Natarajan Vs. State

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Court : Chennai

Decided On : Sep-27-1999

Reported in : 2000(1)ALT(Cri)341; 2000CriLJ1045

Judge : V.S. Sirpurkar and ;K. Gnanaprakasam, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 313 and 366; Indian Penal Code (IPC), 1860 - Sections 302 and 307

Appeal No. : Referred Trial No. 1 of 1999 and Crl. Appeal No. 427 of 1999

Appellant : Natarajan

Respondent : State

Advocate for Def. : G.M. Syed Fasiuddin, Addl. Public Prosecutor

Advocate for Pet/Ap. : A.S. Chakravarthy, Adv.

Judgement :

V.S. Sirpurkar, J.

1. Referred Trial No. 1 of 1999 is a reference by the Principal Sessions Judge, Tuticorin, for confirmation under Section 366 of Criminal Procedure Code of the death sentence passed against the accused Natarajan. He has been awarded the sentence of death as the Sessions Judge, Tuticorin has found him guilty of the

offences under Section 302 of Indian Penal Code on two counts as also under Section 307, I.P.C. on two counts. Criminal Appeal No. 427 of 1999 has been filed by the accused against the finding of the conviction.

2. Shortly stated, the prosecution story is as under:-- The accused Natarajan is a resident of South Karasery where he was living with his family. About six months prior to 4-3-1995, his mother-in-law Gomathiammal was residing with the accused. Adjacent to the house of the accused in the village, is the house of PW-1 Madathiammal, who was running a petty shop in the said house and her mother Shanmughavadivu and her daughter Mariammal also were residing in the said house. It is the prosecution's case that the accused had strained relationship with his mother-in-law as his mother-in-law used to nag the accused. There often used to be quarrels between the accused and his mother-in-law as the mother-in-law used to insist the accused for working and earning something for the family. It is the prosecution case that on 4-3-1995 at about 6 O' Clock in the evening, when she was standing in the front side of the house in her petty shop, when her mother Shanmughavadivu and her daughter Mariammal were standing in the courtyard of the back side of the house, she saw the accused chasing his mother-in-law, who was running. The accused was armed with a sickle. Gomathiammal jumped over the mud-wall in between the house of PW-1 Madathiammal and the accused and fell on her face near the courtyard of the house of the witneSections At that time, the accused dealt with sickle blows on his mother-in-law on her back. Seeing this, Shanmughavadivu shouted as to why he was assaulting the mother-in-law. The accused is said to have then assaulted Shanmughavadivu and dealt with sickle blows on her shoulder, below her chest and on her chest. Seeing this, PW-2 Mariammal also shouted as to why the accused was cutting her grand-mother. The accused thereafter came running and dealt with sickle, blows on Mariammal also on her left shoulder, neck, right shoulder and nape. Seeing this, when PW-1 Madathiammal asked the accused as to why he was assaulting her daughter, the accused dealt with sickle blows on Madathiammal on her neck, right shoulder and left forearm. Thereafter, the accused ran away with the sickle. The two ladies viz., Gomathi Ammal and Shanmughavadivu died on the spot. A car was hired by one Lakshmiammal and Arumughathammal and the two injured witnesses viz., Madathiammal and Mariammal were taken to Palayamkottai High Ground Hospital

