

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 06.06.2016

Judgment Pronounced on : 09.06.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Referred Trial No.1 of 2016
and
Criminal Appeal No.315 of 2016

Referred Trial No.1 of 2016

Rajiv Gandhi @ Marimuthu ... Accused

-Vs-

Inspector of Police
Anaimalai Police Station
Coimbatore.
[Crime No.66/2012]

... Complainant

Referred Trial under Section 366 of the Code of Criminal Procedure, 1973 on the judgment of the learned IV Additional District and Sessions Judge, Coimbatore in S.C.No.344 of 2012 dated 30.03.2016.

Crl.A.No.315 of 2016 :-
Rajiv Gandhi @ Marimuthu

...Appellant/Accused

-Vs-

State Rep. by
Inspector of Police
Anaimalai Police Station, Coimbatore District.
[Crime No.66/2012]

... Respondent/Complainant

This Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned IV Additional District and Sessions Judge, Coimbatore, in S.C.No.344 of 2012 dated 30.03.2016.

For Appellant/Accused : C.Ram Kumar

For Respondent/Complainant : Mr.S.Shanmugavelayutham
Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The 4th Additional District and Sessions Judge, Coimbatore has referred the case in S.C.No.344 of 2012 for confirmation of the death sentence imposed on the accused Mr.Rajivgandhi @ Marimuthu (hereinafter referred to as the first accused). Mr.Rajivgandhi is the first accused and one Mr.Jothimani is the second accused in the case. As against the first accused, as many as three charges were laid for offences under Sections 302 (2 counts), 307 and 506(ii) IPC and as against the second accused, charges were laid for the offences under Sections 302, 307 and 506(ii) IPC r/w 109 and r/w 34 IPC. During the pendency of the trial, the second accused died and thus, the charges against him stood abated. The Trial Court proceeded with the trial as against the first accused alone. By judgment dated 30.03.2016, the Trial Court convicted the first accused under Sections 302 IPC (2 counts), 307 IPC and 506(ii) IPC. For the offence under Section 302 IPC 2(counts), the Trial Court imposed death sentence on the first accused; for the offence under Section 307 IPC to undergo imprisonment for life and for the offence under Section 506(ii) to undergo rigorous imprisonment for three years. The trial court has submitted the proceedings to this Court under Section 366 of the Code of Criminal Procedure, 1973 for confirmation of the death sentence. That is how, the Referred Trial No.1 of 2016 is before this Court. The first accused - Mr.Rajivgandhi @ Marimuthu has come up with CrI.A.No.315 of 2016 challenging the said conviction and sentence and that is how these two cases are before this Bench.

2. The case of the prosecution in brief is as follows:-

The first accused is the resident of Sungam village in Pollachi Taluk, Coimbatore District. He was in possession of a Government Poramboke land in the said property. The deceased namely Palaniammal- (hereinafter referred to as D1), Ms.Jothimani (hereinafter referred to as D2) and the injured Magudeeswari (hereinafter referred to as P.W.5) are also residents of the same village. D2 and P.W.5 are the daughters of D1. There were tamarind trees on the above said land. The deceased used to collect fruits from the trees as per the license issued to them by the Government. On account of the dispute regarding possession of the said land and collection of tamarind fruits, there was enmity between these two families.

3. While so, on 11.02.2012 at about 6.00 p.m, the accused went to the house of the deceased and wanted them to give up their so called claim over the property, as he wanted to make some developments. They did not concede to the said request.

This is stated to be the immediate motive for the occurrence. On the same day, at 8.00 p.m., P.W.1 - the son of D1, P.W.2 - the husband of D1, P.W.3- the son-in-law of D1, P.W.4 -the brother of D1 and P.W.5 - the daughter of D1, were in their house. At about 8.00 p.m., D1 and D2 were proceeding towards the above stated tamarind tree for the purpose of answering the nature's call. They were in possession of a torch light in their hand. At that time, the accused was also found moving towards the said direction with an Aruval. Therefore, P.Ws.1 to 3 and others followed him suspecting some possible foul play. On reaching D1 and D2, the accused started cutting them indiscriminately. P.W.5 her daughter intervened. The accused cut her also. The eye witnesses rushed towards him. On seeing them, the accused ran away from the scene of occurrence. They in fact made a chase, but could not get hold of him. They found D1 and D2 died instantaneously. P.W.5 was struggling for life with injuries. Then, P.W.1 with the help of others arranged for an ambulance and took them to the Government Hospital at Pollachi.

