(2015) 6 Supreme Court Cases 632

(BEFORE H.L. DATTU, C.J. AND S.A. BOBDE AND ARUN MISHRA, JJ.)

Criminal Appeals Nos. 802-803 of 2015†

SHABNAM .. Appellant;

Versus

STATE OF UTTAR PRADESH .. Respondent.

With

Criminal Appeals Nos. 804-805 of 2015‡

SALEEM .. Appellant;

Versus

STATE OF UTTAR PRADESH .. Respondent.

Criminal Appeals Nos. 802-803 of 2015 with Nos. 804-805 of 2015, decided on May 15, 2015

A. **Criminal Trial — Death sentence — Rarest of the rare case — Determination of — Contemporary community values — Relevance**

— Need for courts to be alive to evolving standards of public morality and consciousness that mark the progress of a maturing society, even though society's perceptions of a crime with respect to appropriate penalties are not conclusive

— Evolving role of daughters as being equal to sons, highly educated family background and salubrious home environment of appellant-accused daughter who with her lover, had murdered her whole family in a cold-blooded manner, and fact that she herself was a teacher, taken as aggravating circumstances to confirm death sentence of both appellants — Held, parricide or family murders would be sufficiently appalling where the perpetrator and the victims are uneducated and backward, but as in the present case, it gains a ghastly illumination from the descent, moral upbringing, and elegant respectful living of the educated family where the father and daughter were both teachers

B. **Criminal Trial — Death sentence — Parricide — Murder of her family by a daughter — Evolving role of daughters being equal to sons — Relevance of, in imposition of death sentence — Criminology**

C. **Criminal Trial — Sentence — Death sentence — Circumstances of the criminal — Family background, home environment, level of educational attainment and nature of career of accused, when aggravating circumstances**

D. **Criminal Trial — Sentence — Death sentence — Aggravating and mitigating circumstances — Need for independent consideration of, in the facts of *each* case — Need to determine *cumulative effect* thereof**

† Arising out of SLPs (Crl.) Nos. 6520-21 of 2013. From the Judgment and Order dated 26-4-2013 of the High Court of Judicature of Allahabad in CC No. 5245 of 2010 in CR No. 8 of 2010

‡ Arising out of SLPs (Crl.) Nos. 6528-29 of 2013

— Held, what is required to be considered is not just the circumstances by placing them in separate compartments, but their cumulative effect in the facts of each case — And based on such cumulative and holistic assessment, death sentence must be imposed only when life imprisonment appears to be altogether inadequate punishment — Court ought to be sufficiently cautious and adherent to the same, so as to better administer the criminal justice system and provide an effective and meaningful reasoning by court, as contemplated under S. 354(3) CrPC, while sentencing

— Instant case is of brutal parricide — Extermination of her own entire family by daughter, with her lover's help — Reasons were that family members were vehemently opposed to their relationship and to secure entire property of family, creating financial security for themselves — Herein, crime was committed by both appellant-accused in most cruel, cold-blooded and inhuman manner, which is extremely brutal, grotesque, diabolical and revolting — Therefore, requirement in instant case is to award a punishment that is graduated and proportioned to crime — Extreme culpability of both appellants makes them most deserving of the death penalty — Therefore, confirmation by High Court of death sentence awarded to appellants requires no interference — Penal Code, 1860 — Ss. 302/34 — Criminal Procedure Code, 1973, S. 354(3)

E. **Criminal Trial — Sentence — Death sentence — Generally — Guidelines and principles for classification of circumstances and determination of indicia of culpability — Succinct summarisation in *Ramnaresh*, (2012) 4 SCC 257, affirmed** **(Para 25)**

F. **Penal Code, 1860 — Ss. 302/34 — Brutal parricide — Extermination of her own entire family by educated daughter working as a teacher, with her lover's help — Evolving role of daughters as being equal to sons, taken into account — Aggravating circumstances outweighing mitigating circumstances — Extreme brutal, cold-blooded, calculated and diabolical nature of crime, held, rules out likelihood of reform of both accused persons (young couple) and of their abstaining from future crime — Compassionate ground of dependent minor child of accused, in such circumstances, held, not relevant in considering commutation of death sentence — Mitigating circumstances regarding young age of appellants at the time of commission of crime, do not bear any significance in terms of outweighing aggravating circumstances of their wanton act — Death sentence confirmed**

— Appellants driven by opposition to their alliance from deceased family and alive to conception of their illegitimate child, and to secure entire family property, had hatched depraved plan to first administer them sedatives mixed in tea prepared by appellant daughter, and thereafter, bleeding them to death by slitting vital blood vessels in their throats — Appellants murdered seven innocent persons and did not even spare ten-month-old infant, so as to leave no survivors for claiming share in family's property in future — As soon as family members were rendered dead, while appellant lover fled from the spot disposing of murder weapon and other evidence of crime, appellant daughter feigned unconsciousness and laid by side of deceased father's mutilated body, to callously insinuate that crime was committed by an outsider while

she was asleep on roof-top — Appellants consistently denied their guilt throughout trial, and on prosecution case being proved, stooped down to implicate each other in commission of offence, so as to exonerate themselves from consequences of their obnoxious act

G. **Criminal Trial — Death sentence — Mitigating circumstances — Reformation/Rehabilitation — Possibility of — When ruled out — Manner of commission of offence — Calculated cold-blooded murders — In present case, extreme brutal, cold-blooded, calculated and diabolical nature of crime, held, rules out likelihood of reform of both accused persons (young couple) and of their abstaining from future crime**