for treatment. On receiving information, the Sub-Inspector of Police attached to Seithunganallur Police Station came there and recorded a statement of Madathiammal, in which she narrated the whole story. This statement is treated by the prosecution as the First Information Report. The investigation was started on the basis of this First Information Report by the Police. It seems that the Investigating Officer Chinnaiah, who was then on duty as Inspector of Police, Law and Order, in the Central Police Station, Tuticorin, had received this information. He, therefore, came to Seithunganallur Police Station at 11.45 p.m. and after receiving the copy of the First Information Report, which was recorded by PW-14 Thiru, Kandasamy, first went to the Hospital and after interrogating the two injured witnessees and recording their statements, he then proceeded to the spot of occurrence in the same night. A spot observation mazar Ex. P-2 was executed and a rough sketch was also prepared vide: Ex. P-25. Blood-stained earth etc., were seized, so also the other articles lying on the spot under Seizure Mahazars Ex. P-3, P-4, P-5 and P-6. The inquest was conducted over the dead bodies of Gomathiammal and Shanmughavadivu. The bodies were then sent for autopsy to the Government Hospital, Srivaikuntam through Constable Sivakumar. The Investigating Offices then recorded the statements of other witnesses. The accused was arrested on 6-3-1995 at about 8.30 a.m. near Kalvoi Road. He was arrested in the presence of Chlthiraj and Ganesan. On his being asked, he agreed to discover the sickle used in committing the crime. That statement was recorded as Ex. P-28. The accused then took the Investigating Officer and discovered the sickle which was kept hidden at the western side wall of the terraced roof of Muppidathi Amman koil which is situated on the western side of Karunkulam-Moolakaraipatti road. The said mahazar was seized under Seizure Mahazar Ex. P-29. The accused was then remanded to the judicial custody. The Investigating Officer later on seized the blood-stained clothes of the eye-witnesses PW-1 and PW-2 and sent all the materials to the Court. He also recorded the statement of Dr. Jayakumar on 11-3-1995. He gave a requisition to the Court for sending M.O. 1 to M.O. 18 and 21 to 24 for chemical examination. The statements of the Police witnesses as also the other Dr. Ramasamy were recorded on 22-5-1995. On completion of investigation, a charge-sheet came to be filed against the accused. Charge was framed against the accused firstly, for an offence under Section 302,

I.P.C. for having committed the murder of Gomathiammal and on second count, again for an offence under Section 302, I.P.C. for having committed the murder of Shanmughavadivu, so also under Section 307, I.P.C. on two counts for having attempted to commit murder of Madathiammal and Mariammal. The accused abjured guilt.

3. Prosecution mainly relied on the evidence of the eye-witnesses, PW-1 Madathiammal, PW-2 Mariammal and PW-3 Sappanimuthu, out of whom PW-3 Sappanimuthu turned hostile, while the other two supported the prosecution PW-4 Lakshmi Ammal is a person, who took the injured in a Car to the Hospital. PW-5 Pechimuthu and PW-6 Chithiraj are the Panchayatdar witnesses on mahazar as well as on the discovery statements. PW-6 Chithiraj has turned hostile. PW-7 Jayakumar and PW-8 Ramasamy are the Doctors. Dr. Jayakumar conducted the postmortem examination on the body of Shanmughavadivu and found four injuries on her person which was ante-mortem injuries, while the body of Gomathiammal had as many as eight incised injuries. The Doctor described the injuries to be sufficient in the ordinary course of time to cause death and also pin-pointed the said injuries. Dr. Ramasamy has proved the Injury Certificates, which he had issued after he had treated PW-1 Madathiammal and PW-2 Mariammal. He found as many as three incised injuries on the person of Madathiammal PW-1 out of which he described Injury No. 1 to be the grievous injury as per X-Ray photographs. He also found four incised injuries on the person of Mariammal and he issued the Injury Certificate where wound Nos. 2 and 3 were grievous in nature as per the X-Ray. Prosecution also relied on the evidence of Dr. Duraipandian, PW-9 who examined the X-Ray photographs to prove the fractures on the persons of Mariammal and Madathiammal. He issued the Certificates Ex. P-15and P-16. PW-12 Mr. Mayandi, who was formerly Head Clerk in the Judicial Magistrate Court, Srivaikuntam, sent Exm. M. 1 to M. 18 and 21 to 24 for chemical analysis along with Ex. P-20, which was a requisition letter. Ex. P-21 is the report of the Chemical Analyst, while Ex. P-22 is the Serologist's report, PW-14 Kandasamy proved the First Information Report, while PW-15 Chinnayya deposed about the Investigation. The defence of the accused was extremely faulty. It was tried to be suggested that there was some altercation among the Villagers and there was an incident of stone throwing because of which, the two ladies were injured and lost

their lives and the two other ladies were injured. The accused went on, however, to accept the guilt at the stage of examination of the accused under Section 313 of the Criminal Procedure Code.

