



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.01.2019

Pronounced on : 28.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

and

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Referred Trial (MD) No. 2 of 2018

and

Criminal Appeal (MD) No. 315 of 2018

and

Cr1.M.P (MD) No.5483 of 2018

Referred Trial (MD) No. 2 of 2018

I Additional District and Sessions Judge
Court of Sessions
Tirunelveli

.. Referring Officer

Versus

Arumugam

.. Respondent

Criminal Appeal (MD) No. 315 of 2018

Arumugam

..Petitioner/ Appellant/Sole Accused

Versus

State through
Inspector of Police
Pettai Police Station
Tirunelveli District

.. Respondent/Respondent/Complainant

Referred Trial (MD) No. 2 of 2018:- Reference made under Section 366 of Cr.P.C. seeking confirmation of death sentence awarded by the learned I Additional District and Sessions Judge, Tirunelveli in Sessions Case No. 377 of 2017 dated 19.03.2018.

Criminal Appeal (MD) No. 315 of 2018:- Appeal filed Section 374 of The Code of Criminal Procedure praying to set aside the conviction and sentence imposed on the appellant in the Judgment dated 19.03.2018 passed in S.C. No. 377 of 2017 on the file of I Additional District and Sessions Court, Tirunelveli.

Referred Trial (MD) No. 2 of 2018

For Referring Officer : Mr. A. Natarajan

Public Prosecutor for

Assisted by Mr. K.K. Ramakrishnan

Additional Public Prosecutor



For respondent : Mr. R. Gandhi

Criminal Appeal (MD) No. 315 of 2018

For Appellant : Mr. R. Gandhi

For Respondent : Mr. A. Natarajan
Public Prosecutor for
Assisted by Mr. K.K. Ramakrishnan
Additional Public Prosecutor

COMMON JUDGMENT

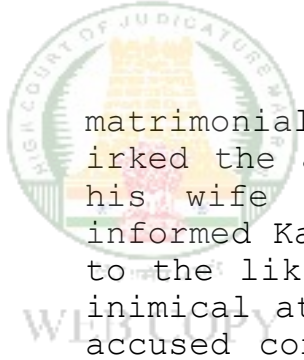
R.SUBBIAH, J.

Referred Trial (MD) No. 2 of 2018 arise out of a reference made by the learned I Additional District and Sessions Judge, Tirunelveli, in terms of Section 366 of IPC, seeking confirmation of the death sentence awarded to the appellant/ accused for the offence punishable under Section 302 of IPC in and by the judgment dated 19th March 2018 passed in S.C. No. 377 of 2017. Challenging the very same Judgment, the appellant/accused has filed Criminal Appeal (MD) No. 315 of 2018 to set aside the said Judgment of conviction and sentence imposed on him.

2. As the Referred Trial (MD) No. 2 of 2018 and Criminal Appeal (MD) No. 315 of 2018 arise out of the same Judgment dated 19.03.2018 passed by the learned I Additional District and Sessions Judge, Tirunelveli, both these cases are taken up for hearing together and disposed of by this common Judgment.

3. A conspicuous narration of the case of the prosecution in brief is required for disposal of these cases, which are succinctly delineated hereunder:-.

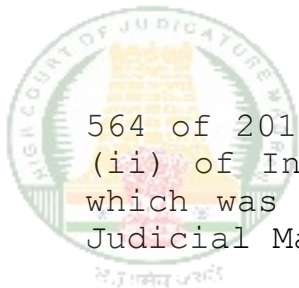
4. PW1 is the mother of Dharun Madhavan @ Darun Madhav (hereinafter referred to as 'deceased'), who was 4 years old at the time of occurrence. PW2 is the mother of PW1 and grandmother of the deceased. PW3, PW4 and PW5 are neighbours of PW1. According to the prosecution, PW1 along with her son (deceased), daughter and mother (PW2) resided at No.8, Puthu Giramam Sundara Vinayagar Kovil South Street, Pettai, Tirunelveli. The husband of PW1 was employed in a company at Dubai. The accused is a neighbour of PW1. PW1 is the one who made arrangements for the marriage of the accused with her uncle's daughter by name Kalaiselvi, who was residing at Mumbai. Due to the wedlock between the accused and Kalaiselvi, a female child was born. After marriage, the accused, suspecting the fidelity of his wife, subjected her to matrimonial cruelty. Unable to succumb to the ill-treatment of the accused, the said Kalaiselvi used to go to the house of PW1 and narrated her ordeal that she had confronted with the accused purportedly to get solace to her matrimonial woes. PW1 in turn advised the accused to lead a happy



matrimonial life with his wife Kalaiselvi. This had apparently irked the accused and he confronted PW1 as to why she should allow his wife Kalaiselvi to enter into her house. Therefore, PW1 informed Kalaiselvi not to come to her house any longer as it is not to the liking of the accused especially when it will aggravate the inimical attitude of the accused towards her. Even after this, the accused continued to harass his wife Kalaiselvi and led a wayward life. In this context, one week prior to the date of occurrence, the parents of Kalaiselvi came from Mumbai to the house of the accused, held deliberations purportedly to patch up the matrimonial differences between the accused and their daughter Kalaiselvi. As there is no sign of reformation of the accused to lead a happy matrimonial life with their daughter, they have accompanied Kalaiselvi along with her child to Mumbai. The accused therefore blamed PW1 as the one who was instrumental for the desertion of his wife Kalaiselvi and the female child from his house and vowed to retaliate her.

5. On 08.09.2016 at about 15.30 hours, PW2 brought the deceased from the school to the house. After returning from the school, the deceased was playing in the street along with other children. At that time, when PW1 and PW2 were in the house, the accused came there and shouted towards PW1 purportedly by stating that she made him as a orphan as his wife and child have deserted him however, she is leading a happy life along with her children. By saying so, the accused proceeded towards the 4 year old child (deceased) and started cutting him indiscriminately with an aruval (*machet*) on his head and hand. On seeing this, PW1 and PW2 came heart-rending and pleaded the accused not to attack the deceased any longer. In that process, when PW1 attempted to prevent further attack on the deceased and at that time, she received cut injuries on her head and also on her hands. As the deceased suffered serious cut injuries, he fell down on the spot in a pool of blood. On seeing the incident, PW3, PW4 and PW5 who were standing in the vicinity raised an alarm and came towards the accused. The accused, by wielding the Aruval cautioned PW3, PW4 and PW5 not to proceed further towards him, else he would cut them also. By saying so, he started to run away from the place. While attempting to run away from the scene of occurrence, the accused hit himself in a Electric pole and fell down, got up again and fled the scene of occurrence.

6. As the deceased was lying in a pool of blood, PW1, 2 and 3 had taken the deceased to Hospital in an ambulance. On reaching the hospital, the Doctor examined the deceased and declared him brought dead. In the same hospital, for the injuries sustained by PW1, she was admitted as an in-patient and given treatment. On intimation from the hospital authorities, PW10, Sub-Inspector of Police along with PW11, Special Sub-Inspector of Police reached the hospital and recorded the statement of PW1 about the death of the deceased and also the manner in which she sustained injuries. The statement so recorded by PW10 was affixed by PW1 with her thumb impression as she sustained injuries on her hands. On receipt of such statement, PW10 proceeded to the Police Station and registered a case in Crime No.