H. **Criminal Trial — Sentence — Death sentence — Mitigating circumstances — Compassionate grounds — Not available in cases of calculated cold-blooded murders — Appellant-accused daughter who murdered her entire family with her lover, as they opposed the relationship and the couple wanted to grab the entire family property, was pregnant at the time of commission of offence and the couple now had a dependent minor child — Affirming *Sevaka Perumal*, (1991) 3 SCC 471, held, such compassionate grounds are present in most cases and are not relevant in considering commutation of death sentence — In most murder cases the accused have minor children, or aged parents or a spouse who would be bereaved if the convict is executed — This cannot provide a legitimate reason for not awarding the death penalty, if the case is one, where looking to the heinous nature of the crime and the criminal, the death penalty is the only appropriate sentence, as in the present case, when the offence is gruesome and was committed in a calculated, cold-blooded and diabolical manner — Penal Code, 1860, Ss. 302/34**

I. **Criminal Trial — Death sentence — Mitigating circumstances — Age of accused — When not a relevant factor — Held, when offence is gruesome and has been committed in a calculated, cold-blooded and diabolical manner, age of accused may not be a relevant factor — Herein, it is shocking, that in the pink of their youth, the couple (appellant-accused) indulged in debased act of multiple murders, driven by infatuation, and exhibited no remorse — Their death sentence is confirmed — Penal Code, 1860, Ss. 302/34**

The accused persons were involved in a love affair and an illicit physical relationship. While appellant-accused *S* is the educated daughter of the deceased family, working as a *Shikshamitra* (teacher), the appellant-accused *Sa* is an unemployed youth residing in the same village. It is established that the appellant *S* was pregnant at the time of commission of the instant gruesome murders. The motive for commission of the offence was to eliminate the appellant *S*'s family, who were vehemently opposed to their relationship and secure the entire property of the family creating financial security for themselves.

Confirming imposition of the death penalty on both appellants and dismissing the appeals, the Supreme Court

Held :

The most significant aspect of sentencing policy in Indian criminal jurisprudence regarding award of death penalty is that life sentence is a rule and death sentence is an exception only to be awarded in "the rarest of rare cases".

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 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. The circumstances which should or should not be taken into account, and the circumstances which should be taken into account along with other circumstances, as well as the circumstances which may, by themselves, be sufficient, in the exercise of the discretion regarding sentence cannot be exhaustively enumerated. (Para 24)

Sevaka Perumal v. *State of T.N.*, (1991) 3 SCC 471 : 1991 SCC (Cri) 724; *Jagmohan Singh* v. *State of U.P.*, (1973) 1 SCC 20 : 1973 SCC (Cri) 169; *Bachan Singh* v. *State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580; *Machhi Singh* v. *State of Punjab*, (1983) 3 SCC 470 : 1983 SCC (Cri) 681, *summarised*

The guidelines and principles for classification of circumstances and determination of the culpability indicia as laid down by the Supreme Court in the aforesaid cases have been succinctly summarised in *Ramnaresh*, (2012) 4 SCC 257. (Para 25)

Ramnaresh v. *State of Chhattisgarh*, (2012) 4 SCC 257 : (2012) 2 SCC (Cri) 382, *affirmed*

It is now settled law that where the maximum punishment that could be awarded under a provision is death penalty, the courts are required to independently consider facts of each case and determine a sentence which is the most appropriate and proportional to the culpability of the accused. It is not sufficient for the court to decide the quantum of sentence only with reference to one of the classes under any one of the head of circumstances while completely ignoring classes under the other. That is to say, what is required to be considered is not just the circumstances by placing them in separate compartments, but their cumulative effect. The court ought to be sufficiently cautious and adherent to the same so as to better administer the criminal justice system and provide an effective and meaningful reasoning by the court as contemplated under Section 354(3) CrPC while sentencing. (Para 26)

Mohd. Jamiludin Nasir v. *State of W.B.*, (2014) 7 SCC 443 : (2014) 3 SCC (Cri) 230, *affirmed*

Having regard, however, to the conditions in India, to the variety of social upbringing of its citizens, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, in evaluating a crime and apportioning the most appropriate punishment, one of the most important functions court performs while making a selection between life imprisonment and death is to maintain a link between contemporary community values and the penal system. Criminal jurisprudence indicates that society's perceptions of a crime with respect to appropriate penalties are not conclusive. Concurrently, it also stands that the said standards have always been progressive and acquire meaning as public opinion becomes enlightened by a humane justice. The scope of determining the standards is never precise and rarely static. The courts must thus draw its meaning from the evolving standards of public morality and consciousness that mark the progress of a maturing society. (Para 31)

Familial relations play a vital role in describing and highlighting the qualities of the Indian society. The Indian legal system today does not differentiate between a son and a daughter—they have equal rights and duties.

Indian culture has been witness to for centuries, that daughters dutifully bear the burden of being the caregivers for her parents, even more than a son. Adult daughters place greater emphasis on their relationships with their parents, and when those relationships go awry, it takes a worse toll on the adult daughters than the adult sons. The modern era, led by the dawn of education, no longer recognises the stereotype that parents would want a son so that they have someone to look after them and support them in their old age. Now, in an educated and civilised society, a daughter plays a multifaceted and indispensible role in the family, especially towards her parents. She is a caregiver and a supporter, a gentle hand and responsible voice, an embodiment of the cherished values of our society and in whom a parent places blind faith and trust. (Para 32)

