A MOHINDER SINGH

v.

STATE OF PUNJAB

(Criminal Appeal Nos. 1278-1279 of 2010)

JANUARY 28, 2013

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[P. SATHASIVAM AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Code of Criminal Procedure, 1973 – ss.366, 432 and C *433A – Double murder – Appellant-accused committed murder of his wife and daughter in the background of inimical relationship between them on account of criminal cases registered against him by his wife for committing rape on the said daughter, for which he was sentenced to rigorous* D *imprisonment for 12 years, and for attacking her after release on parole for which an FIR was registered against him – Appellant had committed the offence with a deadly weapon i.e. 'Kulhara' (Axe) – Trial court convicted the appellant u/s.302 IPC and sentenced him to death – High Court affirmed* E *the conviction and confirmed the death sentence – Held: In the peculiar facts and circumstances, the case did not fall within the category of 'rarest of rare case' though it called for stringent punishment – Appellant was feeling frustrated because of the attitude of his wife and children – It was thirst* F *for retaliation, which became the motivating factor in this case – Appellant not such a dangerous person that sparing his life will endanger the community – He did not harm his other daughter, namely, PW-2 even though he had a good chance for the same – Moreover, probability of appellant's* G *rehabilitation and reformation not foreclosed – Therefore, his sentence modified from one of death penalty to that of life imprisonment till the end of his life – Appellant to undergo rigorous imprisonment for life meaning thereby the end of his life subject, however, subject to remission granted by the*

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appropriate Government satisfying the conditions prescribed in s.432 CrPC and further substantiate check u/s.433A CrPC by passing appropriate speaking orders.

According to the prosecution, the appellant-accused committed murder of his wife and daughter-'G' in the background of inimical relationship between them on account of criminal cases registered against him by his wife for committing rape on 'G', for which he was sentenced to rigorous imprisonment for 12 years, and for attacking her after release on parole for which an FIR was registered against him. The appellant had entered the scene of occurrence to commit the said offence carrying a deadly weapon i.e. 'Kulhara' (Axe) which was used in the commission of both the killings. The appellant committed the offence in the presence of his youngest daughter (PW-2). The trial court convicted the appellant under Section 302 IPC and sentenced him to death. By the impugned judgment, the High Court dismissed the appeal of the appellant and confirmed the death sentence imposed on him by the trial court.

Disposing of the appeals, the Court

Per Sathasivam, J. [for himself and Kalifulla, J.]

HELD: 1. In terms of Section 366(1) of CrPC, when the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court. The scope and application of the above section is only in cases where a sentence of death has been passed by the Court of Session. The Court of Session should refer the proceedings to the High Court and the High Court can only deal with them as a Court of reference. It is the practice of the High Court to be satisfied on the facts as well as the law of the case, that the conviction is right, before it proceeds to confirm that

A sentence. In other words, the High Court has to come to its own independent conclusion as to the guilt or innocence of the accused, independently of the opinion of the Judge. In a reference for confirmation of death sentence, the High Court must examine the entire B evidence for itself independent of the Session Court's views. While confirming the capital sentence, the High Court is under an obligation to itself consider what sentence should be imposed and not be content with the trial Court's decision on the point unless some reason is C shown for reducing the same. Where, in addition to an appeal filed by an accused sentenced to death, the High Court has to dispose of the reference for confirmation of death sentence under Section 366 of the Code, the High Court, while dealing with reference, should consider the D proceedings in all its aspects and come to an independent conclusion on the material on record apart from the views expressed by the Sessions Judge. The confirmation of death sentence cannot be based only on the precedents and or aggravating facts and circumstances of any other case. [Para 5] [101-G-H; 102- E A-E]

2.1. In the instant case, the accused-appellant had earlier committed rape on his deceased daughter-'G' in 1999 and in that case, his deceased wife was a witness F wherein the accused was convicted under Sections 376 and 506 IPC and sentenced to RI for 12 years. It is also subsequently taken on record that his deceased wife sent the accused out of his house and as a consequence, he had to live separately in a rented house with no means G of livelihood. It was thirst for retaliation, which became the motivating factor in this case. The case of the accused does not come within the category of "rarest of rare" case to award death penalty. [Para 15] [106-G-H; 107-A-B]

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2.2. The doctrine of "rarest of rare" confines two aspects and when both the aspects are satisfied only then the death penalty can be imposed. Firstly, the case must clearly fall within the ambit of "rarest of rare" and secondly, when the alternative option is unquestionably foreclosed. Bachan Singh case suggested selection of death punishment as the penalty of last resort when, alternative punishment of life imprisonment will be futile and serves no purpose. [Para 16] [107-C-D]

2.3. In life sentence, there is a possibility of achieving deterrence, rehabilitation and retribution in different degrees. But the same does not hold true for the death penalty. It is unique in its absolute rejection of the potential of convict to rehabilitate and reform. It extinguishes life and thereby terminates the being, therefore, puts an end anything to do with the life. This is the big difference between two punishments. Thus, before imposing death penalty, it is imperative to consider the same. [Para 17] [107-E-F]

2.4. "Rarest of rare" dictum hints at this difference between death punishment and the alternative punishment of life imprisonment. Life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second aspect to the "rarest of rare" doctrine, the court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. [Para 18] [107-G-H; 108-A]

2.5. Treating the instant case on the touchstone of the guidelines laid down in Bachan Singh, Machhi Singh **and other decisions and balancing the aggravating and mitigating circumstances emerging from the evidence on record, the instant case cannot appropriately be called**

A the "rarest of rare" case warranting death penalty. Also it is difficult to hold that the appellant is such a dangerous person that sparing his life will endanger the community. Also it cannot be said that the circumstances of the crime are such that there is no other alternative but to impose
B death sentence even after according maximum weightage to the mitigating circumstances in favour of the accused. This case is the one in which humanist approach must be taken in the matter of awarding punishment. [Para 19] [108-B-D]

