

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CONFIRMATION CASE NO. 01 OF 2014

The State of Maharashtra
(At the instance of Nalasopara Police
Station, Tal. Vasai)

.. Appellant

v/s.

Chandrakant Vasant Ayare,
Age 35 years,
R/at Hemant Patil Chawl,
Room No.13, Nalasopara (E),
Tal. Vasai, Dist. Thane,

.. Respondent

**WITH
CRIMINAL APPEAL NO.669 OF 2014**

Chandrakant Vasant Ayare,
Age 35 years,
R/at Hemant Patil Chawl,
Room No.13, Nalasopara (E),
Tal. Vasai, Dist. Thane,

.. Appellant

V/s

State of Maharashtra
(At the instance of Nalasopara Police
Station, Tal. Vasai)

.. Respondent

Mrs. Nasreen Ayubi, advocate appointed for the appellant
Mr. F.R. Shaikh, APP for the respondent State

**CORAM : V. M. KANADE &
SMT. ANUJA PRABHUDESSAI, JJ.**

**RESERVED ON : 4th FEBRUARY, 2015.
PRONOUNCED ON : 20th FEBRUARY, 2015.**

ORAL JUDGMENT :- (Per Anuja Prabhudessai, J)

1. The appellant herein was tried by the Court of Sessions at Vasai in Sessions Case No.13 of 2012 for offence under Section 302 and 309 of the Indian Penal Code (for short IPC). By judgment dated 03.02.2014, the learned Sessions Judge held him guilty of the offence punishable under Sections 302 and 309 of the IPC and sentenced him to death for offence under Section 302 of the IPC and R.I. for one year for the offence under Section 309 of the IPC.

2. Being aggrieved by the conviction and sentence, the accused has preferred Criminal Appeal No.669 of 2014 while Confirmation Case No.1 of 2014 arises from the statutory reference under Section 366 of the Cr.P.C. for confirmation of the death sentence.

3. The case of the prosecution in brief is as under.

The accused, his wife Sanchita and their minor daughter Viashnavi

were residing in Room No.13 of Hemant Patil Chawl at Bilapada, Nalasopara. PW-1 Ashish, son-in-law of Hemant Patil, the owner of the said Chawl, was residing in Room No.1 of the chawl. On 28.06.2011 at about 9.30 to 10.00 a.m., PW-1 Ashish Patil received a phone call from his mother-in-law that there were some bloodstains outside the room of the accused. On receipt of the said information, PW-1 Ashish and his brother-in-law Krupesh Hemant Patil proceeded to the chawl. They saw blood outside the room No.13. The door and the window of the room were closed from inside. PW-1 Ashish accordingly informed the police. On receipt of the information, Police Head Constable PW-5 Prakash Patil, visited Room No.13 of Hemant Chawl. PW-5 Prakash Patil called out to the accused and told him to open the door. The accused opened the door when PW-5 threatened to break open the door. On entering the room, they saw the beheaded bodies of Sanchita and Vaishnavi lying on a mat, in a pool of blood with their severed heads kept by their side. The accused had also sustained injuries and his clothes were soaked in blood. A blood stained knife and a stone were seen lying in the room.

4. PW-1 went to the police station and lodged the report at Exh.14,

pursuant to which, PW-8 Shriram Koregaonkar, P.I. attached to Nalasopra Police Station, registered Crime No.379 of 2011. PW-8 visited the scene of offence and conducted inquest panchanama at Exh.16 in presence of PW-2 Tushar. The cloths of the deceased Sanchita and Vaishnavi were seized under panchanama at Exh.19 and the bodies were sent to PHC, Nalasopara for post mortem.

5. PW-4 Dr. Dipti Gaikwad conducted the post mortem over the bodies and prepared autopsy reports at Exh.22 and 23. She opined that the death of Sanchita and Vaishnavi was due to asphyxia due to hemorrhagic shock with amputation of neck from body by complete cut throat injury.

6. PW-8 conducted the scene of offence panchanama at Exh.45 and seized the mat, knife, stone, and the pillows from the scene. He also lifted sample of blood from the scene of crime. He prepared a rough sketch of the scene of offence and directed PW-6 Amol Ghag to take photographs of the scene.

7. PW-8 arrested the accused under arrest panchanama at Exh.20 and

seized his blood stained clothes. The accused had injuries on his person hence, he was sent to PHC for examination and treatment. PW-4 Dr. Dipti Gaikwad examined the accused and opined that the injuries were self-inflicted. She issued the injury certificate at Exh.26.

8. PW-8 sent all the seized articles to CFSL for examination and analysis. The CFSL Report is at Exh.48. Upon completion of the investigation, he filed the charge sheet before the Additional Sessions Judge, Vasai.

9. Upon committal of the case, charge was framed and explained to the accused. The accused pleaded not guilty to the charge and claimed to be tried. The prosecution examined in all 8 witnesses. The statement of the accused was recorded under Section 313 of the Cr.P.C. The accused claimed that he has been falsely implicated on suspicion.

10. Upon considering the evidence on record and hearing the learned APP for the State and the Learned Counsel for the accused, the learned Sessions Judge held the accused guilty of offences punishable under section

302 and 309 IPC and accordingly convicted and sentenced the accused as stated hereinabove. Aggrieved by the conviction and sentence, the accused has preferred the appeal whereas confirmation case arises out of statutory reference under Section 366 of the Cr.P.C.

