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THE SUPREME COURT CASES

(1999) 5 SCC

(1999) 5 Supreme Court Cases 1

(BEFORE DR A.S. ANAND, C.J. AND M. SRINIVASAN AND UMESH C. BANERJEE, JJ.)

JAI KUMAR .. Petitioner;

Versus

STATE OF M.P. .. Respondent.

Criminal Appeal No. 548 of 1999†, decided on May 11, 1999

A. **Penal Code, 1860 — S. 302 — Death sentence — Rarest of rare cases — Absence of mitigating factors — Murder of brother's wife and her daughter aged 8 years — Accused trying to commit rape on his brother's wife and on failing committing her brutal murder, severing her head from the body and hanging her head on the tree — Accused also committing murder of her 8-year-old daughter who had witnessed the incident — Mother of the accused testifying about the bad characteristics and reputation of the accused — Character of accused beyond redemption — Facts establishing depravity and criminality of the accused in no uncertain terms — Held, in the circumstances, accused deserves death sentence — Plea that the accused was a young man of about 22 years of age not a mitigating factor — Criminal Procedure Code, 1973, S. 354(3) — Penology — Death sentence**

The accused was charged for committing the murder of his brother's wife and her 8-year-old daughter. The prosecution case was that the accused entered the house and bolted from outside the mother's room and thereafter removed certain bricks from the wall and "choukat" thus facilitating the entry into the room where the deceased sister-in-law was sleeping with the child. The accused committed the murder of his sister-in-law at about 11.00 p.m. by parsul-blows and then kulhadi (tanga)-blows on her neck severing her head from the body and taking away her eight-year-old daughter and killing her in a jungle by axe-blows

† From the Judgment and Order dated 17-3-1998 of the Madhya Pradesh High Court in Crl. A. No. 2192 of 1997

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said to be by offering sacrifice to Mahua Maharaj and burying her in the sand covered with stones and it is thereafter that the accused came back home and carried the body of his deceased sister-in-law tied in a cloth to the jungle and hung the head tied on a branch with the hair and put the body on the trunk of the mahua tree. It was contended by the accused's counsel that the age of the accused is 22 years and he did not have any past criminal history and this is not such a case in which the accused may be awarded the maximum sentence, i.e., sentence of death. The trial Judge passed death sentence in the matter which was confirmed by the High Court. Dismissing the appeal by special leave, the Supreme Court

Held:

Corelation of aggravating and mitigating circumstances and a balance be struck on the basis of the factual matrix of the matter in issue, before the exercise of discretion in terms of the provisions of Section 302. In the matter in issue, however, there is no balancing factor so as to strike a balance. As a matter of fact aggravating factors there are aplenty and galore without any mitigating circumstances. The age of the accused being 22 years cannot, in the factual matrix of the matter under consideration, be said to be a mitigating factor. The accused is 22 years of age while the victim was aged 30 years and at the time of the unfortunate death, she was under pregnancy between 22 to 30 weeks — the other victim was an innocent girl — a child of 8 years; the murders were cold-blooded while the two victims were in a helpless and hapless situation. No amount of perversity would prompt a person to break open the door by removing the bricks from the wall and commit such gruesome murders on failure to satisfy the lust — the human lust ought to know its limits. Imaginations shall have to run wild to consider existence of any mitigating factors in the matter of sentence, having due regard to even the subsequent conduct of the accused in the matter of disposal of the bodies. (Para 21)

Can there be any mitigating circumstances on account of such a ghastly act — the answer cannot but be in the negative. The mother of the accused was bolted inside the room and she watched as a bewildered spectator from the creeks of the window and it is the mother who had given evidence about the bad characteristics and the reputation of the accused in the locality; the sister-in-law has been murdered along with an innocent child. Is this a man who deserves any sympathy from the society? Is this a man who can correct himself and the law courts ought to permit him to lead a decent life after he serves the sentence? The mother's evidence becomes material and it is on this score that it cannot be said that there are some mitigating circumstances and there is likelihood of the accused being reformed or rehabilitated. (Para 22)

The facts establish the depravity and criminality of the accused in no uncertain terms — no regard being had for the precious life of the young child also. The compassionate ground of the accused being 22 years of age cannot in the facts of the matter be termed to be at all relevant. (Para 24)

The murder was cold-blooded and brutal without any provocation. It certainly makes it a rarest of the rare cases in which there are no extenuating or mitigating circumstances. (Para 25)

Kamta Tiwari v. *State of M.P.*, (1996) 6 SCC 250 : 1996 SCC (Cri) 1298 : 1996 Cri LJ 4158; *Dhananjoy Chatterjee* v. *State of W.B.*, (1994) 2 SCC 220 : 1994 SCC (Cri) 358, *relied on*