564 of 2016 for the offence under Sections 294 (b), 307, 302 and 506 (ii) of Indian Penal Code. Ex.P14 is the First Information Report which was forwarded to the higher police officials as well as the Judicial Magistrate No.5, Tirunelveli.

7. PW15, Inspector of Police, on receipt of Ex.P14, First information report at 21.30 hours, proceeded to the place of occurrence at about 22.30 hours, where she prepared a Observation Mahazar and drew a rough sketch, Ex.P20 in the presence of the witnesses Ponlakshmanan (PW7) and Chandran. She also collected the blood stained soil and sample soil from the place of occurrence and prepared a mahazar, Ex.P9. Thereafter, she proceeded 25 feet away from the place of occurrence, where, she recovered the Aruval (MO1) beneath a lamp post, which was used by the accused for the commission of offence. Thereafter, PW15 proceeded to the Government General Hospital where she recorded the statement of PW1, PW2, Ganesan (PW3), Lingamperumal, Santhanam (PW5), Vellathurai (PW4), Muthulakshmi, Selvi, Jaya, Ponlakshmanan (PW7) and Sankaran. On the next day namely 09.09.2016, PW15 proceeded to the mortuary where she conducted inquest of the dead body of the deceased at 8.00 am in the presence of witnesses. Ex.P21 is the inquest report. During the course of investigation, PW15 also recorded the statement of the witnesses Thangadurai and Mariappan. After conclusion of inquest, PW15 gave a requisition letter to Kaliraj, Special Sub-Inspector of Police with a request to conduct postmortem on the dead body of the deceased. On receipt of the requisition, PW14 commenced postmortem on the dead body of the deceased. Ex.P18 is the postmortem report wherein it was stated as follows:-

"Appearance and Caste marks:-

- 1) A black mole in left side of chest
- 2) An old scar near right ankle

The body was first seen by the undersigned at 11.30 am on 09.09.2016. Its condition then was rigor mortis present all over the body. Post mortem commenced at 11.30 am on 09.09.2016.

The following antemortem injuries were noted:

- 1) An oblique gapping heavy cut injury of size 4 X 1cm X cavity leep seen in left side of forehead. It cuts underlying scalp and left side of frontal bone
- 2) An oblique gapping heavy cut injury of size 8 X 1cm X Cavity deep lies 1.5cm above injury no.1 It cuts underlying scalp and frontal bone
- 3) An oblique gapping heavy cut injury of size 3 X 1cm X bone deep lies 1cm above injury no.2 It cuts underlying scalp
- 4) An oblique gapping heavy cut injury of size 2 x 1cm X Bone deep lies 0.5cm above injury no.3. It cuts underlying scalp



- 5) An oblique gapping heavy cut injury of size 4 x 1cm x Cavity deep lies 2cm right to injury no.4 it cuts underlying scalp and right side of frontal bone
- 6) An oblique gapping heavy cut injury of size 4 x 1cm x Bone deep lies in upper part of left ear and left temporal region. It cuts underlying left ear and scalp
- 7) An oblique gapping heavy cut injury of size 4 x 1cm x Cavity deep lies 3cm in front of injury no.6. It cuts underlying scalp and left temporal bone
- 8) An oblique gapping heavy cut injury of size 4 x 1cm x Cavity deep lies 1cm above injury no.6. It cuts underlying scalp and left temporal bone
- 9) An oblique gapping heavy cut injury of size 3 x 1cm x Bone deep lies 3cm above injury no.8. It cuts underlying scalp.
- 10) An oblique gapping heavy cut injury of size 5 x 1cm x Cavity deep lies 3cm in front of injury no.9. It cuts underlying scalp and left parietal bone.
- 11) An oblique gapping heavy cut injury of size 6 x 1cm x Cavity deep lies 0.5cm above injury no.10. It cuts underlying scalp, left parietal bone and left parietal lobe of brain
- 12) An oblique gapping heavy cut injury of size of 5 x 1cm x Cavity deep lies 3cm right to injury no.11. It cuts underlying scalp and left parietal bone
- 13) An oblique gapping heavy cut injury of size 5 x 1cm x Bone deep lies 3cm right to injury no.12. It cuts underlying scalp and right parietal bone
- 14) An oblique gapping cut injury of size 1 x 1cm x Bone deep lies 1cm right to injury no.13 It cuts underlying scalp
- 15) An oblique gapping heavy cut injury of size 3 x 1cm x Cavity deep lies 1cm behind injury no.8. It cuts underlying scalp and left temporal bone
- 16) An oblique gapping heavy cut injury size 3 x 1cm x Cavity deep lies 1.5cm behind injury no.15. It cuts underlying scalp and left temporal bone
- 17) A vertical gapping heavy cut injury of size 4 x 1 x 1cm lies 2cm below and behind injury no.16. It cuts underlying scalp and left side of occipital bone
- 18) An oblique gapping heavy cut injury of ize 8 x 1cm x Cavity deep lies 2cm above injury no.17. It cuts underlying scalp and left side of occipital bone
- 19) An oblique gapping heavy cut injury of size 2 x 1cm x Cavity deep lies 2cm below injury no.18. It cuts underlying scalp and middle of occipital bone
- 20) An oblique gapping heavy cut injury of size 2 x 1cm x Bone deep lies 2cm right to injury no.19. It cuts underlying scalp
- 21) A horizontal gapping heavy cut injury of size 4 x 1 x 2cm seen in back of right hand. It cuts underlying



soft tissues and bones and tendons of right hand
22) An oblique cut injury of size 2 x 1 x 0.5cm seen in back of left wrist
23) Scratch of abrasion of length 4cm seen in back of left hand
24) Scratch abrasion of length 4cm seen in back of left forearm

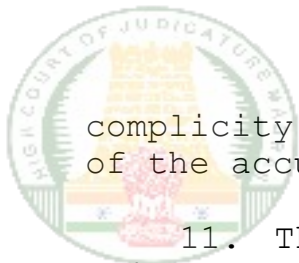
Opinion as to the cause of death:

The deceased would appear to have died of shock and haemorrhage due to heavy cut injuries to head. Death would have occurred 12 to 24 hours prior to autopsy.

8. In the course of investigation, PW15 recorded the statement of Chozharajan, Special Sub-Inspector of Police (PW11) and Tirupathi, Special Sub-Inspector of Police (PW10). Further, on receipt of information that the accused was admitted in the hospital as an in-patient by his mother for the injuries sustained by him during the course of occurrence, PW15 proceeded to Ward No.200 of Government Hospital and arrested the accused in connection with the above said case. On being questioned, the accused voluntarily gave a confession statement, Ex.P7. After recording the confession statement of the accused, PW15 gave a requisition to Judicial Magistrate No.5 to send the accused to judicial custody. PW15 also enquired Kalirajan, Special Sub Inspector of Police and Bhrammanayagam, Head Constable (PW9) and recorded their statement. Since PW15 was transferred, she handed over the case records to her successor, PW16.

