



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**



DATED THIS THE 30TH DAY OF MAY, 2023

PRESENT

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 100170 OF 2020

C/W

CRIMINAL REFERRED CASE NO. 100002 OF 2020

IN CRL.A. NO.100170 OF 2020
BETWEEN

BYLURU THIPPAIAH @ BYALURU THIPPAIAH
@ NAYAKARA THIPPAIAH
S/O MALLAPPA,
AGED: 43 YEARS,
OCC: LABOURER,
R/O: KENCHANAGUDDA HALLI,
WARD NO.III, CHAPPARADAHALLI, KAMPLI,
TQ: HOSAPETE-583132,
DIST: BALLARI (J.C.)

...APPELLANT

(BY SRI. S L MATTI, ADVOCATE)

AND

THE STATE OF KARNATAKA
BY THE C.P.I. KAMPLI CIRCLE,
KAMPLI POLICE STATION,
DIST: BALLARI-583212,
R/BY ADDITIONAL SPP,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH,
DHARWAD.





...RESPONDENT

(BY SRI. V.M.BANAKAR, ADDL. SPP)

THIS CRIMINAL APPEAL IS FILED U/S 374 (2) OF CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE PASSED BY III ADDL. DISTRICT AND SESSIONS JUDGE, BALLARI (SITTING AT HOSAPETE) IN SESSIONS CASE NO.5031/2017, DATED 03/12/2019 AND ORDER DATED 04/12/2019 SENTENCED TO CAPITAL PUNISHMENT OF DEATH PENALTY FOR THE OFFENCE PUNISHABLE U/S 302 IPC.

IN CRL.R.C. NO.100002 OF 2020
BETWEEN

STATE BY KAMPLI POLICE STATION
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH.

...COMPLAINANT

(BY SRI. V.M.BANAKAR, ADDL. SPP)

AND

BYLURU THIPPAIAH @ BYALURU THIPPAIAH
@ NAYAKARA THIPPAIAH
S/O MALLAPPA,
AGE: 40 YEARS,
OCC: LABOURER,
R/O: KENCHANAGUDDA HALI,
3RD WARD, CHAPPARADAHALLI,
KAMPLI, HOSAPETE.
DIST: BALLARI.

...APPELLANT

(BY SRI. S.L.MATTI, ADVOCATE)

THIS CRIMINAL REFERRED CASE IS REGISTERED AS REQUIRED UNDER SECTION 366 OF CR.P.C. FOR CONFIRMATION OF DEATH SENTENCE AWARDED TO APPELLANT-BYLURU THIPPAIAH @ BYALURU THIPPAIAH @ NAYAKARA THIPPAIAH S/O MALLAPPA, AGE: 40 YEARS, OCC:LABOURER, R/O KENCHANAGUDDA HALLI, 3RD WARD, CHAPPARADAHALLI, KAMPLI, HOSAPETE, DIST:BALLARI.

THIS CRIMINAL APPEAL AND CRIMINAL REFERRED CASE HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, **SURAJ GOVINDARAJ J.,** DELIVERED THE FOLLOWING:



JUDGMENT

1. The Appellant is before this Court on appeal challenging the order of conviction and sentence passed by the III Additional District and Sessions Judge, Ballari (sitting at Hosapete) in Sessions Case No.5031/2017 dated 03.12.2019.
2. By way of the order of conviction, the Appellant was found guilty of an offence punishable under Section 302 of IPC, and by way of order of sentence, the Appellant was sentenced to capital punishment of death penalty for the offence under Section 302 of IPC and directed him to be hung till death. In terms of Section 366 of Cr.P.C. the matter is submitted to this Court for confirmation of sentence.
3. The case of the prosecution is that the Appellant had married deceased Pakkeeramma 12 years prior to the date of incident. Initially, the relationship between the Appellant and the deceased was cordial,



later, he started suspecting the fidelity of his wife and started quarrelling with her by assaulting her physically. Though many elders and neighbours advised the Appellant, the Appellant continued the suspicion and abuse. The Appellant would often say that other than the daughter Rajeshwari the other three children, namely Basamma, Nagaraj @ Rajappa and Pavithra were not born to him, and suspected their paternity.

4. It is in that background that the Appellant is alleged to have on 25.02.2017 assaulted Pakkeeramma, her sister Gangamma and the minor children Pavithra, Nagaraj @ Rajappa and Basamma with a chopper in such a manner that 4 of them expired at the spot and Basamma expired on the way to the hospital. The Appellant came out of the house and shouted that he was happy to have chopped his wife and sister-in-law, who are involved in immoral activities



and that he has also chopped off three children who were not born to him.