4. P.W.1 immediately went to Anaimalai Police Station at 11.00 p.m. He made a complaint to the Sub-Inspector of Police under Ex.P1. P.W.15, the then Sub-Inspector of Police, on receipt of Ex.P1, complaint, registered a case in Crime No.66 of 2012 for offences under Sections 302, 307 and 506(ii) IPC. Ex.P17 is the First Information Report. He forwarded both the complaint (Ex.P1) and the FIR (Ex.P17) to the Court, which were received by the learned Magistrate at 6.00 a.m on 12.02.2012.

5. The case was taken up for investigation by P.W.16. He immediately proceeded to the place of occurrence and prepared an Observation Mahazar and a rough sketch in the presence of P.W.7 and another witness. Then he recovered the blood stained earth at the place of occurrence. He took photographs with the help of the photographer (P.W.11). Then he conducted inquest on the body of D1 between 2.15 and 4.15 a.m., on 12.02.2012 and forwarded the body for postmortem. Between 4.30 and 7.00 a.m., he conducted inquest on the body of D2 and then forwarded the body for postmortem.

6. P.W.13, Dr.Amirthalingam conducted autopsy on the body of D2 on 12.02.2012 at 11.10 a.m and he found the following injuries:

- " 1. Deep cut wound 11x3 cm x cranial cavity deep over left fronto temporal region of scalp with underlying fracture, left frontal bone exposing brain matter. Subscalpal contusion noted over an area of 13x5 cm noted over left fronto temporal region.
2. Deep cut wound 7x7 cm noted over right temporo parietal region of scalp with underlying skull

defect over an area of 7x7 cm with the separated fracture piece of right parietal bone over the area of the skull defect underlying dura found intact. Sub scalp contusion noted over an area of 9x8 cm over right temporo parietal region.

3. Cut wound 10x4 x entire thickness of cheek with the inner edge ending at the angle of mouth on left side and outer end 0.5cms in front of tragus of left ear.

4. Deep cut wound 13x7 cm x bone depth with the right side end 4 cm below maxillary prominence and the left side end of the wound merging with inner one third of wound no.3. On dissection, the underlying comminuted fracture of mandible of varying sizes and shapes noted near left side chin with surrounding tissue contusion.

5. Deep cut wound 18x5 cm x bone depth with the right end 3 cm below angle of mandible extending across the neck with the left end 4 cm below angle of left side of mandible with exposing muscle, nerves and vessels. On dissection, the middle third of trachea found cut over an area of 3 x 1 cm x entire thickness noted with surrounding tissue contusion.

6. Deep vertical cut wound 10x2 cm by muscle deep extending from occipital region of scalp to nape of neck exposing muscles, nerves and vessels.

7. Deep transverse cut wound 14x3 cm x bone depth extending from mid line to back of right ear.

8. Deep cut wound 6x2 x muscle deep extending from mid line to back of right ear.

9. Partially amputated left ring and little finger at the level of pipjoint with surrounding tissue contusion.

10. Deep cut wound 8x3 cm x muscle deep over anterior aspect of right thigh middle third."

Ex.P10 is the postmortem certificate. Ex.P11 is the final opinion regarding the cause of death. According to him, the death was due to shock and haemorrhage due to the injuries found on the body of D2. He further opined that injuries found on the body of D2 could have been caused by a weapon like Aruval viz., M.O.1.

7. P.W.13, Dr.Amirthalingam, on the same day i.e, 12.02.2012, at 10.00 a.m. conducted autopsy on the body of D1 and found the following injuries:-

"1. Cut wound 14x2 cm x cranial cavity deep, noted over left parietal region of scalp. Sub scalp contusion of size 16x4 cm noted beneath the left parietal scalp

2. Contusion 5x5 cm noted over left forehead

3. Avulsed left ear with raw area of 10 x 11 cm over left mastoid region of skull attached with small tag of skin;

4. Transverse cut wound 29x5 cm by bone deep noted above right scapula with inner end 2 cm outer to D2 thoracic vertebrae and the outer end 3 cm below 2 back of the tip of acromion process of right scapula

5. Transversely oblique cut wound 23x3 cm x bone deep noted over back of middle and lower chest with the inner end extending to infrascapular area and merging with wound no.4 over back of right arm. The wound passes inwards piercing the pleural and cutting the fourth and fifth ribs in posterior aspects.