4. The learned Sessions Judge accepted the evidence of the eye-witnesses. He held that their presence at the spot to be absolutely natural. He also held that there was absolutely no reason for the two witnesses PW-1 Madathiammal and PW-2 Mariammal to depose falsely. He also accepted the medical evidence and the other incriminating evidence like the bloodstained articles and convicted the accused treating this to be the rarest of rare case. He has also chosen to award death sentence against the accused. On this factual backdrop, it has to be seen as to whether firstly, the accused can be held guilty for the offences charged with and secondly, whether this is a case where the death sentence awarded to the accused can be confirmed under Section 366 of the Criminal Procedure Code.

5. There can be no dispute in this case that the death of Gomathiammal and Shanmughavadivu was homicidal. The presence of fatal injuries on the persons of both and the evidence of Dr. Jayakumar (PW-7) would be sufficient to hold that the two ladies, who did not have any injuries prior to the incident, died due to homicidal violence because of the injuries. The death of the two ladies, therefore, can be safely inferred to be homicidal death.

6. The evidence in this case is both ocular and circumstantial in nature. In so far as the evidence of PW-1 Madathiammal and PW-2 Mariammal are concerned, both the witnesses have specifically stated about the active role played by the accused in bringing about the death of the two unfortunate ladies as also in assaulting themselves. The presence of both the witnesses was most natural at the spot as the incident had taken place in the courtyard of their house itself. It is not disputed that the houses of the accused and the witnesses are adjacent and are divided by a small mud-wall, the presence of whom can be confirmed from the spot observation mahazar Ex. P-2. There is absolutely no cross-examination to any of the witnesses more particularly to these two eye-witnesses as also the Investigating Officer regarding the topography of the scene. Considering the fact that the incident took place at 6 O' Clock in the evening would also go to show that

their presence in the house would be natural. Both these witnesses have given a graphic description of the incident. According to both the witnesses, there used to be quarrels between the accused Natarajan and his mother-in-law, who had come to live with the accused since about six months prior to the incident. PW-1 Madathiammal then goes to describe the whole incident to the effect that the accused was quarrelling with his mother-in-law and then the mother-in-law was chased by the accused. At that time, the mother-in-law tried to jump over the small mud-wall, but tripped over the fire-wood and fell down on her face, when accused Natarajan started dealing blows with the sickle on her back. When we see the injuries on the person of Gomathiammal, there is enough corroboration to this version as the injuries on the person of Gomathiammal are mainly on the back side 'f her body. Barring these three injuries, all the other five injuries are on the back side of the body. The other injuries are on the left shoulder, left side neck and left forearm. This gives a corroboration to the version of Madathiammal PW-1 as also Mariammal PW-2, PW-2 had also stated that the deceased Gomathiammal fell on her face and the accused dealt with the sickle blows on her back. In fact, there is practically no discrepancy in the evidence of the two eyewitnesses. They have also given a clear account of the assault on the mother of PW-1 Shanmughavadivu and thereafter, the assault firstly on Mariammal (PW-2) and secondly on Madathiammal (PW-1). Both the witnesses have suffered the injuries which have been amply proved by PW-8 Dr. Ramasamy, Considering the depth and nature of all the injuries, which were incised wounds, they were possible by use of sickle. The medical opinion expressed about the same. There can be no doubt that the two eye-witnesses were not only present on the spot, but they had seen the whole incident and their evidence is corroborated by each other as also by the injuries suffered by them.