5. It is in that background that a complaint was filed and Crime No.23/2015 was registered in Kampli Police Station for an offence punishable under Section 302 of IPC. After completion of the investigation, a charge sheet was laid for the said offence against the Appellant before the Committal Court. After taking cognizance of the offence, the Committal Court registered the case against the Appellant, secured him from judicial custody, furnished a copy of the charge sheet and after hearing both sides committed the matter for trial.
6. After registration of the case, the Appellant was secured from judicial custody. He was represented by a panel advocate of Taluka Legal Services Committee. After hearing both sides, charges for the offence under Section 302 of IPC were framed, read over and explained to the Appellant in a language



known to the Appellant. The Appellant pleaded not guilty and claimed to be tried.

7. In order to prove its case, the prosecution examined in all 36 witnesses out of 66 witnesses cited in the charge sheet as PWs.1 to PW.36 and got marked Exs.P.1 to P.51 and material objects at MOs.1 to MO.22 were marked in support of its case.
8. After the closure of evidence of the prosecution, the incriminating evidence against the Appellant was put across to the Appellant and his statement under Section 313 of Cr.P.C. was recorded when the Appellant denied the incriminatory evidence against him, he did not lead any evidence in his defence.
9. After hearing the prosecution and defence, the trial Court passed the aforesaid order of conviction and sentence of death penalty. Aggrieved by which the Appellant is before this court represented by Sri S L Matti, a panel counsel for the High Court Legal



Services Committee, High Court of Karnataka,
Dharwad Bench, Dharwad.

10. Sri.S.L.Matti, learned counsel for the appellant,
submits that:

10.1. There are no eyewitnesses to the case and
as such, the case is one of circumstantial
evidence.

10.2. The prosecution has been unable to prove
the case against the Appellant beyond a
reasonable doubt.

10.3. In fact, there are so many loopholes in the
case of the prosecution that they cannot be
explained and would only result in an
irresistible conclusion that the Appellant has
not committed the offence alleged against
him.

10.4. In terms of the decision in **RAMANAND @**
Nandlal Bharti V/s State of Uttar



Pradesh, 2022 SCOnline SC 1396, the prosecution has to establish each and every aspect of the case and establish all the circumstances in such a manner that the only conclusion that could be drawn is that the offence has been committed by the Appellant and none else.

10.5. Even if there is a slight doubt created that the Appellant might not have committed the offence and or that somebody else could have committed the offence, then the circumstantial evidence cannot be said to have been established and as such, the appellant could not have been convicted in the manner done.

10.6. A vague motive has been ascribed to the Appellant, of he having suspected the fidelity of the deceased. There is no evidence led in this regard as regards with whom the



deceased had an affair or otherwise, the same is itself a cooked-up story put up by the prosecution and does not require any consideration.

10.7. The last seen theory has also not been established by the prosecution inasmuch as no one has seen the Appellant with the deceased prior to the death of the deceased. Witnesses who have stated that they have seen the Appellant after the death of the deceased have not completely supported the case of the prosecution and therefore, this aspect has not been established.

10.8. Lastly, he submits as regards the recovery of the material objects that the said objects had been recovered independently and not based on any confession made by the Appellant and as such, the same could not be held to have been properly recovered.



10.9. The only witnesses who have supported the case of the prosecution properly are the police/state witnesses and there is no independent corroboration of the allegation made by the State against the Appellant and on these grounds, he submits that the order of conviction and sentence is required to be set aside.

10.10. Sri.S.L.Matti relies upon the decision reported in **(2019) 17 SCC 568** in the case of **MALAICHAMY VS. STATE OF TAMIL NADU**, more particularly para No.9 thereof, which is reproduced hereunder for easy reference:

"9. The circumstances relied upon by the prosecution are as follows:

(a) The last seen circumstance;

(b) motive for the commission of the offence; and



(c) the recovery of two knives based on the confession made by Appellant No.1 before the Police Officer, as per Section 27 of the Indian Evidence Act, 1872."

10.11. By relying on the above decision, he submits that in a case relating to circumstantial evidence, there being no eyewitnesses, the above aspects would have to be proved by the prosecution beyond a reasonable doubt.

10.12. He relies upon the decision reported in **(2020) 10 SCC 166** in the case of **ANWAR ALI AND ANOTHER VS. STATE OF HIMACHAL PRADESH**, more particularly para Nos.14.2 and 15 thereof, which are reproduced hereunder for easy reference:

"14.2 When can the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:

"20. The findings of fact recorded by a court can be held to be perverse if the findings



have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn (1984) 4 SCC 635, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE 1994 Supp. (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v. State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P (2009) 10 SCC 636).

