

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Bibhas Ranjan De

CRA 334 of 2021
Sanatan Goswami @ Thakur
Vs.
State of West Bengal

With

CRA 327 of 2021
Smt. Mangala Goswami Goswami
Vs.
State of West Bengal

With

DR 4 of 2021
Sanatan Goswami @ Thakur and Anr.
Vs.
State of West Bengal

For the Appellants/ Amicus Curiae	: Mr. Sandipan Ganguly, Sr. Adv. Mr. Dipanjan Dutt, Adv.
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For the State	: Mr. Sanjay Bardhan, Adv. Ms. Amita Gaur, Adv. Mr. Palash Chandra Majhi, Adv.
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Heard on	: August 17, 2022
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Judgement on	: August 25, 2022
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DEBANGSU BASAK, J.:-

1. The appellants have assailed the judgement of conviction dated September 17, 2021 and the order of sentence dated September 21, 2021 passed by the Learned Additional District and

Sessions Judge, 2nd Court, Purulia in SC (SPL) Case No. 34 of 2017. The appellants have been represented by the learned senior advocate Mr. Sandipan Ganguly and advocate Mr. Dipanjan Dutt as amicus curiae. By the impugned judgement of conviction and the order of sentence, the appellants had been held guilty of murdering a child of three years old and sentenced to death. A death reference has been made to this Hon'ble Court by reason of such order of sentence of death. The two appeals and the death reference have been heard analogously.

2. The case of the prosecution is that, Prosecution Witness (PW) No. 1 had lodged a complaint with the police on July 14, 2017. In such complaint, he had stated that, he was working as coordinator of Non-Government Organization (NGO) Childline. On July 11, 2017 at night, a three years old girl child had been admitted at the Sadar Hospital at Purulia by her mother. He had learnt that the child had been severely physically tortured. When the child had been admitted to the hospital several injuries caused by nail were found on her body. The child had been in severe fear with dark circles under her eyes being indicative of torture. He had stated that, Mangala Goswami after some persuasion told him that, Sanatan Goswami Goswami had physically and sexually abused

her daughter even after her prohibition and resistance and for that bleeding occurred.

3. The police had registered First Information Report being Purulia (M) Police Station Case No. 194/2017 dated July 14, 2017 against Sanatan Goswami for offence punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and Section 376 of the Indian Penal Code, 1860. The victim had died on July 21 2017. The police had relied upon medical evidence and other materials gathered during investigation to contend that the appellants had murdered the victim. Police had submitted a charge sheet for offences punishable under Section 4/6 of the Act of 2012 and Sections 326/ 307/ 302/ 376/ 2010/ 120B of the Indian Penal Code, 1860 against both the appellants. The Court had framed charges under Section 6 of the Act of 2012 and Sections 376(2)/ 302/ 120B/ 30B of the Indian Penal Code, 1860 against Sanatan Goswami and under Section 18 of the Act of 2012 and Sections 302 201/ 120B/ 34 of the Indian Penal Code, 1860 against Mangala Goswami.

4. The appellants had pleaded not guilty at the trial. At the trial, the prosecution had examined 37 witnesses, tendered 51 documents as Exhibits which were marked as Exhibit 1 to 51 and also tendered various material exhibits being exhibits A to I. That

apart, the appellants had tendered three documents as exhibits being exhibits A to C. The appellants, however, did not produce any witness for examination at the trial. At conclusion of the evidence on the part of the prosecution, the appellants had been examined under Section 313 of the Criminal Procedure Code, 1973 where, they pleaded innocence and false implication.

5. Learned amicus curiae has submitted that, the victim was the child of Mangala Goswami. Mangala Goswami had been married with Lakshmikanta Goswami who deposed as PW 14.

6. Learned amicus curiae has drawn the attention of the Court to the relation between Sanatan Goswami and Mangala Goswami. He has contended that, PW 3 and PW 9 who are co-villagers with Sanatan Goswami had stated that Sanatan Goswami and Mangala Goswami were living as husband and wife. Sanatan Goswami in his statement under Section 313 had stated that they had lived as husband and wife. However, Mangala Goswami in her Statement under Section 313 of the Code of Criminal Procedure had claimed that she was a maid at the house of Sanatan Goswami. He has pointed out that, PW 1 and PW 15 had corroborated Mangala Goswami in the sense that she had introduced herself as the maid of the house of Sanatan Goswami before such witnesses. He has

pointed out that PW 28 had also referred to Mangala Goswami as the maid at the house of Sanatan Goswami.

7. Learned amicus curiae has contended that, the relationship between Sanatan Goswami and Mangala Goswami would have been otherwise irrelevant had it not been the supply of the motive by the prosecution for elimination of the victim. Prosecution had introduced such motive through PW 6 who had claimed in his testimony that, he overheard Sanatan Goswami to say to Mangala Goswami that she had two options namely, to kill the child or remove herself from the life of Sanatan Goswami along with the child. PW 6 had also claimed that Mangala Goswami stated that, she was incapable of living without Sanatan Goswami and that if Sanatan Goswami killed the child, she would not divulge such information to anyone.

8. Learned amicus curiae has referred to the testimony of PW 6 and submitted that, PW 6 cannot be relied upon in view of the fact that he does not remember the date when such alleged conversation took place, he did not make such Statement to the police at the material point of time and made the Statement after 20 to 25 days from the death of the victim.

9. Learned amicus curia has contended that, prosecution claimed that Sanatan Goswami inserted needles into the body of

the victim. Prosecution had produced PW 4, a co-villager who claimed that he saw Sanatan Goswami inserting a needle into the stomach of the victim while Mangala Goswami pinned her down with both hands. He has pointed out that such witness did not confide about the incident with any other person. Nor did such person speak to the police contemporaneously. Such person had spoken about the same to the police after 15 to 20 days of the incident being flashed on the television. Prosecution had relied upon PW 5 who claimed that Sanatan Goswami had purchased the needles from his shop in large numbers. The needles recovered from the body of the victim had not been shown to PW 5 to obtain a statement whether such needles were purchased by Sanatan Goswami from his shop or not. He has contended that, the prosecution had failed to establish beyond reasonable doubt that Sanatan Goswami inserted the needles into the victim.

10. Referring to the medical evidence on record, learned amicus curiae has contended that, there is no evidence that the inserted needles were the cause of death of the victim. He has referred to the evidence of PW 31, who was the post mortem doctor. According to him, the surgical wounds on the victim had caused her death. He has referred to Exhibit 42 being the death certificate of the victim and submitted that, PW 24, a doctor of SSKM

Hospital had stated that, the death was due to three reasons. None of the reasons are the insertion of needles into the body of the victim by Sanatan Goswami.

11. Referring to the order of sentence, learned amicus curia has submitted that, the learned Judge had erred in awarding death penalty. He has relied upon **2013 Volume 2 Supreme Court Cases 713 (Gurvail Singh @ Gala and Another vs. State of Punjab), 2013 Volume 3 Supreme Court Cases 294 (Mohinder Singh vs. State of Punjab), 2010 Volume 3 Supreme Court Cases 508 (Mulla and Another vs. State of Uttar Pradesh), 2009 Volume 6 Supreme Court Cases 498 (Santosh Kumar Satishbhusan Bariyar vs. State of Maharashtra), 1983 Volume 3 Supreme Court Cases 470 (Machhi Singh and Others vs. State of Punjab), 1980 Volume 2 Supreme Court Cases 684 (Bacchan Singh vs. State of Punjab), and 2022 SCC Online SC 768 (Manoj Pratap Singh vs. State of Rajasthan)** in support of his contentions.