7. The cross-examination of these two witnesses is absolutely purposeleSections In fact, some portion of the cross-examination is irrelevant and we wonder as to why the learned Sessions Judge allowed such irrelevant questions to be put. It was tried to be established by the defence that one Pechimuthu had come along with the injured persons to the Hospital and the witness PW-1 has accepted this. It is also suggested that the said Pechimuthu, Lakshmi Ammal and Arumughathammal were with the injured persons in the Hospital till 6.00 p.m. in

the evening on the next day. One fails to understand any relevancy of this cross-examination. It is tried to be suggested to PW-1 Madathiammal that she and the brother of the accused were competitors in the busineSections Some irrelevant questions regarding the witness and her mother were put to PW-1 which have absolutely no bearing on the present prosecution. A wild suggestion was thrown at her that her brother used to bring illicit liquor and sell the same in the village. Another wild suggestion was thrown at the witness that there was a riot in which the shop and the bench were broken and in that, stones and sticks were thrown and it is because of that, the witness PW-1 and her daughter were injured. In short, nothing could be elucidated from PW-1 in the cross-examination and her evidence remained unshaken. Same is the story of the evidence of Mariammal PW-2. She has graphically supported the version of her mother. In cross-examination also, there is nothing worth the name. The learned Counsel pointed out that while PW-1 stated that she was taken to the Hospital in a Car, this witness had admitted that she went to the Hospital in the Police Jeep. The same theory of riot was suggested by even this witness which was denied by the witness (PW-1). In short, the evidence of this witness also remained totally unshaken. The third witness, who sought to be examined as the eye-witness, is. PW-3 Sappanimuthu. He has turned hostile and, therefore, his evidence cannot be considered. Thus, the evidence of the two eyewitnesses have remained unshaken and their evidence can be safely accepted. As if the evidence of the eye-witnesses is insufficient, there is also the other corroborating evidence which has already been referred to above. The fact that both the witness have also stated that the accused was shouting at her mother-in-law and saying that only if she was finished, there will be tranquillity in his house has also not been demolished. In the cross-examination, which would amply go to prove the intention on the part of the accused and his complicity in the evidence. It was tried to be suggested that PW-1 could not have been seen the occurrence when she was standing in the shop. However, even that cannot be accepted for the simple reason that according to PW-1, she was standing in front of her shop. Again it is not established by cross-examination of any witness that a person who is standing in the shop cannot see the incident in the back courtyard of the house. Some advantage was tried to be taken by the learned Counsel by suggesting that there were some contradictions. However, the

said contradictions have not even been proved in the evidence and they are extremely insignificant. The contradiction in the evidence of PW-1 and PW-2 about the vehicle in which they went to the hospital is also, to say the least, insignificant, because that pertains what happened after the incident.

8. It cannot be again forgotten that in this case, while the incident has taken place at 6 O'Clock in the evening, the First Information Report has been made almost immediately. PW-1, after being injured, was taken to the Hospital and it was there that she gave her statement. Therefore, there is no question of any belated First Information Report. In the First Information Report also, she has given a complete description of the incident. Her evidence is, therefore, corroborated by the First Information Report.

9. The most important factor to be appreciated in respect of the evidence of these two witnesses is that they are the injured witnesses and that they suffered the injuries at the hands of the accused in broad day light. There is nothing in the cross-examination to suggest that these were the self-inflicted injuries or that the injuries were inflicted by some-one else than the accused. That would also be a biggest corroborating factor. Last but not the least that these two witnesses had no reason whatsoever to speak against the accused. The defence has not been able to establish any enmity between the accused and the witnesses. Though faintly it was suggested that there was business rivalry between the brother of the accused and PW- . 1 Madathiammal, it is really not necessary for the witnesses to speak falsely regarding their injuries at the hands of the accused as also the injuries of the mother-in-law and the injuries of Shanmughavadivu. In short, the evidence of PW-1 and PW-2 alone is sufficient to fix the guilt on the accused for offences punishable under Section 302 of I.P.C.

