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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 24.04.2018

CORAM

**THE HONOURABLE DR.JUSTICE S.VIMALA**

**AND**

**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

R.T. (MD) NO.1 OF 2017

CRL. A. (MD) NO.222 OF 2017

AND CRL. M.P. (MD) NO.5826 OF 2017

**R.T. (MD) NO.1 OF 2017**

II Additional District and  
Sessions Judge (PCR)  
Tirunelveli.

.. Referring Officer

- Vs -

1. Sankaranarayanan  
2. Chellammal

.. Respondents/ Accused 1 & 2

**CRL. A. (MD) NO.222 OF 2017**

1. Sankaranarayanan  
2. Chellammal

.. Appellants/ Accused 1 & 2

- Vs -

State rep. by  
The Assistant Commissioner of Police  
L&O, Palayamkottai Sub Division,  
Palayamkottai Police Station.

.. Respondent/ Complainant

Reference made under Section 366 of Cr.P.C. to go into the question of confirmation of the death sentence awarded by the learned II Additional District & Sessions Judge (PCR), Tirunelveli, in S.C. No.144 of 2016 dated 09.01.2017.

Appeal filed under Section 372(2) of the Code of Criminal Procedure praying to call for the records pertaining to the above S.C.No.144 of 2016 dated 09.01.2017 on the file of learned II Additional District and Sessions Judge (PCR), Tirunelveli and set aside the same and allow the above Criminal Appeal.

For Appellants : Mr. E.Somasundaram for A1 in CA 222/17  
Mr. V.Maharajan for A2 in CA 222/17  
Mr.C.Emalias, State Public Prosecutor  
Assisted by Mr.R.Anandharaj, APP in RT 1/2017

For Respondent : Mr. C.Emalias, State PP  
Assisted by Mr.R.Anandharaj, APP  
in CA 222/2017  
Mr.A.K.Manickam

Legal Aid Counsel for RR-1 & 2 in RT 1/2017



|             |               |
|-------------|---------------|
| Reserved on | Pronounced on |
| 16.03.2018  | 24.04.2018    |

**COMMON JUDGMENT**

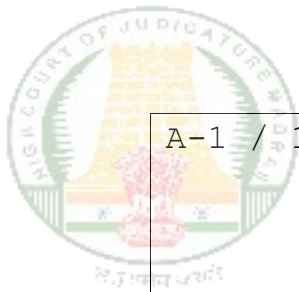
**DR. S.VIMALA, J.**

The Reference, R.T. No.1 of 2017 is made by the learned II Addl. District & Sessions Judge (PCR), Tirunelveli, seeking confirmation of the death sentence, while C.A. No.222 of 2017 is filed by the accused/appellants in S.C. No.144 of 2016 challenging the conviction and sentence imposed upon them. The reference as well as the appeal are disposed of by the following common judgment.

2. The accused were tried before the learned II Addl. District & Sessions Judge for the following charges:-

|                                 |                                                                                                                                                                                                                      |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A-1 / 1 <sup>st</sup> Appellant | i) Section 120 (B) r/w 302 IPC<br>ii) Section 294 (b) IPC<br>iii) Section 302 IPC<br>iv) Sections 3 (1) (r) & (s) of SC/ST (PoA) Act<br>v) Section 3 (2) (va) of SC/ST (PoA) Act<br>vi) Section 506 (ii) IPC         |
| A-2/2 <sup>nd</sup> Appellant   | i) Section 120 (B) r/w 302 IPC<br>ii) Section 294 (b) IPC<br>iii) Section 302 r/w 109 IPC<br>iv) Sections 3 (1) (r) & (s) of SC/ST (PoA) Act<br>v) Section 3 (2) (va) of SC/ST (PoA) Act<br>vi) Section 506 (ii) IPC |

3. The allegation made against the accused is that on 13.05.2014, at about 11.00 a.m., A-1 attacked the deceased with aruval indiscriminately and insulted her by calling her by caste name and A-2, while insulted the deceased by calling by her caste name, instigated A-1 to cut any person, who tried to intervene in the transaction and A-1 insulting the witnesses by calling them by their caste name, threatened them with dire consequences if they try to prevent him from carrying on the attack on the deceased and after inflicting injuries on the deceased, the accused fled away from the scene of occurrence in a motorcycle bearing Regn. No.TN-58-V-7283. On being found guilty, A-1 and A-2 were convicted and sentenced under various Sections of the Indian Penal Code as also under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act (for short 'SC/ST (PoA) Act'), as under :-



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|                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A-1 / 1 <sup>st</sup> Appellant | <p>U/s 120 (B) r/w 302 IPC - Convicted &amp; Sentenced to imprisonment for life.</p> <p>U/s 302 IPC - Convicted &amp; Sentenced to Death.</p> <p>U/s 3 (1) (r) of SC/ST (PoA) Act - Convicted &amp; Sentenced to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.500/-, in default, one month simple imprisonment.</p> <p>U/s 3 (1) (s) of SC/ST (PoA) Act - Convicted &amp; Sentenced to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.500/-, in default, one month simple imprisonment.</p> <p>U/s 3 (2) (va) of SC/ST (PoA) Act - Convicted &amp; Sentenced to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.1000/-, in default, three months simple imprisonment.</p> <p>U/s 506 (ii) IPC - Convicted, but no separate sentence imposed since the A-1 stands punished for the offence u/s 3 (2) (va) of SC/ST (PoA) Act.</p> |
| A-2/2 <sup>nd</sup> Appellant   | <p>U/s 120 (B) r/w 302 IPC - Convicted, but no separate sentence awarded.</p> <p>U/s 302 r/w 109 IPC - Convicted &amp; Sentenced to Death.</p> <p>U/s 3 (1) (r) of SC/ST (PoA) Act - Convicted &amp; Sentenced to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.500/-, in default, one month simple imprisonment.</p> <p>U/s 3 (1) (s) of SC/ST (PoA) Act - Convicted &amp; Sentenced to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.500/-, in default, one month simple imprisonment.</p>                                                                                                                                                                                                                                                                                                                                                                   |

While the appeal has been filed by the appellants against the conviction and sentence, the reference by the trial Judge is for the confirmation of the death sentence.



4. The facts, shorn of unnecessary details, could be briefly summarised as hereunder :-

P.W.1 and the deceased Kalpana are husband and wife. P.W.2 and Kasiammal are the parents of the deceased and the in-laws of P.W.1. Incidentally, Kasiammal is the sister of P.W.1. A-1 and A-2 are husband and wife, whose daughter, Kauvery, eloped with Viswanathan, the son of P.W.2 and Kasiammal and brother of the deceased, on 3.5.2016. While P.W.1 belonged to Hindu Pallar Community the accused belonged to Devar Community. Aggrieved over their daughter having eloped with a person of scheduled caste community, A-1 and A-2 came to the house of P.W.1 and the deceased on 3.5.2016 and demanded them to hand over their daughter, Kavary, to them. A-1 and A-2 were pacified by the witnesses and were assured that, on their daughter being traced, they will immediately hand over her custody to the accused. However, the said Kavary could not be traced and, therefore, the accused frequently visited the house of the deceased enquiring about their daughter and for her being handed over to the accused.

5. On 13.5.2016, at about 11.00 a.m., when P.W.s 1, 2, 3, Murugan, Ganesan and Kasiammal were conversing in the house of P.W.1, at which point of time the deceased and her child were playing outside the house, at that time, A-1 and A-2 once again came there and enquired about their daughter. The witnesses informed that they had no knowledge about the whereabouts of their daughter and once they come to know, they will secure and hand her over to the accused. After consuming water, while A-1 and A-2 left the house around 11.30 a.m., and the deceased accompanied the accused outside the house to see them off and the witnesses were continuing their conversation, the witnesses suddenly heard the hue and cry of the deceased and when they came out of the house, they saw A-1 castigating and insulting the deceased using caste name and using filthy language and indiscriminately cutting the deceased with an aruval. When the witnesses tried to save the deceased, A-1 intimidated them and saying that anybody, who tries to save the deceased will also be done to death. A-2 also castigated and insulted the deceased using her caste name and instigated A-1 to kill the deceased. After indiscriminately cutting the deceased, A-1 and A-2 fled away from the scene of occurrence in a Hero Honda Splendour Motorcycle.