Of all the crimes that shock the souls of men, none has ever been held in greater abhorrence than parricide, which is by all odds, the most complete and terrible inversion, not alone of human nature but of brute instinct. Such a deed would be sufficiently appalling, where the perpetrator and the victims are uneducated and backward, but it gains a ghastly illumination from the descent, moral upbringing, and elegant respectful living of the educated family, where the father and daughter are both teachers. Here is a case where the daughter, appellant-accused *S*, who has been brought up in an educated and independent environment by her family and was respectfully employed as a *Shikshamitra* (teacher) at the school, influenced by the love and lust of her paramour, has committed this brutal parricide, exterminating seven lives including that of an innocent child. Not only did she forget her love for and duty towards her family, but also perpetrated the multiple homicide in her own house, so as to fulfil her desire to be with the co-accused *Sa* and grab the property, leaving no heir but herself. The appellant-co-accused *Sa* hatched the intricate plan with her, slayed the six deceased persons with an axe, escaped the crime scene, hid the murder weapon and supported the false story of occurrence. Both the appellant-accused wrench the heart of Indian society, where family is an institution of love and trust, which they have disrespected and corrupted for the sake of their love affair. (Para 33)

In similar cases where the accused persons had committed murders of their own kith and kin in a preplanned brutal manner, without any remorse or for self-defence, the Supreme Court has thought it fit to uphold their death penalty observing that the manner of commission of crime being grotesque and diabolical, the accused persons deserved nothing but death penalty. (Para 30)

The appellant-accused have put an end to seven innocent lives, while they lay asleep defenceless and unsuspecting, in safety of their own house, absolutely unaware of the gory scheme of their daughter and her paramour. The appellant-accused driven by the opposition to their alliance from the deceased family and alive to the conception of their illegitimate child, had hatched the depraved plan to first administer them sedatives mixed in tea prepared by appellant-accused *S*, who the family would not raise suspicion at, and thereafter, bleeding them to death by slitting the vital blood vessels in their throats. The appellant-accused couple did not even spare the ten-month-old infant, who could not have protested to their liaison, and ruthlessly throttled him to death, so as to leave no survivors for claiming share in the family's property in the future. As soon as the family members were rendered dead, while appellant-accused *Sa* fled from the spot disposing of the murder weapon and other evidence of crime, the appellant-accused *S* feigned unconsciousness and laid down by the side of the deceased father's mutilated body, to callously insinuate that the crime had been committed

by an outsider while she was asleep on the roof-top. The appellant-accused lovers have consistently denied their guilt throughout the trial and, on the prosecution case being proved, stooped down to implicate each other in the commission of offence, so as to exonerate themselves from the consequences of their obnoxious act. (Para 34)

The aggravating circumstances indicate the extreme brutal, calculated and diabolical nature of the crime, which suggests that there is little likelihood of reform of these accused and of their abstaining from future crime. All these features carry the stench of the apathetic attitude of the appellant-accused daughter towards her family and mirrors the extent of her depravity in schemingly committing the cold-blooded murder of her own parents, brother, sister-in-law and ten-month-old nephew. This itself triggers intense indignation in the community. It is the combined concoction of all aggravating circumstances, that is, victims of the crime, motive for commission of murder, manner of execution, magnitude of crime and remorseless attitude of the appellant-accused, that is present in this case. (Paras 28 to 30 and 35)

Mofil Khan v. *State of Jharkhand*, (2015) 1 SCC 67 : (2015) 1 SCC (Cri) 556; *Ram Singh* v. *Sonia*, (2007) 3 SCC 1 : (2007) 2 SCC (Cri) 1; *Ajitsingh Harnamsingh Gujral* v. *State of Maharashtra*, (2011) 14 SCC 401 : (2012) 3 SCC (Cri) 1349; *Athir* v. *Govt. (NCT of Delhi)*, (2010) 9 SCC 1 : (2010) 3 SCC (Cri) 1110; *Jagdish* v. *State of M.P.*, (2009) 9 SCC 495 : (2010) 1 SCC (Cri) 21; *Saibanna* v. *State of Karnataka*, (2005) 4 SCC 165 : 2005 SCC (Cri) 1094; *State of Rajasthan* v. *Kheraj Ram*, (2003) 8 SCC 224 : 2003 SCC (Cri) 1979; *Suresh* v. *State of U.P.*, (2001) 3 SCC 673 : 2001 SCC (Cri) 601, *followed*

In most murder cases the accused have minor children, or aged parents or a spouse who would be bereaved if the convict is executed. This cannot provide a legitimate reason for not awarding the death penalty, if the case is one, where looking to the heinous nature of the crime and the criminal a death penalty is the only appropriate sentence. The mitigating circumstances regarding young age of the appellant-accused at the time of commission of crime, do not bear any significance in terms of outweighing the aggravating circumstances of their wanton act. Further, it has also been pointed out, that appellant-accused *S* was pregnant at the time of commission of the offence and the couple now has a dependent minor child. While the said circumstances stand as such, it is pertinent to notice that such compassionate grounds are present in most cases and are not relevant in considering commutation of death sentence. When the offence is gruesome and was committed in a calculated and diabolical manner, the age of the accused may not be a relevant factor. It is however shocking, that in the pink of their youth, the couple indulged in such debased act of multiple murders driven by infatuation and exhibited no remorse. (Paras 19 and 36)

Sevaka Perumal v. *State of T.N.*, (1991) 3 SCC 471 : 1991 SCC (Cri) 724; *Mofil Khan* v. *State of Jharkhand*, (2015) 1 SCC 67 : (2015) 1 SCC (Cri) 556, *affirmed*

Death penalty is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity. This however does not seem to be the case herein. The appellant-accused persons' preparedness, active involvement, scheming execution and subsequent conduct, reeks of calculated and motivated murders. The act of slaughtering a ten-month-old child by strangulation in no chance reflects immature action but evidence for the lack of remorse, kindness and humanity. The crime is committed in the most cruel and inhuman manner which is extremely brutal, grotesque, diabolical and revolting.

