

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.55 of 2016

Arising Out of PS. Case No.-67 Year-2010 Thana- CHHATAUNI District- East Champaran

Ramesh Kumar Yadav @ Suman Kumar Yadav Son of Late Mahanth Rai
resident of Village - Chhota Bariyarpur, P.S. - Chhatauni, District - East
Champaran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Radha Mohan Singh, Adv.
Mr. Surendra Kishore Thakur, Adv.
For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 05-05-2023

1. Heard Mr. Radha Mohan Singh, the learned advocate for the sole appellant and Mr. Abhimanyu Sharma, the learned APP for the State.
2. The appellant stands convicted under Section 302, 201 and 34 of the I.P.C. and has been sentenced to undergo rigorous imprisonment for remainder of his life, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer imprisonment for six months for the offence under Section 302 of the I.P.C.



and rigorous imprisonment for seven years, a fine of Rs. 5,000/- and in default of payment of fine to further undergo imprisonment for three months for the offence under Section 201 of the I.P.C. Both the sentences have been directed to run concurrently.

3. The appellant has been charged with the offence of parricide. He is said to have murdered his father, mother and 18 year old younger brother.

4. The F.I.R. of this case has been lodged by P.W.19, namely, Ram Vinay Rai, who is the uncle of the appellant. In his F.I.R., he has alleged that he had gone to the house of his brother (Mahant Rai), one of the deceased persons of this case, where the deceased used to reside with his wife Sunaina Devi (deceased), his son Ramesh Kumar Yadav @ Suman (Appellant) and Guddu @ Umesh Rai (deceased) aged about 18 years, the second son of Mahant Rai. He had visited the house of deceased /Mahant Rai on 10.06.2010 for the purposes of taking accommodation loan from



him. However, he did not find anyone of the deceased persons. Only the appellant was present in the house who disclosed that his parents and brother had been missing for the last fifteen to twenty days. P.W.19 was surprised to hear this but because of his preoccupation relating to the affairs of a marriage ceremony in his family, he did not probe any further. After the marriage function was over in his house, he tried to inquire about his brother and his family members. During the course of inquiry, he learnt that the appellant had sold the house of his father to one Manish Bharti @ Mukul Verma by showing his father a dead person. This raised suspicion in the mind of P.W.19, especially in the background of the appellant having told him that his brother, sister-in-law and his other nephew had run away from the house. He therefore filed the case with definite accusation that the appellant has killed all three other members of his family and has concealed the dead bodies somewhere.



5. On the basis of the aforementioned *fardebyan* statement lodged by P.W.19, a case vide Chhatauni P.S. Case No. 67 of 2010 dated 03.08.2010 was instituted for offences under Section 302, 201, 120B and 34 of the I.P.C. against the appellant and the purchaser of the house namely Manish Bharti @ Mukul Verma.
6. The police after investigation submitted charge-sheet against both the accused persons who were sent up for trial.
7. The trial court, after examining twenty witnesses on behalf of the prosecution, convicted the appellant under Section 302 and 201 of the IPC and sentenced him in the manner referred to above.
8. For the prosecution not having proved any element of conspiracy in killing the deceased persons, the other accused person namely Manish Bharti @ Mukul Verma was acquitted of all the charges. It appears from the records that out of 20 prosecution



witnesses, P.Ws. 1, 2, 3, 4, 5 & 9 have been declared hostile whereas P.Ws. 6, 11, 12 and 20 have only partially proved the case of the prosecution, out of whom some were later declared hostile.