9. PW16 continued the investigation conducted by his predecessor, PW15 and recorded the statement of Esakiyappan. PW16 also recorded the further statement of PW1, PW3 and PW4 which were already recorded by his predecessor, PW15. On 14.11.2016, the statements of Dr. Selvamurugan, the Postmortem Doctor (PW14), Dr. Anbu (PW12), Dr. Prince Jeba Anandh (PW13) were recorded by PW16. On 15.11.2016, PW16 made arrangements to send the material objects recovered in the case for analysis to chemical analysis and on 22.11.2016, PW16 recorded the statement of Esakkiammal, Head Clerk attached to the Judicial Magistrate Court. On 22.12.2016, he recorded the statement of Mrs. Anandhi (PW8), Scientific Officer attached to the Forensic Laboratory. After conclusion of his investigation, PW16 filed the charge sheet against the accused on 24.12.2016 for the offences under Sections 294 (b), 307, 302 and 506 (ii) of IPC.

10. The prosecution, in order to prove the offences alleged against the accused, has examined as many as 16 witnesses on their side as PWs 1 to 16 and Exs. P1 to P21 were marked besides Mos 1 to 6 were exhibited. On the basis of the oral and documentary evidence adduced by the prosecution, the accused was questioned under Section 313 of the Code of Criminal Procedure with respect to the incriminating materials adduced by the prosecution, he denied his



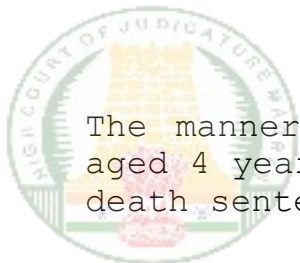
complicity in the crime and pleaded innocence. However, on the side of the accused, no one was examined and no document was marked.

11. The trial Court, after considering the oral and documentary evidence, by judgment dated 19.03.2018, found the accused guilty of the charges under Section 302, 307 and 506 (ii) of Indian Penal Code and accordingly, convicted and sentenced the accused as detailed hereunder:

Conviction U/s.	Sentence	Fine amount
292 (b) of IPC	Not guilty	--
302 IPC	Sentenced to death by hanging, subject to confirmation by High Court U/sec. 366 of Cr.P.C.	---
307 IPC	To undergo imprisonment for life	To pay fine of Rs.5,00,000/- in default to undergo simple imprisonment for five years.
506 (ii) IPC	To undergo rigorous imprisonment for five years	To pay a fine of Rs.10,000/- in default to undergo simple imprisonment for one year.

12. The trial Court also directed that the total fine amount of Rs.5,10,000/- shall be paid to PW1, mother of the deceased as contemplated under Sec. 357 (1) of Code of Criminal Procedure. It is this Judgment dated 19.03.2018 passed in S.C. No. 377 of 2017 on the file of the learned I Additional District and Sessions Judge, Tirunelveli, which is the subject matter of the present Reference as well as the Criminal Appeal filed by the accused/appellant.

13. The learned Public Prosecutor appearing for the State would vehemently contend that trial court is wholly justified in awarding death sentence to the appellant/accused. According to the learned Public Prosecutor, the accused had caused 24 cut injuries on the 4 year old infant, in front of his mother, PW1 and grandmother, PW2 leaving them spine-chilled. The traumatised mother/PW1 on seeing the accused causing indiscriminate cut injury on her son, came heart-breaking and made an unsuccessful attempt to prevent the accused from causing further cut injuries to the child. In that process, PW1 also received cut injuries on her head and hands. When PWs 3, 4 and 5 came to the scene of occurrence on hearing the cries of PW1 and 2 and when they attempted to apprehend the accused, they were threatened by the accused with dire consequences. The fact that the accused had caused numerous cut injuries on the deceased is explicit from the postmortem report, Ex.P18 issued by Doctor, PW14.

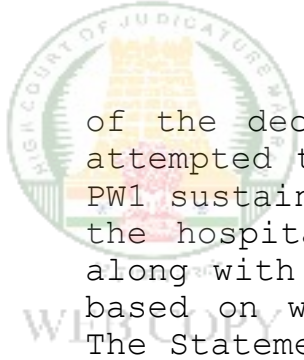


The manner in which the accused had done to death a tender child aged 4 years is nothing short of a grave brutality warranting only a death sentence.

14. The learned Public Prosecutor would contend that the offence committed by the accused is of an exceptionally depraved and heinous in nature. To demonstrate this, he placed reliance upon the decision of the Honourable Supreme Court in **Bachan Singh vs. State** reported in **(1980) 2 Supreme Court Cases 684** and contended that the Courts are well empowered to impose death sentence if it is concluded that the offence committed by the accused such as murder, robbery, gang robbery, abetting the suicide of child or insane person, waging war against the nation, abetting mutiny by a member of armed forces. which falls within the rarest of rare cases. The case on hand is a ruthless monstrosity committed against a child without even a feeble reason for doing so. The accused has no stimulus as against the innocent child who has nothing to do with the matrimonial dispute between him and his wife. The act of the accused was cruel, brutal, gruesome, diabolic and unprecedented in the annals of crime. The trial Court finding that the accused had caused 24 cut injuries on the 4 year old son of PW1 had concluded that it shocked its conscience and therefore awarded death sentence. According to the learned Public Prosecutor, awarding of the sentence in the present case does not call for any interference by this Court and prayed for confirmation of the death sentence.

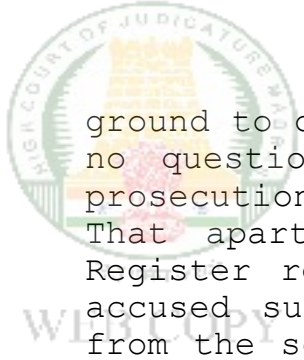
15. As far as the motive behind the crime, the learned Public Prosecutor would contend that PW1 was instrumental in getting the accused married to her uncle's daughter Kalaiselvi. However, there were matrimonial rift caused due to the tyrannical act of the accused in subjecting Kalaiselvi to matrimonial cruelty. As PW1 happened to be a neighbour besides the one who arranged the marriage between the accused and Kalaiselvi, the said Kalaiselvi often visited the house of PW1 and expressed her heart-burns to her. PW1 also with an avowed intention of patching up the matrimonial differences between the accused and his wife Kalaiselvi, advised the accused to behave properly to ensure that he led a happy and blissful matrimonial life. Unmindful of such advise, the accused portrayed an attitude whereby the accused even questioned as to why PW1 could allow his wife Kalaiselvi enter into her house. In view of the same, PW1 even asked Kalaiselvi not to come to her home as it is not to the liking of the accused. Thereafter, one week prior to the occurrence, in view of the continued harassment caused to her, Kalaiselvi, wife of the accused accompanied her parents along with the child to Mumbai. This had infuriated the accused as though PW1 was instrumental for the departure of his wife and child to Mumbai. Therefore, in order to avenge PW1 for her uncalled for intervention into his matrimonial life, the accused had caused indiscriminate cut injury on the son of the PW1 on the fateful day.