10. Same is the case as regards the offence under Section 307, I.P.C. The accused has chosen a dangerous weapon like the sickle to assault the two ladies viz., PW-1 and PW-2. the said two ladies have suffered extensive wounds. Both the ladies have suffered grievous wounds as per the evidence of Dr. Ramasamy (PW-8). In his evidence, the Doctor Ramasamy has deposed that the injuries were grievous. Again, it cannot be forgotten that there were as many as four injuries on

the person of PW-1 and similar number of injuries on the person of PW-2. They were also placed on the vital parts of the body. There would be, therefore, no question of any other intention in the mind of the accused except to cause the death of the two witnesses. It seems, it is only their providence which saved the two witnesses apart from the fact that they have got immediate medical help. The placement of injuries, the manner in which the injuries were dealt with, the nature of the weapon, would amply go to suggest that the accused had intended the death of the two witnesses also. Under such circumstances, the conviction of the accused for offences under Section 307, I.P.C. would also be suggesting. In short, nothing could be said as against the conviction of the offence under Section 302, I.P.C. on two counts and under Section 307, I.P.C. on two counts. In so far as the conviction of the accused person is concerned, we confirm the lower Court judgment. At the trial stage, it is significant to note that the accused did not seriously question that act and on the other hand, went on to admit his own acts. So also in this Court, there can be no serious challenge to the finding of conviction for the offences under Section 302, I.P.C. and Section 307, I.P.C. Accordingly, we are in agreement with the Sessions Judge in so far as the finding of conviction for the offences under Sections 302 and 307, I.P.C. are concerned that leaves the question of sentence.

11. The learned Sessions Judge has chosen to award the death sentence to the accused treating this as to be a rarest of the rare case. It is to be seen as to whether the death sentence awarded is to be confirmed or not. There can be no dispute that in this whole episode, two lives have been lost and two lives were endangered. There can also be no dispute that the accused acted with an intention to commit murder, when he assaulted PW-1 and PW-2. However, that by itself would not be sufficient to treat this case as the rarest of rare case as has been held in Bachan Singh v. State of Punjab : 1980 CriLJ636 . Unfortunately, these are the only two reasons relied upon by the learned Sessions Judge in paragraph 25 of his judgment. The learned Sessions Judge has not bothered to probe into the whole case, the psychology of the accused in the attending circumstances and the other mitigating circumstances while branding this case as the rarest of rare case. The treatment given to this subject is extremely sketchy. The learned Counsel for the appellant brought to our notice that this cannot be

said to be a rarest of rare case even if there have been two murders and attempt to murder the two witnesses who were eyer witnesses. It will be seen that there is material on record to suggest that the accused comes from a poor strata of society where he has to exert for the day-to-day existence for himself and his family. It has also come in the evidence of the two eye witnesses that the mother-in-law of the accused had also started staying with the accused since six months prior to the occurrence. It seems from the evidence of these two witnesses that there used to be often quarrels between the mother-in-law who, probably, was an unwanted guest for more than six months in the house of the accused. It is in the evidence of PW-1 that there used to be often quarrels between the mother-in-law and the accused, as the mother-in-law created a hindrance in getting food. Even on the day when the incident took place, there was a quarrel between the accused and his mother-in-law Gomathiammal on account of giving food to the accused. PW-2 has stated in her evidence that the mother-in-law the accused had quarrelled as to why food should be given to the person, who did not go for work. This was, probably, because the accused had demanded food and food was refused by the mother-in-law. It is this quarrel which seems to have been raised to the incident. The psychology of the accused has to be appreciated in this case that he had an unwanted guest for a long period of six months, even though she was his mother-in-law and the said mother-in-law, in his own house, went to the extent of questioning food given to him on account of his not working. The incident was thus a culmination of not only the strained relationship between himself and the mother-in-law, but also the poverty prevailing in the family. Here is the case where the accused was being stopped by the deceased Gomathiammal from having food in his own house on the plea that he did not work. It is no where given in the evidence that the accused, in reality, was not working. It is difficult to imagine that the accused was not working at all. It is obvious that if he did not work, there was no bread-winner in the family. The strained relationship could, therefore, not be the only reason behind this crime, at least in so far as it related to the death of Gomathiammal. It is obvious that the constant nagging on the part of the mother-in-law had probably filled up with the accused hatred in her, that he started chasing her with the sickle. Both the witnesses have specifically referred to the prior quarrel between the accused and the deceased Gomathiammal on that day.

