SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Goraksha Ambaji Adsul

Crl.A.No.999 of 2007

(B.S.Chauhan and Swatanter Kumar,JJ.,)

07.07.2011

JUDGMENT

Swatanter Kumar,J.,

1. The learned trial court, while weighing the mitigating and aggravating circumstances and keeping in mind the principle of proportionality of sentence or what it termed as "just-desert" for the brutal and diabolical killing of three innocent family members, formed an opinion that the Court could not resist from concluding that the only sentence that could be awarded to the accused was death penalty. Thus, it directed that the accused Goraksha Ambaji Adsul be hanged by the neck till he is dead in terms of Section 354(5) of the Code of Criminal Procedure, 1973 (for short `Cr.P.C.'), subject to confirmation by the High Court in accordance with law. Aggrieved by this extreme punishment and the order of conviction, the accused challenged the judgment of the learned trial court dated 14th February, 2005 by filing an appeal before the High Court which vide its detailed judgment dated 30th September, 2005, declined to confirm the death sentence referred under Section 366 of the Cr.P.C. and held the said accused guilty of offence under Sections 302 and 201 of the Indian Penal Code (for short `IPC'), and sentenced him to undergo life imprisonment. In other words, the High Court converted the death penalty into life imprisonment while sustaining the order of conviction.

2. The State of Maharashtra has preferred the present appeal bearing Crl.A. No. 999/2007, before this Court claiming that the said conversion by the High Court is not appropriate in the facts and circumstances of the case. The State further avers that the High Court in its judgment has fallen in error of law as well as failed in appreciation of evidence. It is contended that this Court should restore the judgment of the trial court on the quantum of sentence by awarding death penalty. The accused has filed a separate appeal being Crl.A. No. 1623 of 2007 challenging the very same judgment of the High Court on the ground that the appellant could not have been held guilty for an offence under Sections 302 and 201 of the IPC and the appellant was entitled to judgment of acquittal.

3. Thus, it will be appropriate for us to dispose of both the above appeals by a common judgment. For that purpose, we may briefly notice the facts giving rise to the present appeals. Accused no.1 Goraksha Ambaji Adsul is the son of the deceased, Ambaji Ahilaji Adsul. Accused no.3 Sow. Sunita Goraksha Adsul is the wife and Accused no.2 Mininath Ambaji Adsul is the brother of the Accused no.1 Goraksha. Accused no.1 was serving in the Indian Army and used to visit his village Hivare-Korda where the family had some agricultural land and other properties. The deceased, Ambaji Ahilaji Adsul was also married to the second deceased, Janabai and she was his second wife. In other words, Janabai was the stepmother of the Accused no.1 and 2 and Reshma (deceased) was their stepsister. All these persons used to jointly reside in their house in the said village. It has come in evidence that there used to be quarrels between the Accused no.1, his brother and wife on the one side and the deceased Ambaji Ahilahi Adsul, his wife Janabai and daughter Reshma on the other. The accused used to demand partition of the land and other property and allotment of share to the accused and his brother. This persisted for a considerable time and is said to be the motive for commission of the offence.

4. One Premchand Rangarao Jatav, Deputy Station Superintendent, Railway Station, Bhopal (PW9), received a memo sent by Sh. R.K. Arora, Train Ticket Examiner (TTE), informing him that a black coloured trunk was found in Bogie No.S-6 of Train No. 2779 (Goa-Nizamuddin Express) running via Ahmednagar when it reached Bhopal Railway Station on 25th October, 2002 at about 7.00 p.m. The black trunk was seized under panchnama and when the same was opened in the presence of Dr. Harsh Sharma it was found that it contained a dead body which was later identified to be that of Ambaji Ahilaji Adsul. Mr. Someshwari Jogeshwari Prasad Mishra, ASI, G.R.P. Bhopal (PW11) completed the formalities of inquest and post-mortem. After the body was received in the hospital it was inspected by one Dr. Mrs. Rajni Armit Arora, the then Associate Professor at the Department of Forensic Medicine, Gandhi Medical College, Bhopal, (PW19).