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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 : AIR 1983 SC 957, *referred to*

a

Suggested Case Finder Search Text (*inter alia*) :

death sentence rare* case*

B. **Penal Code, 1860 — S. 302 — Sentence — Choice of sentence, death or life imprisonment — Court's discretion — Capital punishment justified only in rarest of rare cases — Criminal Procedure Code, 1973, S. 354(3) — Penology**

b

Section 302 of the Indian Penal Code authorises the court to punish the offender of murder with death or imprisonment for life — the statute therefore has provided a discretion to the court to sentence the offender either with death or with imprisonment for life: obviously, a serious decision and a heavy burden imposed on the court. This discretion conferred, however, shall have to be thus exercised in a manner and in consonance with the concept of law so as to c subserve the ends of justice. The award of death sentence though within the ambit of jurisdiction of the courts, does not clothe the courts to exercise the same in a manner indiscriminate. It is only in the rarest of the rare cases that this discretion as regards capital punishment ought to be exercised. Ours is a civilised society — a tooth for a tooth and an eye for an eye ought not to be the criterion; civilisation and the due process of law coupled with social order ought not to d permit the courts to be hasty in regard to the award of capital punishment and as a matter of fact the courts ought to be rather slow in that direction. (Para 12)

C. **Penology — Punishment should be relatable to the gravity of offence — Flexibility and adaptability of law responds to the basic need of the society — Theories of punishment — Criminology**

Justice is supreme and justice ought to be beneficial for the society so that e the society is placed in a better-off situation. Law courts exist for the society and ought to rise up to the occasion to do the needful in the matter, and as such ought to act in a manner so as to subserve the basic requirement of the society. It is a requirement of the society and the law must respond to its need. The greatest virtue of law is its flexibility and its adaptability, it must change from time to time so that it answers the cry of the people, the need of the hour and the order of the day. In the present-day society, crime is now considered a social problem f and by reason therefore a tremendous change even conceptually is being seen in the legal horizon so far as the punishment is concerned. (Para 13)

One school of thought on this score propagates that the function of the law court is that of a social reformer and as such in its endeavour to act as such, the question of a deterring punishment would not arise since the society would otherwise be further prone to such violent acts or activities by reason of the fact g that with the advancement of the age the mental frame of boys of tender age also go on changing and in the event of any arrogance being developed or a sense of revenge creeping into the society, the society would perish to the detriment of its people. The other school, however, has expressly recorded and rather emphatically that unless the severest of the severe punishments are inflicted on an offender (obviously depending upon the nature of the crime) the society would perish. (Para 14)

h

The other school professes that since one has taken the life of another that does not mean that his life shall have to be taken but during the trial if it

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transpires the method and manner or the nature of the activities which have resulted in the elimination of a human being from this world, there should not be any laxity on the part of the law courts, otherwise people will and in turn the society will be engulfed in a false sense of security of life in the event of there being the most heinous crime of the earth. (Para 15)

The law courts as a matter of fact have been rather consistent in the approach that a reasonable proportion has to be maintained between the seriousness of crime and the punishment. While it is true that a sentence disproportionately severe ought not to be passed but that does not even clothe the law courts with an option to award the sentence which would be manifestly inadequate having due regard to the nature of the offence since an inadequate sentence would fail to produce a deterrent effect on the society at large. Punishments are awarded not because of the fact that it has to be an eye for an eye or a tooth for a tooth, rather having its due impact on the society: while undue harshness is not required but inadequate punishment may lead to sufferance of the community at large. (Para 16)

D. **Criminal Procedure Code, 1973 — S. 235(2) — Requirement of affording pre-sentence hearing — Parties heard but none of them giving any documentary or oral evidence with regard to sentence — Defence lawyer merely pleading young age and absence of past criminal record of the offender — Held, in the circumstances of the case, requirement of S. 235(2) satisfied**

The statute has engrafted in the statute-book the provisions of Sections 235(2) so as to see that proper appreciation of the evidence takes place and proper opportunity of hearing as regards punishment be afforded, but if there is no taker of such an opportunity and in spite of there being lawyers appearing for the accused as well, the question of further adjournment of the matter would not arise. It is true that the obligation is not discharged by putting formal questions to the accused. The Judge is supposed to elicit materials from the accused which will have a bearing on the question of sentence and it is on this requirement of law, it has to be considered as to whether there was in fact such a genuine attempt to elicit materials but as the record depicts there was no taker of this opportunity and the defence lawyer pleaded two facts to be considered in the matter for award of punishment, viz., (*a*) the accused is aged 22 years, and (*b*) has no other past criminal record. In the instant case the trial Judge has shown utmost concern and after much deliberation came to the conclusion in the matter of grant of punishment. The judgment was adjourned and the lawyer was asked — and prompt came the reply that the sentence ought to be considered by reason of the age and no past record. Both these aspects have been duly considered by the Sessions Judge and there is no infirmity therein. On the contrary the aggravating situations are galore to support the finding of the Sessions Judge as confirmed by the High Court. (Paras 18 and 20)