6. Cut wound 3 x 1 cm muscle deep four in numbers noted below wound no.5

7. Deep cut wound 8x2 cms x muscle deep noted over back of chest below wound no.6

8. Deep cut wound 14x6 cm x bone deep noted over right shoulder with scapula and head of humerus exposed. On dissection the underlying humerus found dislocated with surrounding tissue contused reddish colour

9. Deep cut wound 6x3 cm x muscle deep noted over left scapular region.

10. Deep cut wound 7 x 3 cm x muscle deep noted out nape of neck

11. Avulsed right ear with exposing raw area over mastoid bone 6x7 cm over right mastoid region of skull attached with small tag of skin.

12.Right forearm found traumatically amputated at the level of below elbow joint, amputated ends exposing muscles, nerves, vessels and bones.

13.Deep cut wound 8x3 cm noted over the dossum of right hand with exposing muscles and bones in the amputated forearm.

14.Deep cut wound 12x5 cms noted over the dossum of left hand with exposing muscles, nerves, vessels tendons and bones. On dissection the underlying metacarpal bone found fractured with surrounding tissue reddish contusion.

15.Deep cut wound 21 x 3 cm extending from the lateral aspect of left lower arm to lateral aspect of upper third of left forearm."

Ex.P12 is the postmortem Certificate and Ex.P13 is his final opinion. He gave opinion that the injuries found on D1 could have been caused by a weapon like Aruval M.O.1 and the death was due to shock and haemorrhage due to the said injuries.

8.During the course of investigation, P.W.16 collected the blood stained clothes from the bodies of both the deceased. He forwarded all the material objects to the Court. On 14.02.2012 at 2.00 p.m. at Anamalai Road, P.W.16 arrested the first accused, who was proceeding in his motor cycle, in the presence of P.W.10 and another witness. Then, the first accused gave a voluntary confession, in which he disclosed the place where he had hidden the Aruval. At the same time, he arrested the second accused also. The second accused gave a voluntary confession, in which he disclosed the place where he had hidden the blood stained clothes. In pursuance of the disclosure statement made by the first accused, (M.O.1) Aruval was recovered and in pursuance of the disclosure statement made by the second accused, the blood stained clothes were recovered under Mahazars.

9. P.W.5 was treated by P.W.12 Dr.Kalaiselvi. Ex.P9 is the Wound Certificate. She found the following injuries:-

" lacerated injury of size about 15x5 x bone depth from left occipital region to right occipital region.

Lacerated injury measuring 10x5x bone depth just above the first injury"

She gave opinion that the said injuries could have been caused by a weapon like Aruval (M.O.1).

10. The investigation was continued by the successor of P.W.16 and on completing the investigation, he laid charge sheet against the accused.

11. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the same, on the side of the prosecution, as many as 17 witnesses were examined, 21 documents besides 12 material objects were marked. Further, two documents viz., Exs.C1 and C2 were marked as Court documents. Ex.C1 is a copy of the judgment in S.C.No.78 of 2006 passed by the learned Additional District Sessions Judge, Coimbatore against the accused, wherein, he was convicted under Section 302 IPC and sentenced to undergo imprisonment for life. Ex.C2 is a copy of the judgment of a Division Bench of this Court in Crl.A.No.228 of 2007, wherein, the Division Bench has modified the conviction of the accused in S.C.No.78 of 2006 and convicted him under Section 304(i) IPC and sentenced him to undergo rigorous imprisonment for seven years.

12. Out of the said witnesses, P.Ws.1 and 2 are the eye witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.Ws.3 and 4 have spoken about the accused 1 and 2 fleeing away from the scene of occurrence in a motor cycle driven by the second accused. P.W.5 is the injured eye witness, who has also spoken vividly about the entire occurrence. She has, in fact, spoken about the overt act of the accused in detail. P.W.6- the sister's husband of the deceased has spoken about the hearsay information and he has not stated anything more than that. P.W.7 has spoken about the preparation of Observation Mahazar and rough sketch at the place of occurrence. P.W.8 has spoken about the hearsay information and thus her evidence is of no use to the prosecution. P.W.9 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.10 has spoken about the arrest of the accused and the consequential recovery made out of the disclosure statements. According to him, on the disclosure statement made by the first accused (Ex.P4), M.O.5 Aruval was recovered and on the disclosure statement made by the second accused (Ex.P5), M.O.6-T-shirt, M.O.7- Dhoti were recovered. M.O.8- Motor cycle was recovered from the possession of the first accused. P.W.11 has spoken about the photographs taken at the place of occurrence. P.W.12 - Dr.Kalaisevi, has spoken about the injuries found on P.W.5 and she has also gave her opinion about the nature of injuries. P.W.13 has spoken about the post mortem conducted on the bodies of both the deceased and his final opinion regarding the cause of death. P.W.14 - the Forensic expert has stated that on examining the material objects, he found blood stains on all the material objects including M.O.5 Aruval. P.W.15 has spoken about the registration

