

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

CRIMINAL APPEAL NO. 504 OF 2002

The State of Maharashtra,
through P.S. Bamni,
Taluka Jintur, District Parbhani

.. Appellant

Versus

Ayodhyabai w/o Bhagwan Musale,
Aged 18 years, Occu. Household,
R/o Borkini, Taluka Sailu,
District Parbhani

.. Respondent

Mr S.J. Salgare, A.P.P. for appellant
Mrs A.S. Rasal, Advocate for respondent

**CORAM : T.V. NALAWADE AND
A.M. DHAVAL, JJ**

DATE : 30th October 2017

ORAL JUDGMENT (Per A.M. Dhavale, J.)

1. Heard learned A.P.P. Mr Salgare for the State and learned Advocate Mrs Rasal for respondent.

2. As held in **Bachan Singh Vs. State of Punjab, AIR 1980 SC 898**, the death sentence is an exception and life sentence is a rule. Death sentence is to be awarded only when life imprisonment appears to be altogether inadequate punishment having regard to the relevant circumstances of the crime and only provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstance of the crime and all the relevant circumstances. It is to be awarded in the rarest of the rare cases. The aggravating and mitigating circumstances have to be drawn up and just balance has to be struck between the aggravating and mitigating circumstances.

3. In **Machhi Singh & Ors. Vs. State of Rajasthan, AIR 1983 SC 957**, the factors to be considered while determining the test of rarest of the rare case are laid down as follows :

(1) The manner of Commission of Murder :

Whether it is extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) Motive for commission of murder :

Showing total depravity and meanness like murders for money or cold blooded murders.

(3) Anti-social or socially abhorrent nature of the crime

(4) Magnitude of crime :

When the crime is enormous in proportion and there are multiple murders

(5) Personality of victim of murder

4. In **Ramnaresh and Ors. Vs. State of Chhatisgarh, AIR 2012 SC 1357**, aggravating and mitigating circumstances to be considered are laid down. On applying the above guidelines, we find following aggravating and mitigating circumstances :

Aggravating Circumstances :

- (i) There were two murders and one attempt by poison;
- (ii) The victims were innocent and they had not given any provocation to the respondent.

Mitigating Circumstances :

- (I) The respondent-accused was aged 18 years of immature mind, newly married and scared of sex relations with her husband;
- (II) There is no previous criminal record of the respondent;
- (III) The respondent must have taken the decision under emotional disturbance. She intended to commit murder of her husband, but two family members of the husband who consumed the food died due to poisoning. She did not intend to kill them.
- (IV) The offence took place about 16 years back.

5. Considering the aggravating and mitigating circumstances, we find that the present set of facts do not make out 'rarest of the rare case' so as to award death penalty. Therefore, it is unnecessary to hear the respondent on the point of sentence. Hence, we pass the following order:

ORDER

(i) The Appeal is allowed.

(II) The respondent is convicted under Section 302 of Indian Penal Code for committing murder of Balu and sentenced to suffer imprisonment for life and is to pay fine of Rs.500/- in default to suffer simple imprisonment for ten days.

(ii) The respondent-accused is further convicted under Section 302 of Indian Penal Code for committing murder of Laxmibai and is sentenced to suffer imprisonment for life and to pay fine of Rs.500/- in default to suffer simple imprisonment for ten days.

(iii) The respondent - accused is convicted under Section 307 of Indian Penal Code for committing murder of her husband and is sentenced to suffer rigorous imprisonment for five years. All the sentences shall run concurrently.

(iv) Muddemal shall be destroyed after the period of appeal is over.

(v) The trial Court shall take steps to arrest the respondent and send her to undergo the imprisonment, as stated hereinabove.

(A.M. DHAVAL, J.)

(T.V. NALAWADE, J.)