Muniappan v. *State of T.N.*, (1981) 3 SCC 11 : 1981 SCC (Cri) 617; *Santa Singh* v. *State of Punjab*, (1976) 4 SCC 190 : 1976 SCC (Cri) 546; *Allauddin Mian* v. *State of Bihar*, (1989) 3 SCC 5 : 1989 SCC (Cri) 490, *referred to*

Ravindra Trimbak Chouthmal v. *State of Maharashtra*, (1996) 4 SCC 148 : 1996 SCC (Cri) 608 : (1996) 1 Crimes 137; *Kamta Tiwari* v *State of M.P.*, (1996) 6 SCC 250 : 1996 SCC (Cri) 1298 : 1996 Cri LJ 4158; *Amrutlal Someshwar Joshi* v. *State of Maharashtra*, (1994) 6 SCC 186 : 1994 SCC (Cri) 1591 *and* (1994) 6 SCC 200 : 1994 SCC (Cri) 1604, *cited*

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Suggested Case Finder Search Text (*inter alia*) :

crpc "235(2)"

a Advocates who appeared in this case :

S. Muralidhar (Amicus curiae), Advocate, for the Appellant;
Uma Nath Singh and Naveen Singh, Advocates, for the Respondent.

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

1. (1996) 6 SCC 250 : 1996 SCC (Cri) 1298 · 1996 Cri LJ 4158, *Kamta Tiwari* v. *State of M.P.* — 11*c-d*, 14*a*
2. (1996) 4 SCC 148 · 1996 SCC (Cri) 608 : (1996) 1 Crimes 137, *Ravindra Trimbak Chouthmal* v. *State of Maharashtra* — 11*a-b*
3. (1994) 6 SCC 186 . 1994 SCC (Cri) 1591 *and* (1994) 6 SCC 200 : 1994 SCC (Cri) 1604, *Amrutlal Someshwar Joshi* v. *State of Maharashtra* — 11*c-d*
4. (1994) 2 SCC 220 : 1994 SCC (Cri) 358, *Dhananjoy Chatterjee* v. *State of W.B.* — 15*a-b*
5. (1989) 3 SCC 5 . 1989 SCC (Cri) 490, *Allauddin Mian* v. *State of Bihar* — 8*f-g*
6. (1983) 3 SCC 470 : 1983 SCC (Cri) 681 : AIR 1983 SC 957, *Machhi Singh* v. *State of Punjab* — 13*h*
7. (1981) 3 SCC 11 : 1981 SCC (Cri) 617, *Muniappan* v. *State of T.N.* — 7*f-g*
8. (1980) 2 SCC 684 : 1980 SCC (Cri) 580, *Bachan Singh* v. *State of Punjab* — 12*f-g*, 13*h*
9. (1976) 4 SCC 190 : 1976 SCC (Cri) 546, *Santa Singh* v. *State of Punjab* — 8*c*

The Judgment of the Court was delivered by

BANERJEE, J.— Leave granted.

2. This appeal by the grant of special leave is directed against the order of confirmation of death sentence by the Division Bench of the High Court of Madhya Pradesh at Jabalpur. Since the appeal pertains to confirmation of death sentence by the High Court and the submission in support of the appeal is restricted to the question of sentence, it would be convenient to note at this juncture that it is only in the rarest of rare cases that this punishment is to be inflicted and it is on this score that Mr Muralidhar, the amicus curiae appointed in the matter with his usual ability strongly contended that the punishment awarded by the Sessions Judge and as confirmed by the High Court, runs counter to the basic concept of law and justice of the situation. As a part of the submission, Mr Muralidhar placed strong reliance on Sections 235(2) and 354(3) of the Code of Criminal Procedure. But before consideration of the submissions on the legal issue as above, it would be convenient to advert to the factual matrix of the matter in issue, in order to assess the situation as to whether the matter in issue in fact falls squarely and evenly in the category of rarest of the rare cases.

3. The factual score depicts that the appellant was charged under Section 302 read with Section 201 for committing the murder of deceased Dev Vati, aged 30 years and a girl child Renu, aged 8 years, on the night of 7-1-1997. Both the lady and the girl child, however, were related to the accused, being his sister-in-law (brother's wife) and niece respectively. Apart from the evidence tendered before the Court by the mother and the nephew respectively of the accused, the latter himself in his examination under Section 313 of the Code categorically stated and admitted the factum of

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murder — the situation, therefore, is that the accused admits of murdering his sister-in-law and niece — and the reason put forth — the sister-in-law had not been giving him enough food and as such on being enraged therewith, this offence was committed — but what about the child? Significantly there is no whisper pertaining thereto — is it because that the child witnessed the gruesome murder of the mother and as such the child had also to be eliminated — maybe, but let us not proceed on any hypothesis, the fact remains however, that both the Sessions Judge and the High Court disbelieved this version of the accused.