It has not come on record as to whether the accused refused to go for work on his own. A possibility of not being able to get the work could also not be ruled out. If the accused, who was already burdened with his mother-in-law, found that in his own house, he was being insulted and food being refused to him at the instance of the mother-in-law, it is obvious that the rebukes given by his mother-in-law added insult to injury. The act of the accused in assaulting his mother-in-law, who was old and helpless cannot be justified. However, the pain of insult which the accused must have felt on account of food being refused to him in his own house by the guest can also not be ignored altogether, at least for the purposes to see as to whether this is a rarest of the rare case and whether the accused deserves to be hanged. The learned Sessions Judge has not taken into account this psychological and social aspect, while awarding the sentence. Once the death of Gomathiammal can be attributed to the pain of insult felt by the accused, the subsequent incident of his assaulting Shanmughavadivu can also be dubbed as his sudden reaction. True it is, that both the ladies were old and helpleSections However, that by itself will not be a factor to term this crime as the rarest of rare case. The incident started with the assault of Gomathiammal and when Shanmughavadivu questioned, the accused, who must have practically lost his reason owing to the constant tension on account of the quarrels between himself and his mother-in-law, in sudden fury, must have reacted against Shamughavadivu also. The act of killing both the ladies could, therefore, be attributed to the constant tension of the accused, who was refused food for his alleged refusal to work. It has to be borne in mind that this was not a pre-planned murder. There is nothing on record to suggest that the accused had ever planned the murder. He had ample opportunity to finish off his mother-in-law, who was the resident in the same house. However, it seems that he bore with her for a period of six months during which, there used to be wordy quarrels. Again, this is not a murder for gain. The accused was to get nothing from murdering Gomathiammal or Shanmughavadivu. Perhaps the pain of insult felt by the accused was intense that it culminated in the murdering of Gomathiammal and assaulting everybody who questioned the act. That is how his assault on the two witnesses can also be explained. There can be no justification in law for the assaults which he had made on Shanmughavadivu, Madathiammal and Mariammal. However, the factual

backdrop of the assault, the totality of the incident, the poverty of the accused as also his possible helpless to ameliorate his economic situation are the factors which cannot be ignored atleast for the purposes of deciding as to whether the accused deserves the extreme penalty. The learned Sessions Judge should have been alive all these factors and unfortunately we do not find any application of mind on the part of the Sessions Judge, while he has dealt with this issue. It is on account of that, we have to deal with these issues ourselves.

12. The learned Additional Public Prosecutor, however, relied on number of precedents to support the death sentence awarded by the learned Sessions Judge. The learned Additional Public Prosecutor pointed out that the accused had shown the depravity of mind by recklessly assaulting Shanmughavadivu and the two eye witnesses. He pointed out that all the victims were helpless and hapless and there was hardly any justification of the accused to assault the said victims. The learned Additional Public Prosecutor has also contended that the accused had displayed an extreme cruelty in dealing as many as 6 to 7 blows by a dangerous weapon like sickle on the person, of Gomathiammal, who had in fact fallen down. He has also shown such cruelty to Shanmughavadivu, who had merely reproached him for assaulting his mother-in-law. According to the learned Additional Public Prosecutor, even the subsequent assault on the witnesses can be taken into consideration to infer the cruel and the criminal mind of the accused.

