



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.211 OF 2019

Pralhad s/o. Laxman Tode,
Age : 48 years, Occ. Agri.,
r/o. Antargaon, Tq. Naigaon,
Dist.Nanded

..Appellant

Vs.

The State of Maharashtra

..Respondent

Mr.P.S.Koshti, Advocate for appellant
Mrs.U.S.Bhosle, APP for respondent

AND

CRIMINAL APPEAL NO.603 OF 2020

The State of Maharashtra

..Appellant

Vs.

Pralhad s/o. Laxman Tode

..Respondent

Mrs.U.S.Bhosle, APP for appellant
Mr.P.S.Koshti, Advocate for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : APRIL 08, 2024
PRONOUNCED ON : MAY 03, 2024**

JUDGMENT (PER R.G.AVACHAT, J.):-

These appeals are being decided by this common judgment since they are interconnected. Criminal Appeal No.211 of 2019 is filed by a convict against the judgment of conviction and consequential

order of sentence dated 05.05.2017, passed by the court of Addl. Sessions Judge, Biloli, in Sessions Case No.44 of 2015, convicting him for the offence punishable under Section 302 of Indian Penal Code and therefore, sentencing him to suffer imprisonment for life. The appellant was also prosecuted for the offences punishable under Sections 307 and 309 of Indian Penal Code. He was, however, acquitted thereof. Neither the State nor the victim has preferred any appeal against acquittal. Acquittal of the offence under Section 309 of Indian Penal Code (attempt to commit suicide) has been passed on the ground of the said section to have been declared unconstitutional.

Another appeal (603 of 2020) is preferred by the State for enhancement of sentence from life imprisonment to death.

2. The facts, giving rise to the present appeals, are as follows:-

The First Information Report (Exh.12) was lodged by PW 2 - Narayan on 10.07.2015 by 09.20 in the morning. It is averred in the FIR that PW 2 - Narayan along with his uncle Ashok (deceased) and his servant (PW 7 - Sakharam Pawar) had slept in the field. The appellant came to the place whereat they were sleeping. He was armed with axe. He assaulted Ashok on his neck with axe. When

PW 2 – Narayan raised some voice, the appellant turned to him and attempted to assault him with axe. PW 2 – Narayan avoided the same. The blow, however, fell on his stomach. The appellant that time told PW 2 – Narayan that he had killed his (appellant's) wife and son at his residence and then came to the field to kill Ashok. It is further averred in the FIR that the appellant consumed some poisonous substance as an attempt to commit suicide. Based on the FIR (Exh.12), crime vide C.R. No.40 of 2015, came to be registered for the offences punishable under Sections 302, 307 and 309 of Indian Penal Code.

3. PW 14 – Santosh Patil, A.P.I., was entrusted with the investigation. Somebody had already informed the police about the assault on Ashok. A station-diary entry to that effect was made by PW 13 – Maroti Chavan, P.S.I. Both PW 13 and PW 14 paid visit to the village Antargaon and particularly, both the places, i.e. house of the appellant and agricultural field of Ashok (deceased). The house of the appellant was locked from outside. It was broken open in the presence of panchas. After having broken open the house, the wife and son of the appellant were found dead lying in a pool of blood. The scene of offence panchnama (Exh.10) was drawn. Then, panchnama relating to the another crime scene in the field of

deceased Ashok (Exh.23) was drawn. The appellant was admitted to hospital. The appellant was arrested after he was recovered. Clothes on his person were seized. A knife and other articles were already seized from the house of the appellant, while axe was seized from the field of Ashok (deceased). Inquest was conducted on the mortal remains of three deceased Gaubai, Hanmant and Ashok under panchnamas (Exhs.41 and 42). Thereafter, their dead bodies were subjected to postmortem examination. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, charge sheet was filed against the appellant before learned Judicial Magistrate, First Class, Naigaon Bazar, Dist. Nanded. Learned Magistrate committed the case to the court of Addl. Sessions Judge, Biloli (trial court). The trial court framed Charge (Exh.2). The appellant pleaded not guilty. His defence was of false implication.

4. The prosecution to establish the charge, examined fourteen witnesses and adduced in evidence certain documents. The trial court on appreciation of the evidence before him in the case, convicted the appellant as stated above.