4. The mother in her evidence in no uncertain terms stated that there was an attempt to commit rape on the sister-in-law and by reason of resistance, the rapist committed the offence and on the same being put forth to the accused — the answer comes that all the children of the sister-in-law were illegitimate children and her visit to her father's place and affinity with friends in that area had brought about this situation of having two children. Incidentally, however, the lady murdered was in an advanced stage of pregnancy at the time of her death.

5. The evidence on record depicts that on the fateful night of 7-1-1997, at Village Rakri Tola, Tikuri, District Rewa, Madhya Pradesh, the accused entered the house and bolted from outside the mother's room and thereafter removed certain bricks from the wall and "choukat" thus facilitating the entry into the room where the deceased sister-in-law was sleeping with the child and had to face this gruesome death at the hands of her brother-in-law. The evidence on record depicts that the accused committed the murder of his sister-in-law at about 11.00 p.m. by parsul-blows and then kulhadi (tanga)-blows on her neck severing her head from the body and taking away her eight-year-old daughter Renu and killing her in a jungle by axe-blows said to be by offering sacrifice to Mahua Maharaj and burying her in the sand covered with stones and it is thereafter that the accused comes back home and carries the body of his deceased sister-in-law tied in a cloth to the jungle and hung the head tied on a branch with the hair and put the body on the trunk of the mahua tree.

6. As regards the injuries suffered, PW 11 Dr R.R. Misra stated:

"(*1*) Rigor mortis was present over the body and clotted blood was present all over the body. Head was separated from the body. Whole face, head and hair were stained with blood. Clothes, saree, blouse, petticoat were also stained with blood. Left eye was damaged. Lacerated wound at the bridge of nose, size 3x2x1 cm. Length, width and depth and bone of nose fractured.

(*2*) Incised wound on occipital region of head, size was 13 cm x 4 cm x 4 cm length, width and depth. Bone at the place of injury was cut, brain matter was visible at that place and damaged.

(*3*) Incised wound on upper part of neck. Head was separated from the body. All structure of neck, muscles, veins were cut due to this injury.

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(*4*) Incised wound on middle finger of left hand, ring finger and index finger and injury of size 3x2x1 cm was present on last vein.

All the above-mentioned injuries appeared to be caused with a hard and blunt object.

On the same date, the same constable had brought before me the dead body of deceased Renu, daughter of Gulab Prasad, aged 7 years for the post-mortem. I started post-mortem on the dead body at 2.30 p.m. and found following in the examination:

External examination

Rigor mortis was present all over the body and dust particles were attached all over the body, clotted blood was present all over the body. All the clothes were bloodstained.

(*1*) Incised wound on front of chest on right side, size was 4.5 cm x 1½ x 1 cm.

(*2*) Incised wound on left side of neck, middle part of back of neck size was 7 cm x 6 cm x 2 cm. At the place of wound muscles, and veins were cut. 3rd and 4th vertebrae of neck were fractured.

(*3*) Incised wound on left side of cheek. Size was 6x3x3 cm and mandible bone was fractured and it was in the left side.

(*4*) Incised wound on right index finger and middle finger. Size was 2x1x1 cm. Middle finger of left hand was found cut and separated means upper portion was separate."

7. It is in this evidentiary backdrop that the learned Sessions Judge thought it fit to pass death sentence in the matter and which stands confirmed by the High Court and it is on this perspective that the basic issue of punishment ought to be assessed.

8. Turning attention on to the issue as regards non-compliance with Section 235(2) of the Code Mr Muralidhar contended that there has been a violation of the mandatory legal requirement of an effective and substantial opportunity to be given to the accused for being heard on the question of sentence. It has been submitted that the requirement of hearing of the accused on the question of sentence, upon a plain reading of Section 235(2) is not an empty formality but a mandatory requirement and in support of his contention placed strong reliance on the decision of this Court in the case of *Muniappan* v. *State of T.N.*[1] wherein this Court at p. 13 observed: (SCC pp. 13-14, para 2)

"We are also not satisfied that the learned Sessions Judge made any serious effort to elicit from the accused what he wanted to say on the question of sentence. All that the learned Judge says is that 'when the accused was asked on the question of sentence, he did not say anything'. The obligation to hear the accused on the question of sentence which is imposed by Section 235(2) of the CrPC is not discharged by putting a formal question to the accused as to what he has to say on the question

1 (1981) 3 SCC 11 : 1981 SCC (Cri) 617

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of sentence. The Judge must make a genuine effort to elicit from the accused all information which will eventually bear on the question of sentence. ... Questions which the Judge can put to the accused under Section 235(2) and the answers which the accused makes to those questions are beyond the narrow constraints of the Evidence Act. The court, while on the question of sentence, is in an altogether different domain in which facts and factors which operate are of an entirely different order than those which come into play on the question of conviction."

