

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

CRIMINAL APPEAL No.186 OF 2018

And

REFERRED TRIAL No. 2 of 2017

COMMON JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

Criminal Appeal No. 186 of 2018 is filed by the accused against the judgment in Sessions Case No. 70 of 2017, wherein the trial court, while convicting the accused under Section 302 IPC, sentenced him to death. R.T.No. 2 of 2017 came to be filed on a reference made by the Sessions Judge for confirmation of the death sentence awarded against the accused.

2. The sole accused in this case was tried for the offences punishable under Sections 450, 302, 307, 394 and 397 IPC. Vide judgment dated 10.08.2017, the accused was found guilty on all the counts and sentenced to various terms of imprisonment, which are as under:

- (i) for the charge under Section 302 IPC, he was sentenced to death penalty to be hanged by the neck till he is dead and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for a period of six months;
- (ii) for the charge under Section 450 IPC, he was sentenced to suffer rigorous imprisonment for a period of ten years and

to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for a period of three months;

- (iii) for the charge under Section 307 IPC, he was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for a period of three months;
- (iv) for the charge under Section 394 IPC, he was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for a period of three months;
- (v) for the charge under Section 397 IPC, he was sentenced to undergo rigorous imprisonment for a period of seven years.

All the sentences were directed to run concurrently.

3. The gravamen of the charge against the accused is that on 09.07.2016, between 11.50 a.m and 12 noon, the accused is said to have trespassed into the house of the deceased under the guise of updating set top box, and in the process, is said to have hit the deceased with an iron rod, thereby causing instantaneous death. It is further stated that in the course of the said transaction, PW2 and PW3, who intervened, were also attacked by the accused.

4. PW1 is the husband of the deceased, while PW2 and PW3 are the children of PW1. PW4 is the brother-in-law of PW1, while PWs 5, 6 and 7 are all neighbors of PW1. PW2 is the adopted child of PW1 and deceased, while PW3 is the nephew of PW1.

5. On the date of incident, i.e., on 09.07.2016, at about 8 a.m., PW3 came to the house of PW1, which was situated near

Childrens Park in Sainagar, Nellore, to undergo computer training. At that time, PW1, PW3 and the deceased were present in the house. Fifteen minutes later, PW1 went outside on his personal work. Within five minutes thereafter, there was a power failure. Then, PWs 2, 3 and deceased were chit-chatting. Between 10.30 and 11 a.m., one person knocked the door, and on hearing the same, the deceased opened the door. After opening the door, the deceased enquired the accused as to who he was and why he knocked the door. He told her that he had come to repair the setup box. The deceased replied that there was no power, and as such, the accused went away, saying that he would come after power supply is restored. Half an hour later, there was resumption of power. The accused again came to the house between 12 noon and 12.30 p.m., and knocked the door. The deceased opened the door. The accused replied that he has come to repair the set top box. It is stated that the accused entered into the house of the deceased and checked the setup box. At that time, the deceased was at the place where the accused was checking the box. PW2 was in the bedroom, chit-chatting with her friend on cell phone, while PW3 was operating the computer. Five minutes later, they heard the cries of the deceased, and on hearing the same, PWs 2 and 3 ran to the said place. By the time PW2 reached the room, the deceased was down on the ground with bleeding injuries and the accused was beating PW3 with an iron hammer over his head. PW2 ran into the bedroom, afraid of the accused. It is stated that the accused followed PW2 to the bedroom and beat her with a

hammer with force, with an intention to kill her. On receiving the blow, PW2 fell down. The accused is said to have removed the gold chain, gold ear studs and ring from PW2 and also took away her Samsung cell phone. Ten minutes later, she heard the cries of PW1 and then fell down unconscious.

6. The evidence of PW3 also shows that after seeing the bleeding injuries, he also fell down unconscious, and by the time himself and PW2 regained consciousness, they were in hospital. On regaining consciousness, PW1 was in front of him.

7. The evidence of PW1 is to the effect that on the date of incident, he left the house to office at 8.30 a.m. By the time he reached his house, the main door of the house was closed without bolting inside. He pushed the door, entered into the hall and found his wife (deceased) in a pool of blood and also found PW3 with bleeding injuries. His efforts to wake her up, by calling her name, proved fatal. Meanwhile, one unknown person ran from the pooja room and made an attempt to push him, in order to escape from the spot. Immediately, PW1 apprehended him and raised cries. On hearing the cries, the neighbours gathered and enquired as to what happened. He stated that he caught hold of the person who started running from his house by pushing him. The unknown person who was apprehended in the house was handed over to the neighbours, who came there. PW1 proceeded to the second bedroom, where PW2 was lying with bleeding injuries. Meanwhile, ambulance and also the regular police came to the spot. Police

enquired PW1 as to what happened and he narrated the incident. He also handed over the accused to the police. The police searched the pockets of the accused and found the cell phone of PW2 and also gold ornaments belonging to PW2 and the deceased. In his presence, the police enquired the accused, who disclosed his name and also his address.