5. Learned counsel appointed to represent the appellant would submit that the case in relation to the murder of wife and son

of the appellant is based on circumstantial evidence. The appellant was not seen at his home nor is there any evidence to indicate him to have been last seen in the company of the deceased wife and son. So far as regards the murder of Ashok is concerned, learned counsel would submit that the family members of Ashok (deceased) had, time and again, asked him not to keep relationship with Gaubai (deceased). There, therefore, used to be frequent quarrels between Ashok on one hand and his family members on the other. His death took place in the midnight. The so called eye-witnesses were not present at the crime scene. According to learned counsel, they were planted witnesses. They are interested witnesses. According to him, there are material contradictions between the evidence of the eye witnesses namely, PW 2 - Narayan and PW 7 - Sakharam. Statements of the witnesses have been recorded late. There is no evidence to corroborate the evidence of the interested witnesses. According to him, the extra-judicial confession is very weak piece of evidence. Same has not been corroborated. The house of the appellant was locked. Key there of was not recovered nor discovered at the instance of the appellant. The C.A. reports do not carry much relevance since the carrier of the articles to C.F.S.L. has not been examined. Possibility of tampering with those articles also could not be ruled out. According to him, the case of murder of wife and

son of the appellant was based on circumstantial evidence. The circumstances relied on have neither been proved nor do they constitute the complete chain to unerringly point out the guilt of the appellant and of none else.

6. On the submission of learned APP for enhancement of sentence is concerned, learned counsel for the appellant would submit that the appellant has been behind the bars since 01.07.2015. His conduct in jail is very good. He is, therefore, kept in open prison. The reports in that regards solicited by this court from the authorities concerned were referred to and relied on.

7. Learned APP would, on the other hand, submit that the appellant has committed three brutal murders. According to her, the trial court ought to have imposed death sentence on the appellant. According to her, it is a rarest of rare case. She took us through the evidence of each witness, to ultimately urge for dismissal of the convict's appeal and allowing of the appeal for enhancement filed by the State.

8. Considered the submissions advanced. Perused the evidence on record. Also perused the judgment impugned herein.

9. Let us advert to the evidence on record and appreciate the same.

PW 2 - Narayan is nephew of the appellant. Deceased Ashok was the appellant's real brother. Ramkishan, father of PW 2 - Narayan, was the third brother of the appellant and deceased Ashok. The appellant would reside in the village along with his wife and two sons namely, Gaubai, Hanmant and Madhav, respectively. On the given night, Madhav was not home. It is in the evidence of PW 2 - Narayan that he along with his uncle Ashok (deceased) and their employee Sakharam (PW 7) were asleep in their field. They were sleeping on separate wooden cots at a distance of 5 ft. between each of them. At about 02.00 in the intervening night of 9th and 10th July, 2015, he heard some noise. Both he and PW 7 - Sakharam, therefore, woke up. Sakharam had a torch with him. He switched it on. They saw the appellant to have assaulted on the neck of Ashok with axe. He made shouts "A...A...A". He then questioned the appellant as to why did he assault Ashok. The appellant, thereafter, replied him to have come there just after having killed his wife and son (Gaubai and Hanmant). The appellant then attempted to give axe blow on the person of PW 2 - Narayan. He avoided the blow. The blow, however, fell on his stomach. The appellant, thereafter, proceeded towards Sakharam (PW 7) to assault him. The appellant,

thereafter, went towards his own cattle-shed. It is further in his evidence that he immediately went to his village Manur, half km. away from the scene of offence and informed his paternal aunt and her husband Balaji Patil. All of them then came back to the field. It is further in his evidence that while they were around the dead body of Ashok, the appellant came. He took two rounds around the dead body of Ashok. The appellant then had bouts of vomiting. He, thereafter, slept on wooden cot of Sakharam (PW 7). PW 2 - Narayan immediately called his aunt Shantabai, wife of Ashok. Some of the villagers gathered. One Sambhaji Tode (PW 3) took him and the appellant to the hospital for treatment. The police recorded his statement (FIR - Exh.12) in rural hospital at Naigaon. It is further in his evidence that the appellant used to beat up his wife Gaubai (deceased) for trifle reasons. The appellant was hot-tempered. He would suspect each and every act of his family members. PW 2 - Narayan referred to the FIR (Exh.12) and identified his signature thereon. According to him, his statement was also recorded by the Judicial Magistrate. His statement (Exh.13) recorded under Section 164 of the Code of Criminal Procedure was also referred to him.