12. Learned amicus curiae has submitted that, that penalty is an exception. He has referred to Section 354 (3) of the Criminal Procedure Code and submitted that, life imprisonment is the rule and death sentence is an exception. He has contended that, in the facts of the present case, it cannot be said that the imposition of

the alternative sentence of life imprisonment, is unquestionably foreclosed.

13. Learned amicus curiae has submitted that, there are mitigating circumstances in favour of both the appellants. According to him, Sanatan Goswami was 61 years of age at the time of the incident while Mangala Goswami was 20 years of age at that time. Mangala Goswami had become a mother at about 16 years of age. Both had come from economical backward strata of the society. Neither of them had any criminal antecedents. The prosecution had not placed any material to establish that, both were beyond reformation. He has contended that, the evidence does not foreclose life sentence and does not prompt a death sentence.

14. Learned amicus curiae has submitted that, in the facts and circumstances of the present case, the appellants be acquitted and in the alternative, the death penalty be reduced to life sentence. He has contended, relying upon **2016 volume 7 Supreme Court Cases 1 (Union of Indian vs. V. Sriharan @ Murugan and Others)** that, the High Court has the power to pass an order of life sentence with no remission. In the event, the Court finds that, the life sentence should be without any remission, then the Court may pass such an order of punishment.

15. Learned advocate appearing for the State has submitted that, the appellants did not commit the act under any mental stress or emotional disturbance or on any spur of the moment or provocation. He has referred to the act of insertion of needles into the body of the victim of three-year old female child by the appellants. He has submitted that, such acts are diabolic, barbaric, inhuman and uncommon. He has contended that, the actions of the appellants were preplanned, premeditated, meticulous and deliberate criminal conspiracy coupled with sheer brutality and apathy for human life. He has contended that the act and conduct of the appellants reveal that they were and will be menace to the society and cannot be reformed and rehabilitated. They had perpetuated such barbaric act upon an innocent, defenseless, helpless, female child of three years of age. The victim had been in the care and custody of the appellants. Mangala Goswami was her mother. The victim and her mother had been living with Sanatan Goswami at the time of the incident. Instead of protecting the three year old female child, they had killed her in a cruel and barbaric manner.

16. Learned advocate appearing for the State has contended that, the appellants had failed to explain any of the incriminating circumstances in their Statements recorded under Section 313 of

the Criminal Procedure Code warranting an adverse inference against them.

17. Learned advocate appearing for the State has submitted that, the report dated August 9, 2022 from the Superintendent of Midnapore Central Correctional Home cannot be a paramount consideration as mitigating circumstances particularly taking into consideration the nature of the heinous offence, its preplanned, premeditated, meticulous and calculated execution and the diabolic barbaric and inhuman act of the appellants. He has contended that, the aggravating circumstances are such that, death penalty should be upheld.

18. Referring to the facts of the case, learned advocate appearing for the State has submitted that, the motive for the murder of the victim girl appears from the evidence of PW 4 and 6. Sanatan Goswami had fled away to Uttar Pradesh after the victim had been admitted to the hospital on July 11, 2017. He had been arrested from the house of his brother-in-law in Uttar Pradesh on July 29, 2017. Mangala Goswami had given false information regarding the ailments of the victim to various persons including the doctors at the hospital. In this regard he has referred to the evidence of the PW 2 and 8. He has contended that, PW 5 had stated that, Sanatan Goswami had purchased the needles from his shop. PW 4

had seen Sanatan Goswami to insert the needles into the victim. Sanatan Goswami had taken PW 37 who was the subsequent investigating officer to the shop of PW 5 from where he had purchased the needles. Needles had been seized from the house of Sanatan Goswami on his leading Statement. PW 2, 3, 4, 5, 6, 7, 8, 9, and 12 had recorded Statements under Section 164 of the Criminal Procedure Code before PW 36. Such Statements corroborate the oral testimonies of such prosecution witnesses. Moreover, the evidence of the prosecution witnesses corroborates each other.

19. Learned advocate appearing for the State has referred to the medical evidence on record. He has submitted that, PW 16, 19, 20 and 23 are doctors and members of the medical board of SSKM Hospital. He has referred to their oral testimonies at the trial and submitted that, they had corroborated the evidence of the post-mortem Doctor being PW 31. He has submitted that, the other doctors being PW 15, 18, 21, 22 and 24 along with the sister in charge of the operation theatre at SSKM hospital being PW 25 had corroborated each other. He has contended that, the insertion of the needles into the body of the victim was the cause of death. He has submitted that, the medical evidence clearly indicate that

death was due to effects of injuries, ante-mortem and homicidal in nature.

20. Learned advocate appearing for the State has relied upon **2015 Volume 1 Supreme Court Cases 253 (*Vasanta Sampat Supare vs. State of Maharashtra*)**, **2015 Volume 6 Supreme Court Cases 652 (*Purushottam Dashrath Borate and Another*)**, **2011 Volume 14 Supreme Court Cases 401 (*Ajit Singh Harnamsingh Gujral vs. State of Maharashtra*)**, **1988 Volume 1 Supreme Court Cases 633 (*Ranjeet Singh and Another vs. State of Rajasthan*)**, and **2003 Volume 8 Supreme Court Cases 224 (*State of Rajasthan vs. Kheraj Ram*)** in support of his contentions.

21. The de facto complainant had been examined as PW 1. He had stated that, he lodged the written complaint on July 14, 2017 and that it was written in his own handwriting. He had stated that on July 12, 2017 he received an unidentified phone call from where he came to learn about a torture being meted out to female child victim from Nadiara who had been admitted at the Purulia Sadar Hospital. On receiving such news, he and his team had reached the Sadar Hospital within an hour. Upon enquiry from the Wardmaster of the hospital, they had reached the concerned ward to find the admitted female child. He had stated that, on seeing the

admitted child, he thought that the condition of the child appearing to be serious and abnormal. On repeated enquiries, Mangala Goswami had informed him that her child was suffering from high fever only.

22. PW 1 had stated that on July 13, 2017, he had visited the hospital and enquired about the health of the child when Mangala Goswami had given the same reply about the condition and ailment of her child. He had visited the hospital again on July 14, 2017 when Mangala Goswami had made the startling revelation to him. She had claimed that, she was married and was divorced by her husband. The minor child was from her first marriage. For the last several months, she along with her child had started living with Sanatan Goswami. She had developed a physical intimacy with Sanatan Goswami. Despite her repeatedly resisting, and protesting, Sanatan Goswami had started perpetuating physical abuse and sexual torture upon her minor child over a period of time and in her presence. Upon hearing such facts, he had lodged the complaint with the police on July 14, 2017 itself.

23. PW 1 had stated that within two hours of his lodging the written complaint with the police he received a phone call from the doctor at Purulia Sadar Hospital that the condition of the child was critical. The doctors had found the hands of the victim to be

fractured and seven needles had been found inside various parts of her body including her sexual organ, after diagnosis. He was informed that the minor child had to be shifted to Bankura Medical College for further/better treatment. Upon receiving such information he along with two other colleagues had rushed to Purulia Sadar Hospital and accompanied the child along with her mother Mangala Goswami to Bankura Medical College. Thereafter on July 15, 2017 in the afternoon, the child had been shifted to SSKM Hospital for further treatment. On July 21, 2017 he had received the news that the female child had died in SSKM Hospital.

24. In cross examination, PW 1 had stated that, when he saw the female child for the first time the appearances of the child struck him. He had explained that, the female child suffered panic attack, had abnormal dark circles around her eyes. He had stated that, seven needles had been found inside the body of the victim.