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2.6. It is well settled law that awarding of life sentence is a rule and death is an exception. Life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years or even 30 years, rather it always means the whole natural life. This Court has always clarified that the
D punishment of a fixed term of imprisonment so awarded would be subject to any order passed in exercise of clemency powers of the President of India or the Governor of the State, as the case may be. Pardons, reprieves and remissions under Article 72 or Article 161
E of the Constitution of India are granted in exercise of prerogative power. There is no scope of judicial review of such orders except on very limited grounds such as the non-application of mind while passing the order, non-consideration of relevant material, or if the order suffers
F from arbitrariness. The power to grant pardons and to commute sentences is coupled with a duty to exercise the same fairly, reasonably and in terms of restrictions imposed in several provisions of the Code. A convict undergoing life imprisonment is expected to remain in
G custody till the end of his life, subject to any remission granted by the appropriate Government under Section 432 of the Code which in turn is subject to the procedural checks mentioned in the said provision and further substantive check in Section 433-A of the Code. [Paras
H 20, 21 and 22] [108-E-H; 109-A-C-H; 110-A-B]

2.7. One significant factor in this case, which we should not loose sight of is that he did not harm his other daughter, namely, PW-2 even though he had a good chance for the same. Further, it was highlighted that he being a poor man and unable to earn his livelihood since he was driven out of his house by his deceased wife. It is also his claim that if he was allowed to live in the house, he could easily meet both his ends and means, as the money which he was spending by paying rent would have been saved. It is his further grievance that his deceased wife was adamant that he should live outside and should not lead a happy married life and that was the reason that their relations were strained. This also shows that the accused was feeling frustrated because of the attitude of his wife and children. Moreover, the probability of the offender's rehabilitation and reformation is not foreclosed in this case. Likewise, it is seen from the affidavit filed by the sister of the accused that his family has not totally renounced as yet. Hence, there is a possibility for reformation in the present appellant. For the reasons aforementioned, this is not a case where death penalty should be imposed. The appellant-accused, therefore, instead of being awarded death penalty, is sentenced to undergo rigorous imprisonment for life, meaning thereby, the end of his life but subject to any remission granted by the appropriate Government satisfying the conditions prescribed in Section 432 CrPC further substantiate check under Section 433-A CrPC by passing appropriate speaking orders. [Paras 23, 24] [110-B-G; 111-A-B]

Bachan Singh vs. State of Punjab **(1980) 2 SCC 684 and** *Machhi Singh and Ors. vs. State of Punjab* **(1983) 3 SCC 470: 1983 (3) SCR 413 – relied on.**

State of Uttar Pradesh vs. Sanjay Kumar **(2012) 8 SCC 537;** *Sangeet and Anr. vs. State of Haryana* **2012 (11) Scale**

A **140 and *Panchhi & Ors. vs. State of U.P.* (1998) 7 SCC 177: 1998 (1) Suppl. SCR 40 – referred to.**

Case Law Reference:

1998 (1) Suppl. SCR 40	**referred to**	**Para 11**
B **(1980) 2 SCC 684**	**relied on**	**Para 12**
1983 (3) SCR 413	**relied on**	**Para 13**
(2012) 8 SCC 537	**referred to**	**Para 21**
C **2012 (11) Scale 140**	**referred to**	**Para 22**

Per Kalifulla, J. [Supplementing]

1.1. The conduct of the appellant, if analyzed, based on the previous crimes committed by him, it is found that D **in the year 1999 as found by the courts below the appellant committed rape on his deceased daughter 'G' when she was minor and that too after beating her. To which beastly action, unfortunately the other deceased (viz) his wife, was an eye-witness. The conduct of the** E **appellant in the commission of the said offence was not only bordering on immorality of the highest order but would be extremely difficult for anyone to lightly brush aside such a conduct by stating that either it was committed in a fit of anger or rage or such other similar** F **situation. When the father himself happens to be the assailant in the commission of such beastly crime, one can visualize the pathetic situation in which the girl would have been placed and that too when such a shameless act was committed in the presence of her own mother.** G **When the daughter and the mother were able to get their grievances redressed by getting the appellant convicted for the said offence of rape one would have in the normal course expected the appellant to have displayed a conduct of remorse. Unfortunately, the subsequent** H **conduct of the appellant when he was on parole**

disclosed that he approached the victims in a far more vengeful manner by assaulting the hapless victims which resulted in filing of an FIR once in the year 2005 and subsequently when he was on parole in the year 2006. The monstrous mindset of the appellant appears to have not subsided by mere assault on the victims who ultimately displayed his extreme inhuman behaviour by eliminating his daughter and wife in such a gruesome manner in which he committed the murder by inflicting the injuries on the vital parts of the body of the deceased and that too with all vengeance at his command in order to ensure that they met with instantaneous death. The nature of injuries as described in the postmortem report speaks for itself as to the vengeance with which the appellant attacked the hapless victims. He was not even prepared to spare his younger daughter (viz) PW-2 who, however, escaped the wrath of the appellant by bolting herself inside a room after she witnessed the grotesque manner in which the appellant took away the life of his wife and daughter. [Para 9] [116-F-H; 117-A-H]

1.2. However, the case still does not fall within the category of 'rarest of rare case' though it calls for a stringent punishment. Therefore, the sentence is modified from one of death penalty to that of life imprisonment till the end of his life. The appellant deserves to be sentenced to undergo rigorous imprisonment for life meaning thereby the end of his life subject, however, to remission granted by the appropriate Government satisfying the conditions prescribed in Section 432 of the Code of Criminal Procedure and further substantiate check under Section 433A of the Code by passing appropriate speaking orders. [Paras 10, 11] [118-B-C, F-G]