8. The evidence of PW15-the Neuro Surgeon, Apollo Hospital, Nellore shows that on 09.07.2016, PW2 was admitted in their hospital with multiple bleeding wounds over her head, and by that time, she was not talking. He further deposed that PW2 had skull fracture on the right side of back of the head and multiple lacerations over her right ear, right side and front side of the head. He also deposed that she underwent brain surgery and all wounds were sutured. Ex.P9 is the discharge summary of PW2.

9. PW15 also deposed about examining PW3 who was admitted in their hospital on 09.07.2016 with major head injury, and after conducting surgery, discharged him. Ex.P10 is the discharge summary of PW3.

10. The evidence of PW22-the Inspector of Police, Balaji Nagar would show that on 09.07.2006, he received a phone call from one person, who is the resident of his locality. Pursuant thereto, he rushed to the scene and took the accused from the custody of the public at the scene of offence, and took the accused into his custody and effected his arrest. He searched the pockets of the deceased and seized cell phone and gold ornaments of PW2. Later,

he visited Apollo hospital, but, on his way, he was informed about the death of the deceased, and also about the admission of PWs 2 and 3 in the hospital, as they received grievous injuries. Thereafter, himself and his police personnel took the accused to the police station.

11. Subsequently, PW1 came to the police station and lodged a report (Ex.P1) before PW22, which came to be registered as Crime No. 101 of 2016 under Sections 302, 307 and 394 IPC. Ex.P62 is the First Information Report. PW22 examined PW1 in the police station. After registering the crime, PW22 visited the scene of offence, and in the presence of PW21 and another, prepared a panchanama, which is placed on record as Ex.P60. He also seized blood stains and controlled earth at the three places in the house, apart from blood stained iron hammer, black colour TV setup box, Nokia cell phone, iron cutting layer, black colour hanging bag and Aadhar card of the accused. He also got photographed the scene of offence through PW17. Thereafter, he is said to have interrogated the accused in the presence of PWs 12 and 13 and recorded his confessional statement. Ex.P3 is the portion of the confessional statement. On 10.07.2016, at 6 a.m., PW22 visited Apollo Hospital and held inquest over the dead body of the deceased in the presence of PW21, LWs 20 and 21. During the inquest, he recorded the statements of PWs 5, 6 and 7. Ex.P59 is the inquest report. After completing the inquest, he sent the dead body for post mortem examination.

12. PW11-the Assistant Professor, Forensic in A.C.S.R. Medical College, Nellore conducted autopsy over the body of the deceased and issued Exhibit P2-the Post Mortem Report. According to him, the injuries are possible with a hammer and are sufficient to cause death of a person in the ordinary course of nature.

13. On 10.07.2016, at about 9 a.m., PW22 again visited the scene of offence, and in the presence of PW21, examined the scene by reconstructing the scene by taking videograph along with the accused. He also seized one pen and chappals at the instance of the accused under cover of the mediators report. Ex.P60 is the mediators report. The evidence of PW22 further discloses that the accused made a confession, stating that he has kept his motorcycle at the puncture shop of PW8. Accordingly, PW22 along with the police personnel and mediators, went to the shop of PW8 and seized Bajaj Platinum motorcycle of the accused. However, the same was not marked, as it was in a damaged condition. Ex.P64 are the photographs of the motorcycle. Later on, PW19-the Judicial Magistrate of First Class conducted the test identification parade on 13.07.2016.

14. PW19-the Judicial Magistrate of First Class proceeded to Central Prison, Nellore and conducted test identification parade on 13.07.2016. Before holding test identification parade, he recorded the statements of PWs 1, 6 and others, who stated before her that they can identify the suspect. After completing all the statutory requirements, she conducted test identification parade, which is

placed on record as Ex.57. Later, PWs 1, 5, 6 and another person by name Inamala Venkata Raana Reddy identified the suspect.

15. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No. 45 of 2016 on the file of the V Additional Judicial Magistrate of First Class, Nellore. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No. 70 of 2017 on the file of IV Additional District and Sessions Judge, Nellore. Basing on the material on record, charges for the offences punishable under Sections 450, 302, 307, 394 and 397 of IPC were framed, read over and explained to the accused, to which he denied and claimed to be tried.

16. In support of its case, the prosecution examined PWs.1 to PW22 and got marked Exs.P1 to P74 and M.Os.1 to 15. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied. Ex.D1 and Ex.D2 came to be marked in support of his defence.

17. Relying upon the evidence of PWs 1 and 2, the learned Sessions Judge convicted the accused under Sections 450, 302, 307, 394 and 397 of IPC and sentenced him to death under Section 302 IPC. Challenging the same, the present appeal came to be filed through legal aid.

18. The learned counsel for the appellant, Sri B. Parameswara Rao mainly submits that the case on hand is not the rarest of rare cases which warrants death penalty. According to him, the accused trespassed into the house of the deceased only with a view to commit theft and in the process, he beat the deceased and caused injuries to the two persons who intervened while committing theft. Hence, pleads that the sentence of death may be reduced to imprisonment for life.

19. On the other hand, the learned Public Prosecutor, relying upon the judgment of the Hon'ble Supreme Court in *MACHHI SINGH v. STATE OF PUNJAB*¹, contends that the sentence of death awarded by the trial court warrants no interference. He submits that the evidence of PWs 1, 2, 3 and neighbours amply establish that it was the accused alone who was responsible for the murder of the deceased and also for causing injuries to PWs 2 and 3.

20. The point that arises for consideration is whether the trial court was justified in convicting the accused, and if so, whether the case on hand warrants imposition of death sentence.

21. The evidence of PW3 shows that on the date of incident, i.e., on 09.07.2016, at about 8 a.m., he came to the house of PW1, which was situated in Sainagar, near Childrens Park, Nellore, to undergo computer training. At that time, PW1, PW3 and the deceased were present in the house. Fifteen minutes later, PW1 went outside on his personal work. Within five minutes thereafter,

¹ 1983 (3) SCC 470

there was a power failure. Then, PWs 2, 3 and deceased were chit-chatting. Between 10.30 and 11 a.m., the accused knocked the door, and on hearing the same, the deceased opened the door. After opening the door, the deceased enquired the accused as to why he came there. He told that he has come to repair the set top box. The deceased replied that there was no power, and as such, the accused went away, saying that he would come after the power supply is restored. Half an hour later, there was resumption of power. The accused again came to the house between 12 noon and 12.30 p.m., and knocked the door. The deceased opened the door, pursuant to which the accused entered the house of the deceased and checked the set top box. At that time, the deceased was at the place where the accused was checking the box. PW2 was in the bedroom, chit-chatting with her friend on cell phone, and PW3 was operating the computer. Five minutes later, PW3 heard the cries of the deceased. He turned back and saw the accused beating the deceased. Immediately, he went there to rescue the deceased, but, the accused beat him on his head with the same hammer. The evidence of PW3 also shows that after seeing the bleeding injuries, he also fell down unconscious, and by the time he regained consciousness, he was in hospital. On regaining consciousness, PW1 was in front of him.

22. PW2, in her evidence, deposed that by the time she reached the room, the deceased was down on the ground with bleeding injuries and the accused was beating PW3 with an iron hammer over his head. Apprehending assault on her as well, PW2 ran into

her bedroom. It is stated that the accused followed PW2 to the bedroom and beat her with a hammer with force, with an intention to kill her. On receiving the blow, PW2 fell down. The accused is said to have removed the gold chain, gold ear studs and ring from PW2 and also took away her Samsung cell phone. Ten minutes later, she heard the cries of PW1. Thereafter, she fell down unconscious.

23. The evidence of PW1 shows that on the date of incident, he left the house to office at 8.30 a.m. By the time he reached his house, the main door of the house was closed without bolting the same inside. He pushed the door, entered into the hall and found his wife (deceased) in a pool of blood and also found PW3 with bleeding injuries. His efforts to wake her up, by calling her name, proved fatal. Meanwhile, one unknown person ran from the pooja room and made an attempt to push him, in order to escape from the spot. Immediately, PW1 apprehended him and raised cries. On hearing the cries, the neighbours gathered and enquired as to what happened. He stated that he caught hold of the person who started running from his house by pushing him. The unknown person who was apprehended in the house was handed over to the neighbours, who came there. Thereafter, PW1 proceeded to the second bedroom, where PW2 was lying with bleeding injuries. Meanwhile, ambulance and the regular police, came to the spot. Police enquired PW1 as to what happened, to whom he narrated about the incident. He also handed over the accused to the police. The police searched the pockets of the accused and found the cell

phone of PW2 and also gold ornaments belonging to PW2 and the deceased. In his presence, the police enquired the accused, who disclosed his name and also his address.