9. One Raj Narain Bhagat, who has been examined as P.W.7 deposed before the Court that he resided in the house of the deceased persons. He was occupying the lower portion of the house where the floor had not been cemented. On one occasion, in the year 2010, he had found that the floor had been dug up. When he enquired from the appellant, he is said to have told him that his father had gone to Varanasi for getting himself treated and had asked him to get the floor repaired in the meanwhile. Before the floor had been dug up, accused Mukul Srivastava had come to him and had disclosed that he had purchased the house of the appellant. On further inquiry by P.W.7, aforementioned Mukul Srivastava told him that the sale deed has been executed by the appellant and he also showed the



photocopy of the sale deed. From the said document PW7, he could infer that the appellant had shown that his father had died before the sale deed was executed. Till the time that P.W.7 had seen the photocopy of the sale deed, he had no idea that Mahant Yadav had died. He was under the impression that a land over which the house situated was recorded in the name of the wife of Mahant Rai. It was rather surprising for him to know that both the parents of the appellant were shown as dead in the sale deed. He did not keep quiet on this information but informed the Chhatauni police station. According to P.W.7, it was on his information to the police that the appellant was arrested and made an inculpatory disclosure before the police. The floor of the house of the appellant was dug up by the police, from where three dead bodies were recovered. He did not know Mahant Rai except in his capacity as a landlord. He had been residing in that house since 2009 and had been paying a monthly



rental of 2500/-. The portion in which he resided was completely separate from the residential portion of the deceased persons. He, therefore, was not in a position to know as to what was happening in the family of the landlord or other tenants. In the neighbourhood of the house in question, few other people have been residing. In his presence, the dead bodies were recovered. All the dead bodies were highly decomposed. He is said to have identified the dead body of Mahant Rai only.

10. Similar statement has been made by Sanjay Kumar (P.W.10) who is resident of the same area in which the deceased persons were residing. On 1st of June, 2010, the appellant had told him that his parents and brother had gone outside of the town. The appellant further disclosed that he was under deep debt and on the asking of his father, he wanted to sell his house. After about a week of the appellant having disclosed his intention of selling his house, the other



co-accused person, namely, Mukul Verma came to his house and wanted to know about the appellant. On being asked the reason from him, he disclosed that a land broker had told him that the appellant wanted to sell his land. On knowing the purpose, P.W.10 is said to have disclosed to Mukul Verma the address of the appellant. Later, P.W.10 learnt that aforementioned Mukul Verma had purchased the house from the appellant and in the sale deed, the appellant had shown his father to be a dead person. He has also testified that prior to the dead bodies having been recovered from the house of the appellant, the appellant had been moving in the locality with his head shaved and on being questioned, he disclosed to everybody that his parents and his brother met with an accident at Varanasi where they had gone for medical treatment and all of them had died. No last rites or any death ceremony was performed because of paucity of funds. According to the appellant, the dead bodies were



cremated at Varanasi only. It was only later that P.W.10 learnt that the dead bodies of all the three persons were recovered from their own house after those bodies were exhumed from beneath the floor. Appellant had also asked the P.W.10 to purchase his house. Many other persons of the village were also approached for the purchase of the house. However, P.W.10 has been candid enough to state that Mukul Verma had only come to him to verify the correctness of the information provided to him by a land broker that the appellant wanted to sell his house. He also wanted to confirm from P.W.10 whether the house is in the name of the appellant. Mukul Verma had tried to know from P.W.10 whether there were any other co-sharers of the property as the appellant had projected to him that he is the only surviving person in the family for disposing of the property.

11. Arvind Singh (P.W.13) is also a resident of the same locality. He claims to have visited the house



of the appellant along with the police and the Block Development Officer at the time when the floor of the house was dug up and the dead bodies were recovered.