Bachan Singh Vs. State of Punjab **(1980) 2 SCC 684;** *Machhi Singh and others Vs. State of Punjab* **(1983) 3 SCC 470: 1983 (3) SCR 413;** *Swamy Shraddananda @ Murali Manohar Mishra Vs. State of Karnataka* **(2008) 13 SCC 767:**

A **2008 (11) SCR 93;** *Santosh Kumar Satishbhushan Bariyar Vs. State of Maharashtra* **(2009) 6 SCC 498: 2009 (9) SCR 90;** *Mohd. Farooq Abdul Gafur & Anr. Vs. State of Maharashtra* **(2010) 14 SCC 641: 2009 (12) SCR 1093;** *Haresh Mohandas Rajput Vs. State of Maharashtra* **(2011) 12**
B **SCC 56: 2011 (14) SCR 921;** *State of Maharashtra Vs. Goraksha Ambaji Adsul* **AIR 2011 SC 2689: 2011 (9) SCR 41;** *Mohammed Ajmal Mohammadamir Kasab @ Abu Mujahid Vs. State of Maharashtra* **JT 2012 (8) SC 4;** *Gopal Vinayak Godse Vs. State of Maharashtra & Ors.* **AIR 1961 SC**
C **600: 1961 SCR 440 and** *Mohd. Munna Vs. Union of India and Ors.* **(2005) 7 SCC 417: 2005 (3) Suppl. SCR 233 – relied on.**

Ravji @ Ram Chandra Vs. State of Rajasthan **(1996) 2 SCC 175: 1995 (6) Suppl. SCR 195;** *Shivaji @ Dadya*
D *Shankar Alhat Vs. State of Maharashtra* **(2008) 15 SCC 269: 2008 (13) SCR 81;** *Mohan Anna Chavan Vs. State of Maharashtra* **(2008) 7 SCC 561: 2008 (8) SCR 1072;** *Bantu Vs. State of Uttar Pradesh* **(2008) 11 SCC 113: 2008 (11) SCR 184;** *Surja Ram Vs. State of Rajasthan* **(1996) 6 SCC**
E **271: 1996 (6) Suppl. SCR 783;** *Dayanidhi Bisoi Vs. State of Orissa* **(2003) 9 SCC 310 and** *State of Uttar Pradesh Vs. Sattan @ Satyendra & Ors.* **(2009) 4 SCC 736: 2009 (3) SCR 643 – referred to.**

F **Case Law Reference:**

(1980) 2 SCC 684	**relied on**	**Para 5**
1983 (3) SCR 413	**relied on**	**Para 5**
2008 (11) SCR 93	**relied on**	**Para 8**
G **2009 (9) SCR 90**	**relied on**	**Para 8**
2009 (12) SCR 1093	**relied on**	**Para 8**
2011 (14) SCR 921	**relied on**	**Para 8**
H **2011 (9) SCR 41**	**relied on**	**Para 8**

JT 2012 (8) SC 4	**relied on**	**Para 8**	A
1995 (6) Suppl. SCR 195	**referred to**	**Para 8**	
2008 (13) SCR 81	**referred to**	**Para 8**	
2008 (8) SCR 1072	**referred to**	**Para 8**	B
2008 (11) SCR 184	**referred to**	**Para 8**	
1996 (6) Suppl. SCR 783	**referred to**	**Para 8**	
(2003) 9 SCC 310	**referred to**	**Para 8**	
2009 (3) SCR 643	**referred to**	**Para 8**	C
1961 SCR 440	**relied on**	**Para 10**	
2005 (3) Suppl. SCR 233	**relied on**	**Para 11**	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1278-1279 of 2010. D

From the Judgment & Order dated 30.05.2008 of the High Court of Punjab and Haryana at Chandigarh in Murder Reference No. 8 of 2007 and Criminal Appeal No. 1033-DB of 2007. E

Tripurari Raj, B.S. Bilowria, M.S. Khan, Vishnu Sharma for the Appellant.

V. Madhukar, AAG, Srajita Mathur, Anvita Cowshish, Kuldip Singh for the Respondent. F

The Judgments of the Court was deliverd by

P. SATHASIVAM,J. 1. These appeals are filed against the common final judgment and order dated 30.05.2008 passed by the High Court of Punjab and Haryana at Chandigarh in Murder Reference No. 8 of 2007 and Criminal Appeal No. G 1033-DB of 2007 whereby the High Court accepted the murder reference and confirmed the death sentence imposed on the appellant herein by the Sessions Judge, Ludhiana by order dated 22.11.2007 in Session Case No. 32 of 2006 and dismissed the appeal filed by him. H

A 2. **Brief facts:**

(a) According to the prosecution, on 08.01.2006, the appellant-accused has committed murder of his wife-Veena Verma and daughter-Geetu Verma in the background of inimical relationship between them on account of criminal cases
B registered against him by his wife for committing rape on his minor daughter–Geetu Verma, for which he was sentenced to rigorous imprisonment for 12 years, and for attacking her after release on parole in January, 2005 for which an FIR was registered against him.

C (b) On the date of incident, i.e., 08.01.2006, at around 06:30 p.m., when Shalu Verma-the complainant, daughter of the appellant-accused was present along with her mother-Veena Verma and sister-Geetu Verma in their house at village Partap Singh Wala, Haibowal, Ludhiana, at that time, the
D appellant-accused, who was living separately in a rented accommodation, came to the said place carrying a Kulhara (axe) in his hand. The complainant informed her mother about the same. When Veena Verma came to the lobby of the house, the appellant-accused gave an axe blow on her head. She
E fell on the ground and, thereafter, he gave two more blows using axe on her neck and hand. Immediately after that, he stepped towards Geetu Verma and gave 3 repeated blows on her head. Both of them smeared with blood and died on the spot. When he approached Shalu, she went into the room and bolted the
F same from inside. The appellant-accused fled away leaving the axe at the spot. After sometime, she came outside the room and raised hue and cry.