15. It is also required to be noted and it is not in dispute that this is a case of circumstantial evidence. As held by this Court in catena of decisions that in case of a circumstantial evidence, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the Appellant and none else and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the Appellant and such evidence should not only be consistent with the guilt of the Appellant but should be inconsistent with his innocence."

- 10.13. He relies upon the decision reported in **(2020) 3 SCC 747** in the case of **MOHD. YOUNUS ALI TARAFDAR VS. STATE OF**



WEST BENGAL, more particularly para Nos.15 and 16 thereof, which are reproduced hereunder for easy reference:

"15. PW 12 did not state before the Investigating Officer that he gave his watch to the deceased when he left the house on 15.03.1984. It is clear from the cross-examination of the Investigating Officer that this statement of PW 12 was an improvement. The manner in which the confessional statement of the Appellant was recorded and the seizure of the receipt of the watch was made is not free from doubt.

16. On an overall consideration of the evidence on record, especially the evidence of PWs 11, 12 and 16 would not lead us to believe that the Appellant and the deceased were last seen together. The evidence of PWs 11 and 16 only shows that they were informed by the deceased that he was going to visit the Appellant. There is no evidence on record to show that the Appellant was last seen with the deceased. Section 106 of the Indian Evidence Act, 1872 is not applicable to the facts of the case. It cannot be said that the Appellant failed to explain as to what happened after they were last seen together especially when there is no evidence to show that they were last seen together."



11. Sri.V.M.Banakar, learned Additional SPP would submit that:

11.1. The Trial court has taken into consideration of all the relevant factors, considered all the evidence on record both oral and documentary and has come to a categorical conclusion that it is the Appellant who has caused the death of the deceased.

11.2. Apart from the Appellant, there was no one else available in the house of the deceased who could have committed the offence.

11.3. The Appellant himself, having admitted that he had caused the death of the deceased, which has been deposed to by several witnesses, there is no other evidence which is required to establish the case of the prosecution.



11.4. Insofar as the sentence is concerned, he submits that the Appellant having caused the death of five persons, namely his wife, sister-in-law and three minor children, this qualifies to be the rarest of rare case requiring this Court to confirm the capital punishment and order passed by the trial Court. The brutality and depravity with which the murders have been committed deserve a death sentence.

11.5. The conduct of the Appellant being atrocious, trial Court did not have any option but to convict the Appellant for the said offence and sentenced him to death penalty.

11.6. On these grounds he submits that this Court ought not to intercede in the matter.

11.7. Learned Additional SPP relies upon the decision reported in **(2013) 7 SCC 45** in the



case of **HARIVADAN BABUBHAI PATEL**
VS. STATE OF GUJARAT, more particularly
para No.28 thereof, which is reproduced
hereunder for easy reference:

"28. Another facet is required to be addressed to. Though all the incriminating circumstances which point to the guilt of the Appellant had been put to him, yet he chose not to give any explanation under Section 313 CrPC except choosing the mode of denial. It is well settled in law that when the attention of the Appellant is drawn to the said circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for building the chain of circumstances. (See State of Maharashtra v. Suresh[21]). In the case at hand, though number of circumstances were put to the Appellant, yet he has made a bald denial and did not offer any explanation whatsoever. Thus, it is also a circumstance that goes against him."

11.8. He also relies upon the decision reported in
ILR 2019 KAR 4216 in the case of
SMT.LALITHA VS. L.C.RAGHU AND
OTHERS, more particularly para No.47



thereof, which is reproduced hereunder for easy reference:

"47. *Having discussed the material evidence available before the Court and also taking the surrounding circumstantial evidence and no explanation on the part of the Appellant in 313 statement, we are of the opinion that the prosecution was able to prove the case against Appellant No.1 and the trial Judge has committed an error in considering the evidence available on record both oral and documentary and the same is not in the right perspective. There is a force in the contention of the complainant's counsel and also the State counsel that in spite of voluminous evidence available before the Court, the trial Judge has committed an error in not appreciating the material in the right perspective. No damage is caused to the motorcycle in which Appellant No.1 and deceased travelled and the same also supports the case of the prosecution that if really an accident has taken place, there would have been damages to the motorcycle and the same is also one of the circumstance which goes against the Appellant in proving the case against Appellant No.1 by prosecution. The Court below has committed an error in not considering the evidence of P.Ws.1 and 6 with regard to both the Appellant and deceased last seen together. The Court below also did not consider the evidence of P.Ws.1 and 6 that just prior to committing the murder, the deceased called P.Ws.1 and 6 told them that they are coming for lunch. The Court below also did not consider the conduct of the Appellant No.1 and also the evidence of*



