

**SUPREME COURT OF INDIA**

Sandesh Alias Sainath Kailash Abhang

Vs.

State of Maharashtra

C.A.No.973of2011

(Swatanter Kumar,J.)

13.12.2012

**JUDGEMENT**

**Swatanter Kumar, J.**

1.The present appeal is directed against the judgment of conviction and order of sentence passed by a Division Bench of the High Court of Judicature at Bombay dated 23rd, 24th and 25th March, 2011 awarding death penalty to the present appellant.

2. The learned counsel appearing for the appellant, the sole accused, at the very outset stated that the appellant does not wish to challenge the order of conviction but is only contending that the present case does not fall under the category of rarest of the rare case where penalty of death could be imposed upon the accused. Thus, the controversy in the present appeal before this Court falls within a narrow compass.

3. In order to examine the sustainability of the submission raised on behalf of the appellant, it is necessary for the Court to refer in brief to the case of the prosecution and the evidence on record.

4. The complaint was lodged by Sumitra Ramesh Birajdar, PW1, maternal aunt of Shubhada Jaydeep Patil, PW2, who was resident of Flat No.D-202, Purple Castle Society, Chintamaninagar, Bibwewadi, Pune. She stated that deceased Shalini Uddahaurao Jadhav was her close relative. PW2 and her husband Jaydeep Patil, PW8, along with the deceased (their grandmother) were living in the same building in Flat No.301 since 31st August, 2007. Jaydeep Patil, PW8 was serving in the ICICI Bank. The incident took place on 10th September, 2007 when the complainant was at her house. At about 9.45 a.m., the deceased had come to her house while she was going to temple. The deceased was at the house of the complainant till about 11.30 a.m. when she left saying that she had to arrange her baggage as she wanted to go to Pandharpur. Both the complainant and PW2 were at their respective flats. At about 3.30 p.m., PW2 gave a call through the window to the complainant addressing as

mami mami. Hearing the sound, the complainant sent her maid servant Chingu to see as to why PW2 was calling for her. The maid servant went to the gallery of her flat and told the complainant that she saw that blood was smeared on the face of PW2. Immediately the complainant rushed to the flat of PW2, which was on the 3rd floor and noticed that the door was bolted from outside. She opened the door from outside and PW2 opened the door from inside. PW2 was seen completely naked and there was blood all over her body. The complainant helped PW2 to wear the clothes to cover herself up. Thereafter, the complainant went inside the bed room, she saw the deceased, mother-in-law of PW2, lying in a pool of blood. The wrist of her left hand and four fingers of her right hand were mercilessly amputated. Her neck had also been slit. Blood was lying everywhere in the flat. The complainant, without any loss of time, gave a call to Jaydeep Patil, PW8, on his mobile and narrated the condition of the house. She also gave a call to her husband. Within 15 to 20 minutes, PW8 reached the house. He shifted his wife, PW2 in a car. They proceeded towards Bharati Vidyapeeth Hospital. On the way, PW2 disclosed to the complainant that at about 2.00 to 2.15 p.m. one young boy came to her flat. The door was opened by her mother-in-law, the deceased. The young boy said that he was a mechanic and was sent by sahib (Jaydeep Patil) to repair the car on which PW2 told him that their car was not out of order and asked the young boy to go back. When she tried to contact her husband on mobile phone, the said young boy snatched away the mobile from her. He closed the door of the flat from inside. Thereupon the accused started assaulting both, PW2 and her mother-in-law, the deceased with a sickle like weapon. They tried to resist his act. At that time, he inflicted blows on the hands of the deceased by the weapon after which she fell down. Further, the case of the prosecution is that the said young man assaulted the deceased a number of times and while she was on the ground and the accused demanded the ornaments on the person of the deceased. He also snatched the Mangalsutra from PW2 and her gold chain but did not stop the assault.

5. PW2 was in her 5 th month of pregnancy and, therefore, tried her best to avoid any injury on her stomach and, in fact, suffered all the injuries on her back. The accused further demanded for jewellery and cash that was lying in the house, which probably was his main object. PW2 threw the purse containing gold ornaments in front of him. He collected them but at this stage when the deceased made some movement on the floor, he gave her another fatal blow on the neck which ultimately resulted in her death. When he demanded more cash and jewellery, PW2 even offered him to search the entire house and take away what he wanted and requested him to spare them. Upon this, the accused became more aggressive and asked PW2 to remove her clothes and committed rape on her under the threat of further assault. Even thereafter, he kept inflicting blows on PW2. He then went to the bathroom, cleaned himself and fled from the flat and bolted the door from outside. PW2 crawled to the

bedroom and from there she screamed for her mami (PW1), the complainant. PW2, according to her statement, moved with great difficulty to unbolt the door from inside when the complainant and her maid servant had come.