5. It was noticed that a lace was found to have been tied to the portion covering neck and throat of the deceased. Dr. Arora performed the autopsy on 26th October, 2002. She noticed ligature mark of brownish colour and ligature material of khaki colour shoe lace, two in number, tied around the neck encircling it and described the injuries as ante-mortem injuries. According to the said doctor, the cause of death was strangulation and homicidal in nature and was caused two to three days prior to the post-mortem examination. As nobody had claimed the body, the blood stained clothes of the deceased were seized and the body was cremated at Bhadbhada Vishram Ghat, Bhopal. An FIR (exhibit-82) was registered with regard to the said crime.

6. On 25th October, 2002 itself, another train, i.e. Train No. 7602-UP (Nanded Pune Express) reached Ahmednagar Railway Station at its scheduled time in the morning at about 6.15 a.m. and departed at 6.30 a.m. Enroute, during the stop at Akolner Railway Station for crossing of the train coming from opposite direction, Mr. Sanjay Bhujadi, TTE, found one white tin trunk in Bogie No. S-4 placed between the two toilets of the Bogie No. S-4. After arriving Kasthi Railway Station,

7. Mr. Sanjay Bhujadi made a report to the Station Master, Kashti, informing him of the said trunk. This memo was delivered to GRP, Daund Railway Station (Ex.132). The trunk was removed from the bogie and a panchnama was prepared.

8. Thereafter, it was opened and two dead bodies were found in that trunk. These were later identified as those of Janabai and Reshma. Inquest formalities were completed and an FIR (exhibit 125) was lodged on 25th October, 2002 as Crime No. 43/2002 for offence punishable under Sections 302 and 201 of the IPC.

9. The railway police investigating officer, Mr. B.B. Joshi, (PW8) conducted investigation and registered a case vide Crime No. 237/2002 on 17th November, 2002 against the three accused namely, Goraksha Ambaji Adsul, Sow. Sunita Goraksha Adsul and Mininath Ambaji Adsul. On further investigation, it was found that the accused persons had administered sedative/poisonous substance mixed in pedas and thereafter strangulated all the three victims with shoe laces. Thereafter, they placed the bodies of the these victims in two different trunks . One trunk was kept near the electricity board D.P. at nearby Village Malkop and the other at the house of one Mr. Sakharam Thakaji Nabge, a friend of the accused (PW7), before both were transported to the Ahmednagar Railway Station by the accused Goraksha in a hired maruti van. Thereafter, as afore-noticed, these trunks were placed in different trains.

10. Accused nos. 2 and 3 were arrested on 14th November, 2002 and Accused no.1 on 30th November, 2002. Their statements were recorded under Section 164 of the Cr.P.C. by Mr. Sayyad, Judicial Magistrate, First Class, on 6 th February, 2003 and 7th February, 2003 respectively. Investigation was completed and the accused were sent to the court of Judicial Magistrate on 11th February, 2003 for committal to the Court of Sessions so that they could be tried in accordance with law.

11. All the three accused had taken the defence of total denial and pleaded false implication. Accused no. 1 had specifically taken up the plea that between 22nd October, 2002 and 25th October, 2002, he was present at his duty place i.e. the Army Office at Patiala. The prosecution has examined as many as 25 witnesses to bring home guilt of the accused persons and after recording the statement of the accused under Section 313 of the Cr.P.C., the trial court after discussing the entire evidence on record had found Accused no.1 Goraksha Ambaji Adsul guilty of an offence under Section 302 as well as Section 201 of the IPC and awarded the sentence of death to him.

12. However, Accused Nos. 2 and 3 were acquitted as according to the trial court, the prosecution had failed to prove its case beyond reasonable doubt against these accused. The State did not prefer any appeal against the acquittal of the said two accused and thus, their acquittal has already attained finality. Resultantly, in the present appeal, we are only concerned with Accused no.1 Goraksha Ambaji Adsul, who has filed an independent appeal against the judgment of conviction and sentence.

13. As would appear from the above narrated factual matrix, it is a case of circumstantial evidence and there is no eye-witness or other direct evidence in regard to the murder of the three deceased persons. As is clear from the above, Ambaji Ahilaji Adsul was the real father of Accused nos.1 and 2 while Accused no.3 is the wife of Accused no.1. Deceased Janabai was the second wife of Ambaji and therefore the step-mother of Accused nos.1 and 2. Deceased Reshma and PW13 Sunil are the children born to Janabai from Ambaji, thus, they are the step-sister and step-brother of the Accused nos.1 and 2.