25. PW 2 is the daughter-in-law of Sanatan Goswami who had stated that she came to her matrimonial home for attending her late mother-in-law's annual sradh ceremony. Her elder sister-in-law had also returned to her matrimonial home prior to her reaching such matrimonial home. She had found Mangala Goswami staying with her father-in-law along with the victim. She had claimed that, Mangala Goswami and Sanatan Goswami were

residing as husband and wife. She had noticed that the victim was not keeping well. The victim was having difficulty in walking and breathing while she tried to sit and was vomiting every now and then after she was given food. When she had asked the mother of the victim and her father-in-law to take the child to a doctor, Mangala Goswami stated that she was not responsible for the ailing child since the child was not her own. Mangala Goswami had also stated that if PW 2 cared so much for the sick child she was welcome to take her to a doctor. Then PW 2 had spoken to some women in the neighbourhood and also members of a self-help group. When members of the self-help group had approached Mangala Goswami, she gave the same reply that the child was not her own and hence she was not interested to take her to a doctor. Thereafter, the self-help group had managed to collect contributions of money from the public and took the child to the hospital.

26. PW 2 had stated on July 12, 2017, after her father-in-law returned from the hospital, he left home and did not return. The police had come to her matrimonial house when various articles had been seized. She had claimed that when the police were seizing the articles Mangala Goswami had murmured saying that

she and Sanatan Goswami had jointly planned to insert the needles in the body of the victim to slowly cause her death.

27. PW 2 had recorded a Statement under Section 164 of the Criminal Procedure Code before the learned Magistrate which she had tendered in evidence and which was marked as Exhibit 4.

28. A neighbour of Sanatan Goswami had deposed as PW 3. He had stated that Sanatan Goswami used to work as a Home guard and retired from such post. According to him, Sanatan Goswami used to indulge in occult practices and used to sing kirtan in different places. He had stated that Sanatan Goswami had brought Mangala Goswami into the house as his wife. He had noticed that the victim was unwell and had asked both Mangala Goswami and Sanatan Goswami to take the victim to the doctor. He had also given money to Sanatan Goswami and Mangala Goswami to take the victim to the doctor. He had noticed that, the victim used to be frightened in the presence of Sanatan Goswami and avoided him. He had tendered his Statement recorded under Section 164 of the Criminal Procedure Code as Exhibit 5.

29. A local villager had deposed as PW 4. He had stated that, he frequently visited the house of Sanatan Goswami to pluck flowers. On a particular day, on hearing screaming and cries of the victim, he looked inside the house of Sanatan Goswami when he had seen

Sanatan Goswami inserting a needle into the body of the victim with Mangala Goswami pinning down the victim. He had thought that, Sanatan Goswami was engaging in occult practices. Subsequent to him coming to know that the victim had died due to insertion of needles, he had gone to the police. He had also recorded a Statement under Section 164 of the Criminal Procedure Code which was marked as Exhibit 6.

30. The grocery shop from where, Sanatan Goswami had purchased the needles, deposed as PW 5. He had stated that, Sanatan Goswami had purchased two packets of needles. He had asked Sanatan Goswami as to why Sanatan Goswami needed so many needles to which Sanatan Goswami had replied that he had some work with it. He had learnt about the death of the victim and thereafter spoke to the police about the purchase of the needles by Sanatan Goswami. He had tendered his Statement recorded under Section 164 of the Criminal Procedure Code as Exhibit 7.

31. Prosecution had examined PW 6 who is a villager. He had stated that, while he was going to his field for work, he heard an altercation between Sanatan Goswami and Mangala Goswami. He had heard that, Sanatan Goswami was telling Mangala Goswami that, he had driven away his two sons in order to start living with Mangala Goswami and that since the victim was not his child,

either Mangala Goswami leaves him or the child is put away so that they can live together. He had narrated the incident to the police subsequent to the death of the victim. He had tendered his Statement recorded under Section 164 of the Criminal Procedure Code as Exhibit 8 in evidence.

32. A member of the self-help group had been examined as PW 7. She had narrated how the members of the self-help group had collected the money for the treatment of the victim. She had tendered her Statement recorded under Section 164 of the Criminal Procedure Code as Exhibit 9 in evidence.

33. The elder daughter-in-law of Sanatan Goswami had been examined as PW 8. She had stated that, when she reached her matrimonial home, she had found her father-in-law Sanatan Goswami to be living with Mangala Goswami. She had stated that the victim was sick and was not in a position to walk properly. She had corroborated the evidence of the other prosecution witnesses as to the self-help group assisting in the treatment of the victim.

34. PW 9 had stated in his deposition that, Sanatan Goswami had brought Mangala Goswami to his residence and was living with him. They had been living as husband-and-wife. He has stated that the local self-help group had pressurized Sanatan Goswami and Mangala Goswami to get medical help for the victim.

He had stated that, Sanatan Goswami had run away from his home on day after the victim had been admitted to the Purulia Sadar Hospital.

35. PW 10 and 11 had been examined by the prosecution as seizure list of witnesses. They had tendered documents and material exhibits in evidence.

36. PW 12 had claimed himself to be friendly with Sanatan Goswami, in his testimony before the trial Court. He had claimed that, Sanatan Goswami told him that he wanted to kill the victim and that, Mangala Goswami did not agree to it. Sanatan Goswami had also confided in him that he would kill the victim in such a way that the villagers would not suspect anything. PW 12 had heard about the insertion of the needles into the victim and went to the house of Sanatan Goswami to enquire when he found Sanatan Goswami was missing. When the police had come to the village to make enquiries, after the death of the victim, he had told the police that he wanted to make a Statement. He had recorded a Statement under Section 164 of the Criminal Procedure Code which he had tendered in evidence as Exhibit 12.

37. The prosecution had examined a worker with the Non-Government Organisation, Childline, as PW 13. She had stated about the steps she along with others of the Childline Organisation

had taken for the purpose of saving the victim and affording the victim proper medical care.

38. The estranged husband of Mangala Goswami had been examined by the prosecution as PW 14. He had stated that, a female child had been born out of their wedlock and that, Mangala Goswami had deserted him and that he did not know where she lived subsequent to her desertion.

39. The doctor who had treated the victim initially at the first medical Centre where the victim was brought had deposed as PW 15. He had stated that, initially, Mangala Goswami had told him that the victim had cold, cough and fever. However, he had noticed dark circles around the eyes of the victim and made repeated inquiries as to the cause thereof from Mangala Goswami. Initially, Mangala Goswami did not give him any answer. Subsequently, she had claimed that, the victim had been assaulted by the owner of the house where she was staying. Thereafter, he had made a thorough examination of the victim and found various injury marks on parts of the body of the victim. Since he had found injury marks on the private parts of the victim, he had referred the victim for further examination by a Gynecologist. He had also informed the district hospital about the physical assault on the victim. He had stated that, a medical board was framed to look

into the victim. He had stated about the opinion of the medical board with regard to the physical condition of the victim as on July 13, 2017 and the recommendations of the medical board. In terms of the recommendations of the medical board, further clinical investigations had been conducted when, it was discovered that, the victim was carrying inserted needles in her body. It was then decided to refer the victim to the district hospital for better treatment. The clinical report of the victim had also stated that there was a blood clot in the Urinary bladder of the victim. Pursuant to such referral being made, the victim had been removed from the district hospital on July 14, 2017. He had tendered various documents as exhibits. He had named the composition of the surgical team. He had stated that through the surgery seven needles were extracted from the body of the victim.

40. The doctor at SSKM hospital under whose supervision the victim had been admitted on a referral from the district hospital, had deposed as PW 16. He had received to the victim on July 15, 2017. A medical board comprising of a number of doctors had been formed. He had attended the prescription prepared on July 15, 2017 in respect of the victim. He had stated that, in the opinion of the doctors, there were foreign bodies (needles) in the body of the victim. He had stated that on July 17, 2017, another

medical board was formed to treat the victim. The medical board had formed a unanimous opinion that, the victim should be operated upon to remove the needles from the body. He had referred to the prescription for the victim, subsequent to her undergoing the operation for removal of the needles. He had referred to the deteriorating medical condition of the victim subsequent to the operation from July 20, 2017. He had tendered various documents as exhibits at the trial.