12. The inquest report was prepared in his presence over which he had signed (Exhibits 1, 1/A and 1/B). He had seen the deceased persons about two three months before their dead bodies were recovered. He was also informed by the appellant, when the deceased persons were not to be seen in the locality, that they had gone to Varanasi for medical treatment. Later, the appellant had disclosed before P.W.13 that all his family members perished in an accident. P.W.13 was also offered the house in question. Out of curiosity, P.W.13 wanted to know the reason for selling such property. On this, the appellant is said to have told him about his plans that after the death of his parents, he was desirous of selling the property and the house in question and thereafter



settling in the village of his in-laws. P.W.13 had flatly refused to purchase his house. He was also approached by Mukul Verma for verification of the broker's information that the appellant wanted to sell off his property. Aforenoted Mukul Verma also tried to inquire from P.W.13 whether the parents of the appellant are alive or not. P.W.13 is said to have told the accused Mukul Verma that the parents of the appellant have died in an accident in Varanasi. The same information was given by the appellant to other villagers as well.

13. Vijay Chaudhary, P.W.14 is a witness to the exhumation of the dead body from the house of the appellant. No sooner had the floor been dug up, three decomposed dead bodies were recovered one after the other. He along with P.W.13 had put his signature on the three inquest reports. Five to six months prior to the dead bodies having been recovered, it was the talk of the village that Mahant



Rai, his wife and his other son had died. The dead bodies were totally decomposed.

14. Postmortem on all the three dead bodies have been done by three doctors namely Dr. Awadhesh Kumar, Dr. Rabindra Kumar Verma and Dr. Ravi Ranjan, who have been examined as P.Ws. 15, 16 and 17 respectively.

15. Dr. Awadhesh Kumar (P.W.15) conducted the postmortem on the dead body of Sunaina Devi. He found that the nose of the deceased had been chopped off; breast had been cut and there were many lacerated wounds on the body. There was complete decomposition and the time fixed by the doctor of death was within one to three months. No accurate time, according to him, could be given of the date of death as the dead body was totally decomposed. However, even from such decomposed dead body, the P.W.15 was of the view that it could not have been more than three months old.



16. Similar statements were made by P.Ws. 16 and 17, both of whom also could not exactly assess the time of murder/death of the accused persons.

17. Bijendra Kumar Singh is the Investigating Officer of this case who has been examined as P.W.18. He has deposed before the trial court that on the F.I.R. lodged by the P.W.19, he registered the case as Chhatauni P.S. Case No. 67 of 2010 under Section 302, 201, 120B and 34 of the I.P.C. (Exhibit-8). He had taken the further statement of P.W. 19. During the course of investigation but, shortly after the F.I.R. was registered, he received a secret information that the appellant had visited a Gynecologist for the delivery of his wife. On such information, the appellant was arrested from near the clinic of the Gynecologist. On being questioned, the appellant made his confession which was recorded by P.W.18 in the case diary. In his confession, the appellant clearly stated that he had killed his parents



and brother and had buried the dead bodies beneath the floor of his house.

18. On getting such confession from the appellant, P.W.18 informed the Block Development Officer and requested him to come to the house of the appellant. In front of the aforementioned B.D.O., namely, Manoj Kumar who has not been examined in the trial, the floor was dug up from where the dead bodies were recovered. All the dead bodies were found to have been decomposed. Thereafter, the appellant and Mukul Verma were arrested and charge-sheet was submitted against them. However, the I.O. admits that no written permission was sought nor any information was given to the S.D.M. or the D.M. for exhumation of the dead bodies. The B.D.O. was only informally asked to visit the house of the appellant for the purposes of recovery of the dead bodies. He had taken the signature of the Informant on all the inquest reports as the family member of the deceased persons. He



had also come to know during the course of investigation that the deceased Mahant Rai worked as a spy of the Customs Department, which vocation was not dangerous in the least. No weapon of assault was but recovered from the house. The process of exhumation had not been video-graphed. No person, whose help was taken for taking the dead bodies for postmortem, was examined by him and even the statement of the B.D.O. was not recorded. Nonetheless, he has stated before the Trial court that the accusation against him of having conducted the investigation in a haphazard manner, was incorrect.

19. The Informant of this case has been examined as P.W.19, who has stated what he had disclosed in the F.I.R. He did not but identify the accused Manish Bharti @ Mukul Bharti who was present in the dock. He could not clearly identify the dead bodies because of the same having been decomposed.