14. It is the case of the prosecution that there used to be quarrels and the accused Goraksha used to demand partition of the land and other properties. In fact, he is stated to have assaulted his father during those quarrels. The accused Goraksha had returned home for Diwali. He had brought sweets (pedas) with him, which he offered to all, i.e. Ambaji, Janabai, Sunita, Reshma and Sunil on the night of 23 rd October, 2002. These pedas contained sedative/poisonous substance and after supper when the family was asleep,
Goraksha killed his father, stepmother and stepsister by strangulation and packed the dead bodies in two metallic boxes. One of the boxes was loaded in the train 2779 UP, Goa-Nizammudin Express while the other was loaded in train 7602-UP, Nanded-Pune Express and the same were recovered at Bhopal and Daund Railway Stations respectively, as noticed above. Sunil and the accused Sunita required medical assistance on the next day as they suffered from vomiting and dysentery presumably because of food poisoning caused by the sedative-infused pedas, which were offered to them by Accused no.1 Goraksha. Another suspicious circumstance which led to the arrest of the accused was that on enquiry by the brother of the deceased Ambaji, the accused had informed him that Ambaji, Janabai and Reshma had gone to Ahmednagar for medical treatment and subsequently claimed that he had received a telephone call from his father stating that the family was proceeding to the holy place of Pandharpur. Still another circumstance which connected accused no.1 with the commission of the crime was that he had hired a maruti van owned by PW14 Bapusaheb Shinde for the purpose of carrying the two trunks containing the three dead bodies from Village Malkop to the Railway Station, Ahmednagar. PW-7 Sakharam Nabge, a friend of the accused had also deposed that the trunk was kept in front of his house before it was loaded in the Maruti Van. PW12, Baban Vishnu Thorat is a friend of Bapusaheb Shinde and both of them were together when Goraksha contacted Bapusaheb for hiring of Maruti Van on 24th October, 2002. They were again together when two trunks were lifted in the early dawn hours on 25th October, 2002. Thus, these two persons were material witnesses for establishing the fact that these trunks/iron boxes were actually carried from the place afore-indicated to the Railway Station by the accused. PW17, Pandurang Daobhat is the brother of the deceased Janabai and had identified the dead bodies. His statement is of significance in regard to the identification of the dead bodies as well as the conduct of the accused subsequent to the recovery of the dead bodies. He is the person who was provided with incorrect information by the accused Goraksha regarding whereabouts of the deceased. PW13 Sunil is another material witness as he was also administered the pedas laced with sedatives and the same was served in his presence to the deceased by the Accused no.1 Goraksha. Besides this evidence, the statement of Dr. Sanjay Pande, PW10 also helps in completing the chain of events leading to the commission of the crime and its subsequent

result. According to this witness, he had treated Sunil (PW13) and Sunita (Accused no.3) on 24th October, 2002 when they were brought to him with the complaint of diarrhea.

15. When they went to the doctor, Goraksha, the Accused no.1 had accompanied them. PW23, Ezaz Ahmed, Judicial Magistrate, First Class at Sahabad had recorded the statements of PW12, PW14, PW17 and Meerabai Daobhat, sister of the deceased Janabai under Section 164 of the Cr.P.C. We may also notice that some of the panch witnesses who had signed the panchnamas turned hostile and PW7 Sakharam, a personal friend of the accused Goraksha also did not fully support the case of the prosecution.

16. The above are the main witnesses on whose statement the entire case of the prosecution rests, of course, in addition to the statement of the Investigating Officers and other formal witnesses. Accused nos. 2 and 3 were acquitted by the trial court and the High Court noticed that it was not concerned with the merit or otherwise of their acquittal by the trial court as the State had not preferred any appeal against the judgment of acquittal.

17. At this stage, we may usefully refer to the circumstances which were relied upon by the prosecution before the courts and they were as follows:-

> "i Motive - dispute over agricultural land/partition.
>
> (Evidence of PW-13 Sunil and PW-17 Pandurang) i Last seen together - (togetherness by virtue of joint family).
>
> i Administration of sedative through sweets. (Evidence of PW-13 Sunil and PW-10 Dr. Pande).
>
> i The disposal of dead bodies by Accused no.1 (Evidence of PW-12 Baban, PW-14 Bapusaheb).
>
> i Identification of Accused no.1 as person loading one trunk in Goa-Nizammuddin Express train (PW-15 Aradhana).
>
> i Homicidal death.
>
> i False theory/explanation propounded by accused for absence of the victim. (Evidence of PW-13 Sunil and PW-17 Pandurang).