6. The complainant called up PW8. Police was also informed and it reached the spot. When PW2 was taken to Bharti Vidyapeeth Hospital, they advised to refer her to Ruby Hall Clinic and, thus, PW2 was shifted to that clinic at about 5.30 p.m., where she was operated upon immediately and was in the ICU upto 18th September, 2007 and she was discharged on 28th September, 2007.

7. Having received the information from PW1, the complainant, Police had commenced its investigation. The Police brought the dog squad as well as photographer, PW11, to the place of offence. On 11th September, 2007, the police even went to get information from PW2 in the hospital. On the basis of the description given by her, PW12, Girish Anant Charwad, had prepared the sketch of the accused which was widely circulated including publication in the local newspapers. PW16, Ashok Shelke, the Inspector from the Crime Branch got an information that the suspect was residing at upper Indira Nagar area. When the Police party went there and made inquiries, the suspect was not traced. The Police traced the native place of the accused, Awasari Khurd in Ambegaon Taluka and found that his name was Sandesh Kailas Abhang. In furtherance to the information received, the accused was arrested from his house in Awasari Khurd Village and was taken into custody.

8. The inquest panchnama of the body of the deceased, Shalini Jadhav, was drawn as Exhibit 45 on 10th September, 2007. The post mortem report, Exhibit 40, was prepared and signed by PW7, Dr. Milind Sharad Wable. After the arrest of the accused, recovery of the articles, viz., the gold ornaments, mobile phone, clothes of the accused as well as the weapon used, was effected. The articles recovered were sent for chemical analysis and report thereof is filed on record. The Investigating Officer, after recording the statement of witnesses and collecting other evidence, filed the charge-sheet, Exhibit 4, before the Court of competent jurisdiction. The accused was charged with the offences punishable under Sections 302, 307, 397, 394, 376(e) of the Indian Penal Code, 1860 (for short, the IPC), Section 25 of the Arms Act and Section 135 of the Bombay Police Act.

9. The prosecution examined as many as 18 witnesses. It may be noticed at this stage that the Trial Court has dealt with the extra-judicial confession made by the accused to his friend, Rajendra Baban Sawant, PW13, at great length and found that his statement Exhibit 59 recorded under Section 164 of the Code of Criminal Procedure, 1973 (for short, the Code) fully corroborated the case of the prosecution. However, there was no reason for PW13 to make any false statement or for the Trial Court to disbelieve the same. The Trial Court by a

very detailed judgment held the accused guilty for offences punishable under Sections 302, 307, 394, 397 and 376(e) IPC. It heard the accused on the quantum of sentence as well as referred to the judgment of this Court in the case of Bachan Singh v. State of Punjab [(1980) 2 SCC 684]. After analysing the principles enunciated in that case, the Trial Court came to the conclusion that the case fell in the category of the rarest of rare cases and awarded the punishment as follows:

“1) Accused Sandesh alias Sainath Kailas Abhang is found guilty for the offence punishable under Sections 302, 307, 376(e), 394, 397 of Indian Penal Code.

2) Accused is convicted for offence punishable under Section 302 of Indian Penal Code and he is sentenced to death. Accused shall be hanged by neck till he is dead.

Death sentence shall not be executed unless it is confirmed by the Honble High Court.

3) Accused is convicted for offence punishable under Section 307 of Indian Penal Code and he is sentenced to suffer R.I. for 10 years and to pay a fine of Rs.5000/- in default to suffer R.I. for six months.

4) Accused is convicted for offence punishable under Section 376(e) of Indian Penal Code and he is sentenced to suffer imprisonment for life and to pay a fine of

5) Accused is convicted for offence punishable under Section 394 read with Section 397 of Indian Penal Code and he is sentenced to suffer imprisonment for life and to pay a fine of Rs.5000/- in default to suffer R.I. for six months.

6) Accused is acquitted for offence punishable under Section 135 of Bombay Police Act and under Section 25 of Arms Act.

7) All the Jail sentences to run concurrently.

8) Accused is in jail since 19.09.2007. He is entitled for set off.

9) The seized gold ornaments and mobile handset be returned to PW Shubhada Patil after the period of appeal will be over.

10) Remaining articles being valueless be destroyed after the period of appeal will be over.

11) Record and proceedings be sent immediately to the Honble High Court for confirmation of the death sentence.”

10. The appellant challenged the correctness of the judgment of conviction and order of sentence before the High Court by filing a Regular Criminal Appeal being Criminal Appeal No.7 of 2011. Along with this, the Criminal Confirmation Case No.1 of 2010 for confirmation or otherwise of death sentence was listed before the High Court. The High Court by a detailed judgment confirmed the death sentence as well as dismissed the appeal filed by the accused, giving rise to filing of the present appeal.