16. The learned Public Prosecutor proceeded to advance his argument by contending that PW1 in this case is not only the mother



of the deceased but also the one who sustained injuries when she attempted to ward off the onslaught by the accused towards her son. PW1 sustained injuries on her head and hands and she was admitted in the hospital. On intimation from the hospital authorities, PW10, along with PW11 reached the hospital, recorded the statement of PW1 based on which the case in Crime No. 564 of 2016 was registered. The Statement of PW1 was also recorded under Section 164 of The Code of Criminal Procedure before the learned Judicial Magistrate and the same was marked as Ex.P2. The deposition of PW1 was aptly corroborated by PW2, who is also a witness to the occurrence. PW3, PW4 and PW5 are neighbours and they in their deposition have categorically deposed that the accused, after abusing PW1, chopped and sliced on the head of the infant deceased indiscriminately with MO1/Aruval. The deposition of PW3 to 5 are cogent, convincing and trustworthy. Further, PW6 is the witness who attested the confession statement, Ex.P7, of the accused. However, he was treated as hostile during the course of trial as he had deposed that he was never examined by the Inspector of Police. PW7 is the one who witnessed the observation and seizure Mahazar marked marked as Exs. P8 and P9. He has categorically deposed about the manner in which the observation and seizure mahazar were prepared by the Inspector of Police and the collection of MO5, tar road pieces (blood stained) and MO6, ordinary tar road pieces without blood. PW12 is the Doctor who treated PW1 for the injuries she sustained during the course of occurrence. PW12 deposed that he had given treatment to PW1 and issued Ex.P15, Accident Register. PW13 was another Doctor who had given treatment to PW1. PW13 deposed that during the course of treatment to PW1, he had taken X-ray for PW1 and it was marked as Ex.P17. PW14 is the postmortem Doctor who conducted postmortem on the deceased. PW15 and 16 are the investigation officers in this case and they have spoken about the manner in which the investigation was conducted as also the arrest of the accused. Thus, the prosecution, by examining the aforesaid witnesses, has clearly proved that the death of the deceased in this case was caused by none other than the accused and that the deceased died due to a homicidal violence perpetrated towards him by the accused.

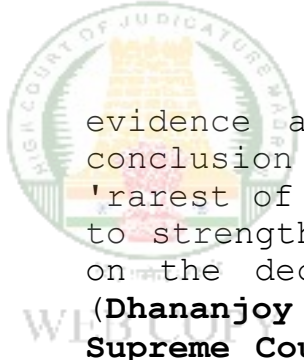
17. The learned Public Prosecutor appearing for the prosecution would contend that one of the defences raised by the accused is that the prosecution has failed to explain the manner in which the accused has sustained injuries and it is fatal to the case of the prosecution. Such a defence raised on behalf of the accused, according to the learned Public Prosecutor, is legally not sustainable. Merely because the prosecution did not explain the minor injuries found on the body of the accused, it will not vitiate the case of the prosecution in any manner. Even otherwise, in the present case, the prosecution, through the deposition of PWs 3 to 5 has clearly proved that the deceased, after committing the crime, had hit himself against a lamp post and sustained injuries. In any event, according to the learned Public Prosecutor, the alleged non-explanation of the injuries sustained by the accused cannot be a



ground to doubt the case of the prosecution especially when there is no questions put to the witnesses examined on the side of the prosecution with reference to the injuries sustained by the accused. That apart, the prosecution has also produced Ex.P16, Accident Register relating to the accused in which it was stated that the accused sustained simple injuries when he attempted to flee away from the scene of occurrence and hit against an electric pole. In this context, the learned Public Prosecutor placed reliance on the decision in the case of **(Siri Kishan and others vs. The State of Haryana)** reported in **(2009) 12 Supreme Court Cases 757** wherein in para No.14, it was held as follows:-

"14. Non-explanation of injuries by the prosecution will not affect prosecution case where injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it outweighs the effect of the omission on the prosecution to explain the injuries. As observed by this Court in *Ramlagan Singh vs. State of Bihar*, 1973 Cr1 LJ 44, prosecution is not called upon in all cases to explain the injuries received by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries of the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the persons of an accused. In *Hare Krishna Singh and others vs. State of Bihar* 1998 Cr1 LJ 925, it was observed that the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words, it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. If the witness examined on behalf of the prosecution are believed by the Court in proof of guilt of the accused beyond reasonable doubt, question of obligation of prosecution to explain injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and under what circumstances injuries have been inflicted on the person of the accused. It is more so when the injuries are simple or superficial in nature. In the case at hand, trifle and superficial injuries on accused are of little assistance to them to throw doubt on veracity of prosecution case, particularly, when the accused who claimed to have sustained injuries has been acquitted."

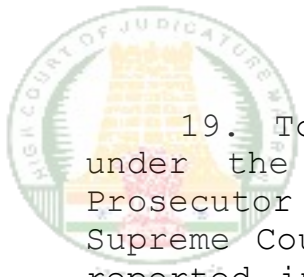
18. The learned Public Prosecutor appearing for the Prosecution would further contend that the trial court, by rightly analysing the



evidence adduced on behalf of the prosecution has come to the conclusion that the case on hand will definitely fall within the 'rarest of rare case category' and awarded death sentence. In order to strengthen this submission, the learned Public Prosecutor relied on the decision of the Honourable Supreme Court in the case of **(Dhananjay Chatterjee vs. State of West Bengal)** reported in **(1994) 2 Supreme Court Cases 220**. In that case, a young school going girl, aged about 18 years, was raped and murdered by the appellant, who was employed as a security guard in the flat premises where the deceased was residing along with her parents. There was no eye-witness to the occurrence and the prosecution in that case relied on circumstantial evidence. The trial court as well as the High Court confirmed the death sentence imposed on the accused, which was also confirmed by the Honourable Supreme Court by considering the offence committed by the accused as the one which shook the conscious of the Court. In para No.15 and 16, it was held as follows:-

"15. In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

16.The faith of the society by such a barbaric act of the guard, gets totally shaken and its cry for justice becomes loud and clear. The offence was not only inhuman, and barbaric but it was a totally ruthless crime of rape followed by cold blooded murder and an affront to the human dignity of the society. The savage nature of the crime has shocked our judicial conscious. There are no extenuating or mitigating circumstances whatsoever in the case. We agree that a real and abiding concern for the dignity of human life is required to be kept in mind by the courts while considering the confirmation of the sentence of death but a cold blooded pre-planned brutal murder, without any provocation, after committing rape on an innocent and defenceless young girl of 18 years, by the security guard certainly makes this case a 'rare of the rarest' cases which calls for no punishment other than the capital punishment and we accordingly confirm the sentence of death imposed upon the appellant for the offence under Section 302 of IPC."



19. To demonstrate that the instant case is the one which falls under the 'rarest of rare' cases category, the learned Public Prosecutor also placed reliance on the decision of the Honourable Supreme Court in the case of (**Sushil Murmu vs. State of Jharkhand**) reported in **AIR 2004 SC 394** in which the Honourable Supreme Court had an occasion to consider the blood-chilling murder of a young boy, aged 9 years, committed by the accused purportedly as a human sacrifice to appease the Goddess Kali. In para Nos. 22 and 23 of this judgment, it was held as follows:-

"22. A bare look of the fact situation of this case shows that the appellant was not possessed of the basic humanness and he completely lacks the psyche or mind set which can be amenable for any reformation. He had at the time of occurrence a child of same age as the victim and yet he diabolically designed in a most dastardly and revolting manner to sacrifice a very hapless and helpless child of another for personal gain and to promote his fortunes by pretending to appease the deity. The brutality of the act is amplified by the grotesque and revolting manner in which the helpless child's head was severed. Even if the helpless and imploring face and voice of the innocent child did not arouse any trace of kindness in the heart of the accused, the nonchalant way in which he carried the severed head in a gunny bag and threw it in the pond unerringly shows that the act was diabolic of most superlative degree in conception and cruel in execution. The tendency in the accused and for that matter in any one who entertains such revolting ideas cannot be placed on par with even an intention to kill some but really borders on a crime against humanity indicative of greatest depravity shocking the conscience of not only any right thinking person but of the Courts of law, as well. The socially abhorrent nature of the crime committed also ought not to be ignored in this case. If this act is not revolting or dastardly, it is beyond comprehension as to what other act can be so described is the question. Superstition is a belief or notion, not based on reason or knowledge, in or of the ominous significance of a particular thing or circumstance, occurrence or the like but mainly triggered by thoughts of self aggrandizement and barbaric at times as in the present case. Superstition cannot and does not provide justification for any killing, much less a planned and deliberate one. No amount of superstition colour can wash away the sin and offence of an unprovoked killing, more so in the case of an innocent and defenceless child.