6. P.W.1, along with P.W.s 2 and 3 took the deceased in the auto of P.W.4, to the Government Hospital, Tirunelveli, where the doctor declared her dead on arrival. Thereafter, P.W.1, in the same auto belonging to P.W.4, proceeded to Palayamkottai Police Station and at about 12.30 p.m. on 13.5.2016, lodged the complaint, Ex.P-1 to P.W.15, the Sub-Inspector of Police. However, even before lodging of the complaint, death intimation, Ex.P-14, was received by P.W.15 from Tirunelveli Government Medical College & Hospital, about the death of the deceased. Based on the complaint and death intimation, P.W.15 registered the case in Crime No.581 of 2016 under



Sections 294 (b), 302, 506 (ii) IPC r/w Sections 3 (1) (r) and (s) and 3 (2) (va) of SC/ST (PoA) Act. Ex.P-15 is the FIR and the printed FIR was forwarded to the Judicial Magistrate No.I, Tirunelveli and the copies were sent to the higher official.

7. P.W.17, the Assistant Commissioner of Police (L&O), on receipt of order, Ex.P-18, from the Dy. Commissioner of Police, Tirunelveli City, took up investigation and proceeded to the scene of occurrence, where he prepared Observation Mahazar, Ex.P-2 and rough sketch, Ex.P-19, in the presence of witnesses. At 14.00 hrs., he collected bloodstained cement piece and ordinary cement piece, M.Os.6 and 7 in the presence of the same witnesses under Ex.P-3. Thereafter, he proceeded to the mortuary at the Government Hospital, Tirunelveli and in the presence of witnesses and panchayatadars, between 14.45 and 16.00 hrs., conducted inquest over the dead body of the deceased and prepared inquest report, Ex.P-20. P.W.17, thereafter, issued requisition, Ex.P-11, through the Special Sub Inspector of Police for conducting post-mortem on the body of the deceased under Passport, Ex.P-21.

8. P.W.12, Tutor in Medico-Legal Department, Tirunelveli Medical College & Hospital, on receipt of Ex.P-11 from the Investigating Officer, viz., the Assistant Commissioner of Police (L&O), conducted autopsy on the body of the deceased and found the following injuries :-

"1) A horizontal gapping heavy cut injury of size 22 x 3 cm x cavity deep from right parietal region to left parietal region of head. It cuts underlying soft tissue organs, bone and brain.

2) A curved gapping heavy cut injury of size 9 x 3 cm x cavity deep on left parietal region of head. It cuts underlying soft tissue organs, bone and brain.

3) A gapping heavy cut injury of size 24 x 4 cm x cavity deep on front & outer aspect of right side of abdomen. It cuts underlying soft tissue organs and bone and also cuts right kidney. A part of intestine exposed out through this injury.

4) An oblique gapping heavy cut injury of size 14 x 3 cm x bone deep on right shoulder. It cuts underlying soft tissue organs and bone.

5) A vertical gapping heavy cut injury of size 8 x 3 cm x bone deep on right shoulder. It cuts underlying soft tissue organs and bone.

6) A cut injury of size 4 x 2 x 0.5 cm on right cheek.

7) A cut injury of size 4 x 2 x 1 cm on middle of back of chest.

8) A cut injury of size 11 x 3 x 2 cm on right side of back of chest.

9) A cut injury of size 2 x 1 x 1 cm on right occipital region of head.



10) A cut injury of size 2 x 1 x 1 cm on left occipital region of head.

**OTHER FINDINGS :**

Pleural cavities and peritoneal cavity : Appear normal

Heart : Normal, coronary vessels are patent.

Hyoid Bone : Intact.

Stomach : Contains about 300 gm of partially digested food particles with nil specific smell and mucosa pale.

Small Intestine : Contains about 100 gm of partially digested food particles with nil specific smell and mucosa pale.

Lungs, Liver, Spleen and Left Kidney : Appear normal, c/s pale.

Uterus : Appears normal, c/s cavity is empty.

Bladder : Empty

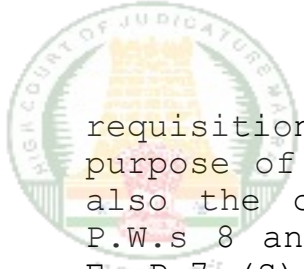
Viscera are preserved for chemical analysis.

Opinion as to the cause of Death : The deceased would appear to have died of heavy cut injuries to the region of head and abdomen. Injury Nos. 1 to 3 are fatal in nature."

9. P.W.12 issued Ex.P-12, post-mortem certificate opining that the deceased appears to have died of heavy cut injuries to the region of head and abdomen and that injury Nos.1 to 3 are fatal in nature.

10. P.W.17, continuing with his investigation, examined P.W.s 1 to 4, Kasiammal, Murugan, Saraswathy, Gopi, Lakshmi and Selvakumar and other witnesses and recorded their statements. On 14.5.2016, P.W.17, accompanied by P.W.15, arrested A-2 in the presence of witnesses. At that time, A-2 gave a voluntary confession statement and the same was recorded in the presence of witnesses. At about 9.00 a.m. on the same day, P.W.17 arrested A-1 in the presence of witnesses and at that time, A-1 also gave a voluntary confession statement, the admissible portion of which is marked as Ex.P-9. On the basis of the confession statement given by A-1, M.O.1, aruval and M.O.4, Motorcycle were seized under cover of mahazar Ex.P-10 in the presence of witnesses. Thereafter, the accused were sent for judicial remand.

11. P.W.17, continuing with his investigation examined further witnesses and recorded their statements. On 14.5.2016, under Form-95, the bloodstained nighty and inskirt worn by the deceased, the bloodstained cement piece and ordinary cement pieces were sent to the Court of Judicial Magistrate No.I. The investigation officer issued Ex.P-22, requisition letter, requesting the Court to send the material objects for chemical examination. Accordingly, the said materials were sent for chemical examination and Ex.P-5, chemical examination report was received. The investigation officer issued

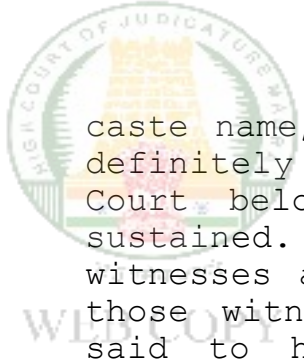


requisition to the Tahsildar to conduct departmental enquiry for the purpose of ascertaining the community of the deceased and P.W.1. as also the community of the accused. Accordingly, the Tahsildars, P.W.s 8 and 9 conducted departmental enquiry and submitted report, Ex.P-7 (S) and Ex.P-8 (S). The Investigation Officer examined the doctor and the Tahsildars and recorded their statements. After completing the investigation, the investigation officer filed the final report against the accused for the offences referred to above.

12. The prosecution, in order to sustain their case, examined P.W.s 1 to 17, marked Exs.P-1 to P-22 and also marked M.O.s 1 to 7. The accused were, thereafter, questioned under Section 313 (1) (b) Cr.P.C. with regard to the incriminating circumstances made out against them in the evidence tendered by the prosecution witnesses and both the accused denied it as false. On behalf of the accused, no witness was examined nor any documents were marked.

13. The trial court, on a consideration of oral and documentary evidence and other materials, while found A-1 guilty under Sections 120 (B) r/w 302, 302 and 506 (ii) IPC and under Sections 3 (1) (r) & (s) and Section 3 (2) (va) of the SC/ST (PoA) Act; found A-2 guilty of the offence under Section 120 (B) r/w 302 and 302 r/w 109 IPC, Sections 3 (1) (s) of the SC/ST (PoA) Act. While A-1 was sentenced to life imprisonment for the offence under Section 120 (B) r/w 302 IPC, no separate sentence was awarded under Section 506 (ii) IPC. For the offence under Sections 3 (1) (r) & (s), A-1 was sentenced to rigorous imprisonment for a period of 3 years under each for the offence and directed to pay a fine of Rs.500/- for each offence, in default, to undergo simple imprisonment for a period of one month for each of the offence and under Section 3 (2) (va) of the SC/ST (PoA) Act, A-1 was sentenced to rigorous imprisonment for a period of five years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of three months. A-2 was convicted and sentenced to rigorous imprisonment for a period of 3 years each under Sections 3 (1) (r) & (s) of SC/ST (PoA) Act, and directed to pay a fine of Rs.500/- each, in default, to undergo simple imprisonment for a period of one month. While A-1 was convicted under Section 302 IPC and sentenced to death, A-2 was convicted under Section 302 r/w 109 IPC and sentenced to death. However, no separate sentence was awarded on A-2 for the conviction under Section 120 (B) r/w 302 IPC. Challenging the legality of the conviction and sentence, passed by the trial court, while the accused have preferred C.A. No. 222 of 2017, the reference has been made by the learned II Addl. District & Sessions Judge (PCR), Tirunelveli, to this Court under Section 366 Cr.P.C. for confirmation of the death sentence.