41. The prosecution had examined one of the doctors forming the medical board constituted on July 13, 2017 as PW 17. He had deposed that the lacerated injury found in the vagina region of the victim could have been inflicted by manipulating the genitalia of the victim.

42. The prosecution had examined one of the doctors attending the victim at Bankura Medical College on July 14, 2017 as PW 18. He had stated that on examination of the victim he found multiple pin insertion on palpitation of the abdomen. The mother of the victim, Mangala Goswami had told him that, the victim had been on the lap of Sanatan Goswami and that, there was loss of appetite, fever and vomiting for 14 days by the victim. He has stated that, clinical investigations had revealed presence of needles

in the body of the victim. The victim had fractured ribs also. The victim had suffered left and right fractures of the ulna.

43. The Pediatric Surgeon of SSKM hospital that treated the victim on July 15, 2017 had been examined as PW 19. He had stated that on July 18, 2017, the patient had been operated upon and seven needles had been extracted from her body. He had opined that, the seven needles had been inserted at different points of time and were not recent. Six of the seven needles had been found in the abdominal cavity of the victim. After the operation of the victim on July 18, 2017, her condition had deteriorated. He and other doctors had attended to the victim. He had tendered the documents as exhibits at the trial.

44. Another doctor of SSKM hospital who had treated the patient prior to the operation as also subsequent to the operation had been examined as PW 20. He had tendered various medical documents as exhibits at the trial. He had stated that the condition of the victim had become serious on July 20, 2017. In cross-examination he had stated that, it was not possible for the victim to swallow the needles.

45. One of the doctors examining the victim at the Purulia Sadar Hospital had been examined as PW 21. He had stated that, he had examined the x-ray of the victim and found that there were seven

needles inserted in the abdomen and pelvic region of the victim. He had found white discharge from the vagina of the victim. He had found a needle lodged in the urinary bladder of the victim from the x-ray plate of the victim which according to him had explained the white discharge.

46. A doctor posted at Bankura Medical College and Hospital who had treated the victim on July 14, 2017 had been examined by the prosecution as PW 22. He had stated that, on July 15, 2017, he examined the victim and found at least seven foreign bodies in the victim on the x-ray plate done elsewhere. He had tendered the medical note prepared by him as an exhibit at the trial.

47. A member of the medical board constituted on July 17, 2017 at SSKM hospital to treat the victim had deposed as PW 23. He had named the other doctors which comprised the medical board treating the victim. He had stated that the victim was operated on July 18, 2017. Through surgery, seven needles had been extracted from the body of the victim. Six of the needles had been embedded in the peritoneal cavity of the patient and the remaining one needle was extracted through a small incision in the perianal region. He had stated that, as far as the position of the needles were concerned, two of them were introduced from the right lobe of the liver, another through the under surface of the left lobe of the liver,

another one was extracted from the Duodenum-Jejunum flexure of intestine, one needle was found in the small bowel mesentery and another from the retroperitoneum in the mid abdomen. In answer to the question as to whether the needles embedded in the body of the victim could be the cause of her death, he had answered that, if any foreign, unsterile body or bodies are inside the body of a patient for a long time, it normally results in sepsis, which in turn, becomes fatal. He had stated that all recovered needles were found in the adjoining anal and vaginal region of the victim.

48. Another doctor of SSKM Hospital who treated the victim had been examined as PW 24. He had stated that, he was on duty on July 20, 2017 and July 21, 2017 at the Pediatric Intensive Care Unit of the hospital. He had examined the victim on July 20, 2017. He had narrated the treatment that he had administered on the victim on July 20, 2017.

49. The Sister in Charge of the operating theatre complex of SSKM hospital had been examined as PW 25. She had stated that, on July 18, 2017, she was in the post as noted. On completion of the surgery on the victim on July 18, 2017, several needles had been handed over to her in a sealed and labelled glass bottle by the surgeon of the operating theatre. She had stated that, she had

handed over such needles in presence of witnesses to the police. The needles had been marked as material exhibit G.

50. The sub- inspector of police who had conducted the inquest upon the body of the victim, had deposed as PW 26. He had tendered the inquest report as Exhibit 46 in evidence.

51. A police constable accompanying the sub- inspector of police and another constable on August 6, 2017 to seize at the residence of Sanatan Goswami had deposed as PW 27. He had identified the articles seized.

52. The assistant sub- inspector of police to whom, the members of the self-help group had for the first time complained about the sickness of the victim on July 11, 2017 had deposed as PW 28. He has stated as to how he came to learn about the sickness of the victim from the members of the self-help group. He had gone to the house of Sanatan Goswami and met him as well as Mangala Goswami and offered to take the victim to the medical facility in the police vehicle. In the vehicle, Sanatan Goswami had said that since the victim was tendered in age, she was suffering from fever, cold and cough. However, Mangala Goswami had kept quiet and did not say anything about the condition of the victim.

53. The Superintendent of Purulia Sadar Hospital had been examined as PW 29. He had stated that, a doctor in such hospital

had written to him requesting for formation of a medical board for better treatment of the victim. He had accepted such request and constituted a medical board.

54. The officer in charge of Purulia (M) police station at that relevant point of time had been examined as PW 30. He had stated that on July 14, 2017, he received a complaint from PW 1 which he registered as a police case bearing number 194/2017 dated July 14, 2017 for offences punishable under Section 376 of the Indian Penal Code, 1860 and Section 4 of the Protection of Children from Sexual Offences Act, 2012. He had stated that, he filled up the formal First Information Report and signed the same. In his capacity as the officer in charge, he had issued written orders upon the sub- inspector of police Gopal Chandra Man for holding raid at other State likely Uttar Pradesh for apprehending Sanatan Goswami. He had endorsed the police case to sub-inspector of police Asim Sengupta for investigation.

55. The doctor who had conducted the post-mortem of the victim had deposed as PW 31. He had narrated about the wounds he found on the body of the victim. He had stated that, the injuries showed evidences of ante mortem vital reaction directed from front to back and middle wards from lateral. In his opinion, that was due to the effects of the injuries as noted in his post-mortem

report, ante mortem and homicidal in nature. He had tendered his post-mortem report in evidence which was marked as Exhibit 49. He had stated that, he was one of the doctors of the medical board formed on July 17, 2017 at SSKM Hospital to treat the victim.

56. The police personnel who was posted as the officer in charge of Purulia (M) police station on August 6, 2017 had deposed as PW 32. He had stated that, he had endorsed the case to sub- inspector of police Gopal Chandra Man after receiving the case diary from sub- inspector of police Asim Sengupta.

57. The first investigating officer had deposed as PW 33. He had narrated the manner in which he had conducted the investigations. He had stated that on August 6, 2017, as per the directions of the officer in charge of the police station, he handed over the case diary to another sub- inspector of police Gopal Chandra Man for further investigation.

58. The mother of Mangala Goswami had deposed as PW 34. She had stated that, Mangala Goswami was married to Lakhikanta. Out of such marriage they had one daughter being the victim. After birth of the victim, Mangala Goswami left her husband and started staying with her. According to her, Sanatan Goswami had taken Mangala Goswami and the victim with him. She had stated that, when she visited Purulia Sadar Hospital after being told by

Sanatan Goswami that the victim was admitted there, Mangala Goswami never told her anything regarding the cause of ailment of the victim.