9. Mr Muralidhar contended that there are certain other factors which shall also have to be taken into account by the Court in deciding upon the appropriate sentence to wit: his education, his home life, social adjustments and the emotional and mental conditions of the offender and it is in this context that reliance was placed on the decision of this Court in *Santa Singh* v. *State of Punjab*[2] wherein this Court observed: (SCC p. 195, para 3)

"The reason is that a proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances — extenuating or aggravating — of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of 'the offender', the prospects for the rehabilitation of the offender, the possibility of return of the offender to a normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence. These are factors which have to be taken into account by the court in deciding upon the appropriate sentence, and, therefore, the legislature felt that, for this purpose, a separate stage should be provided after conviction when the court can hear the accused in regard to these factors bearing on sentence and then pass proper sentence on the accused. Hence, the new provision in Section 235(2)."

10. Mr Muralidhar contended further that the constitutional basis for recognising this inviolable right of the accused has also been very lucidly elucidated by this Court in *Allauddin Mian* v. *State of Bihar*[3] wherein this Court at pp. 20-21 of the Report observed: (SCC para 10)

"The requirement of hearing the accused is intended to satisfy the rule of natural justice. It is a fundamental requirement of fair play that the accused who was hitherto concentrating on the prosecution evidence on the question of guilt should, on being found guilty, be asked if he has anything to say or any evidence to tender on the question of sentence. This is all the more necessary since the courts are generally required to

2 (1976) 4 SCC 190 1976 SCC (Cri) 546
3 (1989) 3 SCC 5 . 1989 SCC (Cri) 490

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make the choice from a wide range of discretion in the matter of sentencing. To assist the court in determining the correct sentence to be imposed the legislature introduced sub-section (2) to Section 235. The said provision therefore satisfies a dual purpose; it satisfies the rule of natural justice ... and at the same time helps the court to choose the sentence to be awarded. ... there can be no doubt that the provision is salutary and must be strictly followed. It is clearly mandatory and should not be treated as a mere formality. ... In a case of life or death ... the presiding officer must show a high degree of concern for the statutory right of the accused and should not treat it as a mere formality.... We think as a general rule the trial courts should after recording the conviction adjourn the matter to a future date and call upon the prosecution as well as the defence to place the relevant material bearing on the question of sentence before it and thereafter pronounce the sentence to be imposed on the offender."

11. Before launching a discussion on the merits of the submissions, it would be convenient to note the true purport of Section 302 for ascertainment of the legislative perspective.

12. Section 302 of the Indian Penal Code authorises the court to punish the offender of murder with death or imprisonment for life — the statute therefore has provided a discretion to the court to sentence the offender either with death or with imprisonment for life: obviously, a serious decision and a heavy burden imposed on the court. This discretion conferred, however, shall have to be thus exercised in a manner and in consonance with the concept of law so as to subserve the ends of justice and it is on this aspect of the matter that in a long catena of cases this Court in no uncertain terms laid down that the award of death sentence though within the ambit of jurisdiction of the courts, but that does not clothe the courts to exercise the same in a manner indiscriminate. This Court has been candid enough to record on more occasions than one that it is only in the rarest of the rare cases that this discretion as regards capital punishment ought to be exercised. Ours is a civilised society — a tooth for a tooth and an eye for an eye ought not to be the criterion; civilisation and the due process of law coupled with social order ought not to permit us to be hasty in regard to the award of capital punishment and as a matter of fact the courts ought to be rather slow in that direction.

13. Justice is supreme and justice ought to be beneficial for the society so that the society is placed in a better-off situation. Law courts exist for the society and ought to rise up to the occasion to do the needful in the matter, and as such ought to act in a manner so as to subserve the basic requirement of the society. It is a requirement of the society and the law must respond to its need. The greatest virtue of law is its flexibility and its adaptability, it must change from time to time so that it answers the cry of the people, the need of the hour and the order of the day. In the present-day society, crime is now considered a social problem and by reason therefore a tremendous

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change even conceptually is being seen in the legal horizon so far as the punishment is concerned.

14. One school of thought on this score propagates that the function of the law court is that of a social reformer and as such in its endeavour to act as such, the question of a deterring punishment would not arise since the society would otherwise be further prone to such violent acts or activities by reason of the fact that with the advancement of the age the mental frame of boys of tender age also go on changing and in the event of any arrogance being developed or a sense of revenge creeping into the society, the society would perish to the detriment of its people. The other school, however, expressly recorded and rather emphatically that unless the severest of the severe punishments are inflicted on an offender (obviously depending upon the nature of the crime) the society would perish.