11. Mr. Shaikh, learned APP has submitted that the prosecution has established that the accused, his wife and daughter were residing in Room No.13 of the Hemant Patil Chawl. It is submitted that the evidence of PW-1 and PW-7 proves that accused was suspecting the character of his wife and that there used to be constant quarrels between them. Learned APP has further contended that the testimony of PW-1 and PW-5 proves that the beheaded bodies of Sanchita and Vaishnavi, the wife and daughter of the accused were found in a closed room. The accused was present in the room and he too had sustained injuries. It is submitted that the accused has not offered any explanation and this circumstance leads to an irresistible conclusion that the accused had caused the death of his wife and daughter and had inflicted injuries on himself.

12. Learned APP Mr. Shaikh has submitted that the accused had committed the crime in a cold-blooded manner, by severing heads of his

wife and minor girl child. Learned APP has submitted that the offence was premeditated and that the same falls in the category of rarest of rare cases. Mr. Shaikh, learned APP has further submitted that the prosecution has established the circumstances pointing to the guilt of the accused. He has relied upon the decisions of the Apex Court in the case of ***Shivaji @ Dadya Shankar Allhat Vs. State of Maharashtra, AIR 2009 SC 56*** and ***Sudam @ Rahul Jadhav Vs. State of Maharashtra, (2011) 7, SCC 125***, wherein the Apex Court has held that the death sentence can be based on the circumstantial evidence when it is found to be of unimpeachable character.

13. Learned APP has further submitted that even if it is considered that the case is not the rarest of the rare case, considering the nature and brutality of crime, the accused is liable to be convicted for life till his last breath and end of the biological life. He has relied upon the decisions in the case of ***Gopal Godse Vs. State of Maharashtra, AIR 1961 SC 600***, and ***Swami Shradhanand Vs. State of Karnataka, (2008) 13, SCC 767***, ***Sunil Gaikwad Vs. State of Maharashtra, (2014) 1 SCC 129*** and ***Gurvail Singh @ Gala Vs. State of Punjab, (2014) 1 SCC (Cri) 364***.

14. Learned Counsel Mrs. Ayubi has submitted that the prosecution has

not established the guilt of the accused beyond reasonable doubt. She has submitted that there was no sufficient material to hold the accused guilty of the offence and that the accused has been convicted on the basis of surmises and presumptions. She has further submitted that while imposing the sentence, the learned trial Judge has not considered whether the accused had any criminal antecedents. She has further argued that the prosecution has failed to prove that the act was premeditated.

15. The learned Counsel for the accused has urged that this is not a rarest of rare case and has claimed that the learned trial Judge has erred in awarding the death sentence. She contends that the evidence of PW-7 reveals that the accused was suspecting the character of his wife. She, therefore, urges that there is every possibility of the accused committing the offence under the state of emotional disturbance. Relying upon the judgment of the Apex Court in *Bajendrasingh Vs. State of M.P. (2002) SCC 89*, *State of U.P. Vs. M.K. Anthony, (1985) 1 SCC 505*, *Kamleshwar Paswan Vs. Union Territory of Chandigarh (2011) SCC 564*, *Sushil Kumar Vs. State of Punjab, (2009) 10 SCC 434*, *Mulla and anr. Vs. State of U.P.(2010) 4 SCC 408*, *Javed Masud Vs. State of Rajasthan, (2010) 3*

SCC 538, State of Maharashtra Vs. Damu Shinde, (2000) 6 SCC 269 and Lehna Vs. State of Haryana, (2002) 3 SCC 76, she has contended that the learned trial Judge ought to have balanced the aggravating and mitigating circumstances before categorizing the case as a rarest of the rare case and awarding the death sentence. She has submitted that there is nothing on record to prove that the accused had criminal antecedents or that the crime was premeditated. She has, therefore urged that the learned trial Judge has erred in awarding death sentence.

16. We have heard Mrs. Ayubi, learned Counsel for the accused, and learned APP for the State. We have examined the records and considered the arguments advanced by the learned Counsel for the respective parties.

17. The prosecution has sought to establish the guilt of the accused only on the basis of the circumstantial evidence. It is well settled that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances should be consistent only with the hypothesis of the guilt of the accused. It would be advantageous to refer to the judgment of the Apex Court in the Case of

Hanumant Govind Nargundkar & Anr. Vs. State of M.P. AIR 1952 SC

343, the Apex Court has held that :

“It is well to remember that in cases where the evidence in of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should 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 pendency 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”.

18. In the case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116***, the Apex Court had laid down the principles of standard of proof, required in a case sought to be established on the basis of circumstantial evidence, which are as under :-

“152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra : 1973CriLJ1783 where the following observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict, and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(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 complete 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.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

19. The law on circumstantial evidence has been summarized and reiterated by the Apex Court in the case of **Shivaji @ Dadiya Shankar Allhat** (Supra). It is held that:-

“if the circumstantial evidence is found to be of an unimpeachable character in establishing the guilt of the accused, that forms the foundation for conviction. That has nothing to do with the question of sentence. If the said evidence has been found to be credible, cogent and trustworthy for the purpose of recording conviction, to treat that evidence as mitigating circumstance, would amount to consideration of an irrelevant aspect.”

20. Reverting to the facts of the present case, the prosecution has sought to establish the guilt of the accused on the following circumstances:-

1. The accused, his wife Sanchita and daughter Vaishnavi were residing in Room No.13 of Hemant Patil Chawl.
2. Blood was seen outside Room No.13 of Hemant Patil Chawl.
3. Beheaded bodies of the wife and daughter of the accused were found inside Room No. 13.
4. Blood stained knife and stone were seized from the Room No.13.
5. Death of the wife and the daughter of the accused was homicidal.
6. Accused was alone present in the Room No.13
7. Accused had injuries on his person
8. Accused had not explained the cause of death of his wife and daughter or the injuries sustained by him.
9. Motive.