P.W.28 – Doctor, who deposed that the Appellant No.1 though had not sustained the injury got admitted in the Hospital for two days. The Court below also did not consider the fact that Appellant No.1 called Appellant Nos.2 and 3 to the spot and made arrangements to shift the body to the house of parents of the deceased. All these factors connect to each of the circumstances that Appellant No.1 himself has committed the murder. Hence, the Court below committed an error in appreciating the material evidence and hence, the findings of the trial Court is erroneous. Hence, we are of the opinion that it requires the interference of this Court by re-appreciating the evidence available on record in the light of the principles laid down by the Hon'ble Apex Court in the judgments referred to supra and the very conduct of the Appellant No.1 without any explanation as envisaged under Section 106 of Evidence Act is significant. Hence, we are of the opinion that it is a fit case to convict Appellant No.1 for the offence punishable under Section 302 of Indian Penal Code by reversing the Judgment of the trial Court. Accordingly, we answer point No.1 as 'affirmative'."

12. It is in the background of the above submissions that we have been called upon to appreciate and re-appreciate the evidence on record to arrive at a finding on whether the judgment of the trial Court and the sentence awarded is proper or not.



13. Admittedly, the above matter is one relating to circumstantial evidence. There is no particular eyewitness to the actual incident/crime. There are several witnesses post the crime as regards the conduct of the Appellant but there are, in fact no eyewitnesses to the actual occurrence of the crime.
14. The case being one of the circumstantial evidence, it is but required for the prosecution to establish the chain of events as held in **SHARAD BIRDHI CHAND SARDA VS STATE OF MAHARASHTRA 1984 (4) SCC 116** to lead to an irresistible conclusion that it is the Appellant who has committed the offence.
15. The main ingredients that are required to be established are:
- i. Motive;
 - ii. That the Appellant and the deceased were last seen together before the death of the deceased, the same has also been extended to the Appellant being seen with the body immediately after the deceased's death;



iii. Recovery of the material objects and or weapon used for commission of crime on the basis of a confession made by the Appellant in terms of Section 27 of the Indian Evidence Act.

16. In the present case, insofar as the motive is concerned, PW.2, PW.4, PW.5, PW.8, PW.9, PW.11, PW.14, PW.16, PW.17, PW.20, PW.21, PW.32 have all stated about the several quarrels that the Appellant had with Pakeeramma the deceased wife, suspecting her fidelity and the Appellant having alleged that his wife Pakeeramma and her sister Gangamma were of loose character.

17. PW.2, PW.9, 14 & 15 have deposed that the Appellant had categorically stated that Pavithra, Basamma and Nagaraja @ Rajappa are not his children and he suspected their paternity.

18. The above witness have also stated about the fights between the Appellant and the deceased Pakkeeramma, relatable to the other deceased Gangamma and children Pavithra, Basamma and



Nagaraja @ Rajappa, it is clear that there was ill-will between the Appellant and the deceased giving rise to a motive on the part of the Appellant to cause their death and the occurrence of the event being homicidal.

19. PW.8, PW.11, PW.17, PW.18, PW.23, PW.24, PW.26, PW.27, PW.28, PW.29, PW.30, PW.31 have all stated that on the fateful day they heard a lot of noise and when they went to the spot they saw the Appellant covered in blood holding a chopper (*Macchu*) which was drenched in blood, coming out of the house proclaiming that he was happy today since he had finished the story and has chopped the prostitutes and the children.
20. PWs.7, 11, 16 & 17 have deposed that they had upon seeing the Appellant enquired with him as to what happened, when the Appellant informed that he had chopped the prostitutes and killed the children and that he was happy.



21. PWs.8, 11, 16, 17, 20 & 29 have deposed that they rushed into the house when they saw five bodies namely that of Pakkeeramma, Gangamma, Pavithra, Basamma and Nagaraja @ Rajappa covered in blood having various injuries. They found that Pakkeeramma, Gangamma, Pavithra and Nagaraja @ Rajappa had already expired and Basamma was still breathing.

22. PWs.2, 4, 5, 11, 16, 17, 20, 25, 26, 27, 28, 29 30 & 31 have deposed that Basamma was taken to the hospital for treatment but she was declared dead on arrival.

