This was a case based on circumstantial evidence. Prosecution relied on the following circumstances to fasten the guilt on the accused appellant:

"1. Last seen.
2. Motive
3. Seizure of blood stained clothes which were on the person of the accused at the time of arrest.
4. C.A. report which shows that shirt and pant of the accused were stained with blood Group A which is blood group of both the deceased.
5. Blood in the nail clippings of the accused was of 'A' group which is the blood group of both the deceased.

6. Recovery of dead body of Gauri at the instance of the accused.

7. Accused pointing out the places where rape was committed on Neelam and Gauri where the earth was found stained with blood of "A" group and other incriminating articles were seized.

8. Extra-judicial confession to PW 11.

9. Recovery of frock of both the deceased girls at the instance of the accused.

10. Accused pointing out the well wherein he had thrown Neelam.

11. False explanation by accused."

Trial court considered all the circumstances to be a complete chain to unerringly pointing at the guilt of the accused appellant. Accordingly, the conviction was recorded. Appellant was awarded death sentence for the offence punishable under Section 302 IPC while custodial sentences were imposed for the offences punishable under Sections 363,

376 and 201 IPC. Appellant questioned correctness of the judgment before the High Court and as noted above a reference was made by the trial court in view of the death sentence imposed.

The High Court found that all the circumstances except the alleged confession to have been established. After analyzing the evidence the High Court found the evidence to be cogent and credible and affirmed the death sentence looking into the ghastly acts committed by the appellant.

In support of the appeal learned counsel for the appellant submitted that the case being one which rest on circumstantial evidence, a case for conviction is not made out. Alternatively it is submitted that death sentence was not the proper sentence.

Learned counsel for the respondent on the other hand supported the judgment of the trial court and the High Court

and submitted that this was a case belonging to the rarest of rare category and death sentence was the appropriate sentence.

4. Before analyzing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

5. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh v. State of Rajasthan AIR (1977 SC 1063); Eradu and Ors. v. State of Hyderabad (AIR 1956 SC 316); Earabhadrappa v. State of Karnataka (AIR 1983 SC 446); State of U.P. v. Sukhbasi and Ors. (AIR 1985 SC 1224); Balwinder Singh v. State of Punjab (AIR 1987 SC 350); Ashok Kumar Chatterjee v. State of M.P. (AIR 1989 SC 1890). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to

negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

6. We may also make a reference to a decision of this Court in C. Chenga Reddy and Ors. v. State of A.P. (1996) 10 SCC 193, wherein it has been observed thus:

> "In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....".

7. In Padala Veera Reddy v. State of A.P. and Ors. (AIR 1990 SC 79), it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

8. In State of U.P. v. Ashok Kumar Srivastava, (1992 Crl.LJ 1104), it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour

of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

9. Sir Alfred Wills in his admirable book "Wills' Circumstantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable

hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted".

10. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952.

11. In Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh, (AIR 1952 SC 343), wherein it was observed thus:

> "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human

> probability the act must have been done by the accused."

12. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra, (AIR 1984 SC 1622). Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so compete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

13. In the instant case interestingly PW 7 and PW 8 are the key witnesses. PWs. 7 & 8 are the wife and daughter of the accused appellant.

14. In Joseph and Poulo v. State of Kerala [2000(5) SCC 197] it was, inter alia, held as follows:

"The formidable incriminating circumstances against the appellant, as far as we could see, are that the deceased was taken away from the convent by the appellant under a false pretext and she was last seen alive only in his company and that it is on the information furnished by the appellant in the course of investigation that jewels of the deceased which

were sold to PW 11 by the appellant, were seized."

"The incriminating circumstances enumerated above unmistakably and inevitably lead to the guilt of the appellant and nothing has been highlighted or brought on record to make the facts proved or the circumstances established to be in any manner in consonance with the innocence at any rate of the appellant. During the time of questioning under Section 313 Cr.P.C. the appellant instead of making at least an attempt to explain or clarity the incriminating circumstances inculpating him, and connecting him with the crime by his adamant attitude of total denial of everything when those circumstances were brought to his notice by the Court not only lost the opportunity but stood self-condemned. Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed.(See: State of Maharashtra v. Suresh). That missing link to connect the accused appellant, we find in this case provided by the blunt and outright denial of every one and all that incriminating circumstances pointed out which, in our view, with sufficient and reasonable certainty on the facts proved, connect the accused with the

> death and the cause of the death of Gracy and for robbing her of her jewellery worn by her — MOs 1 to 3, under Section 392. The deceased meekly went with the accused from the Convent on account of the misrepresentation made that her mother was seriously ill and hospitalised apparently reposing faith and confidence in him in view of his close relationship — being the husband of her own sister, but the appellant seems to have not only betrayed the confidence reposed in him but also took advantage of the loneliness of the hapless woman. The quantum of punishment imposed is commensurate with the gravity of the charges held proved and calls for no interference in our hands, despite the fact that we are not agreeing with the High Court in respect of the findings relating to the charge under Section 376.