21. We shall now endeavor to determine whether the prosecution has established the abovementioned circumstances and whether the circumstances so established are consistent only with the hypothesis of the guilt of the accused.

22. PW-1 Ashish Patil is the son-in-law of Hemant Patil, the owner of Hemant Patil Chawl situated at Bilalpada, Nalasopara. PW-1 Ashish was residing in Room No.1 of the said chawl. PW-1 has deposed that the accused, his wife Sanchita and their minor daughter Vaishnavi were residing in Room No.13 of the said chawl since the year 2010. He has deposed that there was some dispute between the accused and his wife and that they used to quarrel with each other. PW-1 has deposed that they had advised them to behave properly.

23. PW-1 Ashish has stated that on 28.06.2011 at about 10.00 to 10.20 a.m., while he was in his office at Tiwari Nagar, Nalasopara, he received a phone call from his mother-in-law informing him that there was blood outside the room of the accused. PW-1 came to the room and confirmed that there was blood outside the room of the accused.

24. PW-1 found that the window and the door of the room were latched from inside. PW-1 Ashish phoned the police, whereupon the police personnel PW-5 Mr. Kale, attached to Pelhar Police outpost came to the spot. PW-5 knocked the door and told the accused to open the door. The accused told

him that he would open the door only if called his parents. The accused opened the door only when the police constable Kale told him that he would break open the window. They entered the room and saw the beheaded bodies of Sanchita and Vaishnavi lying on a mat in a pool of blood, with their severed heads kept beside the bodies. The accused was present in the room. The accused had sustained injuries and his clothes were soaked with blood. PW-1 has deposed that a blood stained knife and stone were lying in the room. PW-1 therefore proceeded to the police station and lodged the report at Exh.14. Based on the said report PW-8 registered Crime No. I-379/2011 under Sections 302, 309 of the Indian Penal Code.

25. PW-5 Prakash Patil is the Police Head Constable, who at the relevant time was attached to Nalasopara Police Station. He has deposed that on 28.07.2011, he was on duty at Pelhar bit. PW-5 has confirmed that PW-1 Ashish Patil had called him at about 12.30 p.m. and informed that he had seen blood outside the room of the accused. PW-5 Prakash Patil visited Room No.13 of Hemant Chawl and saw a pool of blood outside the room. The door and the window of the room were closed. He called out to the accused and told him to open the door. Initially the accused told PW-5 that he

would open the door only if he called his parents. PW-5 has stated that the accused had opened the door only after he had threatened to break open the window.

25. The testimony of PW-5 indicates that he had entered the room and had seen the accused in the room. The accused had sustained injuries and his clothes were stained with blood. PW-5 had also seen two beheaded bodies lying on a mat in a pool of blood with severed heads by the side of the bodies. PW-5 has deposed that he had seen a blood stained knife and stone in the room. PW-5 Prakash Patil has deposed that he immediately reported the incident to the P.I. Koregaonkar. He has denied that he had not visited the room. He has also denied that he had never seen the accused in the room.

27. PW-8 Shriram Koregaonkar, the Police Inspector, attached to Nalasopara Police Station had registered the FIR, dated 28.07.2011 at Exh.14 lodged by PW-1 Ashish. He visited Room No.13 of Hemant Patil Chawl and saw two beheaded bodies, one of a woman and the other of a girl child, lying in the room in a pool of blood. PW-8 had conducted scene of offence panchanama at Exh. 45 and attached the blood stained mat, two pillows,

blood stained knife and stone and lifted sample of blood from the scene of offence.

28. PW-8 had called a photographer to take the photographs of the scene of offence. PW-6 Amol is the photographer who had visited the scene of offence and taken photographs at Exh.37. PW-6 has deposed that on 28.7.2011 the police had called him to Room No. 13 of Hemant Patil Chawl at Nalasopara and requested to take photographs of the scene of offence. He has deposed that he had entered the room and seen two bodies, one of a woman and the other of a girl child lying on a mat in a pool of blood. He has further deposed that blood had spread all over the room. A blood stained knife and a stone were lying in the room. He has deposed that he had clicked photographs of the scene of offence. He has confirmed that the photographs at Exh.37 are of the scene of offence.

29. PW8 had conducted the inquest panchanama at Exh.16 in presence of PW-2 Tushar. PW2 has deposed that he had seen two beheaded bodies lying on a mat in room no.13 of Hemant Patil Chawl. He has confirmed the contents of the inquest panchanama at Exh.16.

30. PW8 had referred the bodies to PHC, Nalasopara for post mortem. PW-4 Dr. Dipti, attached to PHC, Nalasopara, conducted the post mortem over both the bodies. She has deposed that on 28.07.2011, Nalasopara Police had brought two beheaded bodies of Sanchita and Vaishnavi for post mortem. On examining the body, she noticed following injuries.

External injuries :-

1. Clean incised cut throat injury amputating head from neck at the level of C6, C7 slightly inclined angle from back to front of neck.
2. Clean incised, cut injuries dissecting all neck muscles with esophagus, trachea and thyroid gland at C6, C7 level.
3. Abrasion over neck and face near mouth, 3 to 4 in number, nail abrasions.
4. Contused lacerated injuries over inside of upper lip, over buccal mucosa.
5. Loosening of teeth seen of upper and lower inciser and canine teeth 2|1 front.
6. Tongue beaten

Internal Injuries :-

1. Central cynosis plus,
2. Heart empty

31. PW-4 Dr. Dipti has deposed that all the injuries were ante mortem. Age of the injuries was stated to be 36 hours. PW-4 has opined that the death was due to asphyxia due to hemorrhagic shock with amputation of

neck from body by complete cutthroat injury. She has deposed that cut throat injury could be caused by knife, while asphyxia could be caused by hard and blunt weapon like stone. PW-4 has produced the post mortem report at Exh.22.