20. Mr. Radha Mohan Singh, the learned advocate for the appellant has submitted that the conviction cannot be sustained in the eyes of law for two reasons viz. that the only material against the appellant appears to be his confession and the recovery of three dead bodies from beneath the floor of his house. He further submits that even the dead bodies have not been identified. The uncle of the appellant (P.W.19), has clearly stated before the police that he could not identify any of the dead bodies because of all of it having decomposed. Few of the witnesses who were present during the process of exhumation have only testified to the recovery of the skeleton like dead bodies. Thus, it is only a presumption that since the deceased persons were not to be heard of, the recovered dead bodies were those of the parents and brother of the appellant. He has further doubted the entire process of recovery of dead bodies in as much as the B.D.O. has not given his



statement that in his presence the recovery was made nor has he been brought to the witness stand to support the factum of recovery in his presence. He, therefore, submits that unless there are other materials to support the claim of the prosecution, merely because of recovery of three skeleton like dead bodies from beneath the floor of his house, he could not be saddled with the charge and convicted for killing all three of them. The evidence is completely silent on the complicity or the participation of other accused persons. Assuming but not admitting, Mr. Singh argues, that if the allegation is accepted to be true, all three murders could not have been executed by the appellant alone. It is nobody's case that his parents were too old to resist any attack. One of the deceased persons is a young man of 18 years. Whether they were made unconscious and then killed or were they killed in some other transaction is not known. It is precisely for this reason, it has been



argued, that there is a complete prohibition of any confession made to a police officer being taken in as evidence. Under Section 26 of the Evidence Act also, the prohibition is equally strong. It mandates that no confession made by any person whilst he is in the custody of a police officer unless, it be made in the immediate presence of the Magistrate, shall be proved as against such person.

21. Thus, even if there was a recovery pursuant to such confession, only such information in such confession as it related to the discovery of the dead bodies could be proved and nothing beyond that.

22. In the present case, it has been urged on behalf of the appellant that the Court has started the exercise of finding the truth on the basis of confession which is not permissible in the eyes of the law. There is no evidence worth its name except wild guess work of P.W. 7 to 14 and 19 to indicate the complicity of the appellant in killing of the deceased persons.



23. The learned counsel for the appellant has relied upon a judgment of the Supreme Court in **Selvi & Ors vs State of Karnataka & Anr; 2010 (7) SCC 263**. We are at a loss to understand as to how the judgment in this case is of any help to the appellant. The issue involved in this case is with respect to the legality, during the course of the investigation of narco analysis; polygraph test; or beep test conducted against the will of the persons subjected to such tests and who could invoke the inhibition/protection under Article 20 (3) of the Constitution of India. Mr. Singh has referred to another judgment of this Court. In the case of **Sonu Akhtar Khan vs State of Bihar; 2022 (5) BLJ 512**, which also does not, in any measure, support any one of the hypothesis put forth by the appellant. The issue decided in the aforementioned case was with respect to circumstantial evidence wherein it was held that inference of guilt can be justified in a case based on circumstantial evidence but only when



all incriminating facts and circumstances are found to be incompatible with the innocence of the accused or guilt of any other person. The circumstances from which inference of guilt of the accused can be drawn, is required to be proved beyond all reasonable doubts. The Court is to look for complete chain of circumstances and not on snap and scattered links which do not make out a complete sequence pointing out the guilt of the accused. The cautious approach has been sounded for the Courts dealing with such matters.

24. Mr. Abhimanu Sharma, the learned counsel for the State, on the other hand, submits that the evidence is replete with such conduct of the appellant that there could be no other hypothesis except his guilt of killing of deceased. He further submits that conviction could be recorded on the confession of an accused person provided it is not the sole material but relied upon by the Court as an additional supporting



material for the evidence so collected.