23. PW.1 being the doctor who conducted the postmortem, has stated that Pakkeeramma suffered the following injuries:

1. *Left shoulder: Chopped wound measuring 19 x 6 cm muscle and bone chopped wound over scapula is seen.*
2. *Supraclavicular region/base of left neck 4x6x1.5 cm lacerated wound about 6 cm from angle of mouth (left side)*



3. *Lacerated wound measuring 5x ½ cm is seen below the left ear.*
4. *A semicircular lacerated wound measuring 6 cm x ½ cm is seen over left deltoid region.*

24. Gangamma suffered the following injures:

1. *Right side of face: a chopped wound measuring 8 cm 5cm x bone deep mandible fracture below the right side.*
2. *Chopped wound measuring 5cm x 2cm is seen over right shoulder.*
3. *2 cm x ½ cm penetrating wound is seen over the right side of the back.*
4. *Neck: a chopped wound measuring 9 cm x 5 cm x bone deep is seen over the occipital region over left side.*
5. *Chopped wound measuring 2 cm x 1 cm is seen over the left deltoid.*

25. Pavithra suffered from the following injures:

1. *Front of neck: incised wound measuring 6cm x 3cm in seen.*
2. *Right side of shoulder: 4.5 cm x 1.cm chopped wound is seen.*
3. *Side shoulder over scapula: 8 cm x 5 cm x bone deep chopped wound is seen.*
4. *Occipital region: 10 cm x 3 cm chopped would in seen.*

26. Nagaraja @ Rajappa suffered the following injures:



1. *Head: chopped wound oblique measuring 6 cm x 2 cm over left parietal region is seen.*
2. *Neck: chopped wound measuring 5 x 2.5 cm in front of the neck is seen.*
3. *Left shoulder: chopped oblique wound measuring 5/3/bone deep is seen at left side over scapula region.*
4. *Lega: 8x2 cm oblique chopped wound one left leg below the left knee.*

27. Basamma suffered the following injuries:

1. *Head: chopped wound measuring 12.5 x 4 cm bone fractured is seen over left parietal region.*
2. *Below ear (left): 3 cm x ½ cm x 1 cm deep chopped wound is seen 1 cm from left ear.*
3. *2.5 x 1 cm oblique chopped wound is seen over the back.*
4. *2 cm x 1 cm lacerated wound is seen over left shoulder.*

28. PW.1-doctor has opined that all the five deaths were caused due to cardiopulmonary arrest as a result of hemorrhagic shock as a result of multiple injuries sustained. Thus, it is clear that the deaths are due to homicide.

29. The postmortem reports also indicate that Pakkeeramma was aged 34 years, Gangamma was



aged 28 years, Pavithra was aged 6 years, Rajappa was aged 7 years and Basamma was aged 8 years.

30. PWs. 18, 19 and 33 have deposed that it is the Appellant who surrendered the weapon to the police upon which the same was seized.
31. The fact of the Appellant having planned the event is established by the evidence of PW.15 who has stated that on the fateful date the Appellant had informed PW.15 that his daughter Rajeshwari would be coming to Yarakallu village to the residence of PW.15. Rajeshwari would board the bus at Kampli and reach Yarakallu. He has stated that the Appellant had requested him to pick her up at the bus stand and take her home when PW15 had informed him of Rajeshwari knowing the way to his house she could herself come to the house.
32. The above facts indicate that the Appellant having stated that he has only one daughter, namely



Rajeshwari and the other children are not born to him, has knowingly and intentionally planned that he would assault and cause the death, and has in fact caused the death of his wife, sister-in-law and three other children, by sending his daughter Rajeshwari to PW.15's house so that no harm could be caused to her and that she is not present at the time when he carries/d out his intentions.

33. In the above background, the deaths being homicide, the Appellant having a motive to cause the said deaths, the Appellant having proclaimed that he has caused the deaths, the Appellant being seen immediately after the death in bloodied clothes carrying a chopper which was also bloodied, the said chopper having been surrendered to the police, witnesses having stated that there were several fights between himself and his wife, the Appellant having suspected the fidelity of his wife the Appellant having planned the entire event by sending his elder



daughter to the house of PW.15, would categorically establish that the actions of the Appellant were preplanned, motivated, predetermined and that he has committed the murder of 2 adults and 3 children.

34. An heinous act of murder of his wife, sister-in-law and three children all of whom were below 10 years of age having been committed would also indicate the depravity of the Appellant. Five murders having been caused by the Appellant in the house of the Appellant by using a chopper and physically assaulting the aforesaid persons, the postmortem report indicating the seriousness and the maliciousness with which the deceased had been attacked, we are of the considered opinion that the prosecution has proved beyond reasonable doubt that the Appellant has caused the death of all the five deceased.

35. Coming to the sentence, the trial Court has awarded death penalty directing the Appellant to be hung till



death. While imposing such a sentence, the trial Court was of the opinion that the Appellant has committed the brutal, barbaric, inhuman murder of five family members including three children who were aged 6, 7 and 8 years respectively with a motive and full preparation.