Therefore, as the instant case requires to award a punishment that is graduated and proportioned to the crime, the inescapable conclusion is, that the extreme culpability of both the appellant-accused makes them the most deserving for death penalty. (Para 37)

In the result, the reasons recorded by the trial court and approved by the High Court, while awarding and confirming the death sentence of the appellant-accused, respectively, are concurred with and confirmed. The judgment(s) and order(s) passed by the courts below do not suffer from any error whatsoever which would call for interference in the sentence awarded to the appellant-accused persons. (Para 38)

Saleem v. *State of U.P.*, Capital Case No. 5003 of 2010, decided on 26-4-2013 (All), *affirmed*

Y-D/54918/CR

Advocates who appeared in this case :

Dushyant Parashar (Amicus Curiae), Advocate, for the Appellant;

Gaurav Bhatia, Additional Advocate General (Garvesh Kabra, Abhishek Chaudhary and Utkarsh Jaiswal, Advocates) for the Respondent.

Chronological list of cases cited ***on page(s)***

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2. (2014) 7 SCC 443 : (2014) 3 SCC (Cri) 230, *Mohd. Jamiludin Nasir* v. *State of W.B.* 647*b*
3. Capital Case No. 5003 of 2010, decided on 26-4-2013 (All), *Saleem* v. *State of U.P.* 638*g-h*, 642*c-d*
4. (2012) 4 SCC 257 : (2012) 2 SCC (Cri) 382, *Ramnaresh* v. *State of Chhattisgarh* 644*g*
5. (2011) 14 SCC 401 : (2012) 3 SCC (Cri) 1349, *Ajitsingh Harnamsingh Gujral* v. *State of Maharashtra* 648*c-d*
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14. (1980) 2 SCC 684 : 1980 SCC (Cri) 580, *Bachan Singh* v. *State of Punjab* 644*d*
15. (1973) 1 SCC 20 : 1973 SCC (Cri) 169, *Jagmohan Singh* v. *State of U.P.* 644*d*

The Judgment of the Court was delivered by

H.L. DATTU, C.J.— Leave granted in all the special leave petitions. These appeals are directed against the common judgment and order passed by the High Court of Judicature of Allahabad in the two connected appeals — Capital Cases Nos. 5003 and 5245 of 2010 along with Capital Reference No. 8 of 2010, dated 26-4-2013[1]. By the impugned judgment and order, the High Court has confirmed the judgment of conviction, dated 14-7-2010 and order of sentence, dated 15-7-2010, passed by the learned Sessions Judge in Sessions Trial No. 293 of 2008, whereby and whereunder the learned

1 *Saleem* v. *State of U.P.*, Capital Case No. 5003 of 2010, decided on 26-4-2013 (All)

Sessions Judge has convicted the appellant-accused for the offence under Section 302 read with Section 34 of the Penal Code, 1860 (for short "IPC") and sentenced them to death.

2. At the outset, it would be pertinent to notice that the learned Amicus Curiae, Shri Dushyant Parashar, appearing for the two appellant-accused has limited his submissions only to the question of sentence. Therefore, the scope of these appeals stands restricted to the determination of appropriate sentence for the offence committed by the appellant-accused.

Facts

3. The prosecution case in a nutshell is: on the intervening night of 14-4-2008/15-4-2008, eight persons of the family were present at the residence of Master Shaukat Ali (the deceased father); besides himself; his wife Smt Hashmi (the deceased mother); their daughter Shabnam (the appellant-accused); their younger son Rashid (the deceased younger brother); their minor niece Rabia (the deceased cousin); their elder son Aneesh Ahmad and his wife Anjum (the deceased couple) along with their 10-month-old son Arsh. At about 2.15 a.m. on the fateful night, upon hearing the cries of the appellant-accused Shabnam, their neighbour Lateef Ullah Khan (PW 1) along with other neighbours reached the house. PW 1 entered the house and found Shabnam lying unconscious near the dead body of her deceased father, whose neck was cut and also discovered the dead body of the deceased younger brother with slit throat. Further, in another room, PW 1 discovered the dead bodies of the deceased wife, the deceased couple and the deceased cousin lying in a pool of blood, with their respective necks cut. The dead body of 10-month-old infant, Arsh, was also found between the dead bodies of his parents. Immediately thereafter, PW 1 raised an alarm gathering the neighbours and informed the investigating authorities of the incident.

4. Accordingly, Case Crime No. 880 of 2008 was recorded on the basis of information received from PW 1, and an FIR was registered under Section 302 IPC against unknown persons for the murder of seven members of the family, in Police Station Hasanpur at 3.05 a.m. on 15-4-2008. Neither PW 1 nor Hashmat Hussain (PW 2) i.e. the neighbour residing opposite to the house of the deceased persons, had conversed with appellant-accused Shabnam before approaching the investigative authorities.

5. The investigative agency reached the spot, prepared the inquest report and dispatched the dead bodies for post-mortem. Further, bloodstained pillows, mattress, quilt, rope of cot, etc. found near the respective dead bodies were duly sealed, marked, taken into possession and sent for further analysis to the Forensic Science Laboratory, Moradabad (for short "the FSL"). Dr Deewan Ram (PW 24) conducted the post-mortem on the dead bodies of the deceased father, infant and the younger brother; and Dr R.P. Sharma (PW 27) conducted the post-mortem on the remaining deceased persons. Upon further investigation, both the appellant-accused, namely, Saleem and Shabnam, were arrested. Recoveries of the murder weapon axe

and a bloodstained shirt were made at the instance of Saleem. Further, a Nokia mobile phone, one empty wrapper of 10 biopose tablets, bloodstained clothes, mobile SIM of Saleem, etc. were recovered from Shabnam's possession. Additionally, the call records and details of conversations between the appellant-accused were also obtained.