24. As seen from the record, PWs 1 to 3 are the injured witnesses. Their evidence shows that on the date of incident, i.e., on 09.07.2016, PW3, who is the nephew of PW1 and deceased, came to the house of the deceased at about 8 a.m. By that time, PWs 1 and 2 were present in the house. About five or ten minutes thereafter, PW1 left the house to go to the office. At about 9 a.m., there was power failure. While the deceased, PWs 2 and 3 were chit-chatting, the accused came to the house and knocked the door. The deceased opened the door and enquired the accused as to the purpose of his visit. The accused replied that he has come to repair the TV set top box. The deceased told him that there is nothing he can do, as there is no power supply and asked him to come after the power is restored. Accordingly, the accused went away, and between 12 and 12.30 noon, he again came to the house of the deceased and knocked the door. Since there was restoration of power by that time, the deceased permitted the accused to undertake the repair of the set top box. While the accused was repairing the set top box, PW2 was in the bedroom, talking on her mobile, while PW3 was working on his computer. Two minutes thereafter, PW3 heard cries of the deceased. He turned back and saw the accused beating the deceased over the head with an iron hammer. Immediately, he went there and attempted to rescue the deceased, but he was also beaten on the

head with the same hammer. As such, the deceased and PW3 fell down. On hearing the cries, PW2 also came there and saw the accused attacking the deceased and PW3. Anticipating that the accused would also attack her, she ran towards her bedroom. The accused followed her and beat her with the same hammer, causing injuries. Thereafter, the accused removed the gold chain, one pair ear studs, gold ring and also the cell phone from PW2. At that point of time, PW1 entered the house and raised cries. He noticed the deceased and PW3 with bleeding injuries. He also noticed one person trying to run away from the house. He apprehended him and raised cries. On hearing the same, the neighbours came, to whom he handed over the accused. In the meanwhile, 108 ambulance and the police personnel also came, to whom the accused was handed over.

25. These facts are spoken to by PWs 1, 2, 3, 5, 6 and 9. All of them were subjected to cross-examination, but, nothing useful came to be elicited to discredit their testimony. Further, the fact that PWs 2 and 3 received injuries came to be elicited not only through the oral evidence of PWs 1, 5 and 6, but also through the evidence of PWs 15 and 16, who treated PW2 and PW3.

26. Having regard to the above, we feel that the presence of the accused in the house of the deceased on the date of incident and his involvement in the commission of the offence, cannot be doubted, more so, when he was apprehended at the spot while he

was trying to leave the house of PW1, after attacking the deceased, PW2 and PW3.

27. Having regard to the evidence of the witnesses, we feel that the finding of the trial court, holding that the accused is responsible for the murder of the deceased, warrants no interference. Hence, the other question that arises for consideration is whether it is a fit case or rarest of the rare case to award death sentence.

28. Unless a case falls under rarest of the rare cases, the capital punishment cannot be imposed. In *Bachan Singh vs State of Punjab*² the Apex Court while upholding the constitutional validity of capital sentence, revisited the law relating to death sentence at that point of time and held that normal rule is awarding of “life sentence”, imposition of death sentence being justified, only in the rarest of rare cases, when the option of awarding sentence of life imprisonment is unquestionably foreclosed. By virtue of *Bachan Singh* case (1 supra) “life imprisonment became the rule and ‘death sentence’ an exception. The focus was shifted from ‘crime’ to the ‘crime and criminal’”. The principles laid down in *Bachan Singh* case (1 supra) were considered in *Machhi Singh v. State of Punjab*³ and were summarized as under:

“38. In this background the guidelines indicated in *Bachan Singh's* case (supra) will have to be culled out and applied to the facts of each individual case where the question of

² (1980) 2 SCC 684

³ (1983) 3 SCC 470

imposing of death sentence arises. The following propositions emerge from Bachan Singh's case (supra):

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.”

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.”

29. In Ramnaresh v. State of Chhattisgarh⁴ the Apex Court laid down an exhaustive list of aggravating and mitigating circumstances, while considering the circumstances for imposing death sentence, which are as under:

“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

⁴ (2012) 4 SCC 257

committed by the person having a substantial history of serious assaults and criminal convictions.