of the case on the complaint of P.W.1 . P.W.16 has spoken about the entire investigation done by him and the filing of final report against the accused.

13. When the above incriminating materials were put to the first accused, he denied the same as false. However, he did not choose to examine any witness. His defence was a total denial.

14. Having considered all the above, the Trial Court convicted him as detailed in the first paragraph of this judgment and imposed death sentence for the offence under Section 302 IPC (2 counts) and other sentences for the other offences as detailed in first paragraph of this judgment. That is how, this proceeding for confirmation and the appeal are before this Court for disposal.

15. We have heard Mr.S.Shanmugavelayutham, learned Public Prosecutor appearing for the State and Mr.C.Ramkumar, learned counsel appearing for the accused (appellant in CrI.A.No.315/2016) and also perused the records carefully.

16. The learned counsel for the appellant would submit that P.Ws.1 and 2 would not have witnessed the occurrence at all. He would further submit that the evidence of P.Ws.3 and 4 would not in any manner go to support the case of the prosecution. He would further add that though P.W.5 is an injured eye witness, she also would not have witnessed the occurrence, as at the place of occurrence there was no light. He would further state that the medical evidence does not corroborate the eye witness account.

17. Turning to the quantum of punishment, the learned counsel for the appellant would submit that this is not a rarest of rare case, where it is warranted that death sentence should be imposed on the appellant. Thus, according to the learned counsel, the death sentence imposed on the appellant should not be confirmed and he should be acquitted.

18. The learned Public Prosecutor appearing for the State would submit that the accused had killed two innocent women in a very gruesome manner and had also attempted on the life of P.W.5., by causing extensive injuries. This act of the accused, according to the learned Public Prosecutor has shaken the collective conscience of the entire community of the people in that area. According to him, this is not an ordinary case of murder, but it is a case falling within the rarest of rare category and thus, the Trial Court was right in imposing the death sentence. He would further submit that the evidence of P.Ws.1, 2 and 5, which draw adequate corroboration from P.Ws.3

and 4 and the medical evidence, would be sufficient to confirm the conviction as well as sentence.

19. We have considered the above submissions.

20. P.W.5, in this case, is the injured eye witness. She has spoken very vividly about the injuries inflicted on her as well as on D1 and D2. Her presence at the place of occurrence cannot be doubted at all for any reason. D1 and D2 had gone to the place of occurrence to answer the nature's call. Since the accused was found moving towards that place with Aruval, D1 and D2 had followed him and they had also witnessed the entire occurrence. At that time, the deceased had torch light and it is not at all the case of the accused that there was no light available at the place of occurrence so that identity could not be noticed by the witnesses. At any rate, though P.Ws.1, 2 and 5 have been cross examined at length, we find nothing on record, even for a slightest doubt regarding their veracity. At an earliest point of time, P.W.5 has told the Doctor that she was attacked by a known person at 8.00 p.m with Aruval. This statement of P.W.5 also duly corroborates her evidence. The medical evidence undoubtedly corroborates the eye witness account. These evidences are, in turn, corroborated by the evidences of P.Ws.3 and 4. P.Ws.3 and 4 have stated that when they were standing in front of the house of P.W.3, they found the first accused rushing with Aruval in his hand. The second accused was readily waiting in his motor cycle and the first accused got on the motor cycle and both fled away from the scene of occurrence. These two witnesses are also reliable, as their evidence is so convincing. In our considered view, the Trial Court was right in holding that it was this accused, who cut D1, D2 and P.W.5.