14. Mr.Somasundaram, learned counsel appearing for the appellants submit that the witnesses, who were examined by the prosecution to substantiate the charge made against the accused all belong to Scheduled Caste community and charge having been made relating to the accused insulting the deceased and witnesses using

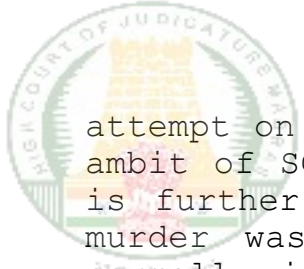


caste name, it is the necessary corollary that the witnesses would definitely be biased and, therefore, the reliance placed by the Court below, on the deposition of those witnesses, cannot be sustained. The witnesses are more in the nature of interested witnesses and, therefore, the credence placed on the deposition of those witnesses is questionable. Further, the occurrence having said to have taken place outside the house of the deceased, independent witnesses ought to have been examined to prove the charge, which the prosecution has miserably failed to do.

15. It is the further submission of the learned counsel for the appellants that even as per the prosecution, the occurrence is said to have occurred at about 11.30 a.m., on the fateful day, in broad daylight, that too outside the abode of the deceased. That being the case, only related witnesses have been examined and no independent witnesses, viz., the public, who are passersby, have been examined and in the absence of any corroboration through any independent witness, the genesis of the occurrence as projected by the prosecution itself becomes doubtful. Similarly, no independent witness has been examined to prove the arrest and recovery, though the arrest and recovery have been made from a busy locality. This clearly shows that the whole case has been projected by the prosecution only to implicate the accused in the crime.

16. It is further contended on behalf of the appellants that the version as spoken to by the defacto complainant, P.W.1 bristles with very many interpolations and inconsistencies with regard to the persons, who were available at the scene of occurrence at the time of the incident. Similarly, there is no whisper about the gold ornaments worn having been recovered as material objects, though it is stated by P.W.1 in cross examination about the gold ornaments worn by the deceased. It is the further submission of the learned counsel for the appellants that no details as to the registration number of the vehicles have been given in the FIR, though P.W.1 has deposed about the same in the witness box. It is the contention of the learned counsel that when the occurrence was fresh in the mind of the complainant at the earliest opportunity, he did not disclose the relevant details in the complaint, but has given those particulars at a later date, which clearly shows that the details given during examination is nothing but an extrapolated version, developed at the instance of the prosecution to fasten the liability on the accused.

17. It is the further submission of the learned counsel for the appellants that even the deposition of P.W.1 clearly establish that the appellants used to visit the house of the complainant for the purpose of enquiring about the whereabouts of their daughter and were in the habit of drinking water there. If the said statement of the complainant is taken into consideration, then the contention of the prosecution that the appellants, belonging to upper caste, castigated the complainant and his family, belonging to lower caste by using the caste name and used derogatory words is nothing but an



attempt on the part of the prosecution to bring the case within the ambit of SC/ST (PoA) Act and to make the offence more heinous. It is further submitted that the version of the prosecution that the murder was an act of honour killing is per se unjustified, as normally in the case of honour killing, the persons, who had ran away are normally done away with, which, at times, may include the family members, but doing away with one of the family members alone cannot be said to be an act of honour killing.

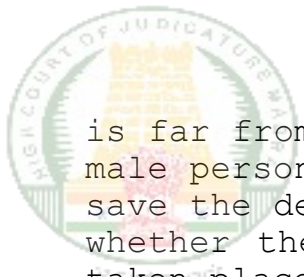
18. It is the further contention of the learned counsel for the appellants that though it is the case of the prosecution that the murder took place outside the house of the deceased, however, the footage aired by one of the TV channels revealed blood stains in one of the room inside the house of the deceased. Therefore, it is submitted by the learned counsel that the eye witness account about the way in which the murder had been committed is highly doubtful.

19. It is the further contention of the learned counsel for the appellants that though in the complaint, the injuries sustained by the deceased have been spoken to by P.W.1, however, the testimony of P.W.2 in cross examination reveals that both P.W.s 1 and 2 noticed the injuries on the body of the deceased only at the mortuary during their examination by the investigation officer. This material discrepancy in the evidence of P.W.2 creates a doubt about the presence of the witnesses at the scene of occurrence.

20. It is further contended that though P.W.1 in his complaint has revealed the name of A-1 and not the name of his father, yet the printed FIR reveals the name of the father of A-1 as also the address of A-1. It is therefore contended that the veracity of the FIR itself is questionable and, therefore, no credibility can be given to the FIR.

21. It is further contended on behalf of the appellants that though the FIR was registered and handed over to P.W.14 for being taken to the Court even at 1.15 p.m. on the day of occurrence, however, curiously, the FIR has reached the Court, after an inordinate delay, only at 5.50 p.m. Though as per the testimony of P.W.14, the distance between the police station and the Court is only 5 Kms., however, the reasoning attributed for the delay being torrential downpour of rain is far from convincing, as the occurrence had taken place in the month of May, during peak summer and, therefore, the testimony of P.W.14 that it was raining is far from believable. Therefore, the delay in the FIR reaching the Court is fatal to the case of the prosecution.

22. It is further submitted that though even according to the prosecution there were more than five persons conversing in the house of the deceased at the time of occurrence, however, no one ventured to prevent the onslaught on the deceased, though a simple reason is attributed through the witnesses by the prosecution that they were afraid of A-1 as he was wielding an aruval, but the same



is far from acceptable, as the gathering consists of more than three male persons, who could very easily have overpowered A-1 in order to save the deceased. In the light of the above, it is highly doubtful whether the occurrence, as projected by the prosecution could have taken place.

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23. It is the further contention of the appellants that though P.W.1 has stated that the accused alleged missing of their daughter and that complainant and his family were said to be responsible and, therefore, threats were meted out by the accused for which a complaint was lodged with the Commissioner of Police on 4.5.2016, however, the case of the prosecution reveals that the accused came to the house of the complainant/P.W.1, where they were offered water, which was partaken by the accused and, thereafter, the occurrence had occurred. Had enmity existed between the accused and the family of the deceased, definitely no hospitality would have been extended by the family of the deceased to the accused. Therefore, the projection of enmity between the family of the accused and the family of the deceased, by the prosecution, is an after thought and has been made up for the purpose of roping the accused into the crime.

24. It is the further contention of the appellants that the injuries sustained by the deceased would definitely have resulted in much loss of blood and had the eyewitnesses and A-2 been present during the said occurrence, definitely blood would have spluttered on the clothes of the eyewitnesses and the accused. However, the bloodstained clothes of the eye witnesses and the accused have not been seized by the prosecution and placed before the Court. In the absence of the bloodstained clothes being seized, the occurrence as projected by the prosecution deserves to be disbelieved.

25. In fine, it is submitted by the learned counsel appearing for the appellants that the case of the prosecution bristles with very many discrepancies and the witnesses have not properly supported the case of the prosecution, which facts have not been taken into consideration in the proper perspective by the Trial Court and, therefore, the failure on the part of the prosecution to prove its case beyond reasonable doubt would definitely lead to the irresistible conclusion that the case is a foisted one and, therefore, the benefit enuring therefrom should be given to the accused and, they should be acquitted by setting aside the judgment of the Trial Court.