36. Sri.S.L.Matti, learned counsel for the appellant by relying on the decision reported in **(2021) 1 SCC 718** in the case of **DILEEP BANKAR VS. STATE OF MADHYA PRADESH** has contended that the entire basis of conviction being circumstantial evidence, death penalty ought not to be imposed. He relies upon the decision reported in **2022 (3) SCALE 45** in the case of **PAPPU VS. THE STATE OF UTTAR PRADESH** and submits that the death sentence could be commuted to imprisonment for life with such stipulation that this Court may deem fit.
37. Sri.V.M.Banakar, learned Additional SPP by relying upon the decision reported in **1994 SCC (Cri) 555**



in the case of **BHERU SINGH S/O KALYAN SINGH VS. STATE OF RAJASTHAN** would submit that the present case is one which would fit into the definition and meaning of rarest of rare cases requiring death penalty to be imposed on the Appellant. In this regard he relies upon para No.27 of the above judgement, which is reproduced hereunder for easy reference:

"27. So far as the sentence is concerned, while narrating the prosecution case we have indicated the motive as given by the appellant in the admissible portion of the first information report Ex. P-42 and in his confessional statement. This needlessly suspicious husband, doubting the fidelity of his wife Smt Kajodbai and suspecting her of having an affair with Bhojak Gujar did not stop short at severing the head of Kajodbai from her body and thereby slaughtering her but went on a murdering spree and murdered his five children also one after the other for no rhyme or reason. The young innocent children aged between 2 to 14 years were murdered in a most brutal manner for no fault of theirs. He chased the children and murdered them. The entreaties by his brother's wife Smt Ratnabai PW 10 spare at least the last child, also went unheeded by the appellant. The appellant committed a most heinous cold-blooded and gruesome murder. When even the lower species, like the animals and the birds, would take all steps to protect their progeny, the appellant fell down to such depth of



depravity as to slaughter his own wife and children, for no fault of theirs, only on some suspicion being planted in his mind that his deceased wife was having an affair with Bhojak Gujar. The act of the appellant in murdering his wife and five children in cold blood on hearing rumour of infidelity of his wife on one occasion sends a chill down our spine and shocks our judicial conscience."

38. Sri.V.M.Banakar, learned Additional SPP reiterates that the Appellant having caused the death of five persons at the same time, three of them being children, this Court ought not to show any mercy insofar as the Appellant is concerned the Appellant not having shown any mercy to his wife and children. The Appellant therefore is also not entitled for any mercy and ought to be given the maximum punishment possible for the barbaric inhuman offence committed by him.
39. In terms of Section 354(3) of Cr.P.C., it is clear that normally imprisonment for life is to be awarded and only in any exceptional circumstances death



sentence is required to be awarded. Section 354(3) of Cr.P.C. reads as under:

"354(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence."

40. The Hon'ble Apex Court in **JAGMOHAN SINGH V. STATE OF U.P. (1973) 1 SCC 20**, after considering legislative policy came to a conclusion that normal rule is that offence of murder shall be punished with sentence of life imprisonment. The Court can depart from that rule and impose the sentence of death only if there are special reasons for doing so. Such reasons are required to be recorded in writing before imposing death sentence. Thus, it is only under exceptional circumstances for exceptional reasons and in extreme cases that death sentence could be awarded.



41. There cannot be a straight jacket formula which can be worked out as to, in which cases death sentence has to be imposed and in which cases life sentence has to be awarded that has to be decided, on case to case basis by taking into consideration aggravating and mitigating circumstances of each cases.

42. Certain guidelines were laid down in **BACHAN SINGH V. STATE OF PUNJAB (1980) 2 SCC 684.**

Para 202 deals with aggravating circumstances:

"202. Drawing upon the penal statutes of the States in U.S.A. framed after Furman v, Georgia, in general, and Clauses 2(a), (b), (c), and (d) of the Indian Penal Code (Amendment) Bill passed in 1978 by the Rajya Sabha, in particular, Dr. Chitale has suggested these "aggravating circumstances":

Aggravating circumstances : A Court may, however, in the following cases impose the penalty of death in its discretion:

*(a) if the murder has been committed after previous planning and involves extreme brutality;
or*

*(b) if the murder involves exceptional depravity;
or*

(c) if. the murder is of a member of any of the armed forces of the Union or of a member of any



police force or of any public servant and was committed -

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the CrPC, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.

203. Stated broadly, there can be no objection to the acceptance of these indicators but as we have indicated already, we would prefer not to fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other.