23. Criminal propensities of the accused are clearly spelt out from the fact that similar accusations involving human sacrifice existed at the time of trial. Though the result could not be brought on record, yet the



fact that similar accusation was made against the accused-appellant for which he was facing trial cannot also be lost sight of. In view of the above position we do not think this to be a fit case where any interference is called for, looking to the background facts highlighted above. This in our view is an illustrative and most exemplary case to be treated as the 'rarest of rare cases' in which death sentence is and should be the rule, with no exception whatsoever. Appeal fails and is dismissed."

20. For the very same proposition, the learned Public Prosecutor has also relied on the decision of the Honourable Supreme Court in the case of **Md. Mannan vs. State of Bihar** reported in **(2011) 5 Supreme Court Cases 317** wherein the Honourable Supreme Court considered a case where a eight year old minor girl was kidnapped, raped and done to death by the accused who was engaged as mason in the uncle's house of the deceased. In para No.18, while upholding the death sentence imposed on the accused, it was observed as follows:-

"18. When we test the present case bearing in mind what has been observed, we are of the opinion that the case in hand falls in the category of the rarest of the rare cases. Appellant is a matured man aged about 43 years. He held a position of trust and misused the same in calculated and preplanned manner. He sent the girl aged about 7 years to buy betel and few minutes thereafter in order to execute his diabolical and grotesque desire proceeded towards the shop where she was sent. The girl was aged about 7 years of thin built and 4 feet of height and such a child was incapable of arousing lust in normal situation. Appellant had won the trust of the child and she did not understand the desire of the appellant which would be evident from the fact that while she was being taken away by the Appellant no protest was made and innocent child was made prey of the appellant's lust. The postmortem report shows various injuries on the face, nails and body of the child. These injuries show the gruesome manner in which she was subjected to rape. The victim of crime is an innocent child who did not provide even an excuse, much less a provocation for murder. Such cruelty towards a young child is appalling. The appellant had stooped so low as to unleash his monstrous self on the innocent, helpless and defenceless child. This act no doubt had invited extreme indignation of the community and shocked the collective conscience of the society. Their expectation from the authority conferred with the power to adjudicate, is to inflict the death sentence which is natural and logical. We are of the opinion that the Appellant is a menace to the society and shall continue to be so and he can not be reformed. We have no manner of doubt that the case in hand falls in the category of the



rarest of the rare cases and the trial court had correctly inflicted the death sentence which had rightly been confirmed by the High Court."

21. Thus, by quoting the aforesaid decisions, the learned Public Prosecutor appearing for the prosecution would only contend that the offence committed by the accused in this case would fall within the 'rarest of rare case' category and therefore, the death sentence awarded by the trial court need not be interfered with by this Court and prayed for confirmation of the death penalty.

22. Per contra, the learned counsel for the accused would contend that the presence of PW1 to 5 in the scene of occurrence is highly doubtful besides that they are interested witnesses. The prosecution, in order to prove the guilt of the accused, did not examine any independent witness. Further, the prosecution has also failed to prove the place of occurrence. Above all, prosecution did not prove by adequate materials that MO1, Aruval was used by the accused during the commission of offence especially when it was not recovered based on the confession statement or any evidence provided by the accused. The prosecution also failed to explain the nature of injury sustained by the accused, which is fatal to the case. Thus, according to the counsel for the accused, the prosecution failed to prove the case beyond reasonable doubt and there are several lapses on the part of the prosecution witnesses in proving the guilt of the accused, therefore, the judgment of the trial court is vitiated.

23. The learned counsel for the appellant/accused would proceed to contend that with the evidence made available by the prosecution, especially when there is no independent witness to speak about the occurrence, the trial court ought not to have awarded death sentence. Further, according to the counsel for the accused, this is not an exceptional case where the trial court is justified in imposing the death sentence. The case on hand, at any stretch of imagination, will not fall within the 'rarest of rare case' category and therefore, the death sentence awarded by the trial court is legally not sustainable. The Court below failed to consider several mitigating factors in this case to award appropriate punishment. It is his contention that brutality cannot be the only criteria to impose death sentence and that the trial court failed to follow the parameters laid down by the Honourable Supreme Court in various cases. According to the counsel for the appellant/accused, while awarding death sentence, the Court has to consider that life is the rule and death is an exception as has been enunciated by the Honourable Supreme Court in the case of **Machhi Singh and others vs. State of Punjab**) reported in (1983) 3 Supreme Court Cases 470, in which, following the decision of the Honourable Supreme Court in (**Bachan Singh vs. State of Punjab** (1980) (2) SCC 684, it was held as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>

In this background the guidelines indicated in *Bachan Singh* case will have to be culled out and



applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from *Bachan Singh case*

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

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

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

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

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

24. For the very same proposition, the learned counsel for the appellant/accused placed reliance on the decision of the Honourable Supreme Court in the case of (**Babasaheb Maruthi Kamble vs. State of Maharashtra**) reported in (2018) Supreme Court Cases Online SC 2767) wherein the Honourable Supreme Court reviewed and recalled it's own Judgment dated 06.01.2015 confirming the death penalty. In para No.13, it was held thus:-

"13. Again, while undertaking the exercise as to whether the death penalty is to be given imprimatur by this Court, even after the approval thereof by the High Court, case law of this Court amply demonstrates that proper exercise of sentence discretion calls for consideration of various factors like the nature of offence, circumstances - both extenuating or aggravating, the proper criminal record, if any, of the offender, the age of the offender, his background, his education, his personal life, his social adjustment, the emotional and mental condition of the offender, the



prospects of the rehabilitation of the offender, the possibility of his rehabilitation in the life of community, the possibility of treatment or training of the offender, the possibility that the sentences may serve as a deterrent to crime by the offenders or by others.