In the facts and circumstances of the case, the High Court expressed the opinion that two circumstances, i.e. the last seen together and the homicidal death stands proved by themselves and do not require further evidence to prove that fact. We fully agree with the view expressed by the High Court that, keeping in view the photographs of the dead body and the doctor's statement, it was proved to be a homicidal death.

The learned counsel appearing for the Accused no.1 (appellant) argued with some vehemence that the doctor had not expressed his opinion with regard to the cause of death particularly in relation to Reshma and Janabai, as is evident from Exhibits 113 and 114. But this argument does not
impress us at all inasmuch as the death of the two persons have been proved. From the injury report on the body of the deceased, the photographs and the circumstances attendant thereto, it is more than clear that this was a case of homicidal death. The bodies of the deceased were duly identified. It was practically an admitted case that the deceased as well as the accused were living in a joint family and had their last meals together, during which the accused had offered pedas to the family including the deceased. This is fully substantiated by the statement of PW13 and PW10. PW13, Sunil is a family member. He had also suffered the consequences of consuming the pedas and was treated by PW10, Dr. Pande. The factum of carrying of two boxes and loading them on the respective trains has also been fully established by the prosecution as we have above-discussed. At this stage, we may refer to some extracts of the High Court judgment where in our view the High Court has correctly appreciated the evidence. It disregarded the statement of PW7 while fully relying upon and holding that there were witnesses who were truthful and can be safely relied upon, the Court held as under: -

"To sum-up the assessment of evidence of these seven vital witnesses, we may say that, PW-7 Sakharam Nabge has made himself sufficiently useless for the prosecution. Evidence of PW-12 Baban Thorat is acceptable to establish that Accused No.1 had contracted with PW-14 Bapusaheb and accordingly two trunks were transported from Malkop D.P. to Ahmednagar Railway Station at the instance of Accused No.1 (sic), for which accused no.1 paid hire charges of Rs.200/-. Evidence of PW-14 Bapusaheb, although shaky, can be relied upon on the same point, to the extent it is in harmony with the evidence of PW-12. We find PW-10 Dr. Pande, in the absence of case-papers to refresh his memory, to be not reliable. PW- 15 Aradhana also cannot be relied upon for the purpose of identification of Accused No.1, although she can be believed to the extent that the trunk was loaded in Goa-Nizamuddin Express, at Ahmednagar Railway Station. PW-17 Pandurang can be relied upon for identification of the victims and subsequent conduct of Accused No.1, so also to some extent, possible motive i.e. quarrels on the point of partition. PW-13 Sunil, although a child witness, can certainly be believed regarding togetherness on the fateful night, more so because that is an admitted position. His evidence regarding quarrels on the

point of partition can also be accepted, because of support from Pandurang and probability. The story of administration of Pedhas containing some sedative/poisonous substance and subsequent admission to Mate Hospital, has become a story not acceptable without risk, more so when such story is not supported by any case papers.

XXX XXX XXX XXX XXX

We have subjected the evidence to close scrutiny and only thereafter arrived at our conclusion as to whether witnesses are to be believed and if yes, to what extent. By relying upon Anthony D. Souza - Vs. - State of Kerala, A.I.R. 2003 S.C. 258 and Darshansingh -Vs.- State of Punjab, 1995 S.C.C. (Crl.) 702, learned A.P.P. has propounded that, in case accused makes a statement under section 313 of Cr.P.C. completely denying the prosecution case and established facts and offers false answers or explanation, that can be counted as providing missing link from complete chain of the prosecution evidence and circumstances, in a case based on circumstantial evidence. Relying on these cases, an argument that false explanation can be utilized as one of the links in the chain of circumstantial evidence was advanced, in order to persuade this Court that story narrated by accused Goraksha to PW-17 Pandurang about the victims having gone to Pandharpur should be taken into consideration as false explanation, although not to the Court, to the relatives and others. In fact, as already pointed out earlier, accused have persisted in sticking to this explanation even during the curse (sic) of their statement under Section 313 Cr.P.C., 1973, without demonstrating to the Court that either of the two trains, i.e. Goa-Nizamuddin Express and Nanded-Pune Express travel via Padharpur (sic). We may state it here itself, that explanation offered by the accused about his having received a message from Balasaheb Sinare of Village Padali, who received telephone of the deceased Ambaji, of the three victims having gone to Pandharpur cannot be said to have been probabilised in the absence of evidence of said Balasaheb Sinare. The two trains not having been demonstrate as passing through Pandharpur gives another set back to the said defence.