(c) On the basis of the statement of Shalu (PW-2), a First Information Report (FIR) being No. 6 was registered against
G the appellant-accused under Section 302 of the Indian Penal Code, 1860 (in short "the IPC") at P.S. Haibowal, Ludhiana. On the same day, the appellant-accused was arrested from his rented house and the case was committed to the Court of Session, Ludhiana and numbered as Session Case No. 32 of
H 2006

(d) The Sessions Judge, Ludhiana, by order dated 22.11.2007, convicted the appellant under Section 302 of IPC and sentenced him to death.

(e) Against the said order, the appellant preferred an appeal before the High Court and the State filed a reference under Section 366 of the Code of Criminal Procedure, 1973 (in short 'the Code') for confirmation of death sentence. By a common impugned order dated 30.05.2008, the High Court while accepting the murder reference confirmed the death reference imposed by the trial Court and dismissed the appeal filed by the appellant-accused.

(f) Aggrieved by the said judgment, the appellant preferred these appeals by way of special leave before this Court.

(g) This Court, by order dated 20.07.2009, issued notice on the special leave petitions confining to sentence only. Even on 16.07.2010 when this Court granted leave, nothing has been stated about the above said initial notice. Hence, in these appeals, we are concerned about the quantum of sentence imposed on the appellant.

3. Heard Mr. Tripurari Raj, learned counsel for the appellant and Mr. V. Madhukar, learned Additional Advocate General for the respondent-State.

4. Though at the outset, learned counsel for the appellant insisted us to go into the entire merits of the case including the circumstances relied on by the prosecution and accepted by the Courts below, in view of the fact that this Court has issued notice confining to sentence only, we rejected his plea.

5. We are conscious of the fact that in terms of Section 366(1) of the Code, when the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court. The scope and application of the above section is only in cases where a sentence of death

A has been passed by the Court of Session. The Court of Session should refer the proceedings to the High Court and the High Court can only deal with them as a Court of reference. It is the practice of the High Court to be satisfied on the facts as well as the law of the case, that the conviction is right, before it B proceeds to confirm that sentence. In other words, the High Court has to come to its own independent conclusion as to the guilt or innocence of the accused, independently of the opinion of the Judge. In a reference for confirmation of death sentence, the High Court must examine the entire evidence for itself C independent of the Session Court's views. While confirming the capital sentence, the High Court is under an obligation to itself consider what sentence should be imposed and not be content with the trial Court's decision on the point unless some reason is shown for reducing the same. Where, in addition to an appeal D filed by an accused sentenced to death, the High Court has to dispose of the reference for confirmation of death sentence under Section 366 of the Code, the High Court, while dealing with reference, should consider the proceedings in all its aspects and come to an independent conclusion on the material on record apart from the views expressed by the E Sessions Judge. The confirmation of death sentence cannot be based only on the precedents and or aggravating facts and circumstances of any other case.

6. Keeping the above principles in mind, let us analyze the F materials placed before the trial Judge as well as the confirmation order of the High Court. In view of the limited notice and in the light of the mandates provided under Section 366 of the Code relating to confirmation of death sentence by the High Court, we are of the view that considering two earlier G orders passed by this Court on 20.07.2009 and 16.07.2010 confining to the sentence, we intend to concentrate only to the question, namely, acceptability or otherwise of the "sentence" hereunder.

7. No doubt, it is a case of double murder by the appellant- H

accused who murdered his wife and daughter in a gruesome manner in the background of inimical relationship between the family on account of criminal cases registered against the appellant-accused at the instance of his deceased wife – Veena Verma and deceased daughter- Geetu Verma for which he was sentenced to rigorous imprisonment for 12 years' for committing rape on his daughter-Geetu Verma. In that case his deceased wife was a witness. It is seen that after release on parole in January, 2005, he attacked on his wife and an FIR was registered against him for violating the conditions of release. It is further seen that the accused committed the offence in the presence of his youngest daughter Shalu (PW-2). It is also proved that the appellant had entered the scene of occurrence to commit the said offence carrying a deadly weapon i.e. 'Kulhara' (Axe) which was used in the commission of both the killings. The members present in the house were his family members, viz., wife and two daughters.

8. We noticed the following special reasons given by the trial Court for warranting the death sentence and the High Court for confirming the same which are as follows:

(i) The appellant-accused had earlier committed rape on his deceased daughter – Geetu Verma in the year 1999 when she was a minor after giving beatings and threat to her and in that case his wife-Veena Verma (since deceased) was a witness and that a case under Sections 376 and 506 IPC was registered against him which finally resulted in rigorous imprisonment for 12 years.

(ii) While on parole in January 2005, the appellant-accused having violated the conditions of release, attacked his wife-Veena Verma and an FIR being No. 58 dated 06.04.2005 was registered against him under Sections 323, 324 and 506 IPC which is pending in the Court of JMIC, Ludhiana on the date of alleged occurrence.

(iii) The appellant-accused entered into the house with a

A deadly weapon 'Kulhara' (Axe) and caused unprovoked brutal attacks on the victims.

(iv) The appellant-accused caused repeated blows on the vital parts of the body of his wife and daughter resulting in instantaneous deaths in the presence of his youngest daughter
B of tender age, who by running into a room and bolting its from inside, saved herself when the accused proceeded towards her.

(v) The appellant-accused gave first blow to his wife – Veena Verma from behind with Kulhara (axe) on her head and
C when she fell down on the ground he caused successive blows on her neck and the head and, thereafter, he attacked his daughter–Geetu Verma and caused repeated Kulhara blows till her death. Thereafter, he proceeded towards his youngest daughter Shalu (PW-2) and showed Kulhara to her, who ran into
D a room and bolted it from inside.