10. PW 2 - Narayan was subjected to a searching cross-examination. He was suggested that even after receiving blow of

axe, he was conscious oriented and able to speak. This suggestion goes a long way to indicate the appellant to have admitted that PW 2 – Narayan was given axe blow. PW 2 – Narayan was confronted with the FIR (Exh.12). Following matter was admitted to have not been stated by him to police in the FIR :-

5- I made a statement before police that I myself and Sakharam Pawar was slept on the wooden cot (Baj). I made a statement before police that Sakharam Pawar wake up from the sleep and he on the torch towards the sound and Sakharam Pawar was having torch in his hand. I made a statement before police that accused Pralhad after the incident went towards his own cattle shed (Akhada). I made statement before the police that accused Pralhad went towards Sakharam Pawar to give a blow. I made a statement before the police that Sakharam Pawar came along with me to Manur.

Same suggests him to have made some improvement over his contentions in the FIR. He also admitted that police constable had accompanied him in the court at Kandhar. This suggestion was in relation to recording of statement under Section 164 of Cr.P.C. He denied that his father and deceased Ashok were members of joint family. He has, however, admitted that his father and deceased Ashok were residing in their house built by his grandfather; whereas the appellant was residing in a house, which was in dilapidated condition.

11. It was further suggested to PW 2 – Narayan that there was illicit relationship between Ashok and Gaubai (wife of appellant). Two days before the incident, there was quarrel among the family members of Ashok over his relationship with Gaubai. It was also suggested to him that Ashok had asked Gaubai to leave the appellant and children and start residing with him. All these suggestions have been denied by this witness. It is also brought on record through the cross-examination of PW 2 – Narayan that the house of Pralhad (appellant) was located in a thickly populated area. He, however, claimed ignorance about the appellant to have not been present at his residence on the fateful night.

12. PW 7 – Sakharam gave his evidence consistent with the evidence of PW 2 – Narayan. It is in his evidence that he hailed from village Mahati, Tq. Umri. He was serving with Ashok (deceased) as farm labour. It is in his evidence that on the fateful night, PW 2 – Narayan, he himself and Ashok were asleep on separate wooden cots in the agricultural field. On hearing some noise, he and PW 2 – Narayan woke up. He switched on the torch. He saw the appellant to have axed Ashok. It is further in his evidence that the appellant suspected the deceased Ashok to have illicit relationship with his wife. He, therefore, killed him. It is further in his evidence that the

appellant then assaulted PW 2 – Narayan on his thigh. It is further in his evidence that he accompanied PW 2 – Narayan to village Manur and informed the incident to the sister and brother-in-law of Ashok. All of them immediately came back to the field. It is further in his evidence that the appellant took two rounds around the dead body of Ashok. The appellant then had bouts of vomiting. The appellant and Narayan were taken to the hospital for treatment.

13. PW 7 – Sakharam too was subjected to searching cross-examination. He claimed ignorance as to the family members of deceased Ashok to have advised him (Ashok) not to keep relationship with the wife of the appellant. He also claimed ignorance that there was, therefore, dispute among the family members of Ashok. He denied to have not witnessed the incident.

14. PW 8 – Maruti Shinde is witness to the scene of offence panchnama (Exh.23), drawn in the field. His evidence indicates that an axe, pesticide-tin, a shoe, chappal, blood-mixed clay, Baniyan, gunny-bag, blanket, etc. were seized under panchnama (Exh.23)

15. PW 1 is witness to the scene of offence panchnama (Exh.10) drawn at the house of the appellant. It is in his evidence that the police broke open the lock of the house of the appellant on

10.07.2015. On breaking open the house, Gaubai and her son Hanmant were found dead in a pool of blood. There were six bags of fertilizers. Those were stained with blood. He also saw blood stains on the wall of the room. One bicycle was there in the room. One wooden cot was there. Gaubai had suffered neck-cut injury. A knife was lying between the two dead bodies. The police officials seized all those articles and drew panchnama (Exh.10). According to this witness, photographs of the scene of offence were also snapped. During his cross-examination, he could not give the exact boundaries of the house of the appellant. He admitted that there was no signature on the packet containing cotton swab.