26. Per contra, Mr.Emalias, learned Public Prosecutor appearing for the State, in order to sustain the case as well as the sentence of death awarded to the appellants, submitted that the trial court, after giving careful consideration to all the materials on record and also going through the evidence of the witnesses has held that the prosecution has proved the case beyond reasonable doubt, more so, keeping in mind the fact that this is a case of eye witness testimony and, therefore, no interference is called for with the



well considered findings of the trial court. On the question of sentence, learned Public Prosecutor submits that the trial court, carefully analyzing the dictum laid down by the Supreme Court in categorizing the case under the rarest of rare category, taking into account the fact that the murder has taken place on account of saving the honour of the family, which has been time and again been deprecated by the Apex Court, has held that the act of the accused warrants the maximum punishment as it was felt that there is no chance for reformation of the accused and, therefore, awarded the sentence of death after giving due opportunity to the appellants to put forth their case and, therefore, no interference is warranted on the question of sentence as well.

27. Countering the arguments of the learned Public Prosecutor, Mr. Manickam, the legal aid counsel, who has been appointed to put forth the cause of the appellants against the sentence of death, submitted that the finding of the Trial Court that it is a case of 'Honour Killing' is totally erroneous. It is submitted that this is not a case of honour killing as the relationship between the accused and the deceased, even prior to the crime, has not been shown to be strained. Further, no material has been placed before this Court to show that there existed a strained relationship between the two families. However, contra to the same, the accused used to visit the house of the deceased often, which only goes to show that all was well with both the families until the time the daughter of the accused eloped with the brother of the deceased. A-1, due to the said act of his daughter, had become distraught and due to the emotional stress, in the spur of the moment had attacked the deceased and, therefore, at best, it could be said to be only due to a sudden provocation and in the heat of passion and, would definitely not fall under the category of rarest of rare cases warranting sentence of death. Further, the Trial Court failed to take the aggravating and mitigating circumstances, as enunciated by the Supreme Court in *Bachan Singh - Vs - State of Punjab* (AIR 1980 SC 898) & *Machhi Singh & Ors. - Vs - State of Punjab* (1983 SCC (Cri) 681) into consideration before awarding the capital punishment.

28. It is the further submission of the learned legal aid counsel that A-2 has been roped into the offence just for the sake of making the case as one falling under the honour killing category. No overt act has been attributed to A-2, except for the fact that the witnesses have spoken a parrot like version that A-2 castigated and insulted the deceased using caste name and instigated A-1. In the absence of any cogent and convincing evidence showing the involvement of A-2 in the offence, the conviction and the consequential sentence awarded to A-2 deserves to be set aside.

29. This Court gave its anxious consideration to the submissions made by Mr. Somasundaram, learned counsel appearing for the appellants, Mr. Emalias, learned Public Prosecutor for the respondent/State and Mr. Manickam, learned legal aid counsel appearing for the appellants/respondents and also perused the

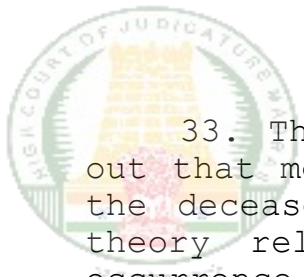


evidence of the witnesses, the exhibits and the material objects relied on by the prosecution. This Court has also taken into consideration the dictum laid down by the Supreme Court in categorizing a case under the rarest of rare category and the factors to be taken into consideration for the purpose of award of capital punishment.

30. The cause of death of the deceased stands established through the evidence of the doctor, P.W.12, Dr.Sreedharan, who conducted autopsy on the dead body and issued the post-mortem certificate, Ex.P-12 and after receipt of chemical analysis report, Ex.P-17, opined that the deceased appears to have died on account of heavy cut injuries to the region of head & abdomen. The death of the deceased on account of homicidal violence was not disputed by the accused before the trial court nor disputed before this Court. On the medical evidence we hold that the deceased died on account of homicidal violence, but the question is who is responsible for the death of the deceased.

31. This is a case of eye witness testimony with regard to an incident that had happened in broad daylight. The prosecution has projected the frustration of the accused to get back their daughter, who had eloped with the brother of the deceased and also the inability of the family of the deceased to trace out the daughter of the accused and hand her over to the accused as the motive for the occurrence, more particularly, emphasis has been laid on the fact that the accused belonged to an upper caste and the deceased belonged to Scheduled Caste and, therefore, the elopement of the daughter of the accused with the brother of the deceased is said to have instigated the accused for committing the offence. The evidence regarding the existence of a motive which operates in the mind of the accused is very often very limited, and may not be within the reach of others. The motive driving the accused to commit an offence may be known only to him and to no other. Not only in a case of circumstantial evidence, but equally in a case of eye witness testimony also, motive may be a very relevant factor. However, it is the perpetrator of the crime alone who is aware of the circumstances that prompted him to adopt a certain course of action, leading to the commission of the crime. Therefore, if the evidence on record suggests adequately, the existence of the necessary motive required to commit a crime, it may be conceived that the accused has in fact, committed the same. (Vide Rohtash Kumar - Vs - State of Haryana - 2013 (14) SCC 434).

32. The contention of the learned counsel for the accused that the eye witnesses, said to be closely related to the deceased, had they been present at the scene of occurrence, as put forth by the prosecution, would definitely have gone to the help of the deceased when A-1 was attacking her. The witnesses having not gone to the rescue of the deceased clearly points out that they could not have been available at the scene of occurrence as alleged by the prosecution. Further, it is also the contention that the witnesses having not gone to the rescue of the deceased, their presence at the scene of occurrence itself is doubtful.

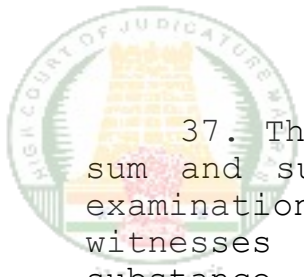


33. Though such a contention is advanced, it is to be pointed out that merely because the witnesses have not gone to the help of the deceased would not be a ground to disbelieve the prosecution theory relating to P.W.s 1 to 4 being eye witnesses to the occurrence. The response of the every individual in grave situations would be different from their response under normal situation and that the response of the individual might differ depending upon the ability to withstand the shocking incidents and depending upon the physical stamina and mental courage; some of them may try to rescue, some of them may counter attack, some of them may run away and some others may faint. In the above backdrop, merely because the witnesses did not try to intervene during the attack on the deceased, it cannot be said that they are not eyewitnesses to the occurrence. To be brief, 46 cm aruval, which the accused was said to be using, would have a repelling effect to run away from the place of occurrence and it would not have an attracting effect so that the witnesses would try to go to the rescue of the deceased.

34. P.W.1, in his evidence, has deposed that on the date of occurrence, the accused came to his house at about 11.00 a.m., when he was conversing with P.W.2, P.W.3, Kasiammal and Murugan, at that time the deceased, who was playing with her child outside the house also came inside the house. It is the further testimony of P.W.1 that the accused enquired about the whereabouts of their daughter, who had eloped with the brother of the deceased. After the enquiry, when the deceased accompanied A-1 and A-2 outside the house for seeing them off, P.W.1 heard the hue and cry of the deceased, who raised alarm that A-1 was inflicting cut injuries on her. It is further seen from the evidence of P.W.1 that P.W.1 along with P.W.s 2, 3, Kasiammal and Murugan rushed outside the house and found A-1 castigating and insulting the deceased and degrading her using her caste name and inflicting lethal injuries on the deceased. P.W.1 also went on to depose that A-2, who was standing nearby, instigated A-1 to do away with anyone, who tried to intervene and save the deceased. P.W.1 has further deposed that when they tried to intervene to save the deceased from the onslaught, they were warded off by A-1 saying that anybody, who tries to intervene would also be meeting with the same fate. Thereafter, A-1 and A-2 fled away from the scene of occurrence in a Hero Hondo motorcycle.

35. P.W.1 has further deposed that the deceased had sustained head injuries, injuries on the right shoulder and other injuries all over the body. Immediately after A-1 and A-2 fled away from the scene of occurrence, P.W.s 1, 2 and 3 took the deceased to the hospital in the auto belonging to P.W.4. The doctor, P.W.17, who was on duty at the Government Hospital, declared the deceased as brought dead and intimation in this regard, Ex.P-14, was sent to the police station. P.W.17 issued the accident register, Ex.P-16.

36. P.W.1 accompanied by P.W.2 went to Palayamkottai Police Station and lodged the complaint, thereby setting the criminal machinery in motion.