(vi) In the case of the deceased - Veena Verma, out of 4 incised wounds, Injury Nos. 1 & 2 were caused on head, Injury No.3 on neck and Injury No. 4 resulted in partial amputation of left index finger from 1/3rd with clean cut margins. Regarding
E the deceased - Geetu Verma, who had been earlier subjected to diabolical act of rape by the appellant-accused during her minority in 1999, as many as 9 injuries were caused, out of which 7 were incised wounds and 2 were abrasions. Further, out of 7 incised wounds 3 had been caused on head region
F itself, 1 on the left mastoid and rest 3 on left and right elbow and fingers. In both the cases, the victims died instantaneous death.

(vii) Apart from taking revenge for his conviction and sentence, the appellant-accused has committed the offence for
G personal gain as he wanted the house, being occupied by his deceased wife and children, to be vacated for his personal use.

9. The crime of double murder of his wife and daughter in a gruesome and diabolical manner will irrefutably be taken into
H consideration as aggravating circumstance. However, for some

reasons, the High Court did not find any mitigating circumstance in favour of the accused for the purpose of balancing aggravating against mitigating. Even, the High Court recorded at page 38 of the impugned order as under:-

> "... In this background, looking for a strong mitigating circumstance, may not yield any result and this offence has in fact, ceased to remain a simple case of murder. This has rather acquired an enormity to the extent of rushing into the category of the "rarest of rare case."

It is pertinent to mention that in spite of the onerous duty bestowed on the reference court to balance the aggravating and mitigating circumstances, the High Court evaded the same.

10. On the other hand, the Sessions Court had attempted to draw a balance of aggravating and mitigating circumstances by stating two mitigating circumstances as follows:

1. Firstly, his age at the time of commission of crime i.e. 41 years.

2. Secondly, that the accused is a poor man, who had no livelihood.

While it is true that the above two circumstances alone will not make good for commuting the death sentence to life sentence, however, before we move on to enumerate the other mitigating circumstances in this case, it is necessary to consider few case laws which reiterate that brutality is not the sole criterion of determining whether a case falls under the "rarest of rare" categories.

11. In *Panchhi & Ors. vs. State of U.P.*, (1998) 7 SCC 177, this Court held that brutality is not the sole criterion of determining whether a case falls under the "rarest of rare" categories, thereby justifying the commutation of a death sentence to life imprisonment. This Court observed:

A "No doubt brutality looms large in the murders in this case particularly of the old and also the tender age child. It may be that the manner in which a murder was perpetrated may be a ground but not the sole criterion for judging whether the case is one of the "rarest of rare cases" as
B indicated in Bachan Singh's case."

12. The Constitution Bench of this Court, by a majority, upheld the constitutional validity of death sentence in *Bachan Singh vs. State of Punjab,* (1980) 2 SCC 684. This Court took particular care to say that death sentence shall not normally be
C awarded for the offence of murder and that it must be confined to the "rarest of rare" cases when the alternative option is foreclosed. In other words, the Constitution Bench did not find death sentence valid in all cases except in the aforesaid cases wherein the lesser sentence would be wholly inadequate.
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13. In *Machhi Singh and Ors. vs. State of Punjab,* (1983) 3 SCC 470, a three-Judge Bench of this Court while following the ratio in *Bachan Singh* (supra) laid down certain guidelines amongst which the following is relevant in the present case:

E "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
F the option is exercised."

14. We have extracted the above reasons of the two courts only to point out that, in a way, every murder is brutal, and the difference between the one from the other may be on account
G of mitigating or aggravating features surrounding the murder.

15. In the instant case, as already mentioned, the accused had earlier committed rape on his deceased daughter-Geetu Verma in 1999 and in that case, his deceased wife - Veena Verma was a witness wherein the accused was convicted under
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Sections 376 and 506 IPC and sentenced to RI for 12 years. It is also subsequently taken on record that his deceased wife sent the accused out of his house and as a consequence, he had to live separately in a rented house with no means of livelihood. It was thirst for retaliation, which became the motivating factor in this case. In no words are we suggesting that the motive of the accused was correct rather we feel it does not come within the category of "rarest of rare" case to award death penalty.

16. The doctrine of "rarest of rare" confines two aspects and when both the aspects are satisfied only then the death penalty can be imposed. Firstly, the case must clearly fall within the ambit of "rarest of rare" and secondly, when the alternative option is unquestionably foreclosed. *Bachan Singh* (supra) suggested selection of death punishment as the penalty of last resort when, alternative punishment of life imprisonment will be futile and serves no purpose.

17. In life sentence, there is a possibility of achieving deterrence, rehabilitation and retribution in different degrees. But the same does not hold true for the death penalty. It is unique in its absolute rejection of the potential of convict to rehabilitate and reform. It extinguishes life and thereby terminates the being, therefore, puts an end anything to do with the life. This is the big difference between two punishments. Thus, before imposing death penalty, it is imperative to consider the same.

18. "Rarest f rare" dictum, as discussed above, hints at this difference between death punishment and the alternative punishment of life imprisonment. The relevant question here would be to determine whether life imprisonment as a punishment would be pointless and completely devoid of any reason in the facts and circumstances of the case. As discussed above, life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the

A second aspect to the "rarest of rare" doctrine, the court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme.

19. Treating the case on the touchstone of the guidelines laid down in *Bachan Singh* (supra), *Machhi Singh* (supra) and B other decisions and balancing the aggravating and mitigating circumstances emerging from the evidence on record, we are not persuaded to accept that the case can appropriately be called the "rarest of rare" case warranting death penalty. We also find it difficult to hold that the appellant is such a dangerous C person that sparing his life will endanger the community. We are also not satisfied that the circumstances of the crime are such that there is no other alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances in favour of the accused. In our D considered view, this case is the one in which humanist approach must be taken in the matter of awarding punishment.