24. In the light of acquittal of Accused Nos. 2 and 3 by the trial court, learned Advocate for the appellant has placed reliance upon the observations of the Supreme Court in the matter of Suraj Mal - Vs- State (Delhi Administration), A.I.R. 1979 S.C. 1408, and more particularly, observation to the following effect in para 2: -

"where witnesses make tow (sic) inconsistent statements in their evidence, either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence, and in absence of special circumstances, no conviction can be based on the evidence of such witness."

This was a case under Prevention of Corruption Act. Three police officers were tried for allegedly having accepted bribe. PW No.s 6, 8 and 9, Shiv Naryan, Prem Nath and Sham Sunder resiled from their statements which they made in their chief

examination and all of them stated that Ram Naryan (one of the three accused) refused to accept the bribe. Ram Naryan was, therefore, acquitted by the trial Court. Another accused Devender Singh was acquitted by the High Court on the ground that the sanction was not valid . We are unable to appreciate the applicability of the ratio to the matter at hands. As can be seen from the impugned judgment, in the present matter, Accused No.s 2 and 3 are acquitted by the trial Court because there is no evidence referring to them....."

25. The above conclusion of the High Court does not suffer from any legal infirmity. It is in conformity with the settled principles of law and is based on proper appreciation of evidence. In fact, finding of guilt by both the Courts is concurrent. However, they differ only on the question of quantum of sentence. On the appreciation of evidence, we are also of the considered view that the prosecution has been able to prove a complete chain of events which points only towards the guilt of the accused. Even in a case of circumstantial evidence, if the prosecution is able to establish the chain of events to satisfy the ingredients of commission of an offence, the accused would be liable to suffer the consequences of his proven guilt. In the present case, right from the evidence of the entire family having the last dinner together and administering of pedas with sedatives or poisonous substances to the recovery of bodies of the deceased at different railway stations the chain of events stands proved beyond reasonable doubt. In fact, the statement of the accused under Section 313 of the Cr.P.C. further supports the case of the prosecution and demolishes the stand of the defence of complete denial. Thus, we are unable to find any error in the concurrent findings recorded by the Courts holding the accused guilty of an offence under Sections 302 and 201 of the I.P.C. Next, we are concerned with whether this Court should exercise its judicial discretion to enhance his punishment from life imprisonment to death sentence, as contemplated on behalf of the State in its appeal. The factual matrix of the case as well as the evidence which has been led by the prosecution to bring home the guilt of the accused, we have already discussed in some detail. Presently, we may discuss the principles which have been long settled by this Court for imposition of death penalty. The principles governing the sentencing policy in our criminal jurisprudence have more or less been consistent, right from the pronouncement of the Constitution Bench judgment of this Court in the case of Bachan Singh v. State of Punjab [(1980) 2 SCC 684]. Awarding punishment is certainly an onerous function in the dispensation of criminal justice. The Court is expected to keep in mind the facts and circumstances of a case, the principles of law governing award of sentence, the legislative intent of special or general statute raised in the case and the impact of awarding punishment. These are the nuances which need to be examined by the Court with discernment and in depth. The legislative intent behind enacting Section 354(3) of the Cr.P.C. clearly demonstrates the concern of the legislature for taking away a human life and imposing death penalty upon the accused. Concern for the dignity of the human life postulates resistance to taking a life through law's instrumentalities and that ought not to be done, save in the rarest of rare cases, unless the alternative option is unquestionably foreclosed. In exercise of its discretion, the Court would also take into consideration the mitigating circumstances and their resultant effects. Language of Section 354(3) demonstrates the legislative concern and the conditions which need to be satisfied prior to imposition of death penalty. The words, `in the case of sentence of death the special reasons

for such sentence' unambiguously demonstrates the command of the legislature that such reasons have to be recorded for imposing the punishment of death sentence. This is how the concept of rarest of rare cases has emerged in law. Viewed from that angle, both the legislative provisions and judicial pronouncements are at ad idem in law. The death penalty should be imposed in rarest of rare cases and that too for special reasons to be recorded. To put it simply, a death sentence is not a rule but an exception. Even the exception must satisfy the pre-requisites contemplated under Section 354(3) of the Cr.P.C. in light of the dictum of the Court in the case of Bachan Singh (supra). The Constitution Bench judgment of this Court in the case of Bachan Singh (supra) has been summarized in paragraph 38 in the case of Machhi Singh vs. State of Punjab (1983) 3 SCC 470 and the following guidelines have been stated while considering the possibility of awarding sentence of death:

> "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 required to be taken into consideration along with the circumstances of the `Crime'.
>
> iii) Life imprisonment is the rule and death sentence is an exception, Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.
>
> iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised."