59. The officer in charge of Women Police Station Purulia had deposed as PW 35. She had stated that, at the request of sub-Inspector Asim Sengupta she had recorded the Statement of Madhuri Mohanta under Section 161 of the Criminal Procedure Code.

60. The judicial magistrate before whom the Statements under Section 164 of the Criminal Procedure Code had been recorded had deposed as PW 36. The second investigating officer had deposed as PW 37. He had narrated how he had arrested Sanatan Goswami from the house of his brother-in-law at Uttar Pradesh on July 29, 2017. He had also narrated about the steps that were taken in the police case.

61. PW 2, 3, 4, 5, 6, 7 8, 9 and 12 had recorded Statements under Section 164 of the Criminal Procedure Code before the PW 36. Such prosecution witnesses had corroborated each other and that their testimonies at the trial stands corroborated by the Statements that they had recorded under Section 164 of the Criminal Procedure Code.

62. At the trial, the prosecution had been able to establish the following facts: –

- i. The victim had been born out of the wedlock of Mangala Goswami with Lakshmikanta. They had separated subsequent to the birth of the victim. This fact has been established by PW 1 (de facto complainant), PW 14 (estranged husband of Mangala), and PW 34 (mother of Mangala Goswami).
- ii. Sanatan Goswami has two sons, both married and that his wife had expired. His two sons had been living separately from him. This fact has been established by PW 2 (younger daughter-in-law of Sanatan Goswami) and PW 8 (elder daughter in law of Sanatan Goswami).
- iii. Mangala Goswami and the victim had been living with Sanatan Goswami. PW 3 and 9 who are co-villagers had stated that Mangala Goswami and Sanatan Goswami were living as husband-and-wife. That they had been living as husband-and-wife was acknowledged by Sanatan Goswami in his examination under Section 313 of the Criminal

Procedure Code. PW 2 who is the daughter-in-law of Santan had stated that Mangala Goswami and Sanatan Goswami were living as husband-and-wife. Although Mangala Goswami had stated that she was maid in the house of Sanatan Goswami in her examination under Section 313 of the Criminal Procedure Code she had stated to PW 1 that there was physical intimacy between her and Sanatan Goswami. With or without physical intimacy, the fact that Mangala Goswami and the victim had been living with Sanatan Goswami was established by the prosecution at the trial.

- iv. Sanatan Goswami had purchased two packets of needles, one large size needle packet and another small size needle packet, from the shop of PW 5. Sanatan Goswami had identified the shop of PW 5 while in custody, as the shop from where he had purchased the needles, after being taken to such shop, on August 8, 2017. Needles had been seized from the house of Sanatan Goswami. Seven needles had been extracted from the body of the victim.

- v. Sanatan Goswami had been seen by PW 4 to insert a needle in the body of the victim with Mangala Goswami pinning down.
- vi. PW 6 had overheard Sanatan Goswami tell Mangala Goswami that she had two options namely, either kill the child or remove herself from his life.
- vii. The victim had been afforded medical treatment on July 11, 2017 at the intervention of the members of the self-help group. This fact has been established by PW 1, 13 and PW 28.
- viii. The victim had been treated at Purulia Sadar Hostital, Bankura Medical College and Hospital and lastly at SSKM Hospital. This fact has been established by the doctors treating the victim and the medical documents marked exhibits.
- ix. The victim had been diagnosed with fractured ribs, fractured left and right Ulna and needles being inserted in her body. This fact has been established by the doctors treating the victim and the medical documents marked exhibits.

- x. The victim had been operated on July 18, 2017. She had died on July 21, 2017. This fact has been established by the doctors treating the victim and the medical documents marked exhibits.
- xi. Before her death, the victim had suffered multiple fractures. The victim had seven needles inserted into her body mainly in the abdomen region. One needle was in the lower aspect of the right kidney, one in the urinary bladder, rest in the liver. One of the needles reached the dome of the diaphragm of the victim. This fact has been established by the doctors treating the victim and the medical documents marked exhibits.
- xii. The victim was about three years in age at the time of the incident. This fact has been established by PW 1 and the grandmother of the victim PW 34.
- xiii. Sanatan Goswami had fled away from his house on July 12, 2017 and was arrested on July 29, 2017 from Uttar Pradesh. This fact has been established by PW 2 and PW 37.
- xiv. Post-mortem report of the victim being Exhibit 44 had stated that, there were surgically made incised

wounds and seven puncture lacerated wounds (needle prick like mark) on the body of the victim. According to the post-mortem report being Exhibit 44 such injuries show evidences of ante mortem vital reaction directed from front to back and middle wards from lateral.

xv. PW 23 who was one of the doctors of the medical board who had performed the surgery on the victim, in his deposition stated that, seven needles were extracted from the body of the victim on July 18, 2017 by operation. In reply to a question as to whether the needles embedded in the body of the victim could be the cause of death of the victim, he has answered that, any foreign, unsterile body or bodies inside a patient for a long time results in sepsis which in turn can become fatal.

xvi. PW 19 who as a Pediatric Surgeon of SSKM Hospital had treated the victim stated that the seven needles which were found in the body of the victim were inserted at different point of time and were not of recent origin.

xvii. The victim had died at the hands of the appellants.

Both the appellants were involved in the heinous crime of murder which they had executed meticulously and in a preplanned manner.

63. It has been contended on behalf of the appellants that, Mangala Goswami was working as a maid at the house of Sanatan Goswami. We are unable to accept such contention of the appellants in view of the evidences of PW 3 and 9 who as co-villagers had stated that they were living as husband-and-wife. PW 1 who had lodged the police complaint stated that, Mangala Goswami had told him that she developed a physical relationship with Sanatan Goswami. PW 2 who is the daughter-in-law of Sanatan Goswami had stated that they were living as husband-and-wife. Sanatan Goswami in his examination under Section 313 of the Criminal Procedure Code had acknowledged the relationship to be as husband-and-wife. Sanatan Goswami was a retired Homeguard. His economic condition was not such so as to accommodate a maid with child living at his household permanently. In view of such overwhelming evidence, the contention of the appellants that Mangala Goswami was a maid servant of Sanatan Goswami cannot be accepted despite such claim being made by Mangala Goswami in her examination under

Section 313 of the Criminal Procedure Code. Her conduct prior to the incident had led people to believe that they were husband-and-wife. Her claim in the examination under Section 313 of the Criminal Procedure Code as maid of Sanatan Goswami was after the conclusion of the evidence led by the prosecution.

64. On behalf of the appellants, creditability of the evidence of PW 4, 5, and 6 has been questioned. According to the appellants, they had never disclosed their piece of evidence to any other person contemporaneously and that they had reacted after the media reports and therefore they were unreliable witnesses.

65. The conduct of PW 4, 5, and 6 has to be understood in the context of the situation developing at the material point of time. PW 4 is a co-villager who had known Sanatan Goswami to be engaged in occult practices. He had seen Sanatan Goswami inserting a needle in the body of the victim with Mangala Goswami pinning the victim down. He had explained in his deposition that, he did not speak about the incident to anybody else till after the death of the victim, since at the material point of time he had thought that, Sanatan Goswami was engaged in occult practices. The fact that Sanatan Goswami was engaged in occult practices has been corroborated by the evidence of PW 3. PW 4 had disclosed about the conduct of Sanatan Goswami after the death of

the victim as he found such fact to be relevant after learning about the manner in which the victim had died. In cross-examination, the appellants had not been able to elicit anything favourable to them from PW 4.

66. Similarly, the evidence of PW 5 has been questioned on behalf of the appellants on the ground that he did not disclose such evidence contemporaneously to any other person. PW 5 is the grocery shop owner from where Sanatan Goswami had purchased two packets of needles. At the time of the purchase, PW 5 had enquired of the need for such large number of needles from Sanatan Goswami when Sanatan Goswami had given an evasive answer to him. Purchase of needles by itself will not allow a reasonable person to infer that they would be used as a weapon in a murder. Therefore, it is normal that PW 5 did not share such information with anyone contemporaneously but spoke about the same to the police upon learning about manner of death of the victim and the involvement of Sanatan Goswami therein.