16. PW 3 - Sambhaji's evidence is to the effect that he knew the appellant and PW 2 - Narayan as well. He was their distant relative. On hearing hue and cry on the night of 10.07.2015, he woke up and came out of his house to see what had happened. He was informed that the appellant committed murder of his brother Ashok in the field. He, therefore, immediately, rushed to the field and saw Ashok was lying on the wooden cot. He also saw the appellant was laid on another cot. He noticed one axe near the appellant. It is further in his evidence that he saw the appellant had bouts of vomiting. Sambhaji, therefore, called vehicle. He

accompanied to take the appellant and PW 2 – Narayan for treatment in the hospital at Naigaon. It is further in his evidence that on way to the hospital, PW 2 – Narayan narrated the entire incident and how the appellant axed his brother Ashok. During cross-examination, whatever he has deposed to in examination-in-chief was disputed. He too was suggested that there was illicit relationship between the deceased Ashok and Gaubai (deceased), wife of the appellant. He denied the same.

17. PW 4 – Ananda's evidence indicates that he knew both appellant and deceased Ashok. It is in his evidence that by 3:00 in the night, he heard some noise on the road. He came out of the house. The family members of Ashok were crying. He learnt that Ashok was killed in the field. He, therefore, rushed to the field and saw Ashok dead. He also saw the appellant was lying on the nearby cot. There was axe by the appellant's side. It is further in his evidence that while he returned to the village, the police had already arrived. He peeped into the house of the appellant to notice the appellant's wife and son lying dead in the pool of blood. The suggestion indicating the appellant's defence were put to him. Since he was not eye-witness to the incident, he was not subjected to a searching cross-examination.

18. PW 5 – Saraswati is the sister of deceased Ashok and appellant as well. It is in her evidence that PW 2 – Narayan had come to her residence in the dead of night. He told her the appellant to have committed murder of Ashok. She along with her husband, therefore, accompanied PW 2 – Narayan to Ashok's field. It is further in her evidence that she saw the dead body of Ashok in the field. She then visited the house of the appellant and saw his wife and son dead. During her cross-examination, it is brought on record that while she reached the crime scene, no one was present except them. It is further in her evidence that the appellant arrived during their presence at the spot. She denied PW 2 – Narayan to have not related her the appellant to have murdered Ashok.

19. PW 6 – Datta's evidence indicates that he knew deceased Ashok, the appellant and their family members. It is in his evidence that by 01.30 a.m., he woke up to answer the nature's call. According to him, he was sleeping near Maroti temple in the village on that night. He saw the appellant proceeded towards his field armed with an axe. It is further in his evidence that he woke up all his family members and proceeded towards the field of Ashok. He saw Ashok had died and the appellant was vomiting. The appellant's sister, his nephew and some others were present there. Except

disputing his version in the examination-in-chief, this witness was not subjected to searching cross-examination.

20. PW 9 – Dr.Ananda’s evidence indicates that he was medical officer at rural hospital, Naigaon, on 10.07.2015. According to him, he examined the appellant, who was brought by police and his relatives. He extended the appellant primary medical treatment and referred him to Civil Hospital, Nanded, and issued certificate (Exh.25) to that effect. The certificate indicates it to be a case of ‘*organophosphorus poisoning*’. His evidence further show that he examined PW 2 – Narayan to notice contused abrasion on his lumber region. The injuries were simple in nature.

21. PW 10 – Dr.Bhurke testified that he was Asst. Professor at Medical College, Nanded. The police had brought the appellant to the hospital on 10.07.2015. He examined the appellant and found he was not in a position to talk. The police report submitted to him indicates the appellant to have consumed poison. His evidence further indicates that the appellant’s condition was not good. There were symptoms of poisoning. He, therefore, admitted him to the hospital. The appellant was discharged from the hospital on 01.08.2015, i.e. about 20 days after the incident of murder of Ashok and others. PW 10 – Dr. Bhurke referred to the appellant’s discharge card (Exh.28).