37. The above evidence of P.W.1 is corroborated on the whole in sum and substance by P.Ws.2 and 3. In spite of gruelling cross examination, the defence could not breach the testimony of the eye witnesses to the occurrence, viz., P.W.s 1 to 3. In sum and substance, the testimony of P.W.s 1 to 3 tallies in all material aspects.

38. Though it is the contention of the learned counsel for the appellants that the testimonies of P.W.s 1 and 2 contradict each other in chief as well as in cross, yet, a perusal of the contradictions, as highlighted by the defence only reveals that the contradictions are not vital contradictions, which will have a bearing effect on the occurrence, but are contradictions, which are prone to happen in the evidence. Even the discrepancies in the evidence of the other witnesses, as highlighted by the learned counsel for the appellants are minor contradictions, such as non mentioning of the registration numbers of the Hero Honda and the auto in which the deceased was taken to the hospital, the ornaments worn by the deceased, the non-mentioning of the name of P.W.1 by P.W.17 in the accident register, etc., which are prone to occur, but which does not materially alter the substance of the prosecution case. It is always possible that over a period of time from the time of occurrence to the recording of the statements of the witnesses upto the time the witnesses depose before the Court, it is but natural that there will be some omission/interpolations in the evidence of the witnesses. Human mind is prone to additions and deletions, which cannot be avoided. However, it is the duty of the Court to separate the wheat from the chaff for the purpose of coming to the conclusion whether the overall deposition of the witnesses are believable and truthful and whether the Court could record a conviction based on the said evidence. A careful perusal of the testimonies of the eye witnesses clearly reveal that they are cogent and convincing and contradiction, as pointed out by the learned counsel for the appellants cannot be said to be material contradictions affecting the substratum of the prosecution version.

39. Time and again it has been reiterated by the Supreme Court that minor contradictions or inconsistencies, which does not affect the root and genesis of the prosecution case, are not to be given undue weightage for the purpose of discarding the evidence in toto. In this regard, useful reference can be had to the decision of the Supreme Court in Waman - Vs - State of Maharashtra, (2011 (7) SCC 295), wherein it has been held as under :-

"33. In Gurbachan Singh v. Satpal Singh [(1990) 1 SCC 445 : 1990 SCC (Cri) 151] this Court has held that despite minor contradictions in the statements of prosecution witnesses, the prosecution case therein has not shaken and ultimately accepting their statement set aside the order of acquittal passed by the High Court and restored the sentence imposed upon them by the trial court.



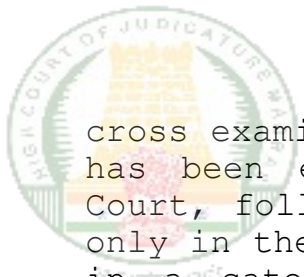
34. In *Sohrab v. State of M.P.* [(1972) 3 SCC 751 : 1972 SCC (Cri) 819] about minor contradictions in the statements of prosecution witnesses, Their Lordships have held in para 8 as under:

"8. ... It appears to us that merely because there have been discrepancies and contradictions in the evidence of some or all of the witnesses does not mean that the entire evidence of the prosecution has to be discarded. It is only after exercising caution and care and sifting the evidence to separate the truth from untruth, exaggeration, embellishments and improvement, the court comes to the conclusion that what can be accepted implicates the appellants it will convict them. This Court has held that falsus in uno falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered though where the substratum of the prosecution case or material part of the evidence is disbelievable it will not be permissible for the court to reconstruct a story of its own out of the rest."

35. It is clear that not all the contradictions have to be thrown out from consideration but only those which go to the root of the matter are to be avoided or ignored. In the case on hand, as observed earlier, merely on the basis of minor contradictions about the use and nature of weapons and injuries, their statements cannot be ignored in toto. On the other hand, we agree with the conclusion of the trial court as affirmed by the High Court about the acceptability of those witnesses, and accordingly, we reject the claim of the appellants as to the same."

(Emphasis supplied)

40. In the case on hand, it is evident that there are few interpolations and contradictions in the evidence of the witnesses, viz., P.W.s 1 and 2. However, those contradictions and interpolations do not materially affect their evidence. P.W.s 1 and 2 have spoken in one voice when confronted about the happenings on that day leading to the murder of the deceased. In spite of lengthy

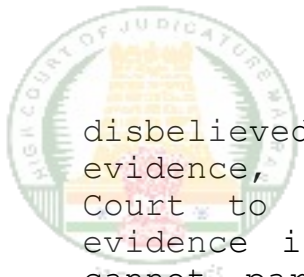


cross examination, no evidence fruitful or beneficial to the accused has been elicited by the defence. In such circumstances, this Court, following the proposition laid down by the Supreme Court not only in the above decision, but which proposition has been laid down in a catena of decisions, is of the considered view that the evidence of P.W.s 1 and 2 are cogent and corroborative on all aspects, which clearly establishes the involvement of A-1 in the commission of offence. The prosecution had established the case beyond reasonable doubt that it was A-1 who brutally attacked the deceased and caused the injuries, which ultimately led to her death. In such circumstances, the conviction recorded by the Trial Court on A-1 u/s 302 IPC deserves to be sustained.

41. Further, it is to be pointed out that the FIR need not be an encyclopedia, but it is only a tool to set the criminal law in motion. Further, the contention of the appellants that the name of the father having not been given by P.W.1, but finds a place in the FIR and, therefore, it is nothing but an attempt by the prosecution to fasten the case on the accused cannot be sustained for the simple reason that P.W.15 has categorically deposed that she belongs to the same area and that she knows the name of the father of the accused and, therefore, while preparing the FIR, she has incorporated the name of the father of the accused. Though it is not for P.W.15/registering officer to incorporate which are within her personal knowledge, yet, the incorporation having been not on material aspect, but on an immaterial aspect, this can be considered as an irregularity, which can be discarded and it is not an illegality affecting the merits of the matter. Therefore, the said addition by itself would not make the FIR unreliable.

42. Another contention advanced by the learned counsel for the appellants is the delay in sending the FIR and the statement of witnesses to the Court. The delay in sending the FIR has been attributed by the prosecution to the torrential downpour of rain on that day. Though it is the contention of the learned counsel for the appellants that the occurrence having taken place in the month of May, being peak summer, the delay attributed to the rain is nothing but an afterthought to cover up the delay. Though such a contention is advanced, however, it is to be pointed out that delay is not so very inordinate to the extent of affecting the prosecution case.

43. It is the contention of the learned counsel for the appellants that the incident about the murder aired in one of the television channels portrayed blood inside the house of the deceased. However, the prosecution has projected the case that the murder took place outside the house of the deceased. Both the versions are contra versions, which has not been properly explained by the prosecution. It is the contention that had the murder taken place outside the house of the deceased, how bloodstains could be found inside the house of the deceased, as aired by the television channel and, therefore, the prosecution version is liable to be



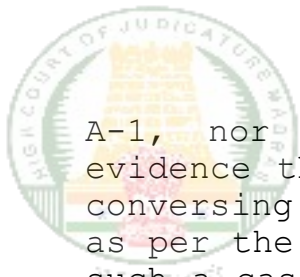
disbelieved. Though such a contention has been raised, however, no evidence, either oral or documentary has been placed before the Court to substantiate such a contention. In criminal trial, evidence is materially important. Mere assertion and submission cannot partake the nature of proof and the standard of proof required in criminal matters is high, particularly, when the life and liberty of the accused is at stake. No evidence having been adduced by the accused before the trial court, mere submission that the prosecution version is doubtful in view of the clipping aired by some television channel cannot be the ground to doubt the prosecution version. Non-examination and non-submission of any proof by the accused to substantiate their case cannot be put against the prosecution.

44. This Court finds that the prosecution has established its case beyond reasonable doubt that it was A-1 who attacked the deceased indiscriminately resulting in the death of the deceased. Therefore, this Court confirms the conviction imposed upon A-1 under Section 302 IPC.

45. However, it is seen that the trial Court has convicted A-1 as well as A-2 u/s 120 (B) r/w 302 IPC and A-2 has been convicted u/s 302 r/w 109 IPC. While Section 120 (B) IPC deals with punishment for criminal conspiracy, Section 109 IPC deals with punishment for abetment.