67. PW 6 is a co-villager and whose evidence has been questioned on behalf of the appellants again on the ground that he did not disclose his evidence to any person contemporaneously. PW 6 had overheard Sanatan Goswami giving Mangala Goswami the ultimatum that either the child is disposed of or she leaves him.

Again, as a normal human being, he had understood the gravity and significance of such conversation between the appellants after the death of the victim. He had thereafter told the police about the same.

68. All the three witnesses namely PW 4, 5, and 6 had recorded Statements under Section 164 of the Criminal Procedure Code. The appellants have not been demonstrate that, there has been any variation between the statements recorded under Section 164 of the Criminal Procedure Code and the oral testimonies adduced by such witnesses at the trial. The appellants could not extract anything favourable to them despite elaborate cross-examination of such witnesses. The evidences of PW 4, 5 and 6 cannot be said to have any creditability issues as sought to be contended on behalf of the appellants.

69. It has been contended on behalf of the appellants that, post operation sepsis was the cause of the death. No doubt the victim had to undergo an operation and that the post-mortem report being Exhibit 44 had stated that there was sepsis. The death of the victim subsequent to the operation has to be understood in the context of the facts and circumstances of the case.

70. The victim, a child of three years of age, had been in the care and custody of Mangala Goswami, her mother and Sanatan

Goswami with whom her mother was living. Both Mangala Goswami and Sanatan Goswami had complete access to the victim. PW 2 had on arrival at her matrimonial home noticed the sickness of the victim and raised a hue and cry over the same. It is at her instance that, members of the self-help group had intervened and ensured that the victim received medical attention. The victim had been admitted to the hospital. Immediately upon the victim being admitted to the hospital, and on a proper diagnosis, the doctors realised that there were seven needles inserted mainly in the abdomen region of the victim. That apart, the doctors had found that the victim was suffering from multiple fractures in both of ribs as well as Ulna. They had recommended surgery. The recommendation of surgery had been made by a board of medical specialist. The victim had been treated by a number of doctors from time to time. The decision to operate on the victim had been unanimous.

71. The doctors had removed seven needles from the body of the victim during surgery. In his testimony, one of the operating doctors PW 23 had stated that as far as the position of the needles were concerned, two of them were introduced from the right lobe of the liver, another through the under surface of the left lobe of the liver, another one was extracted from the Duodenum-Jejunum

flexure of intestine, one needle was found in the small bowel mesentery and another from the retroperitoneum in the mid abdomen. In answer to the question as to whether the needles embedded in the body of the victim could be the cause of her death, he had answered that, if any foreign, unsterile body or bodies are inside the body of a patient for a long time, it normally results in sepsis, which in turn, becomes fatal.

72. Seven needles inserted into the body of the victim by Sanatan Goswami with the assistance of Mangala Goswami was the cause of death of the victim. The operation was necessary to try and save the victim. Left untreated the inserted needles would have resulted in sepsis, in turn becoming fatal.

73. The defence that the appellants has set up does not appeal to us in view of the discussions above. The trial Court had found the appellants guilty under Section 302/34 read with Section 120 B thereof. We have not found any ground to interfere with the impugned judgement of conviction dated September 17, 2021 passed by the learned trial judge.

74. By the impugned order of sentence dated September 21, 2021, the learned trial judge has imposed death penalty upon both the appellants which requires consideration in light of the contentions raised on behalf of the appellants and the State.

75. *Bacchan Singh (supra)* has held that, death penalty does not violate the basic structure of the Constitution. It has observed that Section 354 (3) of the Criminal Procedure Code has given a wide discretion in the arena of sentencing. The exercise of this sentencing discretion cannot be said to be untrammelled and unguided. It has to be exercised judicially in accordance with well-recognised principles crystallized by judicial decisions, directed along the broad contours of legislature policy. It has observed that degrees of culpability and all aggravating and mitigating circumstances should be taken into consideration at the time of sentencing.

76. *Machhi Singh (supra)* has considered ***Bacchan Singh (supra)*** and held as follows: –

“38. In this background the guidelines indicated in Bachan Singh case [(1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636] 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 [(1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636] :

“(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?"

77. Ranjeet Singh and Another (supra) has found in the facts of that case that the manner in which the entire family was eliminated indicated that the offence was deliberate and diabolical. The offence had been found to be a cold blooded murder, devilish and dastardly. Innocent children had been done to death with

lethal weapons when they were fast asleep. In such circumstances, the death sentence had been awarded.

78. In ***Kheraj Ram (supra)*** has observed as follows:-

“38. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now a single grave infraction is thought to call for uniformly drastic measures. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

39. The factual matrix as described by the prosecution and established by the evidence on record shows the cruel and diabolic manner in which the killings were conceived and executed. The accused did not act on any spur-of-the-moment provocation. It was deliberately planned and meticulously executed. There was not even any remorse for such gruesome act. On the contrary, after the killings the accused tried to divert attention and used PW 9 as the cat's paw. He went on taking diversive tactics to suit his purpose. The calmness with which he smoked “chilam” was an indication of the fact that the gruesome act did not even arouse any human touch in him. On the contrary,

he was satisfied with what he had done. In a given case, a person having seen a ghastly crime may act in a different way. That itself in another case may not constitute a suspicious circumstance. But when the entire chain of events and circumstances are comprehended, the inevitable conclusion is that the accused acted in the most cruel and inhuman manner and the murder was committed in an extremely brutal, grotesque, diabolical, revolting and dastardly manner. The victims were two innocent children and a helpless woman. Taking note of these factors, the death sentence imposed by the trial court is most appropriate. The respondent shall surrender to custody forthwith and serve out the sentence.”

79. Santosh Kumar Satishbhushan Bariyar (supra) has observed as follows:-

“157. The doctrine of proportionality, which appears to be the premise whereupon the learned trial Judge as also the High Court laid its foundation for awarding death penalty on the appellant herein, provides for justifiable reasoning for awarding death penalty. However, while imposing any sentence on the accused the court must also keep in mind the doctrine of rehabilitation. This, considering Section 354(3) of the Code, is especially so in the cases where the court is to determine whether the case at hand falls within the rarest of the rare case.

158. The reasons assigned by the courts below, in our opinion, do not satisfy Bachan Singh [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] test. Section 354(3) of the Code provides for an exception. General rule of doctrine of proportionality, therefore, would not apply. We must read the said provision in the light of Article 21 of the

Constitution of India. Law laid down by Bachan Singh [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] and Machhi Singh [(1983) 3 SCC 470 : 1983 SCC (Cri) 681] interpreting Section 354(3) of the Code should be taken to be a part of our constitutional scheme.

159. Although the Constitutional Bench judgment of the Supreme Court in Bachan Singh [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] did not lay down any guidelines on determining which cases fall within the “rarest of rare” category, yet the mitigating circumstances listed in and endorsed by the judgment give reform and rehabilitation great importance, even requiring the State to prove that this would not be possible, as a precondition before the court awarded a death sentence. We cannot therefore determine punishment on grounds of proportionality alone. There is nothing before us that shows that the appellant cannot reform and be rehabilitated.”

80. Mulla and others (supra) has held as follows:-

“67. It is settled legal position that the punishment must fit the crime. It is the duty of the court to impose proper punishment depending upon the degree of criminality and desirability to impose such punishment. As a measure of social necessity and also as a means of deterring other potential offenders, the sentence should be appropriate befitting the crime.