6. It is the case of the prosecution that the accused persons were involved in a love affair and an illicit physical relationship. While appellant-accused Shabnam is the educated daughter of the deceased family, working as a *Shikshamitra* (teacher), the appellant-accused Saleem is an unemployed youth residing in the same village. It is established that the appellant-accused Shabnam was pregnant at the time of commission of the instant gruesome murders. The prosecution has put forth the motive for commission of the offence to eliminate the appellant-accused Shabnam's family who were vehemently opposed to their relationship and secure the entire property of the family creating financial security for themselves.

7. Upon completion of the investigation, the charge-sheet was drawn and the appellant-accused were charged with the offence under Sections 302 read with Section 34 IPC, further Shabnam was charged separately under Section 302 IPC. The appellant-accused had denied their guilt and thus, the case was committed to trial.

8. The prosecution has examined 29 witnesses, documentary evidence (Exts. Ka-1 to Ka-101), FSL reports (Exts. Ka-102 to Ka-112) and recorded statements of the appellant-accused persons under Section 313 of the Code of Criminal Procedure, 1973 (for short "the Code").

9. The post-mortem reports have indicated the cause of death of the deceased father, mother, younger brother, cousin and the couple as shock and haemorrhage due to ante-mortem injuries, namely, multiple incised wounds caused by a sharp-edged weapon and a cut on the front of neck. Further, inner-linings of the stomach of the deceased persons were recorded as red and swollen, concluding that intoxicating substances were ingested before death. The cause of death for the deceased infant was recorded as asphyxia and ante-mortem injuries caused by means of throttling and strangulation with hand.

10. It is a case of circumstantial evidence, there being no eyewitness to the incident. The testimony of neighbours, namely, PW 1 and PW 2, has corroboratively supported the prosecution story and established that the main door to the house was locked from the inside when they had rushed towards the house after hearing the cries of appellant-accused Shabnam. They have stated that when they broke into the house, they did not notice any bedcovers on or around the roof of the house as alleged by appellant-accused Shabnam in her statement recorded under Section 313 of the Code, instead that her bedding was prepared near her mother's bed.

11. Further, Mahendra Singh, Block Head of the village (PW 4) and Bilal Ahmad, tea seller (PW 6) have testified regarding confession of appellant-accused Saleem before them and corroborated the factum and

manner of the commission of the offence as follows: the appellant-accused had planned to kill her family and on the fateful day the former brought and handed over 10 intoxicating tablets to the latter, which she administered to her family members in tea. The family members being unconscious, Saleem reached her house with the murder weapon and as Shabnam held the heads of her family members, Saleem kept cutting their necks one-by-one. Upon commission of crime, Saleem threw away the murder weapon in a pond. They have also testified to the fact that appellant-accused Shabnam has herself throttled the infant. Rais Ahmad, witness at the pharmacy (PW 8) has stated that Saleem, on the fateful morning, had attempted to purchase sleeping pills from the pharmacy, but only finally managed to acquire the same from one Pappu. His statement has been incontrovertibly supported by Mobil Hussain, the pharmacist (PW 11).

12. The statements of the other witnesses have confirmed the illicit relationship between the appellant-accused which was against the wishes of the latter's family and that the two lovers would meet at night.

13. In their defence, the appellant-accused have denied the charges against them and pleaded false implication. They have, in fact, sought to implicate each other in their defence. Appellant-accused Shabnam, in her Section 313 statement has stated that Saleem had entered the house with a knife through the roof and killed all her family members while she was asleep alone on the roof. To the contrary, Saleem, has stated that he reached the house only at the request of Shabnam where she had confessed commission of crime to him.

14. The trial court, after meticulous marshalling of facts and thorough scrutiny of available evidence, has observed that the evidence on record including post-mortem reports and witness statements has established a continuous and consistent link in the chain of events and thoroughly supported the prosecution story. The trial court has concluded that the appellant-accused deranged by the opposition to their illicit relationship had hatched a gruesome murder plan which they had executed by *first* rendering the family unconscious by administering sleeping pills through tea at the hands of Shabnam, and *thereafter* slicing their throats by an axe while they lay in a comatose state. Therefore, the trial court has concluded that the link in chain of events having been established and corroborated unquestionably confirms the guilt of appellant-accused for the brutal murder of seven persons and thereby, convicted them for the offence under Section 302 read with Section 34 IPC.

15. In the order of sentence, the trial court has observed that the crime committed by appellant-accused is enormous in proportion. They are convicted of multiple successive murders of seven persons of co-accused Shabnam's family including her innocent ten-month-old nephew; old helpless mother; old father; one young couple, her brother and sister-in-law; one young boy; and a sixteen year old cousin. The trial court considered the

motive behind ruthless murders, preplanned execution, manner of commission of crime, the personality of the deceased persons who were respectable and loved members of the community, the stand of the deceased persons who were only against the marriage of their educated daughter, appellant-accused Shabnam with the uneducated unemployed co-accused Saleem and the remorseless conduct of the appellant-accused after the murder as aggravating circumstances and in conclusion, has recorded that the instant case falls in the category of "the rarest of the rare" requiring a punishment not less than death penalty for the offence committed by the appellant-accused. Therefore, the trial court has sentenced the two appellants to death.

16. Aggrieved by the aforesaid judgment and order, the appellant-accused had approached the High Court in Capital Cases Nos. 5003 and 5245 of 2010. The High Court has disposed of the said appeal along with Capital Reference No. 8 of 2010 by a common judgment and order, dated 26-4-2013[1].