46. Section 120 (B) IPC, which deals with punishment for criminal conspiracy, which clearly shows that conviction and sentence has to be awarded in case the charge against the accused relating to conspiracy stands established by the prosecution through cogent and convincing evidence. Similarly, Section 109 IPC deals with abetment for which conviction and sentence has to be awarded on the prosecution establishing the charge of abetment.

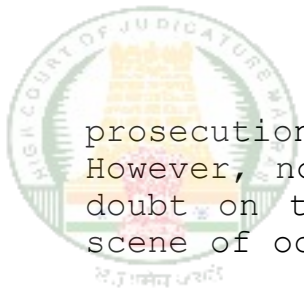
47. In the case on hand, the evidence put forth by the prosecution reveals that A-1 and A-2 used to visit the house of the deceased frequently for the purpose of ascertaining the whereabouts of their daughter, who had eloped with the brother of the deceased. On the fateful day as well, the case of the prosecution reveals that the accused visited the house of the deceased for the same purpose. After enquiry, when the accused left the house, the deceased accompanied them to see them off, when the occurrence is said to have taken place. Only on hearing the hue and cry of the deceased, P.W.s 1 to 3 had rushed out of the house to find A-1 indiscriminately attacking the deceased with an aruval. A careful scrutiny of the evidence let in by the prosecution reveals that no evidence worth mentioning has been adduced by the prosecution to show that with an intention to commit murder A-1 had come to the house of the deceased carrying the aruval. There is no whisper from any of the witnesses to the effect that they found the aruval in the person of A-1 at the time when A-1 entered into the house. Further, the prosecution has also not established that the aruval belonged to



A-1, nor the prosecution had established through any tangible evidence that A-1 was in possession of the aruval even when he was conversing with the family of the deceased inside the house. Even as per the version of the prosecution, the aruval is 46 cm long. In such a case, it would have been a physical impossibility for A-1 to have kept the aruval concealed in his person, while he was conversing inside the house of the deceased. All that the evidence put forth by the prosecution reveals is that, when P.W.s 1 to 3 came out of the house on hearing the distress call of the deceased, they found A-1 attacking the deceased. In such a backdrop, the case of the prosecution that there existed a criminal conspiracy and in furtherance of the criminal conspiracy, which was hatched between A-1 and A-2 the murder had taken place, has been disproved. No substantive evidence has been adduced to prove that in furtherance of the conspiracy hatched by A-1 and A-2, the murder was committed. Further, the prosecution has also miserably failed to prove that A-1, with the intention to commit the murder, was carrying the aruval on his person, with which he attacked the deceased. The prosecution has miserably failed to prove the ingredients relating to conspiracy and in the absence of the same, the conviction rendered by the Court below u/s 120 (B) IPC against A-1 and u/s 120 (B) r/w 302 IPC against A-2 cannot be sustained.

48. In respect of conviction of A-2 u/s 302 r/w 109 IPC, it is to be pointed out that on this count as well, the abetment to commit an offence by A-2 has not been proved. It is the version of the prosecution through the evidence of P.W.s 1 to 4 that while A-1 attacked the deceased, A-2 instigated him to do away not only with the deceased, but anybody, who interferes and tries to save the deceased. A perusal of the testimony of P.W.s 1 to 4 disclose that the recitals in regard to implicating A-2 seems to be more of a parrot-like version given by the witnesses rather than a natural account of what had happened. P.W.s 1 to 4 have deposed that A-2, while castigating and insulting the deceased using her caste name, instigated the deceased to do away with her and also to do away with anyone who interferes and tried to save the deceased. The implication of A-2, by roping her under the SC/ST (PoA) Act as well as u/s 302 IPC, seems to be for the purpose of bolstering up the prosecution version rather than on the basis of materials available on record. No evidence, except the castigation and insulting remarks made by A-2 when A-1 was attacking the deceased, has been put against A-2. The implication of A-2 by P.W.s 1 to 4 clearly show that all have spoken in unison about the utterances made by A-2 and none of them have deviated from the said text. Normally, each witness speak in different fashion about the occurrence, that too, a ghastly murder, which has been witnessed by them. However, P.W.s 1 to 4 have spoken verbatim about the utterances made by A-1 and A-2 and have not deviated from the text.

49. The incident is said to have taken place outside the house of the deceased in broad daylight. Atleast for the purpose of proving the case as against A-2, with regard to her utterances, the



prosecution was duty bound to examine independent witnesses. However, no independent witnesses have been examined, which casts a doubt on the prosecution theory about the presence of A-2 at the scene of occurrence.

50. Further, if the evidence of the above witnesses to the effect that A-2 was also present at the scene of occurrence, more specifically in close proximity to A-1 while he was committing the murder, is to be believed, spurts of blood would have definitely splashed on the clothes of A-2. However, the prosecution has not seized the clothes, worn by A-2 at the time of the alleged occurrence. The non-seizure of the clothes of A-2 for the purpose of ascertaining presence of blood, which would have conclusively proved the presence of A-2 at the scene of occurrence is fatal to the case of the prosecution insofar as A-2 is concerned. In the absence of any proof regarding A-2 instigating A-1, the charge under Section 302 r/w 109 IPC is liable to be set aside and even the conviction u/s 3 (1) (r) & (s) of the SC/ST (PoA) Act also deserves to be set aside.

51. A-1 has been convicted u/s 3 (1) (r) & (s) and Section 3 (2) (va) of the SC/ST (PoA) Act. The said Section relates to intimidating, humiliating and abusing persons belonging to Scheduled Castes or Scheduled Tribes within public view. Even as per the version of the prosecution, the occurrence had taken place outside the house of the deceased in broad daylight, which effectively means that castigating and insulting utterances were perpetuated within public view.

52. P.W.s 1 to 4 have been examined to prove that A-1 in fact intimidated, humiliated and abused the deceased and members of her family. It is the contention of the learned counsel for the appellants that the occurrence having taken place outside the house of the deceased, that the act having been committed in full public view in broad daylight, the prosecution, should have examined independent witnesses and mere examination of interested witnesses would not be suffice to bring home a charge, more specifically u/s 3 (1) (r) & (s) and Section 3 (2) (va) of the SC/ST (PoA) Act.

53. This contention is answered by the decision of the Supreme Court in Swaran Singh - Vs - State (2008 (8) SCC 435), wherein the Supreme Court had occasion to deal with the expression "public place" and "public view" and held as under :-

"28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a "chamar") when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence



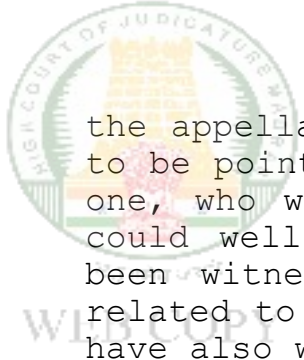
been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression "place within public view" with the expression "public place". A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.

29. Our Constitution provides for equality which includes special help and care for the oppressed and weaker sections of society who have been historically downtrodden. The SC/ST communities in our opinion are also equal citizens of the country, and are entitled to a life of dignity in view of Article 21 of the Constitution as interpreted by this Court. In the age of democracy no people and no community should be treated as being inferior. However, the truth is that in many parts of our country persons belonging to SC/ST are oppressed, humiliated and insulted. This is a disgrace to our country.

33. We have already stated above that in today's context even calling a person "chamar" ordinarily amounts to intentionally insulting that person with intent to humiliate him. It is evident from a perusal of the FIR that Appellant 1 Swaran Singh joined his wife and daughter in insulting Vinod Nagar, and he also used the word "chamar" in a derogatory sense. However, a perusal of the FIR shows that Swaran Singh did not use these offensive words in the public view. There is nothing in the FIR to show that any member of the public was present when Swaran Singh uttered these words, or that the place where he uttered them was a place which ordinarily could be seen by the public. Hence in our opinion no prima facie offence is made out against Appellant 1."