21. Now turning to the medical evidence, P.W.13, has opined that the death was due to shock and haemorrhage due to the cut injuries found on the bodies of both the deceased. There could be no much serious dispute regarding the cause of death. Thus, we accept the opinion of P.W.13 in respect of the cause of death. From the medical evidence, it has been clearly established by the prosecution that the death of both the deceased was on account of injuries caused only by this accused. So far as injuries found on P.W.5 is concerned, there was a deep cut injury on the back of head exposing even brain. There was yet another injury measuring 10 x 5 cms on head. She has also suffered fracture of the left hand. She was in the hospital undergoing treatment as inpatient till 04.04.2012. Thus, it is crystal clear that because of the efforts made by the doctors for months together, she was saved. Undoubtedly, the injuries found on P.W.5 were sufficient in ordinary course of nature to cause death. This would go to clearly prove the intention of the accused that he intended to cause the death of

P.W.5. Similarly, he intended to cause the death of D1 and D2. Therefore, the act of the accused would squarely fall within the first limb of Section 300 of IPC. Therefore, the appellant is liable to be punished for offences under Sections 302 (2 counts) and 307 IPC and also for offence under Section 506(ii) IPC for having criminally intimidated the witnesses.

22. Now turning to the quantum of punishment, the learned Public Prosecutor would submit that this is a rarest of rare case, where death sentence is warranted and imposition of life sentence would be inadequate. But the learned counsel for the appellant would submit that this case would not fall within the category of rarest of rare cases and therefore, the death sentence imposed by the trial Court cannot be confirmed.

23. In this regard, we may fail in our duty if we do not refer to the constitution bench judgment of the Hon'ble Supreme Court in *Bachan Singh v. State of Maharashtra*, 1980 (2) SCC 684, wherein, the Supreme Court has held that it is only in rarest of rare cases, the accused can be imposed with death sentence. Article 21 of the Constitution of India, which has been considered as the heart and soul of the Constitution, guarantees the right to life and liberty of every individual and it mandates that life and liberty cannot be deprived of except by following the procedure established by law. On the touchstone of Article 21, the constitutionality of the death penalty envisaged in Section 302 of IPC was tested by a Constitution Bench of the Hon'ble Supreme Court in *Bachan Singh's* case wherein the Hon'ble Supreme Court eventually upheld its constitutionality. However, the Hon'ble Supreme Court declared that generally, life sentence should be the rule and the death sentence should be an exception. The Constitution Bench has further held that the death sentence could be awarded only in rarest of rare cases.

24. Over a period of about 36 years, the Hon'ble Supreme Court, while dealing with the rarest of rare doctrine, as propounded in *Bachan Singh* case, cited supra, has been endeavouring to impress upon the judiciary as to what exactly is the rarest of rare case which warrants the extreme penalty of death. In this case, it is not our endeavour to catalogue all those judgments, post *Bachan Singh* case, as the same would only add to the length of this judgement. It is enough for us to state that while deciding the quantum of punishment, the court is obliged to balance between the aggravating and mitigating circumstances and impose the appropriate punishment so as to do justice to the parties. There are a few judgments of the Hon'ble Supreme Court following "balancesheet theory" so as to balance between the aggravating and mitigating circumstances and there are also judgments of the Hon'ble Supreme Court taking a contrary view wherein the Hon'ble Supreme Court has held that

comprehensively all the circumstances namely, aggravating as well as mitigating circumstances are to be taken into account. From the various judgments of the Hon'ble Supreme Court, commencing from Bachan Singh case, various principles have been culled out by the Hon'ble Supreme Court. Recently in Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767, the Hon'ble Supreme Court has identified certain factors which are to be taken into account by the courts that are as follows:-

"(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."

25. In Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546, the Hon'ble Supreme Court has held as follows:-

"In my considered view that the tests that we have to apply, while awarding death sentence are "crime test", "criminal test" and the "R-R test" and not the "balancing test". To award death sentence, the "crime test" has to be fully satisfied, that is 100% and "criminal test" 0%, that is no Mitigating Circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record etc. the "criminal test" may favour the accused to avoid the capital punishment. Even, if both the tests are satisfied, that is, the aggravating circumstances to the fullest extent and no

mitigating circumstances favouring the accused, still we have to apply finally the Rarest of Rare Case test (R-R Test). R-R Test depends upon the perception of the society that is "society centric" and not "Judge-centric", that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the Court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of minor girls intellectually challenged minor girls, suffering from physical disability, old and infirm women with those disabilities, etc. Examples are only illustrative and not exhaustive. The Courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the judges."