17. The High Court has examined the evidence on record strand by strand in light of the observations made by the trial court and the submissions put forth by the learned counsel appearing for the parties and confirmed the judgment of conviction passed by the trial court. The High Court has concluded that the scale of aggravating and mitigating circumstances is heavily tilted towards the aggravating circumstances in the present case and observed as under:

> "... we find that in the present case, the aggravating circumstances would include the diabolical and calculated nature of the crime which was committed after *methodical planning*. Biopose sedative tablets appear to have been obtained by the appellant Shabnam with the help of Saleem, and were mixed in some food substance which was given to all the 6 grown-up family members, all of whom were *murdered with an axe in their sleep*. Their bodies were found in their beds, with no injuries on the arms or hands of any deceased. All the injuries were on the neck, face or trunk regions which supports the hypothesis that the *murders were committed when the deceased had been strongly sedated*. The viscera of all these 6 grown-up deceased indicated the presence of diazepam tranquiliser. The *axe which was got discovered by the appellant Saleem* contained human blood. *No mercy was even showed to the 10-month-old child Arsh* who was strangulated, and thus the only other person from the household who could have inherited the property was also eliminated. ... The *subsequent conduct* of accused Shabnam in removing all signs of the crime, by changing her clothes, removing any signs, and finger prints, etc. and then raising an alarm for help and thereafter pretending to be unconscious for creating an impression that some outsiders had committed this crime, all indicate the *cold-blooded planning before, during and after the commission of the crime*." (emphasis supplied)

1 *Saleem* v. *State of U.P.*, Capital Case No. 5003 of 2010, decided on 26-4-2013 (All)

18. Further, the High Court has refused to accept the submission that appellant-accused Shabnam was under great mental stress due to the opposition from her family to the relationship between her and the other co-accused and the same is a fit mitigating circumstance. The High Court has noticed that there was no evidence of any threat or any incident of attack on the lives or person of the two appellant-accused by the deceased persons and that the elimination of all seven members of Shabnam's family, including the ten-month-old child was a grossly disproportionate and uncalled for reaction to any apprehensions that the appellant-accused may have received regarding their proposed alliance.

19. The High Court has further noticed that features of the criminal mind of appellant-accused can be inferred from the preplanned *finesse* with which the crime is committed, manner of commission of crime and remorseless attitude of the appellant-accused persons both — before and after the crime. The High Court has thus concluded that the aforesaid conduct of the appellant-accused persons renders them beyond reformation and observed as under:

> "Shabnam's pregnancy and subsequent delivery of child, no ground for reducing sentence. It was also contended that Shabnam was carrying a child in her womb whom she has delivered in jail and who would be orphaned if the appellants are executed. In most murder cases the accused have minor children, or aged parents or a spouse who would be bereaved if the convict is executed. This according to the Supreme Court in *Sevaka Perumal* v. *State of T.N.*[2] cannot provide a legitimate reason for not awarding the death penalty, if the case is one, where looking to the heinous nature of the crime and the criminal a death penalty is the only appropriate sentence."

Thus, in light of the aforesaid considerations, the High Court has thought it fit to classify the present case as "the rarest of the rare" and award death penalty to the appellant-accused persons.

20. Aggrieved by the aforesaid conviction and sentence, the appellant-accused are before us in this appeal.

Submissions

21. The learned amicus for the appellants would restrict his arguments only to the question of sentence. He would submit that the instant case is based entirely on circumstantial evidence and the prosecution case garners support from no eyewitnesses and therefore, the same could not have been relied upon by the trial court to sentence the appellant-accused to irreversible consequence of death. He would further submit that the mitigating circumstances of the appellant-accused, that is, them being young at the time of incidence, the mental stress undergone by them due to opposition of their alliance from the deceased family and the factum of appellant-accused Shabnam being pregnant at the time of the offence ought to be considered in

2 (1991) 3 SCC 471 : 1991 SCC (Cri) 724 : 1991 Cri LJ 1845

context of the offence committed by the two appellant-accused and lenient approach be adopted in determining and awarding appropriate sentence to them.

22. The learned counsel for the State would oppose the request of the learned amicus in respect of adoption of lenient approach in sentencing the appellant-accused persons and supporting the reasons recorded in the judgment(s) and order(s) passed by the courts below, submit that the present case is a fit case to be classified as "the rarest of the rare" and hence, the appellant-accused deserve nothing but death penalty for the dastardly crime committed by them.

23. We have given our anxious consideration to the evidence on record in its entirety and the submissions put forth by both the learned counsel. We have carefully perused the judgments and orders of the courts below.

Discussion

24. We would not lumber the discussion by tracing the entire death penalty jurisprudence as it has evolved in India, but only limit the exercise to cull out the determinants which would weigh large in our mind to award appropriate sentence while balancing the mitigating and aggravating circumstances. We are mindful of the principles laid down by this Court in *Jagmohan Singh* v. *State of U.P.*[3], *Bachan Singh* v. *State of Punjab*[4] and *Machhi Singh* v. *State of Punjab*[5], as followed by this Court up to the present. The aforesaid decisions indicate that the most significant aspect of sentencing policy in Indian criminal jurisprudence regarding award of death penalty is that life sentence is a rule and death sentence is an exception only to be awarded in "the rarest of rare cases". 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 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. The circumstances which should or should not be taken into account, and the circumstances which should be taken into account along with other circumstances, as well as the circumstances which may, by themselves, be sufficient, in the exercise of the discretion regarding sentence cannot be exhaustively enumerated.

25. The guidelines and principles for classification of circumstances and determination of the culpability indicia as laid down by this Court in the aforesaid cases have been succinctly summarised in *Ramnaresh* v. *State of Chhattisgarh*[6]. The said are extracted as under: (SCC pp. 285-86, paras 76-77)

3 (1973) 1 SCC 20 : 1973 SCC (Cri) 169
4 (1980) 2 SCC 684 : 1980 SCC (Cri) 580
5 (1983) 3 SCC 470 : 1983 SCC (Cri) 681
6 (2012) 4 SCC 257 : (2012) 2 SCC (Cri) 382

"***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 of the Code of Criminal Procedure.