32. PW-4 had also conducted the post mortem over the body of Vaishnavi and noted the following injuries :-

External injuries :-

1. Incised injury with clean cut, complete cut throat amputating neck from body at the level of beheaded C3, C4. From back to front of neck.
2. All neck muscles with esophagus trachea and thyroid gland (in half) cut injury at C3 level.
3. C3 vertebra shows cut injury to body and cartilage.
4. Fracture of C4 cervical vertebra at transverse process, antemortem fracture.
5. Abrasions over angle of mouth seen with contusion injury above upper lip inner side.
6. Nail abrasion over neck and near mouth.

Internal Injuries :-

1. Head – Hematoma over occipital region of head, subdural.
2. Right lung and left lung – pale bluish, cyanosed
3. Pericardium, heart and large vessels–Heart and large vessel empty
4. Spinal cord – cut at C3 level

5. C4 vertebra, fracture transverse process & body seen
6. C3 vertebra, cut injury, incised to body and cartilage.

33. PW-4 has deposed that the injuries were ante mortem. Age of the injuries was stated to be 36 hours. The cause of death was due to asphyxia due to hemorrhagic shock with amputation of neck from body by complete cut throat injury. PW4 has deposed that the injuries could be caused by sharp light weapon akin to knife and that asphyxia could be caused by a hard blunt weapon like stone. She has deposed that the injuries were sufficient to cause death. She has produced the post mortem report at Exh.23.

34. PW-4 has deposed that vide letter dated 08.08.2011 (Exh.27), P.I. of Nalasopara had forwarded the knife (Art. A) and stone (Art.B) and sought her opinion whether the cutthroat injury and incised wounds could be caused by the said knife. She has opined that the cutthroat injuries and incised wounds on the body of the deceased Sanchita and Vaishnavi could have been caused by the knife at Art. A. The said opinion is at Exh. 28.

35. PW-8 Shriram Koregaonkar had arrested the accused on 28.07.2011

under arrest panchanama at Exh. 20, drawn in presence of PW-3 Virendra. PW-8 has deposed that the accused had injuries on his person and his clothes were soaked with blood. The said clothes were attached under the panchanama at Exh.20. PW-3 has confirmed the contents of the panchanama at Ex20.

36. PW-8 had referred the accused to PHC Nalasopara for medical examination. PW-4 had examined the accused on 28.7.2013 and noted that he had following injuries :-

1. Five incised wounds over neck anteriorly suggestive of self inflicted wounds extending posteriorly till nape of neck, suggestive suicidal.
2. Incised wound over parietal region. 3 in number, suggestive of self inflicted wounds suggestive suicidal.
3. One oblique and one vertical CLW over forehead and parietal region.

37. PW-4 has opined that the incised wounds were caused by sharp object like knife at Art. A, whereas the CLW could have been caused by the stone at Art. B. She has deposed that the age of the injury was within 48 hours. She has produced the Certificate at Exh.26. She has opined that the incised wounds found on the person of the accused could be caused by the

knife at Art.A and the other injuries could be caused by the stone at Art.B. She has denied that the injuries found on the person of the accused were not self-inflicted.

38. PW-8 P.I. Shriram Koregaonkar had sent all the incriminating material seized from the scene of offence as well as the clothes of the accused and the deceased and other material collected in the course of the investigation for chemical analysis. The CA Report at Exh.48-49, 50, 51 & 52 reveals that human blood was detected on the mat, pillows as well as on the clothes of the deceased and the accused. Blood sample collected from the scene of offence was stated to be human blood.

39. The prosecution has examined PW-7 Eknath Patil, the brother of the deceased Sanchita. He has deposed that his sister Sanchita was married to the accused and after their marriage, for about two years they resided at village Niland, Dist. Ratnagiri. Thereafter, they shifted to Malad, Mumbai and in the year 2010, after the birth of their daughter Vaishnavi, they started residing in a rental home at Bilapada, Nallasopara. PW-7 has deposed that his sister Sanchita used to complain that the accused was suspecting her

character and was ill-treating her. He has further deposed that about a month prior to the incident, he had visited her sister and stayed in her house for about two days. He has deposed that during his stay with his sister, she had complained that the accused was suspecting her character and was ill-treating her. He has deposed that he had told his sister Sanchita that he would convey this to her father and try to dissuade the accused from resorting to such behavior during her visit to the maternal house during *Ganesh Chaturthi*. He has admitted in his cross-examination that he had not lodged any criminal complaint against the accused for ill-treating Sanchita. He has denied the suggestion that the accused was not ill-treating Sanchita.

40. Thus, from the evidence of PW-1 and PW-7, it is evident that the accused, his wife Sanchita and their daughter Vaishnavi were residing in Room No. 13 of Hemant Chawl at Nalasopara, which fact is otherwise not disputed by the accused in his statement under section 313 Cr.PC. PW-1 who is a resident of Room No.1 of Hemant Patil Chawl at Nalasopara, is an independent as well as a natural witness. The testimony of this witness proves that on 28.07.2011, he had seen blood outside the room of the accused. He informed the police about the same and upon receiving such

information; the police head constable PW-5 visited the Chawl. The evidence of PW-5, which is on the same lines as that of PW-1, substantially proves that there were bloodstains outside the room of the accused.