12-A. True it is, that the assault was on the ladies who were helpless and hapleSections It is also true that the accused had shown cruelty in assaulting the deceased persons with a dangerous weapon like sickle and had inflicted number of injuries on their persons even when no retaliation was offered by any of these persons. Yet, however, this case could not be placed on the high pedestal of rarest of rare case. We have already given our reasons of extreme poverty on the part of the accused, his utter helplessness in the matter and the bitter insult offered to him by his mother-in-law, which must have affected his mind. It has to be borne-in-mind that the accused does not have any criminal list. There is no evidence on record to suggest that he was a person of cruel or arrogant nature. The evidence is completely wanting in their behalf. Here is the case of a poor and a meek villager who does not have a criminal history. Picked by the constant

poverty and further by the insults offered by his own near and dear ones, the man had acted at the spur of the moment in a biased manner so as to terminate two lives and endangered two others. It cannot be said to be a rarest of a rare case. Perhaps, the evidence of the eye witnesses that the accused was uttering that unless Gomathiammal was finished, there would be no peace in the family, suggests the constant dissatisfaction and disturbed atmosphere in his family for a long time. True it is, that two persons have lost their lives, but the number of persons losing their lives in the incident has not been the only factor. In the reported decision of A. Deivendran v. State of Tamil Nadu (1997) 4 Cri 181 : : 1998 CriLJ814 , where the Supreme Court was dealing with the offence of murder of two old ladies during the robbery bid as also the murder of one more victim, the Supreme Court observed that the number of persons died in the incident is not determinative factor for deciding whether the extreme penalty of death could be awarded or not. In that case, relying upon the decisions in Machhi Singh v. State of Punjab : 1983 CriLJ1457 ; Suresh v. State of U.P. : 1981 CriLJ746 ; Raja Ram Yadav v. State of Bihar : 1996 CriLJ2307 and Mukund alias Kundu Mishra v. State of Madhya Pradesh : 1997 CriLJ3182 : : 1997 CriLJ3182 , the Supreme Court refused to award the death sentence. It is liable to be seen that this was a robbery case and the murders were for gain, so also the murders in Raja Ram Yadav's case (supra) and Mukund alias Kundu Mishra's case (supra) were obviously for gain. Yet, considering the peculiar facts, the Supreme Court did not choose to award extreme penalty. Therefore, merely because two persons had died in the incident and the lives of the other two persons were endangered could not be the only factor.

13. The learned Additional Public Prosecutor invited our attention to the reported decision in Nirmal Singh v. State of Haryana : 1999 CriLJ1836 . In this case, two persons were sentenced to death. The main accused, whose death sentence has been confirmed by the Apex Court, was facing a rape charge in the earlier case and was convicted therein. When he was on bail, he attacked the family members of the victim in the earlier case. He was armed with axe and his brother was armed with dagger. In the incident, five persons lost their lives at the hands of both the accused. The Apex Court has, however, not confirmed the death sentence of the brother of the main accused, though it confirmed the death sentence of

Dharampal, who was the main accused. It has to be seen that the facts in this case are quite distinct from the facts in the present case. In the reported decision, there was a premediation on the part of the accused, a cruel Act of finishing off the whole family of five persons and that too in a very cruel manner. This is not the case here. Yet, in this case, in so far as his brother Nirmal Singh was concerned, the Supreme Court has taken into account the fact that Nirmal Singh did not have any past criminal antecedents and there was no possibility of his repeating the criminal acts so as to be a threat to the Society. It can be seen from this case that the advantage of the clean past can be given to the accused person. The learned Additional Public Prosecutor also relied on the reported decision in Govindasami v. State of Tamil Nadu : 1998 CriLJ2913 . This case was from our High Court only, wherein initially all the accused stood acquitted by the Sessions Judge. However, the High Court allowed the Appeal against acquittal and convicted the accused and awarded death sentence to him. The Supreme Court has also upheld the said death sentence. The learned Additional Public Prosecutor very heavily relied upon this case to suggest in support of his contention for grant of death sentence on the accused. We are not in agreement. As a matter of fact, the facts in this case are quite different. In the first place, there were as many as five murders and the entire family was done to death. Again, the act in this case on the part of the accused was proved to be a premeditated and was not on account of the provocation in contradistinction from the present case. The reliance on this ruling is, therefore, uncalled for. The learned Additional Public Prosecutor also tried to rely on a decision in Jai Kumar v. State of M.P. : 1999 CriLJ2569 . The learned Additional Public Prosecutor very heavily relied upon this case, as in this case, only two persons viz., the victim and her daughter were murdered. The learned Additional Public Prosecutor invited our attention to the observations made in support of the award of death sentence to the accused. It cannot be forgotten, however, that the lady, who was murdered, was already carrying. Not only this, but the accused had tried to enter into the room of the victim and dismantled the bricks of the wall around the door and he also had an evil-eye against the victim, none else but his brother's wife. It is pointed out by the learned Additional Public Prosecutor that there, the plea of the accused was that he had committed the murder. There also the victim refused to give enough food to the accused and on that account, the