(Emphasis Supplied)

54. It is the case of the prosecution that the occurrence had taken place outside the house of the deceased, which is prone to public view. Though it is the contention of the learned counsel for



the appellants that no independent witness has been examined, it is to be pointed out that persons, be it members of the family, or any one, who witnesses the occurrence, which happens outside the house could well be categorized as general public. The occurrence had been witnessed by P.W.s 1 to 4 of which P.W.s 2 and 4 are not related to the deceased, but are friends/neighbours. Those persons have also witnessed the occurrence in addition to P.W.s 1 and 2, who are related to the deceased. Therefore, the occurrence having taken place in full public view and having been witnessed by the general public, including related witnesses, who have come forward and given evidence, the contention that non-examination of independent witnesses is detrimental to substantiate the charge against the accused persons under the SC/ST (PoA) Act, is far from convincing.

55. Further, it is to be pointed out that P.W.s 8 and 9, Tahsildars have given their report as to the caste to which the deceased and the accused belongs. While it is evident from the said report that the deceased and the witnesses belong to Scheduled Caste, the accused belongs to upper caste. Therefore, the utterances made by A-1 humiliating and insulting the deceased and the witnesses using their caste name would definitely attract charge under Sections 3 (1) (r) & (s) and Section 3 (2) (va) of the SC/ST (PoA) Act. The trial court was fully justified in convicting A-1 u/s 3 (1) (r) & (s) and Section 3 (2) (va) of the SC/ST (PoA) Act, and, therefore, the conviction and sentence imposed on A-1 deserves to be sustained.

56. A-1 has been convicted by the Trial Court under Section 506 (ii) IPC, however, no separate sentence has been awarded on the said head. Section 506 (ii) IPC deals with punishment for criminal intimidation. P.W.s 1 to 3, in unison, have spoken with regard to the overt act on the part of A-1 while attacking the deceased and also the threats meted out to the witnesses when they tried to intervene to save the deceased. It is the normal behaviour of any person, when perpetuating a murder, to cause threat to any other person, who tries to intervene in the act of his committing the murder. In the case on hand, more than three able bodied persons were at the scene of occurrence, when A-1 was attacking the deceased. Definitely, normal instincts of the individual would be to save the person from the lethal blow that is being given by A-1. In the case on hand as well, P.W.s 1 to 3, who were witnessing the attack on the deceased, would have definitely tried to intervene to save the deceased. Their failure to intervene and save the deceased could only be attributed to the threat that would have been meted out by A-1 to them. Therefore, the evidence of P.W.s 1 to 3 with regard to A-1 threatening the witnesses with similar fate as that of the deceased cannot be ruled out and the Trial Court has taken into account the above fact and has rightly convicted A-1 under Section 506 (ii) IPC, though has not awarded separate sentence. Accordingly, this Court finds that the testimony of P.W.s 1 to 3 not only supports the case of the prosecution but also supports the findings arrived at by the Trial Court for convicting A-1 u/s 506



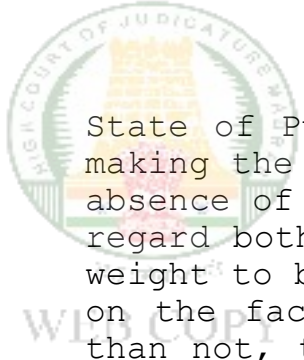
(ii) IPC and, the same is liable to be confirmed. This Courts deem it appropriate to impose a sentence of rigorous imprisonment for a period of one year for the offence u/s 506 (ii) IPC.

57. It is the contention of the learned legal aid counsel for the accused that the Court below has erroneously held this case to be one of honour killing in which intercaste marriage has been performed. It is the submission of the learned counsel that though caste colour is given to the case on hand, however, the facts on record would definitely fall short to treat the present case as one falling under 'Honour Killing'.

58. As pointed out above, the occurrence had taken place due to the daughter of the accused eloping with the brother of the deceased. Though element of caste is involved to a certain degree, however, as held by this Court above, the evidence falls short of terming this case to be one of honour killing. Though it could be said that the caste of the accused and deceased may be a contributing factor in the perpetration of the crime, however, the same cannot be termed as a murder to save the honour. Neither the couples nor the family have been done away with, but only the deceased. What had taken place outside the house of the deceased before A-1 inflicted the fatal injuries is not known. It could have been the inability of A-1 to secure his daughter back, which would could have resulted in the killing due to mental strain and heat of the situation. Therefore, this case falls short of being termed as 'honour killing' murder.

59. Now the core question that needs to be decided is whether the case on hand is one falling under the rarest of rare category warranting sentence of death. While the learned counsel for the appellants submitted that the case does not fall under the category of rarest of rare cases as propounded by the Supreme Court, learned Public Prosecutor submits that the crime is a heinous crime committed by the accused on a lady, belonging to a downtrodden caste and murders of such nature have been deprecated by the Supreme Court warranting capital punishment. It is therefore submitted by the learned Public Prosecutor once the caste angle enters the mind of the accused, the entire family of the deceased would be in danger throughout their life at the hands of the accused, but for capital punishment to the accused and that the chances of the accused indulging in crimes by doing away with the family members is all the more possible, which has unquestionably led the trial court to the inference that the accused are beyond reformation and their continuation in the social system would only lead to more similar crimes. Considering all the above factors, sentence of death was imposed on the accused and, therefore, no interference is called for.

60. In the light of the principles enunciated by the Supreme Court, the question that is to be decided by us is the nature of punishment to be awarded to the accused. In Bachan Singh - Vs -



State of Punjab (AIR 1980 SC 898), the Supreme Court held that for making the choice of punishment or for ascertaining the existence or absence of 'special reasons' in that context, the court must pay due regard both to the crime and the criminal, and what is the relative weight to be given to the aggravating and mitigating factors depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator and that is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate water-tight compartments. In a sense, to kill is cruel and therefore, all murders are act of cruelty. But, such cruelty may vary in its degree of culpability and it is only when the culpability assumes the proportion of extreme depravity that 'special reasons' can legitimately be said to exist. The Supreme Court, in the said judgment, held that in the exercise of its discretion, the court shall take into account the following circumstances, before awarding sentence :-

"(a) That the offence was committed under the influence of extreme mental or emotional disturbance.

(b) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(c) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(d) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (c) and (d) above.

(e) That in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(f) That the accused acted under the duress or domination of another person.

(g) 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."

61. In Machhi Singh & Ors. - Vs - State of Punjab (1983 SCC (Cri) 681), the Supreme Court held that before awarding death sentence, the following questions may be asked and answered as a test to determine the 'rarest of rare' case in which death sentence can be inflicted :-



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

(ii) 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 circumstances which speak in favour of the offender?"

62. The Supreme Court went on to hold that the guidelines which emerge from Bachan Singh's case (supra), will have to be applied to the facts of each individual case, where the question of imposition of death sentence arises. It was further held that in rarest of rare cases, when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power-centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances:-

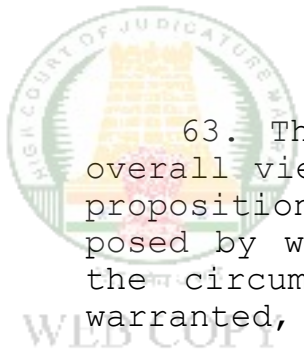
(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course of betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community, etc. is committed not for personal reasons, but in circumstances which arouse social wrath; or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance, when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-à-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.



63. The Supreme Court was of the view that if upon taking an overall view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for determining the rarest of rare case, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.

64. The above tests enunciated by the Supreme Court, while awarding death sentence, has been dealt with in a catena of decisions and the circumstances, which are mitigating and aggravating based on which sentence needs to be awarded, has been culled out from various decisions and highlighted by the Supreme Court in Ramnaresh - Vs - State of Chhattisgarh (2012 (4) SCC 257), and the same is extracted hereunder :-

"76. The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in Bachan Singh and thereafter, in Machhi Singh. 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.



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(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 disturbance 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 eyewitness though the prosecution has brought home the guilt of the accused.

77. While determining the questions relatable 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."



60. This Court has consistently held that only in those exceptional cases where the crime is so brutal, diabolical and revolting so as to shock the collective conscience of the community, would it be appropriate to award death sentence. Since such circumstances cannot be laid down as a straitjacket formula but must be ascertained from case to case, the legislature has left it open for the courts to examine the facts of the case and appropriately decide upon the sentence proportional to the gravity of the offence."