22. PW 11 – Prakash is a witness to the seizure of clothes on the person of the appellant on 12.07.2015. He referred to the panchnama (Exh.30) drawn in that regard.

23. PW 12 - Dr. Pushpak conducted postmortem examination on the mortal remains of Gaubai, Hanmant and Ashok. He gave details of the injuries on their person. According to him, the cause of death of all the three was asphyxia due to cut-throat. The postmortem report of the deceased are at Exhs.34, 35 and 36.

24. PW 13 – Maroti Chavan is A.P.I., attached to Kuntur Police Station on 10.07.2015. It is in his evidence that API Patil had informed him to have learnt from Ananda Shinde (PW 4) of Antargaon that the appellant committed murder of his brother. He, therefore, made the station-diary entry to that effect. The station-diary entry has been tendered in evidence vide Exh.38. It is further in his evidence that he accompanied API Patil (PW 14) to village Antargaon.

25. PW 14 did investigation of the crime. His evidence indicates that pursuant to the intimation about the incident, he rushed to the village. He then visited the Rural Hospital, Naigaon. He then visited the house of the appellant. It was locked. The

entrance door of the house was broken open to find the wife and son of the appellant were lying in the pool of blood. His evidence further indicates that he drew the scene of offence panchnama and seized articles from both the crime scenes. He sent all those articles to C.F.S.L. for chemical analysis and report. His evidence further indicates that the inquest on the mortal remains of the three were conducted in the presence of the panchas.

26. Above referred was the evidence in the case. PW 2 - Narayan is none other than the son of real brother of the appellant and deceased Ashok. He, therefore, cannot be branded as interested witness. He did not have reason to give false evidence against his uncle (appellant). His injury certificate (Exh.26) indicates his presence at the crime scene in the field. PW 7 - Sakharam, although a servant of deceased Ashok, was naturally bound to be in the field. He was engaged for agricultural operations. We do not find any reason to disbelieve evidence of both PW 2 - Narayan and PW 7 - Sakharam. Their evidence indicates the appellant to have axed Ashok. They witnessed the same. Their evidence further indicates that they went to the house of the sister (PW 5 Saraswati) of the appellant and deceased Ashok. She along with her husband Balaji Patil came to the field of Ashok. There is evidence to indicate that

the appellant consumed some poisonous substance and took two rounds around the dead body of Ashok. He then threw up. PW 3 – Sambhaji had accompanied PW 2 – Narayan and the appellant to the Rural Hospital, Naigaon, for treatment. The appellant, thereafter, was shifted to Medical College Hospital at Nanded. He was indoor patient there for about 20 days. In our view, he had no reason to consume poisonous substance with intention to commit suicide. Based on the eye-witnesses account of PW 2 – Narayan and PW 7 – Sakharam, the prosecution has proved the appellant to have committed murder of his real brother Ashok in the field.

27. The appellant's wife Gaubai and son Hanmant were found dead in the pool of blood in the appellant's house on the same night. The house was locked from outside. The lock was broken in the presence of panchas. PW 6 – Datta had seen the appellant proceeding towards his field armed with axe. Same suggests that the appellant, after having killed his wife and son, left the house and proceeded towards the field.

28. The appellant gave additional statement under Section 313 of Cr.P.C. According to him, on the fateful night, he was in his field. He meant to say that he was not home. According to him, his another son Madhav had gone to the house of his friend for study.

He was informed by his relations that someone killed his wife and son. Therefore, he started proceeding towards his house. He then learnt that his brother Ashok too was murdered in his field. He was killed by his sons and some unknown persons. According to him, when he was proceeding towards his house, 3-4 unknown persons overpowered him and forcibly administered poisonous substance. They brought him to *Akhada* whereat, Ashok was lying dead. According to him, because of administration of poison, he had bouts of vomiting. When he gained consciousness, he realised to have been in the hospital at Nanded. According to him, deceased Ashok wanted to have illicit relationship with his wife. His sons were persuading him not to be after the wife of the appellant. According to him, he has been falsely implicated by the children of deceased Ashok.