accused was enraged. A faint shade of similarity in the facts of this case will not, however, take the present case on the high pedestal to the rarest of rare case. The Apex Court has clearly seen a premediated act in the cold blooded murder without any provocation as taking the case to the category of rarest of rare case. Such factual scenario was clearly absent in this case. The law Lald down in Jai Kumar's case, : 1999 CriLJ2569 therefore cannot help the prosecution. The learned Additional Public Prosecutor also tried to rely on the decision in Shankar alias Gauri Shankar v. State of Tamil Nadu 1994 (2) Cri 1. We are afraid, the facts in Shankar's case can have absolutely no similarity with the present case. In the reported case, the accused had obviously given to the vices and had not only killed the victims in cruel manner but also tried to act cruelly even after the death. Again, there was a factor of material gain for murder present in this case, which was totally absent in the present case. The decision, therefore, cannot apply to the present case.

14. The learned Additional Public Prosecutor also relied on the principles Lald down by the Apex Court in State Through Superintendent of Police, CBI/SIT v. Nalini, (1999) (2) Cri 59 : : 1999 CriLJ3124 . The learned Additional Public Prosecutor tried to draw some support from the fact that Nalini, who was one of the perpetrators in the conspiracy of the murder of Shri. Rajiv Gandhi, had not actually participated in the act of killing and yet, she was awarded the death sentence. Apart from the fact that the factual scenario is different, we also wish to point out that the Apex Court has seen a cold blooded attitude in the accused in systematically drawing the conspiracy for murdering Shri. Rajiv Gandhi. The principles Lald down therein would not, therefore, apply to the present case. Same comments apply to the other decision relied upon by the learned Additional Public Prosecutor in Panchhi v. State of U.P. : 1998 CriLJ4044 . This was a. case of four murders. There is absolutely no similarity in the facts and, therefore, the principles stated cannot be said to be applicable. Besides these cases also, the learned Additional Public Prosecutor tried to show the other cases where the Supreme Court had confirmed the death sentences. However, in all those cases, there have been involvements of completely different facts and, therefore, we would not consider them in this judgment. In short, it comes to this that this was not a murder for gain nor could it be said a pre-planned murder. It is obvious that the tension

prevailing in the accused's family for a longer period of six months has culminated ultimately in the gory incident, where two persons have lost their lives. There is a social aspect of abject poverty present in the scenario which would deter us from treating this case as rarest of rare case, though the victims were women who were hapless and helpleSections The learned Sessions Judge has unfortunately given a very sketchy like treatment to the subject. There should have been more consideration shown to this aspect in his judgment.

15. For all these reasons, we would not confirm the death sentence and instead, substitute it with a sentence of life imprisonment. The sentence passed for the offences under Section 307, I.P.C. on two counts and other directions regarding the same would remain undisturbed. In the result, we pass the following Order: The reference is not accepted and the death sentence ordered by the trial Court under Section 302, I.P.C. on two counts is set aside and is substituted by sentence of imprisonment for life. The sentence and the conditions imposed regarding the offences under Section 307, I.P.C. on two counts remains undisturbed. Criminal Appeal No. 427 of 1999 is dismissed.