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

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

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

(5) Hired killings.

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

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

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty Under Section 43 Code of Criminal Procedure. When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community. 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.

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

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

(11) 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.”

30. In *Shankar Kisanrao Khade v. State of Maharashtra*⁵ the Apex Court has exhaustively analysed the case of rape and murder where death penalty was converted to that of imprisonment for life and some of the factors that weighed with the Court in such commutation, are as under:-

“106. A study of the above cases suggests that there are several reasons, cumulatively taken, for converting the death penalty to that of imprisonment for life. However, some of the factors that have had an influence in commutation include:

- (1) the young age of the accused
- (2) the possibility of reforming and rehabilitating the accused
- (3) the accused had no prior criminal record
- (4) the accused was not likely to be a menace or threat or danger to society or the community
- (5) a few other reasons need to be mentioned such as the accused having been acquitted by one of the courts
- (6) the crime was not premeditated
- (7) the case was one of circumstantial evidence.”

31. In the said Case, the Apex Court while elaborately analysing the question of imposing death penalty in specific facts and

⁵ (2013) 5 SCC 546

circumstances of that particular case, concerning rape and murder of a minor, discussed the sentencing policy in India, with special reference to execution of the sentences imposed by the Judiciary. The Court noted the prima facie difference in the standard of yardsticks adopted by two organs of the government viz. Judiciary and the Executive in treating the life of convicts convicted for an offence punishable with death and recommended to the Law Commission of India over this issue. The relevant excerpt from the said judgment, highlighting the inconsistency in the approach of Judiciary and Executive in the matter of sentencing, is as under:

“148. It seems to me that though the Courts have been applying the rarest of rare principle, the Executive has taken into consideration some factors not known to the Courts for converting a death sentence to imprisonment for life. It is imperative, in this regard, since we are dealing with the lives of people (both the accused and the rape-murder victim) that the Courts lay down a jurisprudential basis for awarding the death penalty and when the alternative is unquestionably foreclosed so that the prevailing uncertainty is avoided. Death penalty and its execution should not become a matter of uncertainty nor should converting a death sentence into imprisonment for life become a matter of chance. Perhaps the Law Commission of India can resolve the issue by examining whether death penalty is a deterrent punishment or is retributive justice or serves an incapacitative goal.”

32. In *Sunil v. State of Madhya Pradesh*⁶ the Apex Court dealt with a case where the accused, who was aged about 25 years is

⁶ (2017) 4 SCC 393

said to have committed rape and murder of four year old child. While dealing with the sentence to be imposed, the Court held as under:

“The fact that the accused can be reformed and rehabilitated; the probability that the accused would not commit similar criminal acts; that the accused would not be a continuing threat to the society, are the other circumstances which could not but have been ignored by the learned trial Court and the High Court.”

33. Keeping in view the guidelines laid down in the judgments referred to above, we intend to see whether the sentence of death awarded by the trial Court was proper?

34. In the instant case, there was no motive for the accused to cause the death of the deceased. He entered the house of the deceased between 11 and 11.30 a.m. to repair the set top box and left the house as there was no power supply. He again came back at 12 or 12.30 noon when the power was restored. At that time, he is said to have committed the offence for gain. There was no enmity or motive for the accused to do away with the deceased or cause injuries to PW2 and PW3. Under the guise of repairing the set top box, he intended to commit theft of the articles from the house of the deceased. In the process, he beat the deceased once and later on, beat PW3, who intervened when the deceased raised cries, and attacked PW2, who came and witnessed the incident.

35. As extracted above, in *Shankar Kisanrao Khade v. State of Maharashtra* (4 supra) and in *Sunil v. State of M.P.* (5 supra) the

Apex Court while taking into consideration certain factual aspects converted death penalty into one of imprisonment for life. Even in the instant case, the accused was aged about 27 years, having no prior criminal record; accused is not likely to be a menace or threat or danger to society or the community, the accused had no prior motive to commit the murder of the deceased, and there is possibility of rehabilitating the accused. Having regard to the above, we are of the view that it would be appropriate to convert the death sentence imposed to imprisonment for whole of his life without any extension of any benefits of remissions. Accordingly, the sentence of death is *set aside* and in place he shall undergo imprisonment for life in full.

36. The reference is accordingly answered and the Criminal Appeal is partly allowed only to the extent of sentence while confirming the conviction under Section 302 IPC.

37. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

10.07.2018
DMG