20. It is well settled law that awarding of life sentence is a rule and death is an exception. The application of the "rarest E of rare" case principle is dependant upon and differs from case to case. However, the principles laid down and reiterated in various decisions of this Court show that in a deliberately planned crime, executed meticulously in a diabolic manner, exhibiting inhuman conduct in a ghastly manner, touching the F conscience of everyone and thereby disturbing the moral fiber of the society, would call for imposition of capital punishment in order to ensure that it acts as a deterrent. While we are convinced that the case of the prosecution based on the evidence adduced confirms the commission of offence by the appellant, however, we are of the considered opinion that still G the case does not fall within the four corners of the "rarest of rare" case.

21. Life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years or even 30 years, rather H it always means the whole natural life. This Court has always

clarified that the punishment of a fixed term of imprisonment so awarded would be subject to any order passed in exercise of clemency powers of the President of India or the Governor of the State, as the case may be. Pardons, reprieves and remissions under Article 72 or Article 161 of the Constitution of India are granted in exercise of prerogative power. As observed in *State of Uttar Pradesh vs. Sanjay Kumar*, (2012) 8 SCC 537, there is no scope of judicial review of such orders except on very limited grounds such as the non-application of mind while passing the order, non-consideration of relevant material, or if the order suffers from arbitrariness. The power to grant pardons and to commute sentences is coupled with a duty to exercise the same fairly, reasonably and in terms of restrictions imposed in several provisions of the Code.

22. In order to check all arbitrary remissions, the Code itself provides several conditions. Sub-sections (2) to (5) of Section 432 of the Code lay down basic procedure for making an application to the appropriate Government for suspension or remission of sentence either by the convict or someone on his behalf. We are of the view that exercise of power by the appropriate Government under sub-section (1) of Section 432 of the Code cannot be suo motu for the simple reason that this is only an enabling provision and the same would be possible subject to fulfillment of certain conditions. Those conditions are mentioned either in the Jail Manual or in statutory rules. This Court in various decisions has held that the power of remission cannot be exercised arbitrarily. In other words, the decision to grant remission has to be well informed, reasonable and fair to all concerned. The statutory procedure laid down in Section 432 of the Code itself provides this check on the possible misuse of power by the appropriate Government. As rightly observed by this Court in *Sangeet and Anr. vs. State of Haryana*, 2012 (11) Scale 140, there is misconception that a prisoner serving life sentence has an indefeasible right to release on completion of either 14 years or 20 years imprisonment. A convict undergoing life imprisonment is

A expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under Section 432 of the Code which in turn is subject to the procedural checks mentioned in the said provision and further substantive check in Section 433-A of the Code.

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23. One significant factor in this case, which we should not loose sight of is that he did not harm his other daughter, namely, Shallu (PW-2) even though he had a good chance for the same. Further, it was highlighted that he being a poor man and unable to earn his livelihood since he was driven out of his house by C his deceased wife. It is also his claim that if he was allowed to live in the house, he could easily meet both his ends and means, as the money which he was spending by paying rent would have been saved. It is his further grievance that his deceased wife was adamant and he should live outside and D should not lead a happy married life and that was the reason that their relations were strained. This also shows that the accused was feeling frustrated because of the attitude of his wife and children. Moreover, the probability of the offender's rehabilitation and reformation is not foreclosed in this case. E Likewise, we can see from the affidavit filed by the sister of the accused that his family has not totally renounced as yet. This is also clear that pending the above appeals, the appellant-accused, through his sister – Pramjit Kaur, filed an application for modification of earlier orders of this Court dated 20.07.2009 F and 16.07.2010 for widening the scope of the appeals and sought permission to raise all available grounds. For this application, only his sister – Pramjit Kaur has filed an affidavit strengthening the above points. As mentioned above, the affidavit of his sister shows that his family has not totally G renounced him. Hence, there is a possibility for reformation in the present appellant. Keeping in mind all these materials, we do not think that the present case warrants the award of the death penalty.

24. For the reasons aforementioned, we are of the opinion H

that this is not a case where death penalty should be imposed. The appellant-accused, therefore, instead of being awarded death penalty, is sentenced to undergo rigorous imprisonment for life, meaning thereby, the end of his life but subject to any remission granted by the appropriate Government satisfying the conditions prescribed in Section 432 of the Code and further substantiate check under Section 433-A of the Code by passing appropriate speaking orders. The appeals are disposed of on the above terms.

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. I had the opportunity of reading the judgment of my learned brother Justice P. Sathasivam who has dealt with the issue *in extenso* while modifying the death sentence to one of imprisonment for life i.e. till the end of his life. I only wish to supplement my views while fully endorsing and concurring with the judgment of His Lordship Justice P. Sathasivam. Since, the facts have been elaborately stated in the judgment of His Lordship Justice P. Sathasivam, I do not refer the same in detail. For the purpose of my reasoning, in toeing with the conclusion of His Lordship Justice P. Sathasivam, I only wish to refer to certain factors to support our conclusions.

2. These appeals were entertained on 20.07.2009, however, while issuing notice, the appeals were confined to sentence only. The appellant was found guilty of the offence under Section 302 IPC and was sentenced to death for committing the murder of his wife Veena Verma and his daughter Geetu Verma on 08.01.2006 in the area of Pratap Singh Wala, Ludhiana. The above appeals arose out of the confirmation of death sentence in Murder Reference No.8/2007 as well as the connected Criminal Appeal No.1033-DB of 2007 filed by the appellant.

