

-1-

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.179/2016
WITH
CRIMINAL CONFIRMATION CASE NO. 1 OF 2016**

1] Ganesh S/o Maruti Bhutkar
Age 33 years, Occ-Agril,
R/o Dongargan, Tq. Nagar
Dist.Ahmednagar
(Appellant No.1 is in jail)

2] Laxmibai Maruti Bhutkar
[Deceased]

**... APPELLANTS
[Orig.Accused No.1 &2]**

VERSUS

1] The State of Maharashtra
[Copy to be served on P.P.
High Court of Bombay
Bench at Aurangabad]

.. RESPONDENT

...
Mr. V.B.Mhase, Advocate for appellant.
Mr. A.R.Borulkar, APP for Respondent-State
...

**CORAM : A.V.NIRGUDE &
V.L.ACHLIYA,JJ.**

**RESERVED ON: 12TH JULY,2016
PRONOUNCED ON : 10TH AUGUST, 2016**

ORAL JUDGMENT [PER A.V.NIRGUDE,J.] :-

The Appeal is filed challenging judgment and order dated

-2-

16/2/2016 passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.44/2014 in which the appellant who was convicted for committing murder of his wife and two minor daughters was sentenced to death penalty. The appellant was also sentenced for other offences such as offence u/s 498-A of IPC. The appellant challenged this judgment and order in his Appeal, whereas the learned Sessions Judge sent Confirmation Case for our approval of death penalty awarded to the appellant.

2] The prosecution case is based on evidence of 7 witnesses. Prosecution Witness No.3 Adinath Mate is Police Patil of village Dongargan, Tq. And Dist.Ahmednagar. He stated that on 8/11/2013, at about 5.11 a.m., he received a phone call from appellant Ganesh. Appellant Ganesh told him that he wanted to surrender before police and the witness should call the police van. Despite enquiry, appellant did not disclose further. Adinath informed this fact to the police and alongwith Shivaji and Radhakishan went to the house of the accused. They found door of the house locked from inside and they also heard voice of the appellant reading out some religious book. Despite calling him, the appellant did not open the door. Adinath and his companions waited outside the house of the appellant till arrival of police. When police came, the appellant opened the door. Alongwith police, Adinath and his companions

-3-

Shivaji and Radhakishan entered appellant's house and noticed dead bodies of Anita wife of the appellant, Dnyaneshwari and Sanjivani his minor daughters. All these witnesses noticed marks of throttling on the necks of the victims. They also noticed some blood stains on their mouth. Witness no.1 Shivaji who vouched for what is stated by witness Adinath. He too repeated that at about 5.30 a.m., on 8/11/2013, he at the request of Adinath went to the house of appellant and waited outside his house till the police came. He also stated that when he entered the house, he noticed 3 dead bodies. He also witnessed the scene of offence panchanama conducted on the same day at about 1.30 p.m.

3] Prosecution witness No.6 A.P.I.Chandrashekhar Sawant stated that on 8/11/2013 he was attached to M.I.D.C. Police station. At about 6 a.m., he received a message from P.S.O. P.N.More who informed him that he had received a phone call from Police Patil Adinath Mate that the appellant wanted to surrender the police and therefore, the police vehicle should be sent to his house. Accordingly, he went to Dongargan in police van with police staff. When he reached house of the accused, he noticed Adinath and other villagers were gathered in front of the appellant's house. He also noticed an old lady sitting in front of the house. She was accused no.2. He noticed that main door of the house was closed from inside. He gave a call to

-4-

the appellant. He heard the appellant asking from inside as to whether police had come. He replied in affirmative and then the appellant opened the door. He entered the house and found that in the bed room of the house, three dead bodies were lying. By that time, relatives of the deceased came there. He too noticed injuries on the neck of the dead bodies etc. The relatives of the deceased wanted to file complaint. He then sent them to police station where complaint was filed and offence was registered. Thereafter, witness A.P.I. Sawant carried out inquest panchanama. He sent the dead bodies for post mortem and received medical opinion regarding cause of death of all the persons was death due to throttling. During the investigation the appellant and his mother were arrested immediately. In arrest panchanama, nail clippings of the appellants were recovered. The nail clippings were sent for chemical analysis but unfortunately, no incriminating material was found. On the basis of this evidence, the learned Judge of the lower Court convicted the appellant.