71. Therefore, in the determination of the death penalty, para 38 of Machhi Singh case [(1983) 3 SCC 470 : 1983 SCC (Cri) 681] must be paid due attention to. The test for the determination of the “rarest of the rare” category of crimes inviting the death sentence thus includes broad criteria i.e.

(1) the gruesome nature of the crime,

(2) the mitigating and aggravating circumstances in the case. These must take into consideration the position of the criminal, and

(3) whether any other punishment would be completely inadequate. This rule emerges from the dictum of this Court that life imprisonment is the rule and death penalty an exception. Therefore, the court must satisfy itself that death penalty would be the only punishment which can be meted out to the convict.”

81. Ajit Singh Harnamshigh Gujral (supra) has observed as follows :-

“94. We fully agree with the above view as it has clarified the meaning of the expression the “rarest of rare cases”. To take a hypothetical case, supposing A murders B over a land dispute, this may be a case of ordinary murder deserving life sentence. However, if in addition to murdering B, A goes to the house of B and wipes out his entire family, then this will come in the category of the “rarest of rare cases” deserving death sentence. The expression the “rarest of rare cases” cannot, of course, be defined with complete exactitude. However, the broad guidelines in this connection have been explained by various decisions of this Court. As explained therein, the accused deserves death penalty where the murder was grotesque, diabolical, revolting or of a dastardly manner so as to arouse intense and extreme indignation of the community, and when the collective conscience of the community is petrified, or outraged. It has also to be seen whether the accused is a menace to society and continues to do so, threatening its peaceful and harmonious coexistence. The court has to further enquire and believe that the accused cannot

be reformed or rehabilitated and shall continue with his criminal acts. Thus a balance sheet is to be prepared in considering the imposition of death penalty of the aggravating and mitigating circumstances, and a just balance is to be struck.”

82. *Gurvail Singh (supra)* has in the facts of that case, found that, the mitigating circumstances came to the rescue of the accused. The sentence awarded by the trial Court and confirmed by the High Court was modified from death to life imprisonment for a minimum period of 30 years.

83. On the aspect of the tenure of a sentence of life imprisonment, ***Mohinder Singh (supra)*** has held as follows: –

“26. Life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years or even 30 years, rather it always means the whole natural life. This Court has always clarified that the punishment of a fixed term of imprisonment so awarded would be subject to any order passed in exercise of clemency powers of the President of India or the Governor of the State, as the case may be. Pardons, reprieves and remissions under Article 72 or Article 161 of the Constitution of India are granted in exercise of prerogative power. As observed in State of U.P. v. Sanjay Kumar [(2012) 8 SCC 537 : (2012) 3 SCC (Cri) 970] (SCC p. 546, para 24) there is no scope of judicial review of such orders except on very limited grounds such as the non-application of mind while passing the order, non-consideration of relevant material, or if the order suffers from arbitrariness. The power to grant pardons and to commute sentences is

coupled with a duty to exercise the same fairly, reasonably and in terms of restrictions imposed in several provisions of the Code.

*27. In order to check all arbitrary remissions, the Code itself provides several conditions. Sub-sections (2) to (5) of Section 432 of the Code lay down basic procedure for making an application to the appropriate Government for suspension or remission of sentence either by the convict or someone on his behalf. We are of the view that exercise of power by the appropriate Government under sub-section (1) of Section 432 of the Code cannot be suo motu for the simple reason that this is only an enabling provision and the same would be possible subject to fulfilment of certain conditions. Those conditions are mentioned either in the Jail Manual or in statutory rules. This Court in various decisions has held that the power of remission cannot be exercised arbitrarily. In other words, the decision to grant remission has to be well informed, reasonable and fair to all concerned. The statutory procedure laid down in Section 432 of the Code itself provides this check on the possible misuse of power by the appropriate Government. As rightly observed by this Court in *Sangeet v. State of Haryana* [(2013) 2 SCC 452 : (2012) 11 Scale 140] , there is a misconception that a prisoner serving life sentence has an indefeasible right to release on completion of either 14 years' or 20 years' imprisonment. A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under Section 432 of the Code which in turn is subject to the procedural checks mentioned in the said provision and further substantive check in Section 433-A of the Code.”*

84. In *Vasanta Sampat Dupare (supra)* there were no mitigating circumstances in favour of the convict. The convict there had been found to be 47 years of age at the time of the commission of the crime. There Lordships did not find any remorse on the part of the appellant. In such circumstances, the death sentence had been affirmed.

85. *Purushottam Dashrath Borate and Another (supra)* has held that, mitigating circumstances must be considered in the light of the offence and the manner in which it was committed. It has held that age and lack of criminal antecedents cannot be paramount consideration as a mitigating circumstances.

86. *V. Sriharan (supra)* has held that, the power to impose a modified punishment providing for specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not any other inferior Court.

87. *Manoj Pratap Singh (supra)* has taken into consideration various pronouncement of the Supreme Court on the issue of death sentence, amongst others. It has observed that one of the elements of mitigating factors, namely, probability of reformation of the convict and his rehabilitation and reintegration into the

mainstream society, has been given due consideration, rather extra weightage at the time of sentencing in case of murder.

88. Manoj Pratap Singh (supra) has noticed **2012 Volume 4 Supreme Court Cases 37 (Rajendra Pralhadrao Wasnik vs. State of Maharashtra)**. Therein, the Supreme Court while confirming the death penalty to the convict has held as follows:-

“33. It will be useful to refer to the judgment of this Bench in Ramnaresh v. State of Chhattisgarh [(2012) 4 SCC 257] , wherein it was held as under: (SCC pp. 17-19, paras 72-81)

“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 the IPC are punishable by death penalty or life imprisonment. That by itself does not suggest that in all such offences, penalty of death 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 contradistinction 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 Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] and Machhi Singh [Machhi Singh v. State of Punjab, (1983) 3 SCC 470 : 1983 SCC (Cri) 681], it will be useful to re-state 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 [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] and thereafter, in Machhi Singh [Machhi Singh v. State of Punjab, (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 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 circumstances.*

(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.*

78. *Stated broadly, these are the accepted indicators for the exercise of judicial discretion but it is always*

preferred not to fetter the judicial discretion by attempting to make the excessive enumeration, in one way or another. In other words, these are the considerations which may collectively or otherwise weigh in the mind of the court, while exercising its jurisdiction. It is difficult to state it as an absolute rule. Every case has to be decided on its own merits. The judicial pronouncements, can only state the precepts that may govern the exercise of judicial discretion to a limited extent. Justice may be done on the facts of each case. These are the factors which the court may consider in its endeavour to do complete justice between the parties.

79. The court then would draw a balance sheet of aggravating and mitigating circumstances. Both aspects have to be given their respective weightage. The court has to strike a balance between the two and see towards which side the scale/balance of justice tilts. The principle of proportion between the crime and the punishment is the principle of 'just deserts' that serves as the foundation of every criminal sentence that is justifiable. In other words, the 'doctrine of proportionality' has a valuable application to the sentencing policy under the Indian criminal jurisprudence. Thus, the court will not only have to examine what is just but also as to what the accused deserves keeping in view the impact on the society at large.

80. Every punishment imposed is bound to have its effect not only on the accused alone, but also on the society as a whole. Thus, the courts should consider retributive and deterrent aspect of punishment while imposing the extreme punishment of death.

81. Wherever, the offence which is committed, manner in which it is committed, its attendant circumstances and the motive and status of the victim, undoubtedly brings the case within the ambit of 'rarest of rare' cases and the court finds that the imposition of life imprisonment would be inflicting of inadequate punishment, the court may award death penalty. Wherever, the case falls in any of the exceptions to 'rarest of rare' cases, the court may exercise its judicial discretion while imposing life imprisonment in place of death sentence."