(*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."

26. It is now settled law that where maximum punishment that could be awarded under a provision is death penalty, the courts are required to independently consider facts of each case and determine a sentence which is the most appropriate and proportional to the culpability of the accused. It is not sufficient for the court to decide the quantum of sentence only with reference to one of the classes under any one of the head of circumstances while completely ignoring classes under the other. That is to say, what is

required to be considered is not just the circumstances by placing them in separate compartments, but their cumulative effect. The court ought to be sufficiently cautious and adherent of the same so as to better administer the criminal justice system and provide an effective and meaningful reasoning by the court as contemplated under Section 354(3) of the Code while sentencing.

27. The aforesaid principles also find reference in observations of this Court in *Mohd. Jamiludin Nasir* v. *State of W.B.*[7]: (SCC p. 541, para 173)

> "*173.* Sentencing is a delicate task requiring an interdisciplinary approach and calls for special skills and talents. A proper sentence is the amalgam of many factors, such as, the nature of offence, circumstances—extenuating or aggravating—of the offence, prior criminal record of the offender, age and background of the offender with reference to education, home life, sobriety, social adjustment, emotional and mental condition, the prospects for his rehabilitation, etc. The above passage can be found in *Ratanlal & Dhirajlal's Law of Crimes*, 26th Edn., at p. 185 on the topic 'Of Punishments'."

28. *Mofil Khan* v. *State of Jharkhand*[8] is a case where the appellant-accused had committed brutal and cold-blooded murders of eight persons of their own family successively due to discord over property. This Court while awarding death penalty to the accused persons noted that the scope of reformation of the perpetrators of the crime has been obliterated given the manner of execution of cold-blooded murder of the kin and their conduct after commission of the crime. This Court observed as follows: (SCC p. 84, para 46)

> "*46.* The Crime Test, Criminal Test and the 'Rarest of the Rare' Test are certain tests evolved by this Court. The Tests basically examine whether the society abhors such crimes and whether such crimes shock the conscience of the society and attract intense and extreme indignation of the community. *The cases exhibiting premeditation and meticulous execution of the plan to murder by levelling a calculated attack on the victim to annihilate him, have been held to be fit cases for imposing death penalty. Where innocent minor children, unarmed persons, helpless women and old and infirm persons have been killed in a brutal manner by persons in dominating position, and where after ghastly murder displaying depraved mentality, the accused have shown no remorse, death penalty has been imposed. Where it is established that the accused is a hardened criminal and has committed murder in a diabolic manner and where it is felt that reformation and rehabilitation of such a person is impossible and if let free, he would be a menace to the society, this Court has not hesitated to confirm death sentence.* Many a time, in cases of brutal murder, exhibiting depravity and callousness, this Court has acknowledged the need to send a deterrent message to those who may

7 (2014) 7 SCC 443 : (2014) 3 SCC (Cri) 230

8 (2015) 1 SCC 67 : (2015) 1 SCC (Cri) 556

embark on such crimes in future. *In some cases involving brutal murders, society's cry for justice has been taken note of by this Court, amongst other relevant factors.*" (emphasis supplied)

29. In *Ram Singh* v. *Sonia*[9], a married couple had murdered the wife's father, mother, sister, stepbrother and his whole family including three young ones of 45 days, 2½ years and 4 years with the motive of resisting her father from giving property to her stepbrother and his family. Therein, this Court has held that since the murders were committed in a cruel, preplanned and diabolic manner while the victims were sleeping, without any provocation from the victim's side, it could be concluded the accused persons did not possess any basic humanity and lacked the psyche or mindset amenable to any reformation and therefore, the case fell within the category of the rarest of rare cases for imposition of death penalty.

30. Further, in similar cases where the accused persons had committed murders of their own kith and kin in a preplanned brutal manner, without any remorse or for self-defence, this Court has thought it fit to uphold their death penalty observing that the manner of commission of crime being grotesque and diabolical, the accused persons deserved nothing but death penalty. [*Ajitsingh Harnamsingh Gujral* v. *State of Maharashtra*[10], *Atbir* v. *Govt. (NCT of Delhi)*[11], *Jagdish* v. *State of M.P.*[12], *Saibanna* v. *State of Karnataka*[13], *State of Rajasthan* v. *Kheraj Ram*[14] and *Suresh* v. *State of U.P.*[15]]

31. Having regard, however, to the conditions in India, to the variety of social upbringing of its citizens, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, in evaluating a crime and apportioning the most appropriate punishment, one of the most important functions court performs while making a selection between life imprisonment and death is to maintain a link between contemporary community values and the penal system. Criminal jurisprudence indicates that society's perceptions of a crime with respect to appropriate penalties are not conclusive. Concurrently, it also stands that the said standards have always been progressive and acquire meaning as public opinion becomes enlightened by a humane justice. The scope of determining the standards is never precise and rarely static. The courts must thus draw its meaning from the evolving standards of public morality and consciousness that mark the progress of a maturing society.