4] There are two more witnesses who are important. They are complainants who happened to be brother and father of the deceased Anita. Both of them stated that about 15 days prior to the incident, Anita had come to their house, she made complaint to them that the appellant and his mother were harassing her over demand of

dowry of Rs.1 lakh. They were also blaming her that she did not beget male child. Prosecution Witness No.2 is Dr.Gorakhnath was the autopsy surgeon for all the three dead bodies. He stated that all the deaths occurred due to throttling. According to the charge framed by the prosecution, the deaths occurred during 1 a.m. to 3 a.m. during that night. After the investigation, the police sent charge sheet against appellant and his mother but before framing of the charge, accused no.2 mother of the appellant died natural death while in custody.

5] The learned counsel appearing for the appellant asserted that in this case of circumstantial evidence, chain is not completed and therefore, the appellant deserves acquittal. He also pointed out that the appellant was not the only person in the house during the night and it can be the other accused who could have committed this crime. In the alternative, the learned counsel also pointed out to the defence of the appellant which he took in his statement under Section 313 of Cr.P.C., where the appellant stated that during the night, he was not at home between 11 p.m. till 5 a.m. He stated that he had gone to his field for irrigating the crop of onion, when he came back home, he found dead bodies and made a phone call to the Police Patil.

6] in view of this defence, few things do not require further proof. First, that till 11 p.m. on that night, the victims were alive and were present in the house, they died probably between 11 p.m. to 5 a.m. The question is whether the prosecution could prove its case beyond reasonable doubt or whether the defence of the appellant is believable on probability. The prosecution proved that at about 5 a.m. Police Patil Adinath received a phone call from the accused. This is also an admitted fact. This phone call prompted the Police Patil Adinath to take further steps. He on one hand made a phone call to Police and requested them to send force to his village. On the other hand, he took two respectable persons of the village and proceeded to the appellants house. From this action it appears to us that most probably he suspected some foul play at the house of the appellant. He did not know what could have happened at the house of the appellant. He also deposed that the appellant told him that he would surrender to police thereby indicating that he had committed some crime. With all seriousness, Police Patil went to the appellant's house and called from outside the appellant who refused to open the door of his house and put stayed there. He enquired as to whether police came and showed his willingness to come out only if police would come. As expected unfortunately police came in time. At about 6 a.m. They came and as narrated, the appellant opened the door. After the door was opened, the witness found three dead

bodies inside the house and the appellant and no other persons was found in the house. The investigating officer stated that he found accused no.2 sitting outside the house, therefore, should not be related to the incident of murder. The post mortem confirmed homicidal death of the victims and therefore it became a case of multiple murder. The question is who committed the murder. The only conclusion that can be drawn in these circumstances is that the appellant alone could have committed these murders. It was he who was found near the dead bodies at the relevant time. He had kept himself and the dead bodies locked inside his house, so there was no possibility of third person entering in the house in such situation. The probability of res-epsa-loquitor would arise and the appellant owed the Court explanation as to what had happened in his house. The appellant tried to discharge this liability by making a disclosure during his statement under Section 313 of Cr.P.C. He stated that he was out of the house during the night. The question is whether even on probability this case is believable. The answer is in negative. Had the appellant being serious about this thing he would have entered witness box, he would have recorded deposition of defence witnesses who could have vouched for his presence with them outside the house etc. In other words, the defence is feeble attempt to shirk the responsibility. The appellant even suggested that it was his mother who committed these murders and he wanted to protect

his mother etc. The case of the appellant is utterly unbelievable and we are not inclined to believe it at all. The circumstances that are on record would complete the chain so as to draw an unambiguous conclusion that the appellant alone would have committed this gruesome crime. The Appeal should therefore fail. We would now consider whether the death penalty should be confirmed or not.

7] The learned counsel for the appellants strenuously contended that the case in hand does not fall in the category of rarest of rare case to award death sentence. He has contended that it is settled position in law that awarding of sentence of imprisonment for life in offence under Section 302 of IPC is a rule and death penalty is an exception. He has further submitted that if we draw the balance sheet of aggravating and mitigating circumstances then certainly the case does not fall in the category of rarest of rare to award death sentence. He has submitted that accused is a young person with no criminal antecedents. The case is purely based upon circumstantial evidence. It has come on record that accused himself made a phone call to Police Patil of the village and requested to call the Police by telling him that he wants to surrender. He has not run away after commission of offence. When police visited his house he was found to be present in his house and reading religious book. The evidence on record reveals that he was under financial crisis. On due

consideration of evidence on record, the inference can be drawn that the incident was occurred on account of frustration and financial crisis. There is no evidence brought on record by prosecution to establish that the appellant would be potential danger to the society. He has therefore, urged not to confirm the death sentence. In support of the submissions advanced, the learned counsel has referred and relied upon decision of the Apex Court in the case of **Sunil Damodar Gaikwad V/s State of Maharashtra reported in 2013 (4) Bombay Cases Reporter (Cri) 660 and the decision of the Apex Court in the case of Sangeet and another V/s State of Haryana reported in (2013) 2 S.C.C. 452.**