25. After having heard the learned counsel for the parties and having perused the records, we find the conduct of the appellant to be very doubtful from the beginning. The appellant has been residing in the same house along with his parents and a younger brother. When P.W. 19, much prior to the occurrence had arrived at his house for seeking monetary help from his father, he was surprised not to find anyone in the house except the appellant. At this point the appellant held out wrongly that the deceased persons had run away from the home and their whereabouts is not known to the appellant. This in itself is an information which would have raised the eyebrows of any person, much less a relative of the deceased persons. Why would a person, who is the head of the family, along with his wife and another son run away from the house for no good reason. P.W. 19 (informant) did not probe further because of his pre-



occupation with marriage in his family but no sooner was he through with his responsibilities, he enquired about the *factum* of his brother and his family going missing for no good reason. He did not jump to any conclusion in the beginning but when he learnt that a sale deed had been executed in favour of a co-accused by the appellant showing the brother of P.W. 19 as dead, that he got wary.

26. The tenant and the neighbours of the deceased persons have also categorically deposed before the Court that even before any person in the locality had learned about the death of the deceased persons, the appellant had been moving around with his head shaved with an explanation that all the three other family members of his had made with an accident and that the death ceremony had not been performed by him because of paucity of funds. This explanation also was not in the least plausible. It is a common knowledge that for such religious/social rites, the



villagers extend their helping hand. The appellant did not approach anybody for sale of his house for the purposes of conducting the last rites if he was short of money; rather he had disclosed his intentions to P.W. 13 that after selling the house, he would settle in the village of his in-laws. The appellant also took medical help for the delivery of his wife. These isolated instances, if seen in unison, would demonstrate only one aspect that the appellant knew about the death of the deceased persons. Not for a day, according to the case records, the appellant had left the house in question for any destination. All through, he had been present in the house. Surprisingly, when one of the tenants of the house, namely, P.W. 7 found the floor of the house dug up, he had enquired from the appellant and at that time also, the appellant had also disclosed that his parents and brother had gone to Varanasi for treatment and had given him the responsibility to the appellant to get the floor repaired.



The dead bodies have been found beneath the floor which earlier were found to have been dug up.

27. What could be a more complete chain of events than this to come to the only conclusion that the deceased had killed his parents and the brother. The motive is as clear as the conduct of the appellant for all this while. The hurry and dispatch shown by the appellant in offering the house for sale to all the villagers clearly establishes the motive that he wanted to dispose off the property and run away as fast as he could. There was no other heir of his parents except him and his brother, all of whom were eliminated. It certainly appears to be surprising that three persons were killed inside the house and were buried under the floor but no neighbour could get a whiff of it including a tenant in the same house. However, from the records it appears that when P.W. 7 was questioned regarding this, he came with a prompt reply that the demised portion in which he had been residing was



absolutely separate and he could not know the activities in the other part of the house. However one thing is certain that most of the witness did not see anyone of the deceased persons for the last 4 to 5 months.

28. The tenacity and the depravity of the appellant is worth noticing. He could stay with straight face for so many months with his parents and brother buried inside the same house. He broke his silence only when he was arrested by P.W. 18. The recovery of three dead bodies from the house in which the appellant had been residing clearly makes out a case for an adverse inference under Section 106 of the Evidence Act. The appellant was required to clearly inform as to where the deceased persons had gone when they were not to be seen for four to five months. The wavering response of the appellant before all the witnesses is good enough evidence that he was concealing the fact of murder of all the three members of his family.



29. We do reckon that there is no evidence on record to know the nature and the mode of executing the murders and concealing the dead body. But in this instance, the chain is absolutely complete and there is no circumstance which would go in favour of the hypothesis of innocence of the appellant; rather his not explaining the absence of his parents and brother from the house for a long time with different explanations at different times make it certain that it was the appellant only who had killed the deceased and nobody else.