43. Para 206 of the decision speaks of mitigating circumstances

206. Dr. Chitale has suggested these mitigating factors:

Mitigating circumstances:- *In the exercise of its discretion in the above cases, the Court shall take into account the following circumstances:*



(1) *That the offence was committed under the influence of extreme mental or emotional disturbance.*

(2) *The age of the Appellant. If the Appellant is young or old, he shall not be sentenced to death.*

(3) *The probability that the Appellant would not commit criminal acts of violence as would constitute a continuing threat to society.*

(4) *The probability that the Appellant can be reformed and rehabilitated. The State shall by evidence prove that the Appellant does not satisfy the conditions 3 and 4 above.*

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

(6) *That the Appellant acted under the duress or domination of another person.*

(7) *That the condition of the Appellant showed that he was mentally defective and that the said defect unpaired his capacity to appreciate the criminality of his conduct."*

44. In ***MACHHI SINGH AND ORS. V. STATE OF PUNJAB: (1983) 3 SCC 470***, case the Hon'ble Apex Court has after considering several decisions at para 32 to 38, 39 and 40 held as under:

"32. The reasons why the community as a whole does not endorse the humanistic approach reflected in "death sentence-in-no-case" doctrine



are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of "reverence for life" principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by 'Killing' a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so (in rarest of rare cases) when its collective conscience 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. The community may entrain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as for instance:

In Manner of Commission of Murder



33. *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. For instance,*

(i) When the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II Motive for Commission of murder

34. *When the murder is committed for a motive which evince total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (2) a cold blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust. (c) a murder is committed in the course for betrayal of the motherland.*

III Anti Social or Socially abhorrent nature of the crime

35. *(a) When murder of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make*



them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as '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.

IV Magnitude of Crime

36. 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.

V Personality of Victim of murder

37. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder. (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-a vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

38. In this background the guidelines indicated in Bachan Singh's case (supra) will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentences arises. The following propositions emerge from Bachan Singh's case:



(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 alongwith the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words 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.

39. 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 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 favour of the offender ?

40. If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed here in above, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."

45. Thus, it is on the basis of the above that we have to consider whether in the present case the death penalty awarded by the trial Court is proper or not.
46. CrI.RC No.100002/2020 having been filed for confirmation of death sentence passed by the trial Court, we being of the opinion that before any orders are passed thereon, interactions could be had with the appellant, body warrant was issued for production of the appellant before this Court on 12.12.2022. The appellant was so produced.
47. When we made some enquiries with the appellant and asked him some questions as regards the events that transpired, offences alleged against him, etc.,



not only was he haughty but also denied the commission of any offence.

48. Since the learned Additional SPP continued his insistence on confirmation of the death sentence, we directed him to secure and place before us the report from the Superintendent of Central Jail, Belgavi (Hindalga Jail) regarding the nature of work which had been performed by the appellant while in jail and a report in regard to his conduct and behavior while in jail, for conduct of a psychological evaluation and submission of the report.

49. We also directed the jurisdictional Probation Officer to collect and furnish the information as regards the appellant and his family viz.,

- i. Early family background of the appellant.*
- ii. Details of siblings, if any, and their relationship with the appellant.*
- iii. Any proceedings indicating history of violence or neglect against the appellant or by the appellant.*



- iv. Details as regards the parents (if alive) of the appellant and their opinion as regards the appellant including that of his conduct.*
- v. The present family background of the appellant including the surviving family members, relationship that he has with the surviving family members.*
- vi. Education background of the appellant.*
- vii. The social economic background of the appellant.*
- viii. Criminal antecedents of the appellant including conviction or acquittal, if any, in other proceedings as also pending proceedings.*
- ix. The assets and income of the appellant.*
- x. History of any unstable social behavior or mental or psychological ailments of the appellant.*
- xi. Whether the Appellant can be reformed or rehabilitated.*

50. We further directed the Legal Services Authority also to submit a report. After taking several



adjournments, all the above reports have been submitted.

51. The Taluk Legal Service Committee, Hospete has appointed a panel advocate to collect the information about the appellant and the panel advocate has submitted information about the appellant on 30.12.2022. The panel advocate places on record certain facts which were not on record earlier. It is stated that the appellant had lost his parents during his childhood and he had been brought up under the care of his elder sister. Before he married Pakeeramma, he had already been married which resulted in a separation. He has a son from first wife. The appellant was residing in the maternal home of Pakeeramma. The panel advocate has also stated that the neighbours have also accused the Appellant of causing death of Pakeeramma's father and mother but no complaint was filed in that regard. The appellant is an illiterate. He used to graze sheep



and help his in laws in guarding a mango plantation. The opinion of the local people is that the appellant will not reform and if he is let off, it may result in unpleasant consequences.