11. As already noticed, we are only concerned with the question, whether imposition of death penalty is justified in the facts of the present case or not. Though in view of the statement made by the learned counsel appearing for the appellant, there is hardly any occasion for us to discuss the prosecution evidence in any greater detail, still it is necessary for the Court to examine the intent of the accused, the manner in which the crime was committed, the impact of such crime upon the society and finally the possibility of the accused being reformed.

12. The prosecution evidence, particularly the statements of PW1, PW2, PW3, PW4, PW7, PW8 and PW13 clearly establish that the accused had entered the house of the deceased and PW2 with an intention to commit robbery and was smelling of alcohol. However, he committed the crime in a very brutal manner. He did not heed to the request of PW2 to take away all the ornaments and money that were available in their house and to spare the life of both of them. According to the prosecution evidence, he did not accede to that request and even after taking the gold kept on inflicting injuries upon the deceased as well as PW2. The worst assault of the accused was that he asked PW2 to remove her clothes and committed rape on her while she was five months pregnant. Ultimately, he gave the last fatal blow with the kukri (the weapon he was carrying) on the neck of the deceased resulting in her immediate death. PW2 displayed wisdom and bravery and received the injuries on her back. She resisted the attack to the extent it was possible for her in order to survive and protect the child in her womb from any harm.

13. The appellant committed a cold blooded murder and his conduct was that of a brutal person. According to the statement of PW13, Rajendra Sawant, he had murdered both the ladies which shows that he came out of the house thinking that both, the deceased and PW2, had died. To her good fortune, PW2 survived and was able to establish the case of the prosecution beyond reasonable doubt. The learned counsel appearing for the appellant argued that the accused was under the influence of liquor and was unmindful of the consequences of his crime. He did not commit the crime with any premeditation, was arrested nine days after the date of occurrence, is a young person of 23 years of age are the mitigating circumstances, and that certainly the present case does not fall in the category of a rarest of rare case. He also submitted that the prosecution has led no evidence to show that the deceased is incapable of being reformed. In support of his contention, he has relied upon various judgments of this

Court in the cases of Mohd. Chaman v. State (NCT of Delhi) [(2001) 2 SCC 28]; Sebastian @ Chevithiyam v. State of Kerala [(2010) 1 SCC 58]; Rameshbhai Chandubhai Rathod v. State of Gujarat [(2011) 2 SCC 764]; Rajesh Kumar v. State through Government of NCT Delhi [(2011) 13 SCC 706]; and Amit v. State of Uttar Pradesh [(2012) 4 SCC 107].

14. On the contrary, the contention on behalf of the State is that it was a brutal murder of an innocent lady and is a case where direct evidence (eye-witness PW2) has clearly stated the barbaric manner in which the offence was committed. The accused showed no respect for human life as he inflicted 21 injuries upon the deceased and 19 injuries upon PW2. He assaulted two helpless ladies and that too for a small gain. The counsel for the State placed reliance on the judgment of this Court in the case of Rajendra Prahladrao Wasnik v. State of Maharashtra [(2012) 4 SCC 37].

15. First and foremost, we must notice the authoritative statement by a Constitution Bench of this Court in the case of Bachan Singh (supra), where the Court discussed the entire law in relation to sentencing with a definite reference to the imposition of death penalty and took a somewhat divergent view than was taken in the case of Jagmohan Singh v. State of U.P. [(1973) 1 SCC 20]. Keeping in view the change in legislative policy and various pronouncements of this Court, the Constitution Bench made a shift in approach from an entirely crime based approach to an approach that focused on both, the crime and the criminal. Some reservations were expressed by the Bench in regard to the opinion expressed in the case of Jagmohan (supra). The Courts, within the ambit of Section 354(3) of the Code of Criminal Procedure, were recording reasons with reference to mitigating and aggravating circumstances. However, a Bench of this Court in the case of Sangeet & Anr. v. State of Haryana [2012 (11) SCALE 140] took a view that such approach needed a fresh look, in view of the principles stated in the case of Bachan Singh (supra).

16. The paradigm shift in the criminal jurisprudence would not substantially alter the substance of the approach since ingredients relating to a criminal as well as the attendant circumstances of a crime will have to be considered in all events. The Court would have to consider each case on its own merits. It is neither possible nor permissible to define or lay down any straightjacket formula which can universally be applied to all cases requiring Courts determination in relation to imposition of death penalty. The Court, however, should, inter alia, consider the following points.