29. It is true that the appellant is not bound to lead any defence evidence; but the version he has come with sounds unreasonable. We have already observed above that based on the eye witnesses account of informant PW 2 - Narayan and PW 7 - Sakharam, it is proved that the appellant committed murder of his brother Ashok. The tenor of cross-examination of the witnesses indicates that the appellant was suspecting illicit relationship

between his wife Gaubai and deceased Ashok. The motive behind commission of three murders appears to be the appellant to have suspected such relationship.

30. On appreciation of the aforesaid evidence, we find no reason to take a view different than one taken by the trial court in convicting the appellant for the offence of murder and consequentially, sentencing him to imprisonment for life. In our view, the trial court ought to have passed separate conviction for each murder and passed separate sentence in relation thereto. Same has not been done. Be that as it may.

31. So far as the State's appeal for enhancement of sentence from life to death is concerned, we find it to be not rarest of rare case inspite of there being three murders committed by the appellant. When this appeal came up for hearing by its turn, the appellant has already undergone sentence of little over eight and half years. In view of **Manoj and others vs. State of Madhya Pradesh, 2023(2)SCC 353**, this Court had called certain reports from the jail authorities. The reports have been placed on record. The report of Medical Officer of open prison, Amravati, indicates the appellant to have been keeping good health. The Superintendent of Open Prison, Amravati, has certified the appellant to be of good

behaviour. He also certified the appellant to have never misbehaved in jail. It has also been informed that the appellant has never been granted remission. It is further informed that the appellant is doing agricultural work honestly. His conduct is good. The Psychiatrist's report in relation to the appellant indicates :-

“Clinical Impressions:

Pralhad self reported information, coupled with his scored on psychological measures, suggest a diagnosis of no depressive and psychotic, manic obsessive features at present.”

32. Learned counsel for the appellant relied on the judgment in the case of **Bachan Singh vs. State of Punjab, AIR 1980 SC 898**. He referred to paragraph 204 of the judgment, which pertains to mitigating circumstances. The same is reproduced below:-

204. Dr. Chitaley has suggested these mitigating factors:

Mitigating circumstances: In the exercise of its discretion in the above cases, the Court shall take into account the following circumstances :

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

He then relied on the Apex Court judgment in the case of **Machhi Singh Vs. State of Punjab, AIR 1983 SC 957**, wherein, it has been observed thus:-

33. In this background the guidelines indicated in [Bachan Singh's](#) case (supra) will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentences arises. The following propositions emerge from [Bachan Singh's](#) case:

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

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

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

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

33. As against this, learned APP only submitted that it is a rarest of rare case and the appellant committed three murders and therefore, deserves death sentence. No aggravating circumstances have been brought to our notice. On the contrary, it is reiterated that the reports are received from the jail authority informing the appellant is of good behaviour. He never misbehaved in jail. Considering his conduct, he has been kept in open prison at

Amravati. It needs no mention that a prisoner is kept in open prison when his conduct is found good. No submissions were advanced regarding imposing sentence of life imprisonment to mean till the end of natural life.

34. In the above factual backdrop and for the reasons given herein above, we find that both the appeal deserve to be dismissed.

35. Needless to mention that in an appeal for enhancement of sentence from life imprisonment to death, the appellant/State ought to have urged for taking up such appeal for hearing immediately/forthwith. It is reiterated that the appellant has, so far, been behind the bars for eight and half years.

36. After having held the appellant guilty of the offence of murder, the trial court had heard both the appellant and learned APP-in-charge who conducted the case. Learned APP had submitted before the trial court as under:-

“26.
.....

..... Heard ld. App Mr.D.VKulkarni on the point of sentence, he submitted that the accused has committed the murder of his wife, son and brother with some ulterior motive, it is a serious offence which affect the society, hence, sentence as per law be awarded.

Same indicates that the State was not insistent to see that the appellant was awarded death sentence. It suggests that according to learned APP-in-charge of the case, it was not the rarest of rare case and therefore, he made such submissions before the trial Court.

37. In the result, the appeals are hereby dismissed.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP