

**State Vs. Ashok Kumar Pandey**

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**Court :** Delhi

**Decided On :** Feb-09-2001

**Reported in :** 2001IIIAD(Delhi)1; 90(2001)DLT356; 2001(58)DRJ56

**Judge :** Mr. Arijit Pasayat, CJ. and; Mr. D.K. Jain, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 149, 354(3), 360, 361 and 366; [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Arms Act, 1959](#) - Sections 2, 5, 7, 25 and 27; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 562; Code of Criminal Procedure (CrPC) (Amendment) Act, 1955 - Sections 367(5)

**Appeal No. :** Mur. Ref. 3 of 2000 and Crl. Appeal No. 719 of 2000

**Appellant :** State ;ashok Kumar Pandey

**Respondent :** Ashok Kumar Pandey;state

**Advocate for Def. :** Mr. K.B. Andley, amices and ; Mr. Rajesh Mahajan, Advs.

**Advocate for Pet/Ap. :** Ms. Mukta Gupta, Adv

**Judgement :**

ORDER

Arijit Pasayat, C.J.

1. Both these cases relate to judgment of learned Addl Sessions Judge, New Delhi in sessions case No. 10/97. The reference has been under Section 366 of the

Criminal Procedure Code, 1973 (in short Cr.PC) for confirmation of the death sentence imposed upon the accused. Criminal Appeal has been filed by Ashok Kumar Pandey (hereinafter referred to as accused) against the judgment of conviction and sentence.

The accused was found guilty of offence punishable under Section 302 Indian Penal Code, 1860 (in short, IPC) and Section 27 of the [Arms Act, 1959](#) (in short, Arms Act). The accused faced trial for having caused homicidal murder of his wife Neelam and daughter Anu, (hereinafter referred to as deceased by their respective names) on 11-9-1996. Death sentence was imposed for the offence punishable under Section 302 IPC and three years for the other offence. Fine of Rs. 500/- with default stipulation for each offence.

2. Prosecution version in a nutshell is as follows:

Accused was consuming liquor habitually and was in the habit of getting angry became wild, incoherent and at times assaulted his wife deceased Neelam. He was employed in American Embassy in Chanakaya Puri. On 11.9.1996 Daya Kant Pandey, father-in-law of the accused (PW2) was in the house of the accused which had been taken on rent from Hira Nand (PW1). The accommodation was at the first floor of house No. B-49 Dabri Extension, Delhi. At 4 p.m. on the fateful day, PW2 had gone to the house of the accused to know about the welfare of his daughter. At that time, Sita Ram, father of the accused (DW1) was also present. The accused returned home at about 7 p.m.. At dinner the accused consumed liquor. After dinner PW2 and DW1 went to the terrace for sleeping. After sometime PW2 heard some noise from down stair. He thought that the noise was coming from the portion occupied by the landlord i.e. the ground floor. After sometime he heard cries of his daughter. He immediately rushed down and found that the accused was inflicting stab wounds on Neelam with a knife while Neelam was bleeding profusely. He also saw his granddaughter Annu lying injured on the ground bleeding. The accused came towards PW2 in a stage of anger with knife in his hand and PW2 retraced his steps. At this stage, the accused ran downstairs. PW2 then raised an alarm and many persons gathered there. DW2 and DW1 took the injured Neelam and Annu to Din Dayal Upadhaya Hospital, but they were

declared dead when the doctor examined them at the hospital. SI Ganga Ram (PW7) and constable Jai Ram (PW6) were on patrol duty. In between Head Constable Suresh Kumar and Constable Hari Om, and Constable Ashloof Khan (PW10) met him. It was noticed by them that accused was coming from Dabri village holding a knife. On seeing the police he tried to run away but the police officials apprehended him and the knife was snatched away from him. Later on, it was revealed that the accused had used that knife to cause death of his wife and child. I.O. (PW7) found a crowd at B-49 Dabari Extn and he was told on enquiry that the injured Neelam and child Annu had been taken to DDU hospital by PW2 and Sita Ram DW1. P.W.7 gave a telephonic message with regard to the crime to the police station. After leaving HC Suresh Kumar and other police officials for taking care of the scene of crime and of the accused, he went to Hospital. He found that the doctor had declared Neelam and Annu to have been brought dead against MLCs No. 8337 and 8338. Statement of Daya Kant Pandey PW2 was recorded and an endorsement was made on the statement of PW2 vide Ex. PW7/A. The same was dispatched through Constable Jai Ram (PW6) at 0045 hours on 12.9.1996. On this Tehrir, FIR No. 568/96 under Section 302 IPC was registered. PW7 thereafter took up investigation. Certain articles were seized. On conclusion of investigation, a charge sheet was filed for trial of the accused for offences under Section 302 IPC and Section 25/27 of the Arms Act.

3. Prosecution examined ten witnesses to establish its case. Accused pleaded innocence and took the stand of false implication. According to him Daya Kant Pandey (PW2) was neither present at the spot and had not witnessed the occurrence, nor had he taken the injured to hospital. The accused claimed that PW2 had only received telephonic information after the occurrence which ruled out his presence at the scene of occurrence as claimed.

4. Learned trial Judge placed reliance on the evidence of PW2, who claimed to be the eye witness, PW1 and PW10 to hold the accused guilty and sentenced as aforesaid. As indicated above after hearing the accused on the question of sentence the case was found to be one belonging to rarest of rare category and the accused was sentenced to death for offence punishable under Section 302 IPC. Additionally a fine of Rs. 500/- was imposed. For the offence punishable

under Section 27 of the Arms Act, three years RI with a fine of Rs. 500/- was also stipulated.

5. We have heard learned counsel for the State and amices curiae in support of the appeal filed by the accused. According to the learned counsel for the accused though PW2 claimed to be an eye witness, his version is full of contradictions and is hardly credible. Prosecution has not been able to place any material on record which could have shown the presence of PW2 at the place of occurrence. Though prosecution version is that PW2 had carried both the deceased in injured state to the hospital, the prosecution has not substantiated the claim that he was present at the scene of occurrence. Similarly, FIR has been lodged after considerable length of time and even special report has been dispatched after considerable length of time. The occurrence took place at 10 pm but the special report was received by the Magistrate at 7.30 am. Interestingly the name of the accused does not find place in MLCs. If in reality PW2 had accompanied the injured to the hospital, name of the accused would have found mentioned in MLCs. That having not been done, grave doubt arises about PW2's presence at the spot of occurrence. Strong reliance was placed on two decisions of Apex Court in *Meharaj Singh v. State of U.P.* 1994 SCC (Cri) 1390 and *Devinder v. State of Haryana* : 1996 CriLJ4461 . Additionally PW2 being the relative of the deceased, his evidence cannot be considered cogent and credible and the trial Judge should not have placed reliance on the same. In the site plan, the place from which PW2 claimed to have seen the occurrence has not been indicated. Similarly, clothes of PW2 have not been seized. If his version of having carried the injured is true, his clothes would have shown blood stains. No steps have been taken to recover blood stains. So far as sentence is concerned, it is submitted that the accused has lost his wife and child and is the sole bread earner. This cannot be said to be a case belonging to the rarest of the rare category. Learned counsel for prosecution, on the other hand, submitted that there is hardly any time gap as contended by learned counsel for the accused to make up a story. There is no statutory requirement for indicating the name of the accused in the report or MLC. According to her, an innocent lady and her child, the deceased had been subjected to cold blooded murder, and therefore death sentence is proper sentence.

6. We shall first deal with the contention regarding interestedness of the witness with the deceased. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.

In *Dilip Singh v. State of Punjab* : [1954]1SCR145 , it has been laid down as under:

'A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has caused such an enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not in sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts'.

8. The above decision has since been followed in *Guli Chand and Ors. V. State of Rajasthan* : 1974 CriLJ331 in which *Vadivelu Thevar v. The State of Madras* : 1957 CriLJ1000 was also relied upon.

9. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by Apex Court as early as in *Dilip Singh's* case (supra) in which Apex Court expressed its surprise over the impression which prevailed in the minds of the members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J., the Apex Court observed:

'We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rules. It is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another bench of this Court endeavored to dispel in *Rameshwar v. The State of Rajasthan* AIR 1950 SC 54. We find, however, that it unfortunately still persists, if not in the judgment of the courts, at any rate in the arguments of counsel.'

In this case, Apex Court further observed as under:

'A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has caused such an enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and mere fact of relationship far from being a foundation is often a sure guarantee of truth.'

10. Again in *Masalti v. State of U.P.* : [1964]8SCR133 , Apex Court observed :

'Again it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice.'

To the same effect is the decision of Apex Court in *State of Punjab v. Jagir Singh* : 1973 CriLJ1589 .

Considering the legal position as analysed above, there is no force in the plea that evidence of PW2 is liable to be discarded merely because he was relative of the deceased.

11. Coming to the plea that there was delay in lodging of FIR and dispatch of special report we find no substance in it. There can be no dispute to the position that FIR in a criminal case, particularly in a murder case, is vital and important piece of evidence.

The object of insisting upon prompt lodging of FIR is to see that information when the crime was committed adds the advantage of spontaneity. If there is delay in lodging the FIR, there is likelihood of embellishment which is creature of afterthought. There is also possibility of introducing coloured version or exaggerated story. Similar is the situation as regards the dispatch of the special report to the magistrate. The factual position in the case at hand shows that occurrence took place at about 9.30 p.m. It is too natural for PW2 on seeing his daughter and grandchild in profusely bleeding state, to first take them to hospital. There is a natural reaction expected and a normal human conduct. The police officials have recorded the statement at the hospital and on its basis FIR has been registered at 1.20 p.m. on 12.9.1996 and as endorsed by the Magistrate the special report was received by him at 7.30 a.m.

12. Evidence of PW4 is significant. He has stated that he had sent the special report to the higher police officers in concerned Police Station through a special messenger. He has denied the suggestion that FIR was ante-dated. No question was asked to any witness about the alleged delay in dispatch of the special report to the Magistrate. The above situation clearly shows that there was no delay as submitted by counsel for the accused.

13. Meharaj Singh's case (supra) on which learned counsel for accused placed great reliance has no similarity with the facts of the present case and in fact that was a case where no evidence was laid to show as to when the magistrate had received the special report. In the case at hand, there is a clear endorsement of the magistrate regarding the time of its receipt. Learned counsel for the accused further submitted that the prosecution has failed to lead evidence in that regard. We find that no question was asked about delayed registration of FIR or the delayed dispatch of the special report. There is not even a suggestion in that regard except to PW4. It is preposterous to assume that prosecution on its own

will come forward and indicate reasons that there was no delay. In fact an Explanation shall be required if a doubt or plea is raised. Several other factors need to be noticed. Though DW1 stated that he was present at the time of occurrence and PW2 was not present there, the same gets negated because of statement of PW1. There is not even a suggestion to this witness about PW2 being not present at the time of occurrence.

14. So far as non-mention of name of the accused in MLC is concerned, we find that decision in Devinder's case (supra) relied upon by learned counsel for the accused is clearly distinguishable on facts. It is to be noted that Apex Court nowhere laid down a rule that MLC must contain the name of the accused. On the peculiar facts of the case, it was noted that FIR was bound to be lodged with promptitude which was not done and there was hardly any Explanation for the delay and therefore absence of accused's name in MLC was considered to be additional factor for suspecting prosecution. That is not the situation in the present case.

15. In Raghbir Singh v. State of Haryana 2000 AIR SCW 1812, it was held that if a witness rushes to the hospital to save the victim's life instead of going to police station, it is satisfactory Explanation for delay in filing FIR. The fact situation in the present case stands on a better pedestal, as highlighted above.

16. Learned counsel for accused has urged that the investigation was lackadaisical, and therefore valuable material which could have revealed actual state of affairs has not been recovered. We have noted above in detail the alleged deficiencies pin-pointed. We find no substance in the plea. It could not be shown as to how the evidence tendered by prosecution would have been diluted by the materials, which, as submitted, were not recovered. Mishandling of investigation in any event does not stand on the way of conviction if evidence adduced tested on the touchstone of credibility is sufficient to prove the accusation. ( See. State of U.P. v. Hari Mohan and others AIR 2001 SC 142).

17. Taking into consideration above factors, inevitable conclusion is that the accused was guilty of offence punishable under Section 302 IPC.

18. Accused has been convicted in terms of Section 27 of the Arms Act. Section 2(c) of the said Act defines 'arms' as follows:

'(c) 'arms' means articles of any description designed or adapted as weapons for offence or defense, and includes firearms, sharp-edged and other deadly weapons and parts of, and machinery for manufacturing arms, but does not include articles designed solely for domestic or agricultural uses such as a lathi or an ordinary walking stick and weapons incapable of being used otherwise than as toys or of being converted into serviceable weapons.'

Section 27 deals with punishment for using arms etc. Said provision reads as follows:-

'27. Punishment for using arms, etc.--(1) Whoever uses any arms or ammunition in contravention of Section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(2) Whoever uses any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for term which shall not be less than seven years but which may extent to imprisonment for life and shall also be liable to fine.

(3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of section 7 and such use or act results in the death of any other person, shall be punishable with death.'

In the instant case learned trial Judge has not indicated as to in what manner Section 27 is attracted.

Conviction under Section 27 of the Arms Act in the facts and circumstances of the case cannot be maintained and consequentially sentence thereforee stands set aside.

19. The other question of vital importance is whether death sentence is the appropriate one. Sec. 302, IPC prescribes death or life imprisonment as the

penalty for murder. While doing so, the Code instructs the Court as to its application. The changes which the Code has undergone in the last three decades clearly indicate that Parliament is taking note of contemporary criminological thought and movement. It is not difficult to discern that in the Code, there is a definite swing towards life imprisonment. So the discretion to impose the sentence of death or life imprisonment may not be so wide, after all. Sec. 354(3) has narrowed the discretion. Death sentence is ordinarily ruled out and can only be imposed for 'special reasons'. Apart from Sec. 354(3) there is another provision in the Code which also uses the significant expression 'Special reason'. It is Sec. 361. Sec. 360 of the 1973 Code re-enacts, in substance, Sec. 562, of the Criminal Procedure Code 1898 (in short old Code) Sec. 361 which is a new provision in the Code makes it mandatory for the Court to record 'special reasons' for not applying the provisions of Sec. 360. Sec. 361 thus casts a duty upon the Court to apply the provisions of Sec. 360 wherever, it is possible to do so and to state 'special reasons' if it does not do so. In the context of Sec. 360, the 'special reasons' contemplated by Sec. 361 must be such as to compel the Court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed. This is some indication by the Legislature that reformation and rehabilitation of offenders and not mere deterrence, are now among the foremost objects of the administration of criminal justice in our country. Sec. 361 and Sec. 354(3) have both entered the Statute Book at the same time and they are part of the emerging picture of acceptance by the Indian Parliament of the new trends in criminology. It would not, therefore, be wrong to assume that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors. These aspects have been highlighted in the case of *Bishnu Deo Shaw V. State of West Bengal* : 1979 CriLJ841 . Criminal justice is not a computer machine. It deals with complex human problems and diverse human beings. A judge has to balance the personality of the offender with the circumstances, situations and the reactions and choose the appropriate sentence to be imposed.

20. It should be borne in mind that before the amendment of Sec. 367 (5), Old Code, by the Criminal Procedure Code (Amendment) Act, 1955 (XXVI of 1955) which came into force on January 1, 1956, on a conviction for an offence punishable with death, if the Court sentenced the accused to any punishment other than death, the reason why sentence of death was not passed had to be stated in the judgment. It has been held by the Allahabad High Court that since the amendment of Sec. 367 (5), Old Code, the question of proper sentence when the accused is convicted of an offence punishable with death is to be decided like any other point for determination with the decision thereon and the reasons for the decision. (See: cases of Majoiya Ratna v. State: : AIR 1961 MP10 : Satya Vir v. State: (1958) Cri. LJ 1266. The High Court of Bombay in a Full Bench case has held that after the amendment of Sec. 367 (5) of old Code by Act XXVI of 1955, it is not correct to hold that the normal penalty of imprisonment for life cannot be awarded in the absence of extenuating circumstances which reduce the gravity of the offence. The matter is left, after the amendment, to the discretion of the Court. The Court must, however, take into account all the circumstances, and state its reasons for whichever of the two sentences it imposes in its discretion. thereforee, the former rule that the normal punishment for murder is death is no longer operative and it is now within the discretion of the Court to pass either of the two sentences prescribed in this Section; but whichever of the two sentences he passes, the Judge must give his reasons for imposing a particular sentence. (See State v. Vali Mohammad (1968) 71 Bom LR 1. The amendment of Sec. 367 (5), of the Old Code does not affect the law regulating punishment under the Penal code. This amendment relates to procedure and now Courts are no longer required to elaborate the reasons for not awarding the death penalty but they cannot depart from sound judicial considerations preferring the lesser punishment (See: Ram Singh v. State : AIR1960 All748 ; Sumer Singh v. State: (1962) Cri LJ 672: Arjoon v. State : ; Jan Mohammed v. State: : AIR1963 All501 ). The correct approach to the question of sentence now is that upon a conviction for murder, the Judge should ask himself the question, 'Are there any aggravating circumstances in this case which imperatively call for the exaction of the extreme penalty?' (See Amalla Koteswara Rao v. State: : AIR 1963 AP249 ).

21. Sec. 354(3) of the Code, marks a significant shift in the legislative policy underlying the old Code as in force immediately before 1 April, 1974, according to which both the alternative sentences of death or imprisonment for life provided for murder were normal sentences. Now, under Sec. 354(3) of the Code the normal punishment for murder is imprisonment for life and death penalty is an exception. The Court is required to state the reasons for the sentence awarded and in the case of death sentence 'special reasons' are required to be stated, that is to say, only special facts and circumstances will warrant the passing of the death sentence. It is in the light of these successive legislative changes in Code that the juridical decisions prior to the amendment made by Act 26 of 1955 and again Act 2 of 1974 have to be understood and some of the judgments under the old Code, after amendments have lost their significance.

22. The Supreme Court has observed : 'Let us crystallize the positive indicators against death under Indian Law currently, where the murderer is too young or too old, the clemency of penal justice helps him. Where the offender suffers from socio-economic, psychic or penal compulsions insufficient to attract a legal exception or to downgrade the crime into a lesser one, judicial commutation is permissible. Other general social pressures, warranting judicial notice, with an extenuating impact may, in special cases, induce the lesser penalty. Extraordinary features in the judicial process, such as that the death sentence has hung over the head of the culprit excruciatingly long, may persuade the Court to be compassionate. Likewise if others involved in the crime and similarly situated have received the benefit of life imprisonment or if the offence is only constructive, being under Sec. 302 read with Sec. 149, or again the accused has acted suddenly under another's instigation, without premeditation, perhaps the Court may humanly opt for life, even like where a just cause or real suspicion of wifely infidelity pushed the criminal into the crime. On the other hand, the weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim, and the like, steel the heart of the law for a sterner sentence. We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society. A legal policy on life or death cannot be left for ad hoc mood or individual predilection and so we have sought to objectify to the extent possible, abandoning retributive

ruthlessness, amending the deterrent creed and accepting the trend against the extreme and irrevocable penalty of putting out life.' (See *Ealda Anamma v. State*, : 1974 CriLJ683 .