8] Learned APP has submitted that awarding of death sentence is fully justified. He has submitted that the appellant has caused the murder of his wife and two innocent daughters aged about 5 and 3 years. He has submitted that the motive behind the murder was that the deceased wife of the appellant has given birth to two female child. The accused had no remorse of heinous act committed by him. He was found sitting inside the house after causing murder of his wife and two daughters and reading religious book. He has submitted that the murder was caused in a preplanned manner. There was no provocation from the deceased to commit such ghastly act. The accused has caused murder of his wife and two daughters

while they were in deep sleep and defenceless. The accused being the father and a trusted person never anticipated to have committed such act. He has further submitted that except the age of the accused that he was 31 years of age, there are no mitigating circumstances to award the punishment other than the death sentence. He has therefore, submitted that the reference made by the trial Court awarding death sentence be confirmed. In support of submission that under the facts and circumstances of the case, the accused deserves to be awarded capital punishment, the learned Additional Public Prosecutor relied upon the decision of the Apex Court in the case of **Mahesh S/o Ram Naraian V/s State of Madhya Pradesh reported in 1987 (3) S.C.C. 80** and **Subhash Chander V/s Krishan Lal and others and others reported in 2001 (4) S.C.C. 458.**

9] We have carefully considered the submissions advanced in the light of over all evidence of the case, and the reasons and findings recorded by the trial Court to award death.

10] The legal position as to award the death sentence is quite crystallized by the Apex Court, in the case of **Bachan Singh V/s State of Punjab reported in (1980) 2 S.C.C. 684.** In para 164 and 209, the Court has observed as under :

“164. Attuned to the legislative policy delineated in Sections 354(3) and 235(2), propositions (iv) (a) and (v) (b) in Jagmohan, shall have to be recast and may be stated as below:

(a) The normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. The court can depart from that rule and impose the sentence of death only if there are special reasons for doing so. Such reasons must be recorded in writing before imposing the death sentence.

(b) While considering the question of sentence to be imposed for the offence of murder under Section 302 Penal Code; the court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence.

209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and

-12-

expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and figures albeit incomplete, furnished by the Union of India, show that in the past Courts have inflicted the extreme penalty with extreme infrequency - a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.”

11] Thus, the normal rule is that offence of murder shall be punished with sentence of life imprisonment. The Court can depart from the normal rule and impose the sentence of death only if the Court is satisfied that there are special reasons for doing so.

12] In para 202 and 206 the Apex Court has listed certain aggravating and mitigating circumstances, which are to be taken into

consideration while deciding the case to award death sentence. The circumstances as mentioned in Bachan Singh's case are as under :

Aggravating circumstances :

(a) if the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed -

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.

Mitigating circumstances:- I

- (1) That the offence was committed under the influence of extreme mental or emotional disturbance.
- (2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.
- (3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
- (4) The probability that the accused can be reformed and rehabilitated.

The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.

- (5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.
- (6) That the accused acted under the duress or domination of another person.
- (7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct. “

13] Further the Constitution Bench in Bachan Singh's case has held that not only the relevant circumstances of the crime should be taken into account but due consideration should also be given to the circumstances of the crime while arriving at a decision as to whether case is justified for awarding the death sentence. The conclusion of the Constitution Bench in Bachan Singh's case was that the sentence of death be given only in rarest of rare case and it should be given only when option of awarding of sentence of life imprisonment is unquestionably foreclosed.

14] In the case of **Machhi Singh and Ors V/s State of Punjab reported in (1983) 3 SCC 470**, the three Judge Bench has explained the concept of rarest of rare case. In para 32, the Apex Court has observed as under :

32. The reasons why the community as a whole does not endorse the humanistic approach reflected in "death sentence-in-no-case" doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of "reverence for life" principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety

without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by 'Killing' a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so 'in rarest of rare cases' when its collective conscience is so shocked that it will expect the holders of the judicial power center to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as for instance :

15] Thus, while determining the appropriate sentence, the emphasis has been led on aspects like manner of commission of murder, motive for commission of murder, anti social, or abhorrent

nature of the crime, magnitude of the crime and personality of the victim of the murder.