3. It is necessary to state that the appellant indulged in grotesque crime of murdering his wife and daughter one after another on 08.01.2006. The motive for such a heinous crime was that there was a dispute between him and his wife Veena

A Verma as regards the house which he owned and that he was deprived of having access to his own house. In fact it was a matter of record that in the year 1999 there was an FIR against the appellant in FIR No.27 wherein the appellant was charged for offences under Sections 376 and 506 IPC for having
B committed rape on his deceased daughter Geetu Verma which ended in a conviction of 12 years rigorous imprisonment by judgment dated 15.05.2001. There was yet another FIR No.58 dated 06.04.2005 against the appellant for offences under Sections 323 and 506 IPC for having assaulted and for having
C given threat to his wife Veena Verma which was also proved as per Ex.PAA. There was yet another record of criminal case No.2531 dated 01.08.2005 (FIR No.58 of 2005) again for offences under Sections 323 and 324 IPC which was pending in the Court of JMIC, Ludhiana. In fact, the present offence of
D murder of his wife and daughter was committed by the appellant when he was on parole while undergoing rigorous imprisonment of 12 years for the conviction of the offence of rape of his daughter committed in the year 1999. It was also relevant to keep in mind that for holding the appellant guilty of
E the charge of murder of his wife and daughter apart from the other evidence, the evidence of his own minor daughter Shalu PW.2 who was an eye-witness to the occurrence weighed to very great extent along with the evidence of his own son Malkiat Singh PW.7.

F 4. The trial Court having noted the above factors held that having regard to his involvement in various criminal cases in the past as well as the gravity of the offence of murder of his own wife and daughter, whom the appellant felt were responsible for his conviction for the offence of rape committed
G on his own minor daughter, took the view by stating elaborate reasons as to why the case fell within the principles of 'rarest of rare cases' for the award of death sentence and inflicted the same on him.

H 5. The High Court after setting out the principles laid down

in the celebrated Constitution Bench decisions of this Court in *Bachan Singh Vs. State of Punjab* – (1980) 2 SCC 684 and the subsequent judgment in *Machhi Singh and others Vs. State of Punjab* – (1983) 3 SCC 470 held that the murder reference deserved to be accepted and the death sentence was, therefore, confirmed. The Division Bench of the High Court took into account the circumstances which are to be kept in mind for applying the 'rarest of the rare case' theory based on the above referred two decisions and noted the same as under:

"I. Manner of commission of murder.

II. Motive for commission of murder.

III. Anti-social or socially abhorrent nature of the crime.

IV. Magnitude of crime

V. Personality of victim of murder."

6. The High Court has also noted the injuries found on the body of the deceased insofar as it related to Veena Verma, the wife of the appellant, who suffered four incised wounds of which injury No. 1 was on the right lateral side and upper part of the neck and injury No.2 was on the head, third one was on the neck and fourth one resulted in partial amputation of left index finger from its lower one-third with clean cut margins. As far as the deceased daughter Geetu Verma is concerned, there were as many as nine injuries out of which seven were incised wounds and two were abrasions. Out of the seven incised wounds three were caused on the head region itself, fourth was on the left mastoid and the remaining three were on left and right elbow and fingers. Both the victims had instantaneous death. The basic grievance of the appellant was nothing but his desire to occupy his house which was occupied by none else than his own wife, daughters and son.

7. By noting the special reasons, the Division Bench held

A that the conduct of the appellant in causing the murder of his wife and daughter acquired enormity to the extent that the case was fully governed by the principle of 'rarest of rare cases' and ultimately held that the imposition of death sentence by the trial Court was fully justified.

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8. In this context we analyzed the various principles laid down in the subsequent decisions reported in *Swamy Shraddananda @ Murali Manohar Mishra Vs. State of Karnataka* - (2008) 13 SCC 767, *Santosh Kumar Satishbhushan Bariyar Vs. State of Maharashtra* -(2009) 6 C SCC 498, *Mohd. Farooq Abdul Gafur & Anr. Vs. State of Maharashtra* -(2010) 14 SCC 641, *Haresh Mohandas Rajput Vs. State of Maharashtra* -(2011) 12 SCC 56, *State of Maharashtra Vs. Goraksha Ambaji Adsul* - AIR 2011 SC 2689 and the recent decision reported in *Mohammed Ajmal* D *Mohammadamir Kasab @ Abu Mujahid Vs. State of Maharashtra* - JT 2012 (8) SC 4. From conspectus consideration of the above decisions apart from the four principles laid down in *Bachan Singh* (supra) and also the requirement of a balance sheet of aggravating and mitigating E circumstances, the following principles are required to be borne in mind:

(i) A conclusion as to the 'rarest of rare' aspect with respect to a matter shall entail identification of aggravating F and mitigating circumstances relating both to the crime and the criminal.

(ii) The expression 'special reasons' obviously means ('exceptional reasons') founded on the exceptionally grave circumstances of the particular case relating to the crime G as well as the criminal.

(iii) The decision in *Ravji @ Ram Chandra Vs. State of Rajasthan* – (1996) 2 SCC 175 which was subsequently followed in six other cases, namely, *Shivaji @ Dadya* H *Shankar Alhat Vs. State of Maharashtra* - (2008) 15 SCC

269, *Mohan Anna Chavan Vs. State of Maharashtra* - (2008) 7 SCC 561, *Bantu Vs. State of Uttar Pradesh* - (2008) 11 SCC 113, *Surja Ram Vs. State of Rajasthan* - (1996) 6 SCC 271, *Dayanidhi Bisoi Vs. State of Orissa* - (2003) 9 SCC 310 and *State of Uttar Pradesh Vs. Sattan @ Satyendra & Ors.* - (2009) 4 SCC 736 wherein it was held that it is only characteristics relating to crime, to the exclusion of the ones relating to criminal, which are relevant to sentencing in criminal trial, was rendered per *incuriam qua Bachan Singh* (supra) in the decision reported in *Santosh Kumar Satishbhushan Bariyar* (supra) at 529.