41. The evidence of PW-1 and PW-5 reveals that the door and the window of the said room was closed from inside and when they had called out to the accused to open the door; the accused had refused to open the door untill his parents were called. The accused had opened the door only after PW-5 had threatened to break open the window. The evidence of PW-1 and PW-5 further reveals that they had entered the Room No.13 and had seen beheaded bodies of Sanchita and Vaishnavi lying on the mat inside the room in a pool of blood with their severed heads placed aside the bodies. A knife and a stone, both stained with blood, were lying on the floor of the said room. The CA Report at Exh.48 to 53 also establishes that mat, pillows, which were seized from the scene of offence, were stained with human blood. The evidence of PW-1 and, PW-5, was not seriously contested and we have no reason to disbelieve their evidence in this regard. Furthermore, the evidence of PW-1 and PW-5 is also fortified by PW-2, PW-3, PW-6 and PW-8 vis-à-vis the scene of offence panchanama at

Exh.45 and the inquest panchanama at Exh.16. Therefore, on reappraisal of the evidence, we are of the view that the prosecution has established beyond reasonable doubt that the incident had occurred inside Room No.13 of Hemant Patil Chawl, which was occupied by the accused and his wife.

42. The evidence of PW-1 and PW-5 further finds corroboration in medical evidence, which confirms that the death of Sanchita and Vaishnavi was homicidal, caused within 36 hours. PW-4 has also confirmed that the injuries inflicted on Sanchita and Vaishnavi could be caused by the knife at Art.A and the stone at Art. B, which were seized from the scene of offence.

43. The testimony PW-1 and PW-5 proves that when the accused had opened the door, the accused was alone present in the said room while the beheaded bodies of his wife and daughter were lying in the room in the pool of blood. The testimony of PW-1 is consistent with the FIR at Exh. 14, which was lodged promptly, on the same day. The testimony of PW-1 is duly corroborated by PW-5. They have given a consistent account of events. PW-1 as well as PW-5 are independent witnesses who had no animosity towards the accused and had no plausible reason to falsely

implicate the accused.

44. The evidence of PW-1, PW-5 and PW-8 establishes that there were injuries on the person of the accused and his clothes were soaked with blood. The medical evidence also substantiates that the accused had sustained injuries on his person and that these injuries were self-inflicted and could be caused by the knife and the stone, which were recovered from the scene of offence. The C.A. report also reveals that the clothes of the accused, which were attached under panchanama at Exh.20, were stained with human blood. These circumstances fortify the evidence of PW-1 and PW-5 and prove the presence of the accused in the Room No.13 of Hemant Patil Chawl.

45. The evidence adduced by the prosecution, therefore, proves that the incident had occurred in a closed room and that apart from the accused no other person was present in the said room. Section 106 of the Indian Evidence Act provides that when any fact is within the knowledge of any person, the burden of proving that fact is upon him. In *State of Rajasthan*

V/s Thakur Singh, (2014) 8 SCALE 82, the Apex Court has reiterated the scope of section 106 of the Indian Evidence Act, as under:-

“Way back in [Shambhu Nath Mehra v. State of Ajmer](#)[2] this Court dealt with the interpretation of Section 106 of the Evidence Act and held that the section is not intended to shift the burden of proof (in respect of a crime) on the accused but to take care of a situation where a fact is known only to the accused and it is well nigh impossible or extremely difficult for the prosecution to prove that fact. It was said:

This [Section 101] lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are especially within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word especially stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not.

17. In a specific instance in [Trimukh Maroti Kirkan v. State of Maharashtra](#)[3] this Court held that when the wife is injured in the dwelling home where the husband ordinarily resides, and the husband offers no explanation for the injuries to his wife, then the circumstances would indicate that the husband is responsible for the injuries. It was said: Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together

or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.

18. Reliance was placed by this Court on [Ganeshlal v. State of Maharashtra](#)[4] in which case the appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

19. Similarly, in [Dnyaneshwar v. State of Maharashtra](#)[5] this Court observed that since the deceased was murdered in her matrimonial home and the appellant had not set up a case that the offence was committed by somebody else or that there was a possibility of an outsider committing the offence, it was for the husband to explain the grounds for the unnatural death of his wife.

20. In [Jagdish v. State of Madhya Pradesh](#)[6] this Court observed as follows:

It bears repetition that the appellant and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt.

21. More recently, in [Gian Chand v. State of Haryana](#)[7] a large number of decisions of this Court were referred to and the interpretation given to Section 106 of the Evidence Act in Shambhu Nath Mehra was

reiterated. One of the decisions cited in Gian Chand is that of [State of West Bengal v. Mir Mohammad Omar](#)[8] which gives a rather telling example explaining the principle behind Section 106 of the Evidence Act in the following words: During arguments we put a question to learned Senior Counsel for the respondents based on a hypothetical illustration. If a boy is kidnapped from the lawful custody of his guardian in the sight of his people and the kidnappers disappeared with the prey, what would be the normal inference if the mangled dead body of the boy is recovered within a couple of hours from elsewhere. The query was made whether upon proof of the above facts an inference could be drawn that the kidnappers would have killed the boy. Learned Senior Counsel finally conceded that in such a case the inference is reasonably certain that the boy was killed by the kidnappers unless they explain otherwise.

22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.”