16] In para 38 of Macchi Singh's case, the Apex Court has observed as under :

38. In this background the guidelines indicated in Bachan Singh case will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentences arises. The following propositions emerge from Bachan Singh case :

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

17] In the case of **Macchi Singh**, the Apex Court has observed that while applying above mentioned guidelines, the following questions may be asked and answered.

“39. In order to apply these guidelines inter alia the following questions may be asked and answered :

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence ?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstance which speak in favour of the offender ?

40. If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the Court would proceed to do so.”

18] The broad principles and the guidelines as discussed above are subsequently followed in the various decisions of the Apex Court. The meaning of the word “**rarest of rare**” case has been further elaborated and explained in the case of **Haresh Mohandas Rajput vs. State of Maharashtra** reported in **(2011) 12 SCC 56** In para 19, 20 and 21 the Apex Court has observed as under :

“**19.** In *Machhi Singh and Ors. v. State of Punjab* reported in *AIR 1983 SC 957*, 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 center 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. "Rarest of the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful co-existence of the society. The crime may be heinous or brutal but may not be in the category of "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 co-existence. 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 indulge in organized criminal activities, death sentence should be awarded.

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. ”

19] In the case of **Vasant Sampat Dupare vs. State of Maharashtra** reported in **(2015) 1 SCC 253**, the Apex Court has considered the entire precedents of law on this subject and observed in para 57 as under :

“**57.** Keeping in view the aforesaid authorities, we shall proceed to adumbrate what is the duty of the Court when the collective conscience is shocked because of the crime committed. When the crime is diabolical in nature and invites abhorrence of the collective, it shocks the judicial conscience and impels it to react keeping in view the collective conscience, cry of the community for justice and the intense indignation the manner in which the brutal crime is committed. We are absolutely conscious that Judges while imposing sentence, should never be swayed away with any kind of individual philosophy and predilections. It should never have the flavour of Judge-centric attitude or perception. It has to satisfy the test laid down in various precedents relating to rarest of the rare case. We are also required to pose two questions that has been stated in *Machhi Singh case reported in (1983) 3 SCC 470.*”

20] We have thoroughly considered the submissions advanced in the light of the precedents of law and broad guidelines laid down therein as discussed in the foregoing paras. As discussed in the

foregoing paras, awarding of life imprisonment is a rule and death sentence is an exception. It is therefore, necessary to examine as to whether the case in hand is of a nature where there is no alternative other than to award death sentence. No doubt the act committed by the appellant to cause the murder of his wife and two minor daughters is inhuman and condemnable act. However, we are not in agreement with the view taken by trial Court that the case falls in the category of rarest of rare case and the accused deserves to be awarded with death penalty. If we consider the over all facts of the case, then the fact is not in dispute that accused is a young person. He was 31 years of age at the time of commission of offence. He had no past record of involvement in criminal activities. He was residing in a village and agriculturist by profession. If we consider the injuries on the dead body of the deceased, then it cannot be said that accused has acted in cruel manner in causing the death. As per the post mortem report, the cause of death of all the deceased persons has been given as ***“Cardio Respiratory Arrest due to Asphixia due to Throttling”*** It is also important to note that accused has not run away after committing the murders of his wife and two minor daughters. He made a phone call to Police Patil of the village and requested him to call the police by telling him that he would like to surrender before the police. After making the phone call, he kept himself locked inside the premises. Only after the police came, he

opened the door and surrendered before the police. It has come on record that when they found Police Patil and other villagers reached outside the house then found him reading the religious book. Therefore, from overall conduct of the accused, it cannot be said that after causing the murder, he has acted in the manner to be termed as something uncommon, which render the sentence of life imprisonment inadequate and calls for death sentence.