WEB COPY

25. By quoting the above decision of the Honourable Supreme Court, the learned counsel for the accused would contend that the offence alleged to have been committed by the accused cannot be said to be the one with extreme brutality warranting imposition of death sentence. Even according to the prosecution, the murder was a off-shoot to the interference of PW1 in to the matrimonial life of the accused/appellant and due to mental depression, he had allegedly committed the offence. This is one of the mitigating circumstances appearing in the case which was not taken note of by the trial court while imposing death sentence on the accused. Further, there is no evidence adduced by the prosecution to show that the accused would be a continuous menace to the society and therefore death penalty is not warranted. In this context, the learned counsel for the appellant/accused would place reliance on the decision rendered in **Mohd. Chaman vs. State (NCT of Delhi)** reported in **(2001) (2) Supreme Court Cases 28** wherein the Honourable Supreme Court had an occasion to consider the case of rape and murder of child aged 1 1/2 years. Holding that the crime committed by the accused will not fall within the theory of 'rarest of rare cases' category, the Honourable Supreme Court set aside the death sentence and instead directed the appellant to undergo rigorous imprisonment for life. In para No.25 of the said judgment, it was held as follows:-

"25. Coming to the case in hand, the crime committed is undoubtedly serious and heinous and the conduct of the appellant is reprehensible. It reveals a dirty and perverted mind of a human being who has no control over his carnal desires. Then the question is: Whether the case can be classified as of a 'rarest of rare' category justifying the severest punishment of death. Testing the case on the touchstone of the guidelines laid down in *Bachan Singh*, *Machhi Singh* and other decisions and balancing the aggravating and mitigating circumstances emerging from the evidence on record, we are not persuaded to accept that the case can be appropriately called one of the 'rarest of rare cases' deserving death penalty. We find it difficult to hold that the appellant is such a dangerous persons that to spare his life will endanger the community. We are also not satisfied that the circumstances of the crime are such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances in favour of the offender. In our considered view that the case is one in which a humanist approach should be taken in the matter of awarding punishment.



26. Accordingly, the capital sentence imposed against the appellant by the Courts below is set aside. Instead the appellant shall suffer rigorous imprisonment for life. Subject to the above modification of sentence, the appeals filed by the accused are dismissed."

WEB COPY

26. The learned counsel for the accused would further contend that the prosecution would harp upon the number of cut injuries allegedly caused by the accused to contend that the brutality with which the offence was committed warrants death sentence. However, brutality cannot be the only criteria to impose death sentence as has been laid down by the Honourable Supreme Court in the case of (**Gudda @ Dwarikendra vs. State of Madhya Pradesh**) reported in (2013) (12) Scale 290. In that case, the appellant had committed murder of three persons, including a pregnant woman and an innocent child aged 5 years. In para No."28 and 29 of this judgment, the Honourable Supreme Court held as follows:-

"28. This Court has consistently held that the number of death or the factum of whole family being wiped off cannot be the sole criteria for determining whether the case falls into the category of "rarest of rare"

29. Further, we cannot loose sight of the fact that brutality also cannot be the only criterion for determining whether a case falls under the 'rarest of rare' categories. In *Panchhi vs. State of U.P.* this Court has reiterated the said principle and thereby justified the commutation of sentence from death to life imprisonment."

27. The learned counsel for the accused would further proceed to contend that the trial court failed to take note of the fact that the appellant had exhibited abnormal behaviour and was in an imbalanced mental state during the alleged commission of crime and caused injuries on the child. Such imbalanced mental state of the accused has not been taken note of the by the trial court while awarding death sentence on the accused. In this context, the learned counsel for the accused/ appellant placed reliance on the decision of the Honourable Supreme Court in the case of (**Sandesh @ Sainath Kailash Abhang vs. State of Maharashtra**) wherein it was held as follows:-

"21. However, the trial court as well as the High Court has not considered, in its correct perspective, the state of mind of the accused at the relevant time, his capacity to realise the consequences of the crime he was committing and the lack of intent on his part to commit the murder. The accused had not entered the house of PW2 with the intention to kill either of them. In fact, and indisputably, he entered the house of the deceased with the mind of committing robbery which he committed by taking away the gold ornaments, cell phone and money etc., However, in this process, he not only



repeatedly injured the deceased and PW2, but also committed rape on PW2.

22. One very vital factor which has not been given any significance by the courts in the impugned judgments is that the accused was smelling alcohol. According to PW2, he smelled of alcohol and his eyes were red. Both these factors show that the accused may have been drunk and he may not exactly be aware of the consequences of his acts. This view finds support from the fact that if the accused had intended to kill deceased and PW2, it was not expected of him to inflict 21 and 19 injuries on their bodies respectively. He could have simply given an injury on the vital parts of their body and put them to death. His conduct in inflicting large number of injuries and even amputating the fingers of the deceased clearly reflects the conduct of an abnormal person. Absence of normal behaviour even during the commission of the crime is a relevant consideration. It is evident from the evidence on record that the accused was not in a balanced state of mind and in fact had no control over his mind. He was unable to decipher the consequences of his crime and the result that is likely to flow from such commission. In the facts and circumstances of the case, the Court cannot ignore such an abnormal behaviour of the accused. As already noticed, it is not only the crime and its various facets which are the foundation for formation of special reasons as contemplated under Section 354 (3) CrPC for imposing death penalty but it is also the criminal, his background, the manner in which the crime was committed and his mental condition at the relevant time, the motive of the offence and brutality with which the crime was committed are also to be examined. The doctrine of rehabilitation and doctrine of prudence are the other two guiding principles for exercise of judicial discretion."

28. For the very same proposition, the learned counsel for the accused/appellant also relied on the decision of the Honourable Supreme Court in the case of **(M.A. Antony @ Antappan vs. State of Kerala)** rendered in Review Petition (Crl) No.245 of 2010 in Criminal Appeal No. 811 of 2009) dated 12.12.2018 wherein in Para No.31, it was held as follows:-

31. The socio-economic condition of the appellant was a significant factor that ought to have been taken into consideration by the Trial Court as well as the High Court while considering the punishment to be given to the appellant. While the socio-economic condition of a convict is not a factor for disproving his guilt, it is a factor that must be taken into consideration for the purposes of awarding an appropriate sentence to a



convict.

29. The learned counsel for the accused/appellant also relied on the decision of the Honourable Supreme Court in the case of **(State of Maharashtra vs. Nisar Ramzan Sayyed)** reported in **(2017) 5 Supreme Court Cases 673** to drive home the point that death penalty in this case is not warranted. In para No.17 of this judgment, it was held as follows:-

"17. The next question, however, is as to whether in a case of this nature death sentence should be awarded. A life is at stake subject to human error and discrepancies and therefore, the doctrine of "rarest of rare cases", which is not *res integra* in awarding the death penalty, shall be applied while considering quantum of sentence in the present case. Not so far but too recently, the Law Commission of India has submitted its Report No.262 titled "The Death Penalty" after the reference was made from this Court to study the issue of "death penalty" in India to "allow for an up-to-date and informed discussion and debate on this subject." We have noticed that the Law Commission of India has recommended the abolition of death penalty for all the crimes other than terrorism related offences and waging war (offences affecting National Security). Today when capital punishment has become a distinctive feature of death penalty apparatus in India which somehow breaches the reformatory theory of punishment under criminal law, we are not inclined to award the same on the peculiar facts and circumstances of the present case. Therefore, confinement till natural life of the respondent-accused shall fulfil the requisite criteria of punishment in peculiar facts and circumstances of the present case."

30. We have given our thoughtful consideration to the rival submissions made by the counsel on either side and perused the materials placed on record.