46. In the instant case, it is not in dispute that the wife and the daughter of the accused had met with gruesome homicidal death. As stated earlier the evidence of PW-1 and PW-5 proves that the accused was present in the room wherein the beheaded bodies of his wife and daughter were lying in the pool of blood. The accused was therefore aware that his wife and the daughter were murdered in most brutal manner despite which the accused

had not raised an alarm. The accused has also not explained what had transpired on that fateful night and who had caused the injuries to Sanchita and Vaishnavi or the circumstances in which they had died. The accused has also not raised a defence that he was not present in the room or that any other person had entered the room and caused the death of his wife and daughter. Infact there is nothing on record to indicate that there was possibility of any other person entering the room and causing the death of the wife and daughter of the accused.

47. Furthermore, the unimpeachable medical evidence proves that the injuries on the person of the accused were self-inflicted and were suicidal in nature. The accused has not given any plausible explanation in his statement under section 313 Cr.P.C. as to how he had sustained these injuries. The facts relevant to the cause of his injuries as well as the cause of the death of Sanchita and Vaishnavi were pre-eminently and exclusively within the knowledge of the accused. In the light of provisions of section 106 of the Evidence Act, the accused was required to explain the facts and circumstances leading to the unnatural death of his wife and daughter. Failure of the accused to explain the facts, which were especially within his knowl-

edge is inconsistent with the innocence of the accused and is consistent with the hypothesis of his guilt.

48. The accused was in the room wherein the beheaded bodies of his wife and minor daughter were lying. He did not raise an alarm. He did not seek help from the neighbours. He did not report the matter to the police. He did not open the door till he was threatened that the door would be broke open. The wholly unnatural conduct of the accused is also a material circumstance sufficient to draw an adverse inference against the accused and is an indicator of his complicity in the crime.

49. The evidence of PW-1 proves that the accused used to quarrel with his wife. PW-1 has categorically stated that they had advised the accused to behave properly. The testimony PW-7 also substantiates that the accused was suspecting the character of his wife and that he was ill-treating his wife Sanchita. The evidence of these witnesses therefore proves the motive to commit the crime.

50. We are therefore, satisfied, that in the facts and circumstances of the present case, the prosecution has established the circumstances, which taken

cumulatively are consistent only with the hypothesis of the guilt of the accused. Thus, there is sufficient evidence on the record of this case, on the basis whereof the factum of murder of Sanchita and Vaishnavi at the hands of the accused stands established.

51. The next consideration is whether the case falls in the category of ‘rarest of a rare case, which warrants only the penalty of death. In the case of *Sunder @ Sundararajan Vs. State by Inspector of Police, SSC (2013), Vol.3, p-215*, the Apex Court has summarized the law on the death penalty as under :-

“ ...in Haresh Mohandas Rajput Vs. State of Maharashtra, (2011) 12 SCC 56, wherein, having taken into consideration earlier judgments, this court delineated the circumstances in which the death penalty could be imposed. Reliance was placed on the following observations recorded therein:-

“Death Sentence – When Warranted:

“18. The guidelines laid down in Bachan Singh v. State of Punjab, (1980) SCC 684, may be culled out as under:

- (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 alongwith 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 just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.*

19. *In Machhi Singh and Ors. v. State of Punjab, (1983) 2 SCC 684, this court expanded the "rarest of rare" formulation beyond the aggravating factors listed in Bachan Singh to cases where the "collective conscience" of a community is so shocked that it will expect the holders of the judicial powers centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, such a penalty can be inflicted. But the Bench in this case underlined that full weightage must be accorded to the mitigating circumstances in a case and a just balance had to be struck between aggravating and mitigating circumstances.*

20. *"The rarest of the 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 is likely to continue criminal acts of violence as would constitute a continuing threat to the society. The accused may be a*

menace to the society and would continue to be so, threatening its peaceful and harmonious coexistence. The manner in which the crime is committed must be such that it may result in intense and extreme indignation of the community and shock the collective conscience of the society. Where an accused does not act on any spur-of-the-moment provocation and indulges himself in a deliberately planned crime and meticulously executes it, the death sentence may be the most appropriate punishment for such a ghastly crime. The death sentence may be warranted where the victims are innocent children and helpless women. Thus, in case the crime is committed in a most cruel and inhuman manner which is an extremely brutal, grotesque, diabolical, revolting and dastardly manner, where his act affects the entire moral fiber of the society, e.g. crime committed for power or political ambition or indulging in organized criminal activities, death sentence should be awarded. (See: C. Muniappan and Ors. v. State of Tamil Nadu, AIR 2010 SC 3718; Rabindra Kumar Pal alias Dara Singh v. Republic of India, (2011) 2 SCC 490; Surendra Koli v. State of U.P. and Ors., (2011) 4 SCC 80; Mohd. Mannan (supra); and Sudam v. State of Maharashtra, (2011) 7 SCC 125).

21. Thus, it is evident that for awarding the death sentence, there must be existence of aggravating circumstances and the consequential absence of mitigating circumstances. As to whether death sentence should be awarded, would depend upon the factual scenario of the case in hand.”

Reliance was also placed, on the decision of this Court in Ramnaresh & Ors. Vs. State of Chhattisgarh, (2012) 4 SCC 257. Insofar as the instant judgment is concerned, learned counsel relied on the following observations:-

“The death sentence and principles governing its conversion to life imprisonment.

56. Despite the transformation of approach and radical changes in principles of sentencing across the world, it has not been possible to put to rest the conflicting views on sentencing policy. The sentencing policy being a significant and inseparable facet of criminal jurisprudence, has been inviting the attention of the Courts for providing certainty and greater clarity to it.

57. Capital punishment has been a subject matter of great social and judicial discussion and catechism. From whatever point of view it is examined, one undisputable statement of law follows that it is neither possible nor prudent to state any universal formula which would be applicable to all the cases of criminology where capital punishment has been prescribed. It shall always depend upon the facts and circumstances of a given case. This Court has stated various legal principles which would be precepts on exercise of judicial discretion in cases where the issue is whether the capital punishment should or should not be awarded.