15. In Damodar v. State of Karnataka [2000 SCC (Crl) 90] it was, inter alia, observed as follows:

> "From the evidence of PWs. 1,6,7 & 8 the prosection has satisfactorily established that the appellant was last seen with the deceased on 30.4.91. The appellant either in his Section 313 Cr.P.C. statement or by any other evidence has not established when and where he and the deceased parted company after being last seen."

16. The other circumstances established were the chemical analyst's report of the clothes and nail clippings of the accused, the recovery of the dead bodies pursuant to the disclosure made in terms of Section 27 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'), recovery of the frocks at the instance of the accused, false explanation given and the plea of alibi which has been rightly discarded by the courts below. The prosecution has established that both the girls were missing since about 6 p.m. on 3.12.1999 and the accused appellant was seen in the company of the girl till morning of 14.12.1994 and soon thereafter dead body of Neelam was found and thereafter the dead body of Gauri was found. The post mortem of Neelam was conducted on 14.12.1994 between 9.30 P.M. to 10.30 P.M. and post mortem of Gouri was conducted on 14.12.1994 between 10.30 P.M. to 11.30 P.M. The evidence of Dr.-PW 9 clearly shows that the girls according to him were murdered within 36 hours and the rape has been committed on them within 48 hours before the

time of post mortem. Therefore, the time given by the doctors fits with the prosecution case of timings relating to last seen. The prosecution has been able to establish the accusations.

17. The offence of rape occurs in Chapter XVI of IPC. It is an offence affecting the human body. In that Chapter, there is a separate heading for 'Sexual offence', which encompasses Sections 375, 376, 376-A, 376-B, 376-C, and 376-D. 'Rape' is defined in Section 375. Sections 375 and 376 have been substantially changed by Criminal Law (Amendment) Act, 1983, and several new sections were introduced by the new Act, i.e. 376-A, 376-B, 376-C and 376-D. The fact that sweeping changes were introduced reflects the legislative intent to curb with iron hand, the offence of rape which affects the dignity of a woman. The offence of rape in its simplest term is 'the ravishment of a woman, without her consent, by force, fear or fraud', or as 'the carnal knowledge of a woman by force against her will'. 'Rape' or 'Raptus' is when a man hath carnal knowledge of a woman by force and against her

will (Co. Litt. 123-b); or as expressed more fully,' rape is the carnal knowledge of any woman, above the age of particular years, against her will; or of a woman child, under that age, with or against her will' (Hale PC 628). The essential words in an indictment for rape are rapuit and carnaliter cognovit; but carnaliter cognovit, nor any other circumlocution without the word rapuit, are not sufficient in a legal sense to express rape; 1 Hon.6, 1a, 9 Edw. 4, 26 a (Hale PC 628). In the crime of rape, 'carnal knowledge' means the penetration to any the slightest degree of the organ alleged to have been carnally known by the male organ of generation (Stephen's "Criminal Law" 9th Ed. p.262). In 'Encyclopoedia of Crime and Justice' (Volume 4, page 1356) it is stated ".....even slight penetration is sufficient and emission is unnecessary". In Halsbury's Statutes of England and Wales (Fourth Edition) Volume 12, it is stated that even the slightest degree of penetration is sufficient to prove sexual intercourse. It is violation with violence of the private person of a woman-an-outrage by all means. By the very nature of the offence it is an obnoxious act

of the highest order.

18. The physical scar may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame.

19. The law regulates 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."

20. 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).

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

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

29. 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."

30. 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 (surpa)* 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."

31. 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.

32. 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.

33. 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.

34. This position is highlighted in Union of India & Ors. v. Devendra Nath Rai [2006 (2) SCC 243].

35. The case at hand falls in the rarest of rare category. The past instances highlighted above, the depraved acts of the accused call for only one sentence that is death sentence.

36. Looked at from any angle the judgment of the High Court, confirming the conviction and sentence imposed by the trial court, do not warrant any interference.

37. We record our appreciation for the able assistance rendered by learned amicus curiae in the true spirit of friend and officer of the Court.

38. The appeal fails and is dismissed.

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...J.

(Dr. ARIJIT PASAYAT)

.....J.

(P. SATHASIVAM)

.....J.

(Dr. MUKUNDAKAM SHARMA)

New Delhi,
May 16, 2008