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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order on sentence: 27th November, 2019

+ **CRL.A. 549/2013**
SALEK RAM

..... Appellant

Through: Mr. K.P. Mavi, Mr.B.P.Mishra
and Mr. Sidharth Sadana,
Advocates

versus

STATE GOVT. OF NCT OF DELHI & ORS. ..Respondents

Through: Ms. Radhika Kolluru, APP for
the State along with Inspector
Lekh Singh, SHO, PS New
Usmanpur with ASI Suresh
Kumar.

Mr.Maninder Singh, Mr.Dinhar
Takiar, Mr.Sarthak Garg, Mr.
Anuj Singh, Mr. Sanjay
Chaubey, Mr.Sankalp Kohli,
Mr.Aahil Arora and Mr.Vikram
Kalra, Advocates for
respondent/convict Pramod
Kumar.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S. SISTANI, J.

(ORDER ON SENTENCE)

1. While allowing the appeal filed by appellant Salek Ram, this Court by a judgment dated 20.11.2019 has convicted Pramod Kumar for the offences punishable under Sections 302 IPC read with Section 201 of the Indian Penal Code, 1860 (IPC).

2. Mr. Maninder Singh, learned counsel appearing for Pramod Kumar submits that the present case does not fall in the category of rarest of rare cases. He has highlighted before us the mitigating circumstances in this case. He submits that during the period the convict was in incarceration as an undertrial, he carried out further studies and completed his Graduation. He submits that his conduct both in jail and on his release has been more than satisfactory. Nothing adverse has been pointed out either in jail or outside, neither he has acted in any manner which would be against the society. He submits that upon his release, he has restarted his life, remarried on 22.05.2013, has two children aged 05 years and 03 years respectively. Further, there has been no complaint whatsoever by his second wife or his in-laws. Additionally, Mr. Maninder Singh points out that on the date of the offence Pramod Kumar was barely 21 years of age. It is also pointed that post his release, Pramod Kumar has been employed in an export house where he continues to work and his behavior and conduct even at the export house has been exemplary and nothing untoward has been pointed out during this entire period. It is also the case of Pramod Kumar that till date, there are no other civil or criminal case pending against him, moreover neither any motive has been established by the prosecution neither there is anything on record to suggest that Pramod Kumar had planned to kill his wife. In fact, the case of the prosecution as established, would show that the deceased had been staying in her parental home. Mr. Maninder Singh has also

submitted that Pramod Kumar has already been in incarceration for more than 10 long years during trial and accordingly all these factors should be kept in mind while awarding the sentence. To buttress his argument, Mr. Maninder Singh has placed reliance on the judgment in the case of *Machhi Singh and Ors. v. State of Punjab*, reported in (1983) 3 SCC 470, more particularly, paragraph 38, which we reproduce below:

“38. 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 sentences 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 alongwith 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 has 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.”

3. Mr. Maninder Singh submits that in case a balance-sheet of the aggravating and mitigating circumstances is to be drawn up, the balance towards mitigating circumstances would be much higher and, in fact, there is nothing on record of any aggravating circumstances which would entitle the State and the private appellant to pray for the death sentence in this case. Mr. Maninder Singh has also relied upon on the judgment in the case of *Ramnaresh and Ors. v. State of Chhattisgarh*, reported in (2012) 4 SCC 257, more particularly paragraphs 72 to 77, which we reproduce below:

“72. The above judgments provide us with the dicta of the Court relating to imposition of death penalty. Merely because a crime is heinous per se may not be a sufficient reason for the imposition of death penalty without reference to the other factors and attendant circumstances.

73. Most of the heinous crimes under IPC are punishable by death penalty or life imprisonment. That by itself does not suggest that in all such offences, penalty of death alone should be awarded. We must notice, even at the cost of repetition, that in such cases awarding of life imprisonment would be a rule, while “death” would be the exception. The term “rarest of rare” case which is the consistent determinative rule declared by this Court, itself suggests that it has to be an exceptional case.

74. The life of a particular individual cannot be taken away except according to the procedure established by law and that is the constitutional mandate. The law contemplates recording of special reasons and, therefore, the expression “special” has to be given a definite meaning and connotation. “Special reasons” in contra-distinction to “reasons” simpliciter conveys the legislative mandate of putting a restriction on exercise of judicial discretion by placing the requirement of special reasons.

75. Since, the later judgments of this Court have added to the principles stated by this Court in the case of Bachan Singh and Machhi Singh, it will be useful to restate the stated principles while also bringing them in consonance, with the recent judgments.

76. The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in Bachan Singh [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] and thereafter, in Machhi Singh [(1983) 3 SCC 470 : 1983 SCC (Cri) 681] . The aforesaid judgments, primarily dissect these principles into two different compartments—one being the “aggravating circumstances” while the other being the “mitigating circumstances”. The court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the court. It will be appropriate for the court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the court as contemplated under Section 354(3) CrPC.