23. *Bachan Singh v. State of Punjab* : 1980 CriLJ636 , it has been observed that 'a real and abiding concern for the dignity of human life postulates resistance to taking life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.' 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. In order to apply these guidelines. Inter alia, the following questions may be asked and answered; (a) Is there something uncommon about the crime which renders sentence of imprisonment for the life inadequate and calls for a death sentence?; and (b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favor of the offender?

24. Another decision which illuminatingly deals with the question of death sentence is *Machhi Singh v. State of Punjab* : 1983 CriLJ1457 .

25. In *Machhi Singh's* and *Bachan Singh's* case (supra) Apex Court illuminatingly indicated the guidelines which are to be kept in view when considering the question whether the case belongs to the rarest of the rare category.

As noted in *Machhi Singh's* case

' The following questions may be asked and answered as a test to determine the rarest of the rare case in which death sentence can be inflicted:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating

circumstances which speak in favor of the offender?

As noted in Bachan Singh's case *supra*

The following guidelines which emerge from Bachan Singh case will have to be applied to the facts of each individual case where the question of imposition of death sentence arises :

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

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

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

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

In rarest of rare cases when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances :

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath; or in cases of bride burning or dowry deaths or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-a-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.

If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the rarest of rare case, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.'

26. A convict hovers between life and death when the question of gravity of the offence and award of adequate sentence comes up for consideration. Mankind has shifted from the state of nature towards a civilized society and it is no longer the physical opinion of the majority that takes away the liberty of a citizen by convicting him and making him suffer a sentence of imprisonment. Award of punishment following conviction at a trial in a system wedded to the rule of law is the outcome of cool deliberation in the court-room after adequate hearing is afforded to the parties, accusations are brought against the accused, the prosecuted is given an opportunity of meeting the accusations by establishing his innocence. It is the outcome of cool deliberations and the screening of the material

by the informed man of the Judge that leads to determination of the law. The Courts cannot allow emotional and sentimental feelings to come into the judicial pronouncements. Once sentimental and emotional feelings are allowed to enter the judicial mind, the Judge is bound to view the evidence with a bias and in that case the conclusion may also be biased resulting in some cases in great injustice. The cases are to be decided strictly on evidence, howsoever, cruel or horrifying the crime may be. All possible chances of innocent man being convicted have to be ruled out.

27. The principle of proportion between crime and punishment is a principle of just desert that serves as the foundation of every criminal sentence that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to be punished. Indeed, the requirement that punishment not be disproportionately great, which is a corollary of just desert, is dictated by the same principle that does not allow punishment of the innocent, for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt.

28. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges and those from whom they take advice affirm that punishment ought always to fit the crime: yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence, sometimes the desirability of keeping him out of circulation, and sometimes even the traffic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.

29. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now

unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now a single grave infraction that is thought to call for uniformly drastic measures. Anything less than a penalty of greatest severity for any serious crime is thought to be a measure of toleration that is unwarranted and unwise. But in fact quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

30. In a very recent case (Ram Deo Chauhan v. State of Assam: 2000 AIR SCW 2784) Apex Court observed that though it is time that in a civilized society a tooth for tooth, and a nail for nail or death for death is not the rule, but it is equally true that when a man becomes a beast and menace to the society, he can be deprived of his life according to the procedure established by law, as Constitution itself has recognized the death sentence as a permissible punishment for which sufficient constitutional provisions for an appeal, reprieve and the like have been provided under the law. The reason for taking life of an innocent and helpless child and that too with the primitive idea that it would make a barren woman fertile, in the twentieth century to say the least is very cruel and cold blooded act. It is almost like a situation that a child is sacrificed so that parents of that child become childless and another couple is blessed with a child. We do not find any mitigating circumstance. As observed in Ram Das Chauhan's case (supra) fact that accused was young person at time of occurrence cannot be considered as mitigating circumstance. The inevitable conclusion is that it is a case belonging to rarest of rare category. Accordingly the death sentence awarded to the accused for commission of offence punishable under Section 302 IPC is confirmed.