9 (2007) 3 SCC 1 : (2007) 2 SCC (Cri) 1
10 (2011) 14 SCC 401 : (2012) 3 SCC (Cri) 1349
11 (2010) 9 SCC 1 : (2010) 3 SCC (Cri) 1110
12 (2009) 9 SCC 495 : (2010) 1 SCC (Cri) 21
13 (2005) 4 SCC 165 : 2005 SCC (Cri) 1094
14 (2003) 8 SCC 224 : 2003 SCC (Cri) 1979
15 (2001) 3 SCC 673 : 2001 SCC (Cri) 601

32. Familial relations play a vital role in describing and highlighting the qualities of our society. The Indian legal system today does not differentiate between a son and a daughter—they have equal rights and duties. Indian culture has been witness to for centuries, that daughters dutifully bear the burden of being the caregivers for her parents, even more than a son. Our experience has reflected that an adult daughter places greater emphasis on their relationships with their parents, and when those relationships go awry, it takes a worse toll on the adult daughters than the adult sons. The modern era, led by the dawn of education, no longer recognises the stereotype that a parent would want a son so that they have someone to look after them and support them in their old age. Now, in an educated and civilised society, a daughter plays a multifaceted and indispensible role in the family, especially towards her parents. She is a caregiver and a supporter, a gentle hand and responsible voice, an embodiment of the cherished values of our society and in whom a parent places blind faith and trust.

33. Of all the crimes that shock the souls of men, none has ever been held in greater abhorrence than parricide, which is by all odds the most complete and terrible inversion, not alone of human nature but of brute instinct. Such a deed would be sufficiently appalling where the perpetrator and the victims are uneducated and backward, but it gains a ghastly illumination from the descent, moral upbringing, and elegant respectful living of the educated family where the father and daughter are both teachers. Here is a case where the daughter, appellant-accused Shabnam, who has been brought up in an educated and independent environment by her family and was respectfully employed as a *Shikshamitra* (teacher) at the school, influenced by the love and lust of her paramour has committed this brutal parricide exterminating seven lives including that of an innocent child. Not only did she forget her love for and duty towards her family, but also perpetrated the multiple homicide in her own house so as to fulfil her desire to be with the co-accused Saleem and grab the property leaving no heir but herself. The appellant-co-accused Saleem hatched the intricate plan with her, slayed the six deceased persons with an axe, escaped the crime scene, hid the murder weapon and supported the false story of occurrence. Both the appellant-accused wrench the heart of our society where family is an institution of love and trust, which they have disrespected and corrupted for the sake of their love affair.

34. The appellant-accused have put an end to seven innocent lives while they lay asleep defenceless and unsuspecting, in safety of their own house, absolutely unaware of the gory scheme of their daughter and her paramour. The appellant-accused driven by the opposition to their alliance from the deceased family and alive to the conception of their illegitimate child, had hatched the depraved plan to first administer them sedatives mixed in tea prepared by appellant-accused Shabnam, who the family would not raise suspicion at, and thereafter, bleeding them to death by slitting the vital blood vessels in their throats. The appellant-accused couple did not even spare the

ten-month-old infant, who could not have protested to their liaison, and ruthlessly throttled him to death so as to leave no survivors for claiming share in the family's property in the future. As soon as the family members were rendered dead, while appellant-accused Saleem fled from the spot disposing of the murder weapon and other evidence of crime, the appellant-accused Shabnam feigned unconsciousness and laid by the side of the deceased father's mutilated body, to callously insinuate that the crime had been committed by an outsider while she was asleep on the rooftop. The appellant-accused lovers have consistently denied their guilt throughout the trial and, on the prosecution case being proved, stooped down to implicate each other in the commission of offence so as to exonerate themselves from the consequences of their obnoxious act.

35. The aggravating circumstances indicate the extreme brutal, calculated and diabolical nature of the crime, which suggests that there is little likelihood of reform of these accused and of their abstaining from future crime. All these features stench of the apathetic attitude of the appellant-accused daughter towards her family and mirrors the extent of her depravity in schemingly committing the cold-blooded murder of her own parents, brother, sister-in-law and ten-month-old nephew. This itself triggers intense indignation in the community. It is the combined concoction of all aggravating circumstances, that is, victims of the crime, motive for commission of murder, manner of execution, magnitude of crime and remorseless attitude of the appellant-accused that stands before us in this case.

36. The mitigating circumstances regarding young age of the appellant-accused at the time of commission of crime do not bear any significance in terms of outweighing the aggravating circumstances of their wanton act. Further, it has also been pointed out before us that appellant- accused Shabnam was pregnant at the time of commission of the offence and the couple now has a dependent minor child. While the said circumstances stand as such, it is pertinent to notice that this Court has consistently held that such compassionate grounds are present in most cases and are not relevant in considering commutation of death sentence. The principle that when the offence is gruesome and was committed in a calculated and diabolical manner, the age of the accused may not be a relevant factor, was further affirmed by this Court in *Mofil Khan case*[8]. It is however shocking that at the pink of their youth, the couple indulged in such debased act of multiple murders driven by infatuation and exhibited no remorse.

37. Death penalty is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity. This however does not seem to be the case herein. The appellant-accused persons' preparedness,

8 *Mofil Khan* v. *State of Jharkhand*, (2015) 1 SCC 67 : (2015) 1 SCC (Cri) 556

active involvement, scheming execution and subsequent conduct reeks of calculated and motivated murders. The act of slaughtering a ten-month-old child by strangulation in no chance reflects immature action but evidence for the lack of remorse, kindness and humanity. The crime is committed in the most cruel and inhuman manner which is extremely brutal, grotesque, diabolical and revolting. Therefore, as the instant case requires us to award a punishment that is graduated and proportioned to the crime, we have reached the inescapable conclusion that the extreme culpability of both the appellant-accused makes them the most deserving for death penalty.

38. In the result, we concur with and confirm the reasons recorded by the trial court and approved by the High Court while awarding and confirming the death sentence of the appellant-accused, respectively. In our considered view, the judgment(s) and order(s) passed by the courts below do not suffer from any error whatsoever which would call for our interference in the sentence awarded to the appellant-accused persons.

39. Accordingly, the appeals stand dismissed. The Registry is directed to pay a sum of Rs 10,000 (Rupees ten thousand only) to the learned amicus curiae in each case.