Aggravating circumstances

- (1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.
- (2) The offence was committed while the offender was engaged in the commission of another serious offence.
- (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 CrPC.
- (9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.
- (10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.
- (11) When murder is committed for a motive which evidences total depravity and meanness.

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

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating circumstances

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though the prosecution has brought home the guilt of the accused.

77. While determining the questions relatable to sentencing policy, the court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

Principles

(1) The court has to apply the test to determine, if it was the “rarest of rare” case for imposition of a death sentence.

(2) In the opinion of the court, imposition of any other punishment i.e. life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.”

4. Mr. Maninder Singh submits that applying the law to the facts of the present case not a single circumstance can be pointed out which would show that there are aggravating circumstances in this case and, in fact, to the contrary there are mitigating circumstances in this case.
5. Per contra, Mr. Mavi learned counsel for the appellant and Ms. Radhika Kolluru, learned APP for the State have argued that a lenient view should not be taken against the convict since the convict has committed the crime of murder and also caused

disappearance of evidence of the offence. It has also been argued by the learned APP and Mr. Mavi that apart from the personal implication, it is also a crime against the society.

6. Learned APP further argued that severe punishment should be awarded to the convict, as a clear message needs to be sent to the society, particularly, to those who indulge in such a brutal crime, hence, should be severely dealt with. It is prayed that the convict be awarded death sentence and a fine may also be imposed upon him for the offence punishable under Section 302 of the IPC. It is also prayed by the learned APP that maximum sentence may be awarded to the convict for the offence punishable under Section 201 of the IPC.
7. Mr. Mavi, learned counsel for the appellant submits that this is a case of rarest of rare cases, more particularly when the parties stayed together for only 78 days. Pramod Kumar is none else but the husband of the deceased while at the time of tying the knot who had sworn to look after her well-being and welfare, but acted like a beast to commit the gruesome murder of his wife. Mr. Mavi submits that Pramod Kumar has shown utter disregard to the values of life. He pushed her in a pit while she was semi-conscious. He submits that these factors alone would show that the murder was pre-planned and he had made an arrangement to bury her alive. Mr. Mavi submits that the conduct of the Pramod Kumar shows his utter dis-respect to her life. While he has left the family of the deceased completely shattered, he has started his family that alone cannot be a mitigating factor in these

circumstances. Mr. Mavi has prayed for awarding the rarest of rare sentence, while relying upon the judgment in the case of *Swamy Shraddananda v. State of Karnataka*, reported in (2008) 13 SCC 767, more particularly, paragraphs 36 to 43, which we reproduce below:

“36. Arguing against standardisation of cases for the purpose of death sentence the Court observed that even within a single category offence there are infinite, unpredictable and unforeseeable variations. No two cases are exactly identical. There are countless permutations and combinations which are beyond the anticipatory capacity of the human calculus. The Court further observed that standardisation of the sentencing process tends to sacrifice justice at the altar of blind uniformity.

37. It is significant to note that the Court was extremely wary of dealing with even the question of indicating the broad criteria which should guide the Courts in sentencing a convict of murder. It reminded itself of the observation of Stewart, J. in *Greg vs. Georgia*, ‘while we have an obligation to ensure that the constitutional bounds are not overreached, we may not act as judges as we might as legislatures’. Having thus cautioned itself, though the Court recorded the suggestions of Dr.Chitale, one of the counsels appearing in the case, as regards the ‘aggravating circumstances’ and the ‘mitigating circumstances’, it was careful not to commit itself to Dr. Chitale’s categories. In paragraph 200 the judgment recorded the ‘aggravating circumstances’ suggested by Dr.Chitale, but in paragraph 201 it observed as follows:

"203. Stated broadly, there can be no objection to the acceptance of these indicators but as we have indicated

already, we would prefer not to fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other."

Similarly, in paragraph 204 the judgment recorded the 'mitigating circumstances' as suggested by Dr.Chitale. In paragraph 205, however, it observed as follows:

"207. We will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence. Some of these factors like extreme youth can instead be of compelling importance."

38. In the end, the Court following the decision in Jagmohan left the sentencing process exactly as it came from the legislative, flexible and responsive to each case on its merits, subject to the discretion of the Court and in case of any error in exercise of the discretion subject further to correction by the Superior Court(s). The Court observed:

"197. In Jagmohan, this Court had held that this sentencing discretion is to be exercised judicially on well-recognised principles, after balancing all the aggravating and mitigating circumstances of the crime. By "well-recognised principles" the Court obviously meant the principles crystallized by judicial decisions illustrating as to what were regarded as aggravating or mitigating circumstances in those cases. The legislative changes since Jagmohan - as we have discussed already - do not have the effect of abrogating or nullifying those principles. The only effect is that the application of those principles is now to be guided by the paramount beacons of legislative policy discernible from Sections 354(3) and 235(2), namely: (1) The

extreme penalty can be inflicted only in gravest cases of extreme culpability; (2) In making choice of the sentence, in addition to the circumstances of the offence, due regard must be paid to the circumstances of the offender also."