58. The law requires the Court to record special reasons for awarding such sentence. The Court, therefore, has to consider matters like nature of the offence, how and under what circumstances it was committed, the extent of brutality with which the offence was committed, the motive for the offence, any provocative or aggravating circumstances at the time of commission of the crime, the possibility of the convict being reformed or rehabilitated, adequacy of the sentence of life imprisonment and other attendant circumstances. These factors cannot be similar or identical in any two given cases.

59. *Thus, it is imperative for the Court to examine each case on its own facts, in light of the enunciated principles. It is only upon application of these principles to the facts of a given case that the Court can arrive at a final conclusion whether the case in hand is one of the 'rarest of rare' cases and imposition of death penalty alone shall serve the ends of justice. Further, the Court would also keep in mind that if such a punishment alone would serve the purpose of the judgment, in its being sufficiently punitive and purposefully preventive. ...*

72. *The above judgments provide us with the dicta of the Court relating to imposition of death penalty. Merely because a crime is heinous per se may not be a sufficient reason for the imposition of death penalty without reference to the other factors and attendant circumstances.*

73. *Most of the heinous crimes under the I.P.C. are punishable by death penalty or life imprisonment. That by itself does not suggest that in all such offences, penalty of death alone should be awarded. We must notice, even at the cost of repetition, that in such cases awarding of life imprisonment would be a rule, while 'death' would be the exception. The term 'rarest of rare' case which is the consistent determinative rule declared by this Court, itself suggests that it has to be an exceptional case.*

74. *The life of a particular individual cannot be taken away except according to the procedure established by law and that is the constitutional mandate. The law contemplates recording of special reasons and, therefore, the expression 'special' has to be given a definite meaning and connotation. 'Special reasons' in contra-distinction to 'reasons' simpliciter conveys the legislative mandate of putting a restriction on exercise of judicial discretion by placing the requirement of special reasons.*

75. *Since, the later judgments of this Court have added to the principles stated by this Court in the case of Bachan Singh (supra) and Machhi Singh (supra), it will be useful to restate the stated principles while also bringing them in consonance, with the recent judgments.*

76. *The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in the case of Bachan Singh (supra) and thereafter, in the case of Machhi Singh (supra). The aforesaid judgments, primarily dissect these principles into two different compartments - one being the 'aggravating circumstances' while the other being the 'mitigating circumstances'. The Court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the Court. It will be appropriate for the Court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the Court as contemplated under Section 354(3) Cr.P.C.*

Aggravating Circumstances:

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 Cr.P.C.

(9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

(10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a

daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating Circumstances:

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional distur-

bance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused.

77. While determining the questions relateable to sentencing policy, the Court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

Principles:

(1) The Court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence.

(2) In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.

78. Stated broadly, these are the accepted indicators for the exercise of judicial discretion but it is always preferred not to fetter the judicial discretion by attempting to make the excessive enumeration, in one way or another. In other words, these are the considerations which may collectively or otherwise weigh in the mind of the Court, while exercising its jurisdiction. It is difficult to state it as an absolute rule. Every case has to be decided on its own merits. The judicial pronouncements, can only state the precepts that may govern the exercise of judicial discretion to a limited extent. Justice may be done on the facts of each case. These are the factors which the Court may consider in its endeavour to do complete justice between the parties.

79. The Court then would draw a balance-sheet of aggravating and mitigating circumstances. Both aspects have to be given their respective weightage. The Court has to strike a balance between the two and see towards which side the scale/balance of justice tilts. The principle of proportion between the crime and the punishment is the principle of 'just deserts' that serves as the foundation of every criminal sentence that is justifiable. In other words, the

'doctrine of proportionality' has a valuable application to the sentencing policy under the Indian criminal jurisprudence. Thus, the court will not only have to examine what is just but also as to what the accused deserves keeping in view the impact on the society at large.

80. Every punishment imposed is bound to have its effect not only on the accused alone, but also on the society as a whole. Thus, the Courts should consider retributive and deterrent aspect of punishment while imposing the extreme punishment of death.

81. Wherever, the offence which is committed, manner in which it is committed, its attendant circumstances and the motive and status of the victim, undoubtedly brings the case within the ambit of 'rarest of rare' cases and the Court finds that the imposition of life imprisonment would be inflicting of inadequate punishment, the Court may award death penalty. Wherever, the case falls in any of the exceptions to the 'rarest of rare' cases, the Court may exercise its judicial discretion while imposing life imprisonment in place of death sentence."

52. In the case of ***Mohinder Singh Vs. State of Punjab, AIR 2013 SC 3 622***, the apex Court has reiterated these principles, which are as under :-

"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 (AIR 1980 SC 898) (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 of 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 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.

21. It is well settled law that awarding of life sentence is a rule and death is an exception. The application of the "rarest 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 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 the case does not fall within the four corners of the "rarest of rare" case".

53. Applying the abovementioned parameters and guidelines, we propose to decide whether the case in hand is one of those rarest of rare cases, which warrants death penalty or whether in facts and circumstances of the case, sentence of life imprisonment would be adequate sentence. It may be mentioned that the special reasons given by the learned trial judge in awarding death penalty are that the accused had committed gruesome murder of his wife and his minor daughter and cut short life of these two helpless victims. The learned judge has further held that the crime was premeditated. The learned trial judge also took note of the fact that the accused had beheaded his wife and daughter in a most brutal manner but when the accused had attempted to commit suicide, he was unable to inflict injuries on himself. The learned trial judge therefore categorized the case as the rarest of rare case.