65. On the question of striking a delicate balance between the proportionality of crime to the sentencing policy and arriving at the imposition of penalty in rarest of rare cases, the words of Lord Denning has been quoted with approval by the Supreme Court in Deepak Rai - Vs - State of Bihar 2013 (10) SCC 421), which is quoted hereunder :-

"... The punishment is the way in which society expresses its denunciation of wrongdoing; and, in order to maintain respect for the law, it is essential that the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishments as being a deterrent or reformatory or preventive and nothing else. .... The truth is that some crimes are so outrageous that society insists on adequate punishment, because the wrongdoer deserves it, irrespective of whether it is a deterrent or not."

66. In the case on hand, following the principles laid down by the Supreme Court above, this Court has to consider the aggravating and mitigating circumstances before inflicting the sentence of death on the accused. On a consideration of the circumstances, more particularly, the mitigating factors relating to lack of criminal antecedents or probabilities of the appellant to be a menace to the society, the Hon'ble Supreme Court in Gurudev Singh - Vs - State of Punjab (2003 (7) SCC 258), has observed as hereunder :-

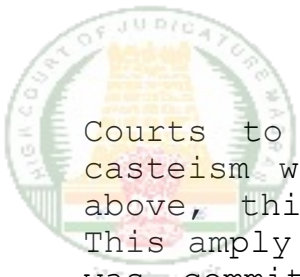
"... it is indeed true that the underlying principle of our sentencing jurisprudence is reformation and there is nothing in evidence to show that the appellants have been a threat or menace to the society at large besides the FIR regarding the theft of buffalo. It is also true that we cannot say that they would be a further menace to the society or not as we live as creatures saddled with an imperfect ability to predict the future. Nevertheless, the law prescribes for future, bases upon its knowledge of the past and is being forced to deal with tomorrow's problems with yesterday's tools."



67. Judgments of the Supreme Court dissect the principles for awarding death sentence into two different compartments - one being the 'aggravating circumstances' while the other being the 'mitigating circumstances'. The Court has to consider the cumulative effect of both these aspects and normally, it may not be appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes without completely ignoring other other class. 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. (Vide - Amar Singh Yadav - Vs - State of U.P. (2014 (13) SCC 443).

68. Keeping in mind the above observations of the Supreme Court, this Court has analysed the aggravating and mitigating circumstances. Though it is said that murder is cruel, however, the cruelty of the murder alone will not tag it under the head of rarest of rare case for award of death sentence as propounded by the Supreme Court in Bachan Singh's case (supra). If the crime perpetrated by the accused is so outrageous that it shocks the conscience of the entire community, then the wrongdoer deserves the punishment of death, whether it is a deterrent or not. Though the learned Public Prosecutor highlighted that the murder has been committed to save the honour of the community, with not even proof for that, yet that by itself would not suggest that A-1 is a menace to the society at large. As held by the Supreme Court in Bachan Singh's case (supra), the State is bound to prove by evidence that the accused would commit criminal acts of violence that would constitute a continuing threat to the society and that the accused is beyond reformation or rehabilitation. No material in support thereof has been placed either before the trial Court or before this Court by the prosecution except terming the murder as one committed for saving the honour of a particular caste. As has been held by this Court above, the tag, which the prosecution has given to this case as a murder for 'honour killing' is more than what this Court could fathom. This Court finds it difficult to hold that A-1 is such a dangerous person that to spare his life would endanger the community.

69. The questions framed by the Supreme Court while determining the rarest of rare case in Machhi Singh's case (supra), has to be taken into consideration while considering imposition of penalty. In the present case, the case of the prosecution itself reveals that the A-1 having been put under mental strain by the elopement of his daughter with the brother of the deceased and inspite of repeated visits made to the house of the deceased demanding the return of their daughter, no concrete steps having been taken by the family of the deceased, the strain has had a telling effect on the mind of the accused. Even as per the version of the prosecution, the murder has taken place on account of caste factor, which is prevalent in the nook and corner of our country. The Supreme Court has cautioned the



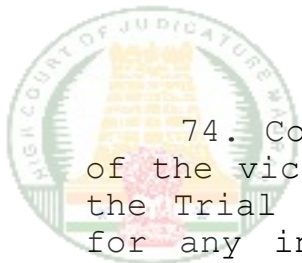
Courts to deal with matters of 'honour killing' arising due to casteism with iron hands. However, as pointed out by this Court above, this case does not fall under the head 'honour killing'. This amply reduces the brutality and inhumanity with which the crime was committed. Further, the age of the accused, though not a determinative factor by itself, the Court has to keep in mind the same before award of sentence. There is no evidence on record to show that there was any diabolic planning to commit the crime, though murder by itself is a cruel act.

70. In the light of the above stated factual position, this Court is of the considered opinion that this is not a case that could be categorized under the head of "rarest of rare cases" warranting imposition of sentence of death. The mitigating circumstances in the present case outweigh the aggravating circumstances and, therefore, this Court, taking a holistic view of the matter deems it fit to modify the sentence of death imposed on the accused.

71. In view of the reasons stated above, the conviction and sentence imposed on A-1 under Sections 120 (B) r/w 302 IPC is set aside; A-1 stands convicted u/s 506 (ii) IPC and sentenced to undergo rigorous imprisonment for a period of one year. The conviction and sentence imposed on A-2 u/s 120 (B) r/w 302, 302 r/w 109 IPC and u/s 3 (1) (r) & (s) of SC/ST (PoA) Act are set aside. The conviction and sentence imposed on A-1 u/s 3 (1) (r) & (s) and 3 (2) (va) of the SC/ST (PoA) Act together with the fine imposed are confirmed. This Court confirms the conviction imposed upon the appellant/A1 under Section 302 IPC, however, the sentence of death imposed upon A-1 is modified and instead A-1 is sentenced to imprisonment for life. Fine amount, if any, paid by the A-2 is directed to be refunded. The sentences imposed on A-1 shall run concurrently. A-2 is directed to be released forthwith unless her custody is required in connection with any other case.

72. In the result, the appeal is allowed insofar as A-2 is concerned and insofar as A-1 is concerned, the appeal is allowed in part confirming the sentence imposed u/s 3 (1) (r) & (s) and 3 (2) (va) of the SC/ST (PoA) Act and modifying the sentence imposed u/s 302 IPC. The reference of the learned III Addl. District & Sessions Judge (PCR), Tirunelveli, is answered accordingly. Consequently, connected miscellaneous petition is closed.

73. The Trial Court has awarded a sum of Rs.8,25,000/= to be paid by the State Government to P.W.1 and the child and a sum of Rs.5,000/= plus admissible Dearness Allowance, in all a sum of Rs.11,600/- per month w.e.f. May, 2016, to Durai Deepan, the child of the deceased, till he completes his graduation or attains 21 years age of age, whichever is earlier, as per the codification made in Annexure I to Rule 12 (4) at S. Nos. 45 and 46.



74. Considering the offence committed by A-1 and the sufference of the victims, this Court is of the view that the order passed by the Trial Court ordering compensation to the victims does not call for any interference and, accordingly, the award as made by the Trial Court to the victim as shown above is confirmed.

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Sd/-

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

1. The II Additional District & Sessions Judge,  
(PCR), Tirunelveli.
2. The Judicial Magistrate No.I, Tirunelveli.
3. The Assistant Commissioner of Police,  
Law and Order,  
Palayamkottai Sub Division,  
Palayamkottai Police Station.
4. The Superintendent of Prison,  
Palayamkottai Central Prison,  
Tirunelveli District.  
(in duplicate for the communication to the detenue)
5. The Superintendent of Prison  
Woman Prison, Trichy.
6. The Superintendent of Police, Tirunelveli.
7. The Commissioner of Police, Tirunelveli.
8. The Director General of Police, Chennai.
09. The District Collector, Tirunelveli.
10. The District Adi Dravidar & Tribal  
Welfare Officer, Tirunelveli.
11. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

**Copy To:**

The Section Officer/ Record, **(2 Copies)**  
Criminal Section,  
Madurai Bench of Madras High Court, Madurai.

COMMON JUDGMENT IN  
R.T. (MD) NO.1 OF 2017 &  
C.A. (MD) NO.222 OF 2017  
PRONOUNCED ON  
24-04-2018

GLN

**MS/SV/SAR-1/24.04.2018/31P.15C**