39. Earlier in the judgment while reaffirming Jagmohan, subject of course to certain adjustments in view of the legislative changes [(section 354(3)] the Court observed:

"161. The expression "special reasons" in the context of this provision, obviously means "exceptional reasons" founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal. Thus, the legislative policy now writ large and clear on the face of Section 354(3) is that on conviction for murder and other capital offences punishable in the alternative with death under the Penal Code, the extreme penalty should be imposed only in extreme cases."

(Emphasis added)

In conclusion the Constitution Bench decision in Bachan Singh said:

"209.....It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality.

That ought not to be done save in the rarest of rare

cases when the alternative option is unquestionably foreclosed."

(Emphasis added)

40. The Bachan Singh principle of 'rarest of rare cases' came up for consideration and elaboration in the case of Machhi Singh. It was a case of extraordinary brutality. On account of a family feud Machhi Singh the main accused in the case, along with eleven accomplices, in course of a single night, conducted raids on a number of villages killing seventeen people, men, women and children for no reason other than they were related to one Amar Singh and his sister Piyaro Bai. The death sentence awarded to Machhi Singh and two other accused by the Trial Court and affirmed by the High Court was also confirmed by this Court.

41. In Machhi Singh the Court put itself in the position of the 'Community' and observed that though the 'Community' revered and protected life because 'the very humanistic edifice is constructed on the foundation of reverence for life principle' it may yet withdraw the protection and demand death penalty:

"32. It may do so 'in rarest of rare cases' when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as for instance :

I. Manner of commission of murder

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

(i) when the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II. Motive for commission of murder

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-à-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course for betrayal of the motherland.

III. Anti-social or socially abhorrent nature of the crime

35.(a) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and

frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. Magnitude of crime

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

V. Personality of victim of murder

37. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-à-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons."

42. In Machhi Singh the Court held that for practical application the rarest of rare cases principle must be read and understood in the background of the five categories of murder cases enumerated in it. Thus the standardisation and classification of cases that the two

earlier Constitution Benches had resolutely refrained from doing finally came to be done in Machhi Singh.

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

8. We have heard the learned counsels for the parties.
9. The order on sentence is to be passed on the touchstone of the law which has been laid down by the Apex Court. Taking into consideration the observations made by the Apex Court in the case of *Machhi Singh and Ors.*(supra), which was taken based on the observations made in the case of *Bachan Singh v. State of Punjab*, reported in (1980) 2 SCC 684. In the case of *Ramnaresh and Ors.*(supra), the Apex Court has observed that most of the heinous crimes under IPC are punishable by death penalty or life imprisonment and observed that by itself does not suggest that in all such offences, penalty of death alone should be awarded. The Supreme Court of India has consistently held that cases of awarding life imprisonment would be the rule while death would be the exception. The term 'rarest of rare' cases has been interpreted to be an exception. Although, Mr. Mavi very emotionally made submissions before us, however we are unable to hold that there are special reasons in this case which would be relevant for awarding of the death sentence in the matter. We have also taken into consideration the conduct of Pramod Kumar in jail and thereafter. There is no other matter reported against him and also the fact that he has continued to earn his livelihood by working in an export house, has re-started his life, has got married and has two children aged 05 years and 03 years respectively. We also find that while drawing the balance-sheet of the convict Pramod Kumar, we are unable to find that the

aggravating circumstances are at much higher scale than the mitigating circumstances.

10. In our view, present case does not fall within the bracket of rarest of rare cases where collective conscience of the community is so shocked that it expects the Court to inflict death penalty. Considering the totality of the facts and circumstances of the case, the convict Pramod Kumar is hereby sentenced to undergo imprisonment for life and to pay a fine of Rs.2,00,000/- for the offence punishable under Section 302 of the IPC and in default of payment of fine, the convict shall have to further undergo simple imprisonment for six months. The convict is also sentenced to undergo rigorous imprisonment for three years for the offence punishable under Section 201 of the IPC and to pay a fine of Rs.10,000/- and in default of the payment of fine, the convict shall have to undergo simple imprisonment for a period of three months. Both the sentences shall run concurrently. Benefit of Section 428 of the Cr.P.C. shall be given to the convict.
11. Section 357 of the Cr.P.C. provides that where the fine is imposed upon the convict, the compensation can be awarded to any person who had suffered any loss or injury because of that crime. Accordingly, under Section 357(2) of the Cr.P.C., out of the aforesaid fine, the parents of the victim shall be paid Rs.1,00,000/- as compensation.
12. A copy of the judgment dated 20.11.2019 and the order on sentence passed today be sent forthwith to the Central Jail concerned.

13. A copy of the judgment and the order on sentence passed today be also given to the convict free of cost.

G.S. SISTANI, J.

CHANDER SHEKHAR, J

NOVEMBER 27, 2019

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