26. The judgment in the case of Bachan Singh (supra), did not only state the above guidelines in some elaboration, but also specified the mitigating circumstances which could be considered by the Court while determining such serious issues and they are as follows:

> "Mitigating circumstances. - In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:
>
> 1 (1) That the offence was committed under the influence of extreme mental or emotional disturbance.
>
> 3 (2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.
>
> 1 (3)The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

1 (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.

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

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

1 (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."

27. Now, we may examine certain illustrations arising from the judicial pronouncements of this Court. In the case of D.K. Basu v. State of West Bengal [(1997) 1 SCC 416] this Court took the view that custodial torture and consequential death in custody was an offence which fell in the category of rarest of rare cases. While specifying the reasons in support of such decision, the Court awarded death penalty in that case. In the case of Santosh Kumar Satishbhushan Bariyar vs. State of Maharashtra [(2009) 6 SCC 498], this Court also spelt out in paragraphs 56 to 58 that nature, motive, impact of a crime, culpability, quality of evidence, socio-economic circumstances, impossibility of rehabilitation are the factors which the court may take into consideration while dealing with such cases. In that case the friends of the victim had called him to see a movie and after seeing the movie, a ransom call was made, but with the fear of being caught, they murdered the victim. The Court felt that there was no evidence to show that the criminals were incapable of reforming themselves, that it was not a rarest of rare case, and therefore, declined to award death sentence to the accused. Interpersonal circumstances prevailing between the deceased and the accused was also held to be a relevant consideration in the case of Vashram Narshibhai Rajpara v. State of Gujarat [AIR 2002 SC 2211] where constant nagging by family was treated as the mitigating factor, if the accused is mentally unbalanced and as a result murders the family members. Similarly, the intensity of bitterness which prevailed and the escalation of simmering thoughts into a thirst for revenge and retaliation were also considered to be a relevant factor by this Court in different cases. This Court in the case of Satishbhushan Bariyar (supra) also considered various doctrines, principles and factors which would be considered by the Courts while dealing with such cases. The Court discussed in some elaboration the applicability of doctrine of rehabilitation and the doctrine of prudence. While considering the application of the doctrine of rehabilitation and the extent of weightage to be given to the mitigating circumstances, it noticed the nature of the evidence and the background of the accused. The conviction in that case was entirely based upon the statement of the approver and was a case purely of circumstantial evidence. Thus, applying the doctrine of prudence, it noticed the fact that the accused were unemployed, young men in search of job and they were not criminals. In execution of a plan proposed by the appellant and accepted by others, they kidnapped a friend of theirs. The kidnapping was done with the motive of procuring ransom from his family but later they murdered him because of the fear of getting caught, and later cut the

body into pieces and disposed it off at different places. One of the accused had turned approver and as already noticed, the conviction was primarily based upon the statement of the approver. Basing its reasoning on the application of doctrine of prudence and the version put forward by the accused, the Court, while declining to award death penalty and only awarding life imprisonment, held as under: -