21] If we consider the evidence on record, then there are reasons to believe that at the time of incident the accused was not in proper state of mind. It has come on record that accused was demanding the amount from in laws to repay the loan. There is no convincing evidence to show that the motive behind the murder of his wife and two minor daughters was on account of giving birth to female child and not giving birth to male child as observed by the trial Court. If we examine the testimony of Devidas Tambe (P.W.4) the brother of the deceased and Bhaskar Tambe (P.W.5) the father of the deceased, then there appears to be no serious dispute amongst the accused and his wife. The earlier incident which leads to lodging of complaint under Section 498-A of IPC was taken place way back in the year 2007. The case resulted into acquittal on the basis of testimony of wife of accused. She has stated before the Court that she lodged the complaint under the hit of anger. P.W.4 has deposed that in the

month of February 2013, the deceased has first time disclosed to him about the demand of money, ill treatment and harassment. However, he has deposed that he is unable to disclose the amount demanded by the accused. The fact disclosed by P.W. 4 in respect of alleged harassment was also found to be by way of omission and improvement.

22] P.W.5 the father of deceased has deposed that after the compromise in the year 2007, Anita (deceased) was residing in the same house with appellant i.e. accused no.1 and mother in law i.e. accused no.2. He has further deposed that she had good terms with accused no.2. As such there is no clinching evidence to arrive to conclusion that the incident of murder was outcome of giving birth to two female child. On the contrary, the evidence on record leads to draw inference that accused was in financial crisis and out of frustration, he has committed the crime. It is quite settled position in law that before awarding the death sentence, due consideration must be given not only to relevant circumstances of particular crime but also to consider circumstance of criminal. In absence of any evidence to show that appellant would be continuing threat to society or incapable of reform and rehabilitation, the awarding of death sentence would not be justified. In the case of **Rajesh Kumar vs. State through Govt. of NCT of Delhi** reported in (2011) 13 SCC

706 in a case based upon identical facts as that of causing murder of two children aged 4½ years and 8 months, who offered no provocation or resistance to the appellant-accused therein, his act though held to be brutal and inhuman, still the Apex Court has held that it is not case fit to award death sentence. In para 86 the Apex Court has observed as under :

“**86.** Taking an overall view of the facts in these appeals and for the reasons discussed above, we hold that death sentence cannot be inflicted on the Appellant since the dictum of Constitution Bench in Bachan Singh (supra) is that the legislative policy in Section 354(3) of 1973 Code is that for person convicted of murder, life imprisonment is the rule and death sentence, an exception, and the mitigating circumstances must be given due consideration. Bachan Singh (supra) further mandates that in considering the question of sentence the Court must show a real and abiding concern for the dignity of human life which must postulate resistance to taking life through law's instrumentality. Except in 'rarest of rare cases' and for 'special reasons' death sentence cannot be imposed as an alternative option to the imposition of life sentence.”

23] The learned counsel for the appellant has rightly placed reliance on the decision of Apex Court in the case of **Sunil Damodar Gaikwad V/s State of Maharashtra reported in 2013 (4) Bom. C.R. (Cri) 660**, wherein in a case based upon identical facts, in which accused was found to have committed murder of his wife and two

children, the Apex Court has held that case would not fall in the category of rarest of rare case and converted the sentence of death into imprisonment for life.

24] We have perused the decisions in the case of **Mahesh S/o Ram Naraian** and **Subhash Chander** as referred and relied by the learned Additional Public Prosecutor. In our view, decisions rendered in said cases have no bearing upon the facts of the present case.

25] In view of the discussion made in the foregoing paras, we are of the view that the death sentence awarded to accused is not justified in the facts and circumstances of the case. Considering overall aggravating and mitigating circumstances, we are of the view that the sentence of imprisonment for life would be an appropriate sentence in the present case. There is no doubt in our mind that the offence committed by the accused deserves severe condemnation and is heinous crime but looking to the cumulative facts and circumstances of the case, we do not think that the case falls in the category of rarest of rare case. Hence we are not inclined to award death sentence. Having regard to the totality of the circumstances, we pass the following order :

ORDER

1] The conviction of appellant-accused under Sections 302 and 498-A of IPC is maintained.

2] The sentence of death penalty awarded by trial Court is commuted to life imprisonment and fine of Rs.10,000/- in default to pay fine amount, to undergo rigorous imprisonment for one year with a rider that the State Government shall not consider the case of the appellant for premature release unless the appellant undergoes minimum sentence of 30 years.

3] The sentence awarded by trial Court for committing offence under Section 498-A of IPC and direction that sentence to run concurrently is maintained.

4] The Appeal filed by appellant is partly allowed to the extent of commutation of death penalty to life imprisonment.

5] Reference is answered accordingly.

(V.L.ACHLIYA,J.)

(A.V.NIRGUDE,J.)

umg/