15. The other school professes that since one has taken the life of another that does not mean that his life shall have to be taken but during the trial if it transpires the method and manner or the nature of the activities which have resulted in the elimination of a human being from this world, there should not be any laxity on the part of the law courts, otherwise people will and in turn the society will be engulfed in a false sense of security of life in the event of there being the most heinous crime of the earth.

16. The law courts as a matter of fact have been rather consistent in the approach that a reasonable proportion has to be maintained between the seriousness of crime and the punishment. While it is true that a sentence disproportionately severe ought not to be passed but that does not even clothe the law courts with an option to award the sentence which would be manifestly inadequate having due regard to the nature of the offence since an inadequate sentence would fail to produce a deterrent effect on the society at large. Punishments are awarded not because of the fact that it has to be an eye for an eye or a tooth for a tooth, rather having its due impact on the society: while undue harshness is not required but inadequate punishment may lead to sufferance of the community at large.

17. Having dealt with the matter as above, it would be convenient to note the finding of learned Sessions Judge as regards the compliance with Section 235(2) of the Code. At p. 22 of the judgment the learned Sessions Judge records:

> "*26.* From the appreciation of the above-mentioned all the evidences, the charge against the accused Jai Kumar is found proved under Section 302 and Section 201 IPC beyond any doubt. Therefore, the judgment is adjourned for hearing on the question of order of sentence in the crime.
>
> sd/-
> R.C. Chandel,
> Sessions Judge,
> Rewa, M.P.

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27. Learned counsel of both the parties were heard on the question of sentence. Both the parties do not want to give any documentary oral verbal evidence with regard to the above. It is the request of the learned defence counsel that the age of the accused is 22 years and he has not any past criminal history and this is not such a case in which the accused may be awarded the maximum sentence, i.e., sentence of death. Learned counsel cited the reference of *Ravindra Trimbak Chouthmal* v. *State of Maharashtra*[4]. Learned Public Prosecutor pleads that the accused has committed efforts to commit rape with his motherlike bhabhi — deceased Dev Vati and on failing in this, caused her brutal death, severed her head from the body and hung her head on the tree and put her body on the tree. Along with this, the accused after taking the minor child deceased Kumari Renu to the jungle merely for the reason that she had seen the accused committing murder, firstly he offered prayers in the jungle and then he committed her murder with the axe. The above act of the accused being brutal is such a case where it is necessary to award the accused the sentence of death. Learned Public Prosecutor has given the reference of *Kamta Tiwari* v. *State of M.P.*[5] and *Amrutlal Someshwar Joshi* v. *State of Maharashtra*[6]. I have carefully perused the legal illustrations referred by the learned counsel and I agree with the principles which are propounded in the judicial illustrations.

28. As is clear from the evidence which has come up in the case that the accused tried to commit rape on the deceased Dev Vati who was his bhabhi and on protest by her against him, he committed her murder. Not to talk of this, he severed the head with kulhari and after tying the dead body in a dhoti took it in the jungle at the Hardia Pahari and there hung the head of the deceased on the tree and put the dead body of the deceased on the tree. Because the deceased Kumari Renu had seen the above accused committing the murder of the deceased Dev Vati, for this reason, the accused offered the eight-year-old minor child (female) deceased Kumari Renu who was the daughter of the deceased Dev Vati, in the jungle and further offered a broken mirror, oil of awala, mustard oil, guava, onion, bindia to Mahua Maharaj (*see* thereby Question 25 under Section 313 CrPC) and then after causing the blow with kulhari on the head of the deceased Kumari Renu committed her murder and after putting her dead body under the balu (sand) suppressed her dead body by keeping the stones on her foot and head.

* * *

Before arriving at the conclusion, I seriously discussed this over for so many times but in the circumstances of the case and keeping in view the brutal act of the accused Jai Kumar, it would not be sufficient to award him the sentence of life imprisonment and with this there would not be any proper effect on the society. Therefore keeping in view the

4 (1996) 4 SCC 148 : 1996 SCC (Cri) 608 : (1996) 1 Crimes 137
5 (1996) 6 SCC 250 : 1996 SCC (Cri) 1298 : 1996 Cri LJ 4158
6 (1994) 6 SCC 186 : 1994 SCC (Cri) 1591 *and* (1994) 6 SCC 200 : 1994 SCC (Cri) 1604

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entire circumstances, the accused Jai Kumar is sentenced to death for the offence punishable under Section 302 IPC for committing the murder of the deceased Dev Vati and the deceased Kumari Renu. Besides this, the accused is sentenced to undergo 7 years' rigorous imprisonment for the crime punishable under Section 201 of the Indian Penal Code. The accused Jai Kumar has been in judicial custody since 8-1-1997 in this case."