> "135. Right to life, in its barest of connotation would imply right to mere survival. In this form, right to life is the most fundamental of all rights. Consequently, a punishment which aims at taking away life is the gravest punishment. Capital punishment imposes a limitation on the essential content of the fundamental right to life, eliminating it irretrievably. We realize the absolute nature of this right, in the sense that it is a source of all other rights. Other rights may be limited, and may even be withdrawn and then granted again, but their ultimate limit is to be found in the preservation of the right to life. Right to life is the essential content of all rights under the Constitution. If life is taken away, all other rights cease to exist.
>
> XXX XXX XXX XXX XXX
>
> 168. We must, however, add that in a case of this nature where the entire prosecution case revolves round the statement of an approver or dependant upon the circumstantial evidence, the prudence doctrine should be invoked. For the aforementioned purpose, at the stage of sentencing evaluation of evidence would not be permissible, the courts not only have to solely depend upon the findings arrived at for the purpose of recording a judgment of conviction, but also consider the matter keeping in view of evidences which have been brought on record on behalf of the parties and in particular the accused for imposition of a lesser punishment. A statement of approver in regard to the manner in which crime has been committed vis-a-vis the role played by the accused, on the one hand, and that of the approver, on the other, must be tested on the touchstone of the prudence doctrine
>
> 169. The accused persons were not criminals. They were friends. The deceased was said to have been selected because his father was rich. The motive, if any, was to collect some money. They were not professional killers. They have no criminal history. All were unemployed and were searching for jobs. Further if age of the accused was a relevant factor for the High Court for not imposing death penalty on Accused No. 2 and 3, the same standard should have been applied to the case of the appellant also who was only two years older and still a young man in age. Accused Nos. 2 and 3 were as much a part of the crime as the appellant. Though it is true, that it was he who allegedly proposed the idea of kidnapping, but at the same time it must not be forgotten that the said plan was only executed when all the persons involved gave their consent thereto.
>
> 171. Section 354(3) of the Code of Criminal Procedure requires that when the conviction is for an offence punishable with death or in the alternative with imprisonment for life or imprisonment for a term of years, the judgment shall state the

reasons for the sentence awarded, and in the case of sentence of death, the special reasons thereof. We do not think that the reasons assigned by the courts below disclose any special reason to uphold the death penalty. The discretion granted to the courts must be exercised very cautiously especially because of the irrevocable character to death penalty. Requirements of law to assign special reasons should not be construed to be an empty formality.

172. We have previously noted that the judicial principles for imposition of death penalty are far from being uniform. Without going into the merits and demerits of such discretion and subjectivity, we must nevertheless reiterate the basic principle, stated repeatedly by this Court, that life imprisonment is the rule and death penalty an exception. Each case must therefore be analyzed and the appropriateness of punishment determined on a case-by- case basis with death sentence not to be awarded save in the `rarest of rare' case where reform is not possible. Keeping in mind at least this principle we do not think that any of the factors in the present case discussed above warrants the award of the death penalty. There are no special reasons to record the death penalty and the mitigating factors in the present case, discussed previously, are, in our opinion, sufficient to place it out of the "rarest of rare" category.

173. For the reasons aforementioned, we are of the opinion that this is not a case where death penalty should be imposed. The appellant, therefore, instead of being awarded death penalty, is sentenced to undergo rigorous imprisonment for life. Subject to the modification in the sentence of appellant (A1) mentioned hereinbefore, both the appeals of the appellant as also that of the State are dismissed."

28. The above principle, as supported by case illustrations, clearly depicts the various precepts which would govern the exercise of judicial discretion by the Courts within the parameters spelt out under Section 354(3) of the Cr.P.C. Awarding of death sentence amounts to taking away the life of an individual, which is the most valuable right available, whether viewed from the constitutional point of view or from the human rights point of view. The condition of providing special reasons for awarding death penalty is not to be construed linguistically but it is to satisfy the basic features of a reasoning supporting and making award of death penalty unquestionable. The circumstances and the manner of committing the crime should be such that it pricks the judicial conscience of the Court to the extent that the only and inevitable conclusion should be awarding of death penalty.

29. In the present case, the accused belonged to the armed forces, his father had married for the second time and had children from the second wife. There were continuous quarrels with regard to the division of property and during these quarrels the accused is stated to have even hit his father. It was a pressure which had increased with the passage of time and probably this frustration attained the limit of commission of such a heinous crime by the accused. Surely, the manner in which the crime has been committed is deplorable but the attendant circumstances and the fact that he even administered the sweets (pedas) containing sedatives/poisonous substance to his own wife Sunita Goraksha Adsul, the Accused no.3,

shows that his frustration, and probably greed, for the property had attained volcanic dimensions. The intensity of bitterness between the members of the family had exacerbated the thoughts of revenge and retaliation in him. The constant nagging would have to be taken as a mitigating circumstance in the commission of this crime. Resultantly, in view of the above factual matrix and the legal analysis, we do not find that the present case falls in the category of `rarest of rare cases'.

30. For the reasons afore-recorded, we dismiss both the appeals.