54. It is no doubt true, that the accused has committed double murder of his wife and a young daughter in a most gruesome and brutal manner. Though such brutal murder of two helpless victims is indeed an aggravating circumstance, as held by the Apex Court in the case of ***Panchhi AIR 1998***,

SC 2726 the mere brutality of the act would not be sufficient to categorize the case as one of the rarest of the rare case.

55. The accused is 38 years old man. There is no evidence on record to prove that the accused had criminal antecedents and that he is likely to continue criminal acts of violence and be a menace to the society, without there being any possibility of reformation or rehabilitation.

56. The finding of the learned trial judge that the offence was premeditated is not based on any evidence on record but is based on an inference drawn from the fact that the stone at Art. B was found at the place of the incident. In the absence of any evidence to prove that the act was premeditated and was not committed on the spur of the moment, we are unable to endorse the inference drawn by the learned trial judge.

57. The evidence on record does not reveal that the accused had committed the crime for lust, greed, or gain. On the contrary, the evidence on record indicates that the accused was suspecting the character of his wife and he had committed murder of his wife and daughter and furthermore he had attempted to commit suicide and in this attempt, he had inflicted serious

injuries on the vital parts of his body. The fact that the accused was casting aspersions on the character of the wife itself could be an indication of his emotional disturbance, alternatively harbouring suspicion about the character of his wife may have driven him to a state of mental imbalance, which resulted in the accused eliminating his family and thereafter attempting to take away his own life. Thus, the motive in committing the crime does not evince total depravity of mind but the facts and circumstances of the case reveal that the accused had committed the crime as a result of emotional and psychological imbalance.

58. It is also to be noted that after causing the death of his wife and the daughter, the accused had not fled away from the spot of the incident but had waited at the scene of offence. The overall conduct of the accused prior to the incident as well as post incident also gives an inkling that the accused was in an emotionally and psychologically disturbed state of mind.

59. Upon evaluating the aggravating and mitigating circumstances, we are unable to categorize the case as 'the rarest of rare case'. We are, therefore, of the considered view that this is not a fit case for imposing death penalty.

60. Nevertheless, the fact that the case is excluded from the category of the rarest of the rare case would not mean that the crime committed by the accused was not grave or brutal or that the accused deserves sympathy or leniency. In the case of *Swamy Shraddananda Vs. State of Karnataka (Supra)*, the Apex Court has held that :-

“92. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial Court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court’s opinion is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to the Court i.e. the vast hiatus between 14 years’ imprisonment and death. It needs to be emphasized that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years’ imprisonment would amount to no punishment at all.”

61. Similarly, in the case of ***State of U.P. Vs. Sanjay Kumar, (2012) 8 SCC 537***, the Apex Court has reiterated that :

“the aforesaid judgments make it crystal clear that this Court has merely found out the via media, where considering the facts and circumstances of a particular case, by way of which it is come to the conclusion that it was not the rarest of rare cases, warrenting death penalty, but a sentence of 14 years or 20 years, as referred to in the guidelines laid down by the State would be totally inadequate. The life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years, rather it always meant as a whole natural life”.

62. In the case of ***Mohinder Singh Vs. State of Punjab*** (supra) the Apex Court has held that:

21.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 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 v. Sanjay Kumar, (2012) 8 SCC 537 : (2012 AIR SCW 5157), 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. Subsections (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 subsection (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. v. State of Haryana, 2012 (11) Scale 140 : (AIR 2013 SC 447), 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 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 433A of the Code.”*

63. Similar principles are enunciated in the case of *Gurvail Singh (supra)* and other decisions relied upon by the learned counsel for the accused and Learned APP for the State. Since we have already considered the ratio laid

down in the decisions, it is not necessary to refer to the said decisions. Suffice it to say that the Apex Court has consistently held that the life imprisonment is not equivalent to 14 years term and that the court can sentence the accused for a fixed term of imprisonment, if the facts and circumstances of a given case so warrant.

64. In the instant case, as stated earlier, the accused had beheaded his wife and a minor daughter. There can be no doubt that the accused had committed murder of these two helpless victims in a most cruel, inhuman and diabolic manner. Though it is not known as to which of the victims was murdered first, the fact remains that the victim who was murdered at a later point of time had to witness the gruesome murder of the other victim. Thus, it is evident that apart from the physical pain caused to the victims, the accused had also subjected the victims to immense mental agony. Considering the nature of the crime and the manner in which two helpless victims, one being a minor child, were eliminated, in our considered view, a sentence of life imprisonment, which upon considering the remission, normally works out to a term of 14 years, would be grossly disproportionate

and inadequate. We are therefore of a view that the present case is one of those cases which warrants a harsher punishment.

65. In the result, we pass the following order :-

ORDER

- (a) Reference made by the learned Additional Sessions Judge, Vasai is rejected.
- (b) The appeal is partly allowed to the extent of sentence awarded under section 302 of the IPC.
- (c) The conviction of the accused for the offence punishable under Section 309 of the IPC and the sentence imposed by the trial court is maintained.
- (d) The conviction of the accused for the offence u/s 302 of the IPC is maintained. However, the death sentence imposed on him is set aside and the same is commuted to life imprisonment, subject to rider that the accused shall not be released unless he has un-

dergone 30 years of imprisonment, including the period already undergone by him. The accused is also liable to pay fine of Rs.5,000/- and in default to suffer R.I. for one year.

(e) The substantive sentences are ordered to run concurrently.

(ANUJA PRABHUDESSAI, J.)

(V. M. KANADE, J.)