31. The deceased in this case is the son of PW1 and grand son of PW2. The accused is the neighbour of PW1. PWs 3 to 5 are neighbours of accused and PW1. PW1 was the one who was instrumental in solemnising the marriage between the accused and her uncle's daughter Kalaiselvi in the year 2013 and out of the wedlock, a female child was born to them. However, the marriage life was not blissful and peaceful and there were repeated quarrel which emanated between the couple. Whenever a quarrel erupts, Kalaiselvi, wife of the accused, used to complain to PW1 so as to get solace. This was not to the liking of the accused and he questioned PW1 as to why she should entertain his wife into her house. From then onwards, PW1 did not even speak to Kalaiselvi. While so, the parents of Kalaiselvi came to the house of the accused and had deliberations. Ultimately, Kalaiselvi, wife of the accused and his daughter have accompanied the parents of Kalaiselvi and left the matrimonial home to Mumbai. This departure of his wife and daughter from his home,



according to the accused, is largely attributable on the part of PW1.

32. On the fateful day namely 08.09.2016, at about 3.30 pm, the deceased had just returned from the school and was playing in the street in front of his house along with other children. At that time, the accused, thinking that he has to wreck vengeance against PW1 for her role in getting his wife separated from him, took an aruval, scolded PW1 and proceeded to the place where the deceased was playing and caused repeated cut injuries on the head and other vital parts of the body of the 4 year old son of PW1. On hearing the cries of the deceased, PW1, who was standing by the side, rushed towards the accused and pleaded with him not to assault her son. Unmindful of such scream, the accused continued with his assault. When PW1 attempted to prevent the accused from causing any further cut injuries, she has also sustained cut injuries on her head and limbs. In the impact, the deceased fell down on the ground in a pool of blood. On hearing the commotion, PW3 to 5, who were standing nearby, rushed to the scene of occurrence. When PW3 to 5 proceeded towards the accused, he wielded the aruval and threatened them not to apprehend him. In that process, the accused hit himself against a lamp post and sustained injuries. However, he fled away from the scene of occurrence. PW1, 2 and 3 arranged an ambulance and had taken the deceased to the hospital, but the Doctor, on examination, informed that the deceased is no more. PW1, who sustained injuries was hospitalised and had taken treatment. When PW1 was in the hospital, her statement was recorded and based on the same, Ex.P14, First Information Report was registered against the accused.

33. Thus, it is evident that PW1 is not only an eye witnesses to the occurrence, but also the injured witness. PW1 in her deposition has stated that on the fateful day, the accused scolded her as the one who was instrumental for separation of his wife. At the same time, he proceeded towards the deceased who was playing in front of the house and indiscriminately caused cut injuries on the deceased and when she attempted to prevent the accused from causing any further cut injuries, she also sustained injuries on her head and limbs and also lost a teeth. According to PW1, she had taken treatment for 11 days as an in-patient in the hospital for the injuries sustained by her at the time of occurrence.

34. PW2 is the mother of PW1 and grandmother of the deceased. She in her deposition has corroborated the evidence of PW1 by stating that accused unleashed an act of terror on her grandson by causing him cut injuries indiscriminately and when it was attempted to be prevented, her daughter (PW1) also received cut injuries for which she had taken treatment.

35. PW3 is a neighbour of PW1 and the accused, who in his deposition has stated that on 08.09.2016 at about 3.30 pm, when he along with PW4 and 5 were having a casual conversation, he saw the

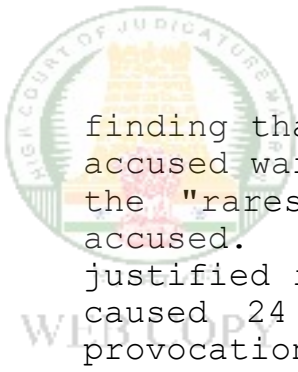


accused coming from his house with an Aruval and scolded PW1 as the one who is instrumental for separation of his family. By saying so, the accused started cutting the deceased indiscriminately on his head which was attempted to be prevented by PW1 but even she was not spared as she also received cut injuries on her head and hands. PW3 further deposed that he along with PW5 went near the accused, but he wielded the aruval and threatened them with dire consequences and fled away from the scene of occurrence after sustaining injuries by hitting himself against the electric pole. PW3 further deposed that he along with PW1 and 2 rushed the deceased to the hospital through an ambulance, but the deceased was declared as brought dead. PW4 and 5 also corroborated the deposition of PW3. However, we could see that during the cross-examination of prosecution witnesses PWs 1 to 5, nothing could be elicited from them that would in any manner vitiate the case projected by the prosecution.

36. Above all, PW14, the Doctor, who conducted postmortem on the dead body of the deceased delineated the cut injuries found on the body of the deceased in his postmortem report, under Ex.P18. PW14 opined that the death of the deceased was caused due to shock and haemorrhage due to heavy cut injuries to head. Thus, the medical evidence adduced by PW14, Doctor lends support to the ocular evidence of PWs 1 to 5. In any event, it is not the defence of the accused that it is not a case without any evidence. The prosecution has cemented its case strongly against the accused by examining PWs 1 to 5 who have chronologically and cogently brought to the fore the guilt of the accused. As mentioned above, PW1 is not only an eye witness but also an injured witness, which could be evident from Ex.P15, Accident Register of PW1 and Ex.P17, X-ray report of PW1. Therefore, it is proved by the prosecution that during the commission of offence, the accused has not only caused fatal injuries to the deceased, but also cut injuries on the body of PW1. In such circumstances, the contention of the counsel for the accused that PWs 1 to 5 are interested witnesses and no independent witness was examined to prove the guilt of the accused is only to be rejected. In fact, the evidence of PWs 3 to 5 was natural and it inspires the confidence of this Court and there is no reason to disbelieve their evidence adduced with respect to their presence at the time of occurrence and the involvement of the accused. Consequently, we hold that it is the accused who had done to death the deceased in this case and the arguments raised by the counsel for the accused, to the contra, are rejected.

37. Next, it has to be considered as to what would be the appropriate punishment to be awarded to the accused for having committed the death of the deceased.

38. As mentioned above, the accused had committed the murder of a young and innocent boy, aged four year. Such murder was committed by the accused in broad day light in the presence of the mother and grand mother of the deceased leaving them heart-broken. The crime was also witnessed by the neighbours PW3 to 5. The trial court,

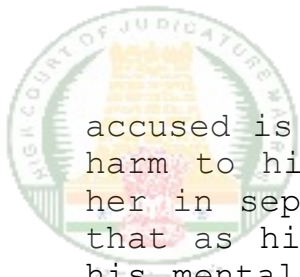


finding that the brutality with which the crime was committed by the accused warrants harshest and severest punishment as it falls within the "rarest of rare" category and slapped death penalty on the accused. According to the prosecution, the trial Court is wholly justified in awarding death sentence especially when the accused had caused 24 cut injuries on the four year old boy without any provocation.

39. On the other hand, the learned counsel for the accused/appellant would contend that the trial Court failed to take note of the mental state of the accused at the time of the occurrence, his age and the fact that his wife had left his matrimonial company, which separation, according to the accused, is largely attributable on the part of PW1 and therefore, to give vent to his outburst, he had suddenly, by losing his mental balance and without any pre-plan, had caused the offence. Further, the accused is a person who is capable of reformation and who has no past antecedent. The prosecution did not produce any evidence to show that he is a menace to the society. In such view of the matter, the learned counsel for the accused/appellant prayed for setting aside the award of death sentence and thereby allowing the Criminal Appeal filed by the accused.