30. Thus we are satisfied that the conviction of the appellant recorded by the Trial Court is justified in view of the evidence on record and does not require any interference; but with respect to the sentence imposed upon the appellant for the offence under Section 302 of the Indian Penal Code, namely, imprisonment for remainder of his life, we are of the view that it was beyond the powers of the Trial Court to have directed



for a fixed term of imprisonment without remissions.

31. In the afore-noted context, it would be profitable to spell out the law in this regard.

32. In ***Bachan Singh v. Union of India; 1980 (2) SCC 684***, while upholding the capital sentence to the appellant, the Supreme Court had specified that the death sentence ought to be given in “rarest of the rare” cases.

33. Three years later, the Supreme Court in ***Machhi Singh v. State of Punjab; 1983 (3) SCC 470*** talked about the requirement of making a balancesheet of “aggravating and mitigating circumstances” and that the mitigating circumstances also be accorded full weightage. A balance is required to be struck between the “aggravating and mitigating” circumstances before imposing the punishment. The Supreme Court drew out a two-pronged approach for the Trial Courts to follow viz. the Trial Court ought to consider whether there is anything uncommon about the crime in question which has rendered the sentence of imprisonment of life



inadequate and that death sentence ought to be awarded and whether according to the circumstances of the crime and the case and giving maximum weightage to the mitigating circumstances in favour of the accused, nothing less than death sentence would be appropriate.

34. There have been but many departures in the past from the said principle in sentencing the offenders.

35. However, in ***Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra ; (2009) 6 SCC 498***, the Supreme Court again clarified and propounded the two-step process to decide whether a convict deserved the death sentence. For death sentence to be given, the case had to fall in the "rarest of the rare category" and secondly, the alternative of life imprisonment to be held to be inappropriate against the gravity of the offence. While deciding the case to be of "rarest of the rare" category, the court would be required to identify the aggravating and mitigating circumstances, giving both the conditions equal weightage and would also have to take a call that life



imprisonment is not the appropriate sentence but this could be done only when it is found that the reformation of the offender was not possible / feasible. The State, therefore, in such circumstances, would be under an obligation to provide materials in order to support the suggestion that death sentence only would be appropriate in that case.

36. About five years later, the Supreme Court in ***Shankar Kishanrao Khade v. State of Maharashtra; 2013 (5) SCC 546*** further cautioned the Trial Courts that both, the crime and the criminal have to be taken into account before taking decision with respect to sentencing. What was emphasized by the Supreme court in this instance was that without considering the mitigating circumstances and referring to materials on the possibility of reformation of the convict, sentence should not be awarded off the hat.

37. It would be relevant here to state that in ***Swamy Shraddananda @ Murali Manohar Mishra v. State of Karnataka; (2008) 13 SCC 767***, the Supreme



Court after consideration of earlier judgments in ***Gopal Vinayak Godse v. State of Maharashtra; (1961) 3 SCR 440, Dalbir Singh v. State of Punjab; (1979) 3 SCC 745, Subash Chander v. Krishan Lal; (2001) 4 SCC 458, Shri Bhagwan v. State of Rajasthan; (2001) 6 SCC 29, State of Madhya Pradesh v. Ratan Singh; (1976) 3 SCC 470*** and host of other cases, held that depending upon the gravity of the offence and the manner in which the crime was executed, it would be appropriate and within the parameters of law to sentence the offender for the remainder of his life or for any fixed term without remissions. In a case reflecting depravity of mind, a sentence for life which for all intents and purposes would not be more than 14 years, would be highly unjust to the victim. This recourse, namely, directing for imprisonment for remainder of life or for a fixed term beyond 14 years and without remissions, but could be taken only if the other alternative punishment of a sentence of 14 years of imprisonment would mean no



punishment at all.