The death penalty was commuted to life sentence without remission, on review, in **2019 Volume 12 Supreme Court Cases 460 (Rajendra Pralhadrao Wasnik vs. State of Maharashtra)**.

89. Manoj Pratap Singh (supra) has also noticed **2019 Volume 13 Supreme Court Cases 640 (Babasaheb Maruti Kamble vs. State of Maharashtra)** where the Supreme Court took into account the age of the convict being 60 years with no criminal antecedents and commuted the death sentence to that of life with a cap of 20 years imprisonment without remission.

90. On the aspect of sentencing, Section 235 (2) of Criminal Procedure Code requires that the accused is heard on the sentencing, if the accused is not being released on probation or after admonition in terms of Section 360 of the Criminal Procedure Code. Sub-section (3) of Section 354 of the Criminal Procedure Code requires reasons to be stated for imposition of a sentence for

life or imprisonment for a term of years and special reasons for a sentence of death.

91. The authorities noted herein have held that, normally the offence of murder should be punished with life imprisonment. However, death penalty can be imposed if there are special reasons for it. Such special reasons must be recorded in writing before imposing in it. Special reason in the context of Section 354 (3) of the Criminal procedure Code has been understood to mean exceptional reasons. The authorities noted above have expressed the view that, life imprisonment is the rule and death is an exception. The Court has to apply the Crime test (aggravating circumstances), Criminal test (mitigating circumstances) and if no mitigating circumstance is found, apply the rarest of rare test to evaluate the necessity for award of the punishment of death. Court may award a death penalty⁸ only on satisfaction that prosecution has proved, through evidence that, the probability is that the convict cannot be reformed or rehabilitated. The convict has the right to bring on evidence on such also. The authorities have also held that, between the punishment for life and death penalty, the High Courts and Supreme Court can award a punishment for life with an order that the convict shall not be released for the rest of

his life or for a specific term of incarceration without the possibility of remission during such period.

92. In light of the law relating to sentencing in a case of murder the quantum of punishment to be imposed upon the appellants has to be considered. In the facts and circumstances of the present case since we have concurred with the finding of the trial Court that the appellants are guilty of murder and the trial Court had awarded death penalty, the aggravating and the mitigating circumstances have to be considered. The authorities noted herein have laid down that, the rarest of rare test has also to be applied in the event; the Court finds that there is no mitigating circumstances in favour of any of the appellants. The prosecution also has the obligation to prove by cogent evidence that the appellants can neither be rehabilitated nor reformed.

93. The aggravating circumstances as against the appellants are many. The victim was three years old at the time of the incident. The victim was in the care and custody of the appellants. Both the appellants owed a duty of care towards the victim due to the relationship between the victim and the appellants. Both the appellants had acted in breach of the duty of care that both of them owed to the victim. Sanatan Goswami had inserted seven needles into the victim with the aid and assistance of Mangala

Goswami. The murder of the victim had been done in a calculated and preplanned and ghastly manner. The conduct of Sanatan Goswami subsequent to the victim had been admitted in the hospital is another aggravating circumstance that the Court should take into account. Sanatan Goswami had fled the place immediately upon the victim being shifted to a better hospital.

94. The existence, if any, of mitigating circumstances in favour of the appellants has to be considered. A report had been called for from the State with regard to the conduct of the appellants subsequent to the appellants being taken into custody and any other materials that the State thought it prudent to place before the Court with regard to the punishment of death penalty. The State had submitted a report dated August 9, 2022 through the Superintendent of Midnapore Central Correctional Home which say that there are no criminal antecedents of any of the appellants. They had behaved well in custody.

95. On the aspect of mitigating circumstances, the Court should not lose sight of the social and economic backgrounds from where the appellants had hailed from. Mangala Goswami was alone with the victim child coming out of a failed marriage. She was a mother at the age of 17 years. Her marriage had failed at the age of 20 years. Her economic condition was also poor if not poorer than

Sanatan Goswami. She was trying to reconstruct her life with Sanatan Goswami. Her conduct post the hospitalisation of the victim should also be taken note of. She did not abandon the victim after the hospitalisation of the victim.

96. Evaluation of mitigating factors in favour of Sanatan Goswami in the facts and circumstances of the present case is tricky. With regard to age being a mitigating factor, we have noticed that ***Purushottam Dashrath Borate and Another (supra)*** has taken note of two previous authorities of the Supreme Court where, it had been held that, the age of the accused may not be a relevant factor where the offence is gruesome and was committed in a calculated and diabolic manner. In the facts of that case, the Supreme Court had confirmed the death sentence awarded by the Trial Court as upheld by the High Court on appeal. In ***Babasaheb Maruti Kamble (supra)*** age of the convict of 60 years with no criminal antecedents had taken as mitigating circumstances to commute the death penalty.

97. In the facts of the present case, the report that the State has submitted in respect of the conduct of the appellant post their arrest does not conclusively establish that, there is no probability of the appellant being reformed or rehabilitated. The State has not placed any material on record to suggest that there are any

criminal antecedents of any of the appellants. As noted above, **Rajendra Pralhadrao Wasnik (supra)** has noted that it was the obligation on the prosecution to prove to the Court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated in order to sustain a sentence of death penalty. Such materials have not been placed by the State. The State has not been able to discharge such obligation.

98. Sanatan Goswami is a retired Home Guard. He was sixty years of age at the time of the incident. He was steeped in superstitions as his indulgence in occult practices suggest. There is no conclusive evidence as against Sanatan Goswami, brought on record by the State, in discharge of their obligation, as noted in **Rajendra Pralhadrao Wasnik (supra)** that there was no probability of Sanatan Goswami being reformed or rehabilitated. Moreover, on the strength of **Babasaheb Maruti Kamble (supra)**, sixty years of age of Sanatan Goswami can be taken to be a mitigating circumstance in his favour. His behavior post his arrest and the absence of any criminal antecedents have to be considered as mitigating circumstances in his favour.

99. In the facts and circumstances of the present case, since, we are not in a position to return a finding that, there are no mitigating circumstances in favour of the appellants, the rarest of

rare test need not be deployed. Since there are some mitigating circumstances in favour of the appellants and since the State has failed to discharged their obligation of establishing that the appellants cannot be reformed or rehabilitated, we are of the view that, the award of death penalty on the appellants should be commuted to life sentence.

100. We therefore commute the death penalty of Mangala Goswami to life sentence. However, so far as Sanatan Goswami is concerned, the principles of **V. Sriharan (supra)** should be applied in view of the aggravating circumstances as against him. We are therefore commuting his death sentence to life imprisonment without the possibility of remission for a period of 30 years from the date of his arrest. We clarify that, he is sentenced to life imprisonment and that, any prayer for remission so far he is concerned can be considered only after 30 years from the date of his arrest.

101. A copy of this judgement along with the trial Court records be remitted to the appropriate Court forthwith. In view of the commutation of the death penalty, any warrant issued by the appropriate Court with regard thereto in respect of the appellants stands modified in terms of this judgement and order. Department will inform the Correctional Home where the appellants are lodged

as to this judgement and order. The Correctional Home will record the fact of commutation of death penalty to the sentence awarded by this judgement and order in respect of the appellants, in their records.

102. DR 4 of 2021 along with CRA 327 of 2021 and CRA 334 of 2021 are disposed of. The valuable contributions of Mr. Sandipan Ganguly, Senior Advocate and Mr. Dipanjan Dutt, advocate as amicus curiae are placed on record. The able assistance of the learned advocates for the State are also appreciated.

103. Urgent Photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

[DEBANGSU BASAK, J.]

104. I agree.

[BIBHAS RANJAN DE, J.]