17. First of all, the Court has to keep in mind that the prosecution has been able to prove its case beyond reasonable doubt and the accused is guilty of the offence where prescribed punishment is that of death. Secondly, the Court has to examine the cumulative effect of the prosecution evidence and the stand of the accused. This would include discussion on the

manner in which the crime was committed, the intent and motive of the accused, situation and mental condition of the accused at the relevant time, attendant circumstances relating to the commission of offence and the possibility of the accused being reformed if permitted to join the mainstream society. As a corollary to this the Court would have to determine whether the accused would be a menace or an irreformable anti-social element to the society.

18. Consideration of these aspects should automatically result in recording of special reasons where the Court is of the opinion that penalty of death should be imposed which is in line with the provisions of Section 354(3) which places a mandate upon the Court to apply its judicious mind and record special reasons for imposing death penalty. It has been settled by this Court that with the legislative changes, the principle death is the rule and life an exception, where it was so provided under the Code of Criminal Procedure, has shifted to life is the rule and death an exception. It is only when exceptional penalty of death is sought to be imposed by the Court that the Court is expected to record special reasons, satisfying the above criteria.

19. The Trial Court has recorded reasons for awarding the sentence of death to the accused. These reasons elucidate how brutally the offence was committed and that the accused treated the victims with utmost disregard, both physically and mentally. Rape of a pregnant lady by the accused was totally inhuman and unwarranted. The learned counsel for the appellant has not been able to dispute these reasons or the fact that they are matters of serious concern.

20. However, the Trial Court as well as the High Court has not considered, in its correct perspective, the state of mind of the accused at the relevant time, his capacity to realize the consequences of the crime he was committing and the lack of intent on his part to commit the murder. The accused had not entered the house of PW2 with the intention to kill either of them. In fact, and indisputably, he entered the house of the deceased with the mind of committing robbery which he committed by taking away the gold ornaments, cell phone and money etc. However, in this process, he not only repeatedly injured the deceased and PW2, but also committed rape on PW2.

21. One very vital factor which has not been given any significance by the Courts in the impugned judgments is that the accused was smelling of alcohol. According to PW2, he smelled of alcohol and his eyes were red. Both these factors show that the accused may have been drunk and he may not exactly be aware of the consequences of his acts. This view finds support from the fact that if the accused had intended to kill deceased and PW2, it was not expected of him to inflict 21 and 19 injuries on their bodies respectively. He could have simply given an injury on the vital parts of their body and put them to death. His conduct in inflicting large number of injuries and even amputating the fingers of the deceased clearly

reflects the conduct of an abnormal person. Absence of normal behaviour even during the commission of the crime is a relevant consideration. It is evident from the evidence on record that the accused was not in a balanced state of mind and in fact had no control over his mind. He was unable to decipher the consequences of his crime and the result that is likely to flow from such commission. In the facts and circumstances of the case, the Court cannot ignore such an abnormal behaviour of the accused. As already noticed, it is not only the crime and its various facets which are the foundation for formation of special reasons as contemplated under Section 354(3) of Cr.P.C. for imposing death penalty but it is also the criminal, his background, the manner in which the crime was committed and his mental condition at the relevant time, the motive of the offence and brutality with which the crime was committed are also to be examined. The doctrine of rehabilitation and doctrine of prudence are the other two guiding principles for proper exercise of judicial discretion.

22. Now, we may refer to some cases that have been relied upon by the learned counsel appearing for the appellant.

23. In the case of Rameshbhai Chandubhai Rathod (supra), the Court while dealing with a case of rape and murder of a child by the watchman, commuted the death sentence to that of imprisonment for life, directing it to be of full life on the ground that it did not fall in the category of rarest of rare cases, because the accused was young person of 27 years and there was possibility of his rehabilitation. Even in the case of Amit (supra), this Court after taking into consideration the fact that there was a possibility of the accused being reformed and he not being involved in similar crimes earlier, commuted the death sentence to life imprisonment in a case of kidnapping, rape, commission of unnatural offence, murder and even causing disappearance of evidence. Similar approach was also adopted by this Court in the case of Sebastian (supra).

24. We have already noticed that it is not possible to lay down as a principle of law as to in which cases the death penalty should or should not be imposed. The above judgments are on their own facts, but one aspect that certainly is stated in these judgments is the possibility of the accused being reformed, he being young and having no criminal involvement in similar crimes are relevant considerations. In the present case the prosecution had led no evidence to show that the appellant was a hardened criminal and there was no possibility of his being reformed. There is also no evidence to show that during the time when he was in jail, his conduct was unworthy of any concession. It is a heinous and brutal crime that the accused has committed, but other relevant considerations outweigh it for the Court to state that the present case is one that of rarest of the rarest of rare cases.

25. For the reasons afore-stated, we partially allow the appeal of the appellant and commute the death sentence to that of rigorous imprisonment for life. The life imprisonment shall be for life and the sentences shall run consecutively.