18. The order of the learned Sessions Judge as recorded above unmistakably depicts that both the parties were heard and none of the parties wanted to give any documentary or oral evidence with regard to the sentence. But the factum of submissions and considerations thereof as appears from paras 27 and 28 leads us to a definite conclusion that there has been no miscarriage of justice. Be it noted that the statute has engrafted in the statute-book the provisions of Sections 235(2) so as to see that proper appreciation of the evidence takes place and proper opportunity of hearing as regards punishment be afforded, but if there is no taker of such an opportunity and in spite of there being lawyers appearing for the accused as well, the question of further adjournment of the matter would not arise. It is true that the obligation is not discharged by putting formal questions to the accused. The Judge is supposed to elicit materials from the accused which will have a bearing on the question of sentence and it is on this requirement of law, let us consider as to whether there was in fact such a genuine attempt to elicit materials but as the record depicts there was no taker of this opportunity and the defence lawyer pleaded two facts to be considered in the matter for award of punishment, viz., (*a*) the accused is aged 22 years and (*b*) no other past criminal record. We wish to put on record that the trying Judge has shown utmost concern and after much deliberation came to the conclusion as above in the matter of the grant of punishment. The ratio decidendi of the cases noticed is to see that there is no statutory mockery resulting in a total miscarriage of justice. The judgment was adjourned and the lawyer was asked — and prompt came the reply that the sentence ought to be considered by reason of the age and no past record. Both these aspects have been duly considered by the Sessions Judge and we do not see any infirmity therein.

19. Incidentally the High Court on the issue of punishment did rely upon the decision of this Court in *Bachan Singh* v. *State of Punjab*[7] and a long catena of cases and upon reliance thereon, the High Court observed:

"Absence of proof of motive and youth of the accused are two factors urged here and also that he pleaded guilty. Let us ignore the statement of the mother of the accused that he wanted to violate the chastity of the deceased Dev Vati as no other overt act of the accused about it is established. It makes no difference whatsoever. His ruthlessness is indicated by the fact that he was not content with slaying Dev Vati into two pieces and hung her head and trunk on a mahua tree, but he is now murdering her reputation by totally false assertion that she

7 (1980) 2 SCC 684 : 1980 SCC (Cri) 580

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was unchaste and all her children were illegitimate. The fact that even his mother deposed against him (of course, the truth), goes to show what type of living danger he is to the family and to society. Absence of proof of motive has not been held to be so relevant a factor in reaching the conclusion about a case being rarest of rare or not. As we have seen in the above precedents, absence of motive loses its mitigating weight if the crime is concluded with extreme cruelty on an innocent child and a hapless lady. In this case, help to the lady was foreclosed by the accused by bolting his mother in the room. He broke into the room of the victim by dismantling the bricks of the wall around the door. We have found it as a fact that the plea taken by him about suspicion for the last five years against the chastity of the deceased is deliberately false and an afterthought. Similarly, his plea that the deceased child was born by illicit connections with somebody at her matrimonial home is also deliberately false. His plea that he was not being given food for the last 3 days is certainly false and an afterthought as already discussed. The deceased was his brother's wife and he had no grievance against his brother. He broke into the room of the lady, dragged her out and killed her and chopped off her head. He was not content with this. It was not sudden rage. He was acting in a calculated manner. He took away his eight-year-old niece and chopped off her neck but for slender attachment of the neck with the rest of the body. Some of her fingers were chopped off and the body was buried. He had offered 'puja' to mahua tree and hung the head of Dev Vati there, separately. So, that shows the type of man he is. All these factors are corroborated by various photographs of the scenes of killing, the scenes of body placed on mahua tree and the scene of the girl buried in sand and below stones. The mere fact that the accused admits to have killed the lady and the daughter does not amount to remorse on his part. He is justifying it on false and indecent pleas. Such calculated, ghastly and cruel murder of a hapless lady who was pregnant of about 22-30 weeks and a hapless innocent child is bound to send shock waves in the society. It creates feeling of revolt in the conscience."

20. In the contextual facts, we have no hesitation to record that as a matter of fact there are no mitigating circumstances and our search in that direction was in vain, on the contrary the aggravating situations are galore to support the finding of the Sessions Judge as confirmed by the High Court. And it is on this count Mr Muralidhar contended that hearing on the question of sentence is also necessitated by reason of the fact that till then the Judge has no opportunity to ascertain the relevant aggravating and mitigating circumstances bearing upon the question of sentence and many of which may not appear from the record of the case. We are, however, unable to record our concurrence to the submissions of Mr Muralidhar in the contextual facts as noticed hereinbefore.