26. In *Swamy Shraddananda (2) v. State of Karnataka*, [cited supra], the Hon'ble Supreme Court has further elaborated as to how go about to find whether a particular case falls within the category of rarest of rare case or not. In paras 34, 36, 43, 45 and 47, the Hon'ble Supreme Court has held as follows:-

"34. As on the earlier occasion, in *Bachan Singh* too the Court rejected the submission. The Court did not accept the contention that asking the Court to state special reasons for awarding death sentence amounted to leaving the Court to do something that was essentially a legislative function. The Court held that the exercise of judicial discretion on well-established principles and on the facts of each case was not the same as to legislate. On the contrary, the Court observed, any attempt to standardise or to identify the types of cases for the purpose of death sentence would amount to taking up the legislative function. The Court said that a "standardisation or sentencing discretion is a policy matter which belongs to the sphere of legislation" and "the Court would not by overleaping its bounds rush to do what Parliament, in its wisdom, warily did not do".

35.

36. Arguing against standardisation of cases for the purpose of death sentence the Court observed that even within a single category offence there are infinite,

unpredictable and unforeseeable variations. No two cases are exactly identical. There are countless permutations and combinations which are beyond the anticipatory capacity of the human calculus. The Court further observed that standardisation of the sentencing process tends to sacrifice justice at the altar of blind uniformity.

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43. In Machhi Singh¹ the Court crafted the categories of murder in which "the community" should demand death sentence for the offender with great care and thoughtfulness. But the judgment in Machhi Singh¹ was rendered on 20-7-1983, nearly twenty-five years ago, that is to say a full generation earlier. A careful reading of the Machhi Singh¹ categories will make it clear that the classification was made looking at murder mainly as an act of maladjusted individual criminal(s). In 1983 the country was relatively free from organised and professional crime. Abduction for ransom and gang rape and murders committed in the course of those offences were yet to become a menace for the society compelling the legislature to create special slots for those offences in the Penal Code. At the time of Machhi Singh¹, Delhi had not witnessed the infamous Sikh carnage. There was no attack on the country's Parliament. There were no bombs planted by terrorists killing completely innocent people, men, women and children in dozens with sickening frequency. There were no private armies. There were no mafia cornering huge government contracts purely by muscle power. There were no reports of killings of social activists and "whistle-blowers". There were no reports of custodial deaths and rape and fake encounters by police or even by armed forces. These developments would unquestionably find a more pronounced reflection in any classification if one were to be made today. Relying upon the observations in Bachan Singh², therefore, we respectfully wish to say that even though the categories framed in Machhi Singh¹ provide very useful guidelines, nonetheless those cannot be taken as inflexible, absolute or immutable. Further, even in those categories, there would be scope for flexibility as observed in Bachan Singh² itself.

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45. But the relative category may also be viewed from the numerical angle, that is to say, by comparing the case before the Court with other cases of murder of the same or similar kind, or even of a graver nature and then to see what punishment, if any was awarded to the culprits in those other cases. What we mean to say is this, if in similar cases or in cases of murder of a far more revolting nature the culprits escaped the death sentence or in some cases were even able to escape the criminal justice system altogether, it would be highly unreasonable and unjust to pick on the condemned person and confirm the death penalty awarded to him/her by the courts below simply because he/she happens to be before the Court. But to look at a case in this perspective this Court has hardly any field of comparison. The Court is in a position to judge "the rarest of rare cases" or an "exceptional case" or an "extreme case" only among those cases that come to it with the sentence of death awarded by the trial court and confirmed by the High Court. All those cases that may qualify as the rarest of rare cases and which may warrant death sentence but in which death penalty is actually not given due to an error of judgment by the trial court or the High Court automatically fall out of the field of comparison.

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47. We are not unconscious of the simple logic that in case five crimes go undetected and unpunished that is no reason not to apply the law to culprits committing the other five crimes. But this logic does not seem to hold good in case of death penalty. On this logic a convict of murder may be punished with imprisonment for as long as you please. But death penalty is something entirely different. No one can undo an executed death sentence."

27. A reading of the judgments [cited supra], more particularly, Swamy Shraddhanand's case, would go to show that no two cases are exactly identical. There are countless permutations and combinations which are beyond the anticipatory capacity of the human calculus. The Court further observed that standardization of the sentencing process tends to sacrifice justice at the altar of blind uniformity.