40. In the light of the above rival submission, this Court is required to consider as to whether the trial Court is justified in inflicting death penalty on the accused for the offence of murder committed by him and whether it requires any interference by this Court.

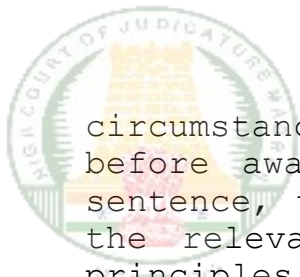
41. The accused had chopped the deceased, a four year old tender child, in a spine-chilling and blood-curdling manner, in front of his mother and grand mother and left them heart-broken. The accused had nipped in the bud the life of the young child, taken away his life, who could have otherwise blossomed in his life, much to the legitimate expectation of his parents. The motive for the accused to cause such fatal injuries to the deceased has been clearly established by the prosecution. The accused, on a misconception and mis-belief that it was PW1, whose intervention into his family affairs had led to the separation of his wife, scolded PW1 often. PW1 in her deposition has narrated that after the wife of the accused left his matrimonial company, whenever the accused saw her, he indulged in accusing her as the reason for the separation of his wife. Similarly, on the fateful day also, the accused scolded PW1 as to how she could lead a happy life when she made his wife to part company with him. This is said to be motive for the accused to commit the offence. However, the accused has not chosen to cause any harm to PW1 but only want to ensure that if he causes any harm to her son, the deceased, PW1 would automatically get hurt and it would make her feel the pinch. Even though PW1 was present in the scene of occurrence, while scolding her, the accused only proceeded to assault the four year old son. While so, according to the counsel for the accused, the intention of the



accused is not to cause the death of the deceased, but only to cause harm to him so that he could retaliate PW1 for the role played by her in separating his wife from his company. It is also contended that as his wife had parted company with him, the accused had lost his mental balance and committed the crime. This according to the counsel for the accused is one of the mitigating factors in favour of the accused, which was not considered by the trial Court. We are unable to agree with this submission of the counsel for the accused. The fact remains that it was PW1 who arranged the marriage between the accused and her uncle's daughter Kalaiselvi. The intention of PW1 is that the accused would take care of her uncle's daughter well. Even though the matrimonial life was happier and blissful for some time, due to the conduct of the accused in suspecting the fidelity of his wife and in leading a wayward life, there was a matrimonial rift between him and his wife Kalaiselvi for which PW1 cannot be blamed. In fact, when the accused expressed his dislike towards PW1 for interfering with his matrimonial life, PW1 even stopped talking with Kalaiselvi or entertaining her into her house. While so, the accused knew fully well about his mis-demeanour which led to his wife leaving his matrimonial company. In any event, this cannot be construed as a mitigating factor in favour of the accused to show leniency in the matter of sentence.

42. The prosecution examined PW14, the Doctor who conducted Postmortem and who has issued Ex.P18, Postmortem report. According to PW14, after receipt of the injuries, the deceased could have survived for a few minutes, meaning thereby, the death has happened instantaneously. In Ex.P8, Postmortem report, PW14 has stated that there were 24 cut injuries on the head and other vital parts of the body. Thus, it is evident that the accused had shown no mercy towards the hapless, defenceless and innocent child at the time of unleashing the act of terror. It is needless to mention that the accused had indulged in a brutal, inhuman and barbaric crime. The fact that such crime has been committed by the accused in front of the eyes of the mother and grandmother of the deceased could only lead to the inference that the accused had achieved his object of wrecking vengeance towards PW1 by indiscriminately assaulting the deceased and thereby given vent to his fury. Therefore, whether such an act of the accused would fall within the rarest of rare category of cases as enunciated by the Honourable Supreme Court in various cases is to be examined.

43. The Honourable Supreme Court, in catena of cases relied on by the learned Public Prosecutor, has awarded death sentence especially when the crime committed in those cases disturbed the collective conscience of the society. In the off-quoted decision of the Honourable Supreme Court in **(Bachan Singh vs. State of Punjab (1980) (2) SCC 684**, which was subsequently followed in almost all the cases by the Honourable Supreme Court, certain guidelines and parameters have been laid down for awarding death sentence. As per the said judgment, death sentence could be imposed only if it is concluded that no other punishment would be appropriate to be awarded or when other punishments appear to be inadequate in consonance to the crime. Further, the aggravating and mitigating



circumstances in favour of the accused also has to be considered before awarding death punishment. Further, while awarding death sentence, the uncommon feature of the crime, if any, will be one of the relevant factors for consideration. Applying the aforesaid principles laid down by the Honourable Supreme Court to the facts of the present case, we are of the considered view that there is no uncommon or peculiar feature involved in the crime committed by the accused warranting death sentence to be imposed on him. At the same time, we are of the view that the accused, while committing the offence, had lost his mental balance and went on a vengeance-spree towards PW1 and her family. Such an act of the accused to wreck vengeance is on a misconception and false notion that it was PW1 who was instrumental for the separation of his wife from him and therefore, she has to be retaliated. Even though the brutality of the crime committed by the accused do disturb the collective consciousness of this Court, at the same time, it alone cannot be a factor for confirmation of the death sentence imposed on the accused in this case. The severity or brutality with which the crime was perpetrated by the accused certainly outweighs the fact that the accused is not a person who can be adjudged as a menace to the society or he has a history of similar antecedents to his credit. At the same time, having regard to the brutal manner with which the crime was committed by the accused against a young child, we cannot rule out that he is a person who is likely to be reformed and on that ground, he must be shown leniency. Thus, taking into account the totality of the circumstances of the case, the aggravating circumstances appear against the accused in unleashing act of terror on an innocent child in a most barbaric and inhuman manner in front of his heart-rending mother and grand mother, causing 24 cut injuries on the deceased, we deem it necessary to set aside the death sentence awarded to the accused, instead, he must be imprisoned throughout the rest of his biological life, which, in our opinion will be the appropriate sentence to be imposed on the accused.

44. In the result, we confirm the conviction imposed against the accused in the Judgment dated 19.03.2018 passed in S.C. No. 377 of 2017 on the file of I Additional District and Sessions Court, Tirunelveli, however, we set aside the sentence imposed by the trial Court awarding death sentence to the accused, instead, we direct that the appellant/accused shall be confined in imprisonment till the end of his natural/ biological life, without any statutory remission/commutation. Accordingly, the Reference is answered and the Criminal Appeal filed by the accused is disposed of. Consequently, CrI.M.P(MD)No.5483 of 2018 is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)



To

1.The Judicial Magistrate No.V,
Tirunelveli

2.The Chief Judicial Magistrate, Tirunelveli

3.The I Additional District and Sessions Judge
Tirunelveli

4.The Inspector of Police, Pettai Police Station,
Tirunelveli District

5.The Superintendent, Central Prison,
Palayamkottai

6.The Superintendent of of Police
Tirunelveli District

7.The District Collector,
Tirunelveli

8.The Director Central of Police,
Mylapore, Chennai 4

9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

10.The Record Keeper, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

rsh

common Judgment
made in
R.T.[MD].No.2 of 2018
and
Crl.A. (MD) No. 315 of 2018
28.03.2019

KM/ (15.04.2019) 25P 12C