21. The guidelines as formulated in *Bachan Singh case*[7] and adopted in two subsequent decisions of this Court in *Machhi Singh* v. *State of Punjab*[8]

8 (1983) 3 SCC 470 . 1983 SCC (Cri) 681 · AIR 1983 SC 957

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and *Kamta Tiwari* v. *State of M.P.*[5] do not lend any assistance to Mr Muralidhar. This Court in *Kamta Tiwari case*[5] as a matter of fact pointedly observed that corelation of aggravating and mitigating circumstances and a balance be struck on the basis of the factual matrix of the matter in issue, before the exercise of discretion in terms of the provisions of Section 302. In the matter in issue, however, we do not find any balancing factor so as to strike a balance. As a matter of fact aggravating factors there are aplenty and galore without any mitigating circumstances as noticed above. The age of the accused being 22 years cannot, in the factual matrix of the matter under consideration, be said to be a mitigating factor. The accused is 22 years of age while the victim was aged 30 years and at the time of the unfortunate death, she was under pregnancy between 22 to 30 weeks — the other victim was an innocent girl — a child of 8 years; the murders were cold-blooded while the two victims were in a helpless and hapless situation. No amount of perversity would prompt a person to break open the door by removing the bricks from the wall and commit such gruesome murders on failure to satisfy the lust — the human lust ought to know its limits. Imaginations shall have to run wild to consider existence of any mitigating factors in the matter of sentence, having due regard to even the subsequent conduct of the accused in the matter of disposal of the bodies as noticed above.

22. Can there be any mitigating circumstances on account of such a ghastly act — the answer cannot but be in the negative. The mother of the accused was bolted inside the room and she watched as a bewildered spectator from the creeks of the window and it is the mother who had given evidence about the bad characteristics and the reputation of the accused in the locality; the sister-in-law has been murdered along with an innocent child. Is this a man who deserves any sympathy from the society? Is this a man who can correct himself and the law courts ought to permit him to lead a decent life after he serves the sentence? The mother's evidence becomes material and it is on this score that we are unable to record our concurrence with the submissions of Mr Muralidhar that there are some mitigating circumstances and there is likelihood of the accused being reformed or rehabilitated. Incidentally, the High Court has described the accused as "a living danger" and we cannot agree more therewith in view of the gruesome act as noticed above.

23. A faint attempt has been made by Mr Muralidhar as regards non-compliance with Section 354(3) of the Code. We however are not in a position to record our concurrence thereto, having due regard to the reasoning available in the body of the judgment itself and we need not by reason thereof dilate much on that score.

24. The facts establish the depravity and criminality of the accused in no uncertain terms. No regard being had for the precious life of the young child also. The compassionate ground of the accused being 22 years of age cannot in the facts of the matter be termed to be at all relevant. The reasons put forth by the learned Sessions Judge cannot but be termed to be unassailable. The learned Judge has considered the matter from all its aspects and there is no infirmity under Section 235(2) or under Section 354(3) of the Code and

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as such we are not in a position to record our concurrence with the submissions of Mr Muralidhar.

25. In the present case, the savage nature of the crime has shocked our judicial conscience. The murder was cold-blooded and brutal without any provocation. It certainly makes it a rarest of the rare cases in which there are no extenuating or mitigating circumstances. The observations of this Court in *Dhananjoy Chatterjee* v. *State of W.B.*[9] to which one of us (C.J. as he then was) was a party while confirming the sentence of death lend concurrence to the views expressed above. This Court opined: (SCC p. 239, para 15)

> "*15.* In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment."

26. We do not see, by reason of the discussion as above, that any mistake of justice has taken place and we record our concurrence with the observations and findings of the High Court.

27. We, therefore, find no infirmity in the sentence awarded by the Sessions Judge and as confirmed by the High Court. This appeal, therefore, fails and is dismissed.

(1999) 5 Supreme Court Cases 15

(BEFORE S.P. BHARUCHA, B.N. KIRPAL, S. RAJENDRA BABU, SYED SHAH MOHAMMED QUADRI AND M.B. SHAH, JJ.)

HYDERABAD INDUSTRIES LTD. AND ANOTHER .. Appellants;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Civil Appeals No. 1354 of 1980† with Nos. 1355-58 of 1980, 5032 of 1993, 4641 of 1985, 2871 of 1986, 1937, 2413-16 of 1987 and 2160-61 of 1988, decided on May 11, 1999

A. **Customs Tariff Act, 1975 — S. 3(1) & Expln. and S. 9-A — Customs Act, 1962 — S. 12 — Additional duty — Pre-1986 case — Charging section for levy of additional duty, held is S. 3 of the Customs Tariff Act and not S. 12 of Customs Act — Also when an article has not undergone production**

9 (1994) 2 SCC 220 : 1994 SCC (Cri) 358

† From the Judgment and Order dated 23-5-1980 of the Delhi High Court in C.W.P. No. 48 of 1978