28. Applying these doctrines to the facts of the present case, if we consider the aggravating as well as the mitigating circumstances emerging from the evidences, what emerges is that it is not a case falling within the rarest of rare doctrine. So far as the aggravating circumstances are concerned, the prosecution has failed to prove the motive for the occurrence. But, at the same time, killing of two women [D1 and D2], is brutal and gruesome and the same cannot be tolerated by any man of ordinary prudence. It should have, certainly, sent shock waves in the society, as rightly observed by the trial court. The trial Court was much influenced by the earlier conviction of the accused as evidenced by Exs.C1 and C2. That was a case, where the accused was convicted under Section 302 IPC. But this Court on appeal, by judgment in Ex.C2 had modified the same into one under Section 304(i) IPC and sentenced him to undergo rigorous imprisonment for seven years. But in this case, motive for the present occurrence resulted in the killing of D1 and D2 and making attempt of the life of P.W.5 has got nothing to do with the earlier occurrence, which is the subject matter in Exs.C1 and C2. But certainly it is also a matter of concern, as the accused has been repeating such kind of crimes and the same cannot be ignored. However, there are also mitigating circumstances in favour of the accused, like his age, the fact that the motive was due to land dispute and that the occurrence was proceeded by a quarrel. As has been held in Shankar Kisanrao Khade's case cited supra, it is not a case where there is 0% mitigating circumstance in favour of the accused. There are certain mitigating circumstances as enumerated hereinabove. Further, in our considered view, it is not as though the sentence of imprisonment for life would be inadequate. Having regard to the totality of all the circumstances, both the aggravating as well as the mitigating circumstances, both by balancing these two as well as by applying the test propounded in Shankar Kisanrao Khade's case cited supra, that there is no 0% mitigating circumstance in the instant case, we are of the view that so far as the murders of D1 and D2 are concerned, imprisonment for life would be the adequate punishment. Thus, we find it difficult to confirm the death penalty imposed by the trial court upon the appellant/accused.

29. But, at the same time, sofar as the imprisonment for life imposed on the appellant for the murders of D1 and D2 are concerned, the accused shall not be entitled for any remission for twenty years. [vide Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767].

30. In view of the foregoing discussions, we find that this case does not fall within the category of rarest of rare cases. Therefore, we find it difficult to confirm the death sentence. We are inclined to impose life sentence, however with a

direction that the accused shall not be entitled to any remission for a period of twenty years from the date of judgment of the Trial Court.

31. In the result, Referred Trial No.1 of 2016 is disposed of and the Criminal Appeal No.315 of 2016 is partly allowed in the following terms:-

(i) The conviction imposed on the appellant under Section 302 IPC (2 counts) is confirmed, however, the sentence of death imposed on the appellant for each count is set aside and instead, the appellant/accused is sentenced to undergo imprisonment for life for each count and to pay a fine of Rs.5000/- for each count in default to undergo rigorous imprisonment for one month each.

(ii) The conviction and sentence imposed on the appellant for the offence under Section 307 IPC is confirmed.

(iii) The conviction and sentence imposed on the appellant under Section 506(ii) IPC is also confirmed.

(iv) It is directed that all the above sentences shall run concurrently and the period of sentence, if any, undergone, shall be set off under Section 428 of Cr.P.C.

(v) The case of the appellant shall not be considered for any remission for a period of twenty years from the date of the judgment of the trial court.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.IV Additional District and Sessions Judge,
Coimbatore.

2.The Principle District Judge,
Coimbatore.

3.The Ist Additional District Judge,
Coimbatore.

- 4.The Judicial Magistrate No.1,
Pollachi.
- 5.The Chief Judicial Magistrate,
Coimbatore.
- 6.The District Superintendent of Police,
Coimbatore.
- 7.The Superintendent,
Central Prison, Coimbatore.
- 8.The Inspector of Police
Anaimalai Police Station
Coimbatore.
- 9.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-8.
- 10.The District Collector,
Coimbatore.
- 11.The Director General of Police,
Mylapore, Chennai.
- 12.The Public Prosecutor
High Court, Madras.
- 13.The Section Officer,
Criminal Section,
High Court, Madras.

+3cc to Mr.C.Ramkumar, Advocate Sr.31151,30296, 30979

+1cc to the Public Prosecutor, Sr.31385

Referred Trial No.1 of 2016
and
Criminal Appeal No.315 of 2016

pur[co]
srg 15/06/2016

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