(iv) Public opinion is difficult to fit in the 'rarest of rare' matrix. People's perception of crime is neither an objective circumstance relating to crime nor to the criminal. Perception of public is extraneous to conviction as also sentencing, at least in capital sentencing according to the mandate of *Bachan Singh* (supra). (2009) 6 SCC 498 at p.535.

(v) Capital sentencing is one such field where the safeguards continuously take strength from the Constitution. (2009) 6 SCC 498 at 539.

(vi) The Apex Court as the final reviewing authority has a far more serious and intensive duty to discharge and the Court not only has to ensure that award of death penalty does not become a perfunctory exercise of discretion under Section 302 after an ostensible consideration of 'rarest of rare' doctrine, but also that the decision-making process survives the special rigours of procedural justice applicable in this regard. (2010) 14 SCC 641 at 692.

(vii) The 'rarest of rare' case comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of "the rarest of the rare case". There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he

A is likely to continue criminal acts of violence as would constitute a continuing threat to the society. 2011 (12) SCC 56 at p.63 para 20.

(viii) Life sentence is the rule and the death penalty is the exception. The condition of providing special reasons for
B awarding death penalty is not to be construed linguistically but it is to satisfy the basic features of a reasoning supporting and making award of death penalty unquestionable.

C (ix) The circumstances and the manner of committing the crime should be such that it pricks the judicial conscience of the Court to the extent that the only and inevitable conclusion should be awarding of death penalty.(AIR 2011 SC 2689)

D (x) When the case falls under the category of 'rarest of rare' case penalty of death is clearly called for and any leniency shown in the matter of sentence would not only be misplaced but will certainly give rise to and foster a feeling of private revenge among the people leading to
E destabilization of the society.(AIR 1983 SC 585)

(xi) Death penalty has been held to be constitutionally valid. The test is what case would attract death penalty if not the case of the appellant. JT (2012) 8 SC 4.

9. Keeping the above settled principles in mind, when we
F examine the case on hand, it is needless to state that the conduct of the appellant, if analyzed, based on the previous crimes committed by him, we find that in the year 1999 as found by the courts below the appellant committed rape on his deceased daughter Geetu Verma when she was minor and that
G too after beating her. To which beastly action, unfortunately the other deceased (viz) his wife, was an eye-witness. One cannot comprehend to visualize a situation of such nature in which father himself committed rape on his own minor daughter in the presence of her own mother. The conduct of the appellant in
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the commission of the said offence was not only bordering on immorality of the highest order but would be extremely difficult for anyone to lightly brush aside such a conduct by stating that either it was committed in a fit of anger or rage or such other similar situation. If such grotesque offence of rape had been committed by anyone, other than the father himself, the victim would have had every opportunity to cry for solace in her father or mother. In this context, we are only reminded of the Tamil proverb "வேலியே பயிரை மேய்ந்த கதை" which means in English "*When the fence eats the crops*". When the father himself happens to be the assailant in the commission of such beastly crime, one can visualize the pathetic situation in which the girl would have been placed and that too when such a shameless act was committed in the presence of her own mother. When the daughter and the mother were able to get their grievances redressed by getting the appellant convicted for the said offence of rape one would have in the normal course expected the appellant to have displayed a conduct of remorse. Unfortunately, the subsequent conduct of the appellant when he was on parole disclosed that he approached the victims in a far more vengeful manner by assaulting the hapless victims which resulted in filing of an FIR once in the year 2005 and subsequently when he was on parole in the year 2006. The monstrous mindset of the appellant appears to have not subsided by mere assault on the victims who ultimately displayed his extreme inhuman behaviour by eliminating his daughter and wife in such a gruesome manner in which he committed the murder by inflicting the injuries on the vital parts of the body of the deceased and that too with all vengeance at his command in order to ensure that they met with instantaneous death. The nature of injuries as described in the postmortem report speaks for itself as to the vengeance with which the appellant attacked the hapless victims. He was not even prepared to spare his younger daughter (viz) PW-2 who, however, escaped the wrath of the appellant by bolting herself inside a room after she witnessed the grotesque manner in which the appellant took away the life of his wife and daughter.

A 10. Be that as it may when we come to the question of applying the various principles culled out from the decisions right from the Constitution Bench decision in *Bachan Singh* (supra) right up to the case *Mohammed Ajmal Mohammadamir Kasab* (supra) as held by my learned brother
B Justice P. Sathasivam for the various reasons referred to therein, we find that the case still does not fall within the category of 'rarest of rare case' though it calls for a stringent punishment. Therefore, while modifying the sentence from one of death penalty to that of life imprisonment till the end of his
C life we apply the earliest decision of this Court reported in *Gopal Vinayak Godse Vs. State of Maharashtra & Ors.* - AIR 1961 SC 600 wherein this Court held in paragraph 5 as under:

> "It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor
> D does the amended section which substitutes the words 'imprisonment for life' for 'transportation for life' enable the drawing of any such all-embracing fiction. A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the
> E whole of the remaining period of the convicted person's natural life."

11. The said principle was followed subsequently in *Mohd. Munna Vs. Union of India and Ors.* - (2005) 7 SCC 417. Applying the above decisions, we have no hesitation in holding
F that the appellant deserves to be sentenced to undergo rigorous imprisonment for life meaning thereby the end of his life subject, however, to remission granted by the appropriate Government satisfying the conditions prescribed in Section 432 of the Code of Criminal Procedure and further substantiate check under
G Section 433A of the Code by passing appropriate speaking orders.

B.B.B. Appeals disposed of.