38. This proposition was questioned in the ***Union Of India vs V. Sriharan @ Murugan & Ors; (2016) 7 SCC 1***, in which the Constitution Bench upheld the ratio in ***Swamy Shraddananda*** (supra) that a special category of sentence, instead of death, for a term exceeding 14 years and putting of such category of sentence to be beyond the application of remission. While doing so, the view expressed by the Supreme Court in ***Sangeet & Anr v. State of Haryana; 2013 (2) SCC 452*** that the deprivation of remission power of the appropriate Government by awarding sentences of 20 or 25 years or without any remission is not permissible and in consonance with law, was specifically overruled.

39. However, the Supreme Court retained to itself and the High Courts the power to exercise the option of imposing special or fixed term sentences and not the Trial Courts.

40. In ***Vikash Chaudhary vs. The State of***



Delhi; (2023) SCC Online SC 472, the Supreme Court again analyzed all the judgments in seriatim and found that the concept of special or fixed term sentences which could be awarded by the Supreme Court and the High Courts as Constitutional Courts served many purposes, which are as follows:-

"(a) As a feasible alternative in capital cases where the Court was of the opinion that death sentence is inappropriate, and:

(b) That the Court was of the opinion that there were elements in the crime and or the conduct of the criminal which warranted imposition of a mandatory sentence beyond a minimum of 14 years prescribed by the Code of Criminal Procedure.

(c) Where the court felt, independently, that the serious nature of the crime and the manner of its commission warranted a special sentence, whereby the state's discretion in releasing the offender, should be curtailed so that the convict is not let out before undergoing a specified number of years, of incarceration."

41. The Trial Courts thus are absolutely prohibited from imposing any modified or specific term of sentence or life imprisonment for the remainder of



the convict's life as an alternative to the death penalty. The Trial Courts thus have only two option viz. to award a life sentence with all remissions or death sentence. For death sentence to be awarded, the Courts shall have to consider the mitigating circumstances as also the aggravating circumstances, for which, materials would be provided by the State for the Courts to undertake the balancing test. The State is under an obligation to show, in case it proposes death sentence, that there is complete absence of mitigating circumstances and that there are no chances of reformation of the accused.

42. In **Vikash Chaudhary** (supra), the Supreme Court after taking into account the judgments in **Manoj v. State of Madhya Pradesh; (2023) 2 SCC 353**, **Rajendra Prahladrao Wasnik v. State of Maharashtra; (2019) 12 SCC 460**, **Channulal Verma v. State of Chhatisgarh; (2019) 12 SCC 438** further held that it is imperative to conduct evaluation of mitigating circumstances at the trial stage "to avoid slipping into a retributive response to the



brutality of the crime” by eliciting information both from the State and the accused.

43. In the case at hand, we find that the Court took note of the fact that the appellant was the first offender and that he was a person of fairly young age at the time of occurrence but on the question of sentence, got misdirected by looking at the gravity of the offence only, namely, killing of the parents and brother. Though the Trial Court found that the case kind fell short of “rarest of the rare” test but the appellant deserved imprisonment for the remainder of his natural life. What were the materials before the Trial Court to conclude that no reformation is possible is not known to us as it has not been discussed. On the contrary, we find that the occurrence took place in the year 2010 and the judgment of conviction by the Trial Court was recorded in the year 2015 when the Trial Court had assessed the age of the appellant to be 28 years. Thus at the time of occurrence, the appellant would have been 23 years of age and as on date, he would be around 35 years of age.



He has remained in jail all through and there does not appear to be any adverse report against his conduct in the jail.

44. We do not thus find any categorical reason to predict that the appellant is beyond reformation.

45. It is for this reason that we find the sentence against the appellant awarded by the Trial Court to be faltering on this score.

46. We therefore deem it appropriate to modify the sentence awarded to the appellant to a minimum term of 20 years of actual imprisonment, which would, for sure, meet the ends of justice.

47. The appeal is dismissed but the sentence is modified to the extent indicate above.

(Ashutosh Kumar, J)

(Harish Kumar, J)

sunilkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
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