52. The Amin, 3rd Additional District and Sessions Court, Hospete has also submitted his report wherein it is stated that the appellant had tried to kill his first wife and it is for that reason that his first wife left him along with the son. The Amin had also stated about the belief of neighbours and residents of the village that the appellant had murdered his father-in-law by strangulating and his mother-in-law by poisoning her. He would fight with his neighbours and was known to beat his wife and daughters. The Amin has also indicated that the people do not believe that he can be reformed. He had threatened and warned all the witnesses deposing against him. Some of the witnesses were threatened in the court proceedings (this particular fact is also borne out in the judgement



of the Trial court). The neighbors have indicated that the appellant should not be let out of jail.

53. The Probation Officer has stated that the appellant and his first wife were separated. There are no proceedings initiated against the appellant and that there is no history of violence against the appellant. The appellant does not have any assets or savings. He has also stated that the residents of Kampli town have opined that the appellant is not fit for rehabilitation. But however the residents of Kenchanagudda village i.e., village where he was born are of the opinion that he could be reformed.

54. Dharwad Institute of Mental Health and Neurosciences has submitted a medical report. In the said report, it is stated that the appellant had informed the doctor that when he returned back to his house, he saw blood in his house and went to the police station and reported the event when he was taken into custody and put in prison. He has also



expressed his worries about his daughter's future and he having death wishes and thoughts to harm himself. Statements attributed to the husband of the niece of the appellant is also recorded in the report wherein he is supposed to have stated that the appellant used to participate in social and religious functions, used to organize religious bhajana programmes, organize ganesha festival, had left alcohol and also persuaded others to leave alcohol.

55. In the physiological assessment, it is stated that the IQ of the appellant is 93, a psychiatrist rating is 29, which is below the cut off score. He does not have any personality disorder and he is emotionally disturbed and has mild depression.

56. The above reports were called for to access the appellant in the light of the Additional SPP requesting for confirmation of death sentence as also to ascertain if there were any mitigating factors which could be considered by us.



57. Punishment under the Indian Penal Code is required to be awarded and many a time is at the discretion of the Court. While awarding punishment, Courts are required to look into various factors including the effect of such punishment. There being various theories of punishment, firstly, the deterrent theory of punishment which calls upon the imposition of punishment so as to deter the offender as also anyone intending to commit similar offence from doing so out of fear of punishment. Secondly, retributive theory of punishment where punishment is imposed more with a motive to inflict similar pain on the offender. Thirdly, preventive theory where punishment is awarded so as to prevent the offender from committing a similar offence and fourthly, Reformatory theory where the punishment is imposed in such a manner as to reform the criminal, rectify his mistakes and rehabilitate himself. These being the main theories of punishments.



58. In the present case, the appellant has been found to be guilty of 5 murders viz., that of his wife, sister-in-law, and 3 minor children. All of whom he had attacked with a chopper and came out of the house covered with blood holding the chopper proclaiming that he has finished of the problem and he is happy to have chopped off the prostitutes and the children.
59. In our interaction with the Appellant, he was defiant and stated that he had not committed any offence and he does not know anything about it. To the psychiatrist, he has stated that when he went to home, he saw blood and thereafter complained to the police, when he was arrested. The manner in which the statements have been made indicates that either the appellant to be divorced from reality or of he having no regard for the law. The phycological evaluation rules out the first. Hence, it can only be the latter which is applicable to the present case.



60. The panel advocate of the TLSC as also Amin have adverted to alleged 2 other murderers committed by the appellant however the same is hearsay and cannot be considered by us. No complaints have been filed or proceedings initiated against the appellant in regard to those. As such, they are required to be ignored.
61. In the present matter, the offence is one relating to murder there being five deaths which have been caused. The murder is of the entire family, the victims are helpless women and children who trusted the Appellant husband and father who has inflicted their death. The murder having been committed only on the alleged suspicion of the Appellant that his wife and sister-in-law were having illicit relationship and or were prostitutes and that the children who were killed were not born to him. The offence has been committed in a preplanned manner. The Appellant having sent his eldest daughter who he admitted to



be his daughter, to the house of PW.15, so as to safeguard her and has attacked the deceased in the house and caused their death.

62. The manner in which the offence has been committed by the Appellant is having attacked two women and three children in the house, hacked them and chopped them resulting in multiple injuries being caused to them and the Appellant coming out of the house and proclaiming that he has killed the prostitutes while holding chopper covered in blood. The same would shock the conscience of anybody and has indeed shocked our conscience, despite we having dealt with so many cases of offences relating to murder.

63. The above being the aggravating circumstances, when we look for mitigating circumstances, there are none of substance we can find, there is no family left for the Appellant except his daughter. He has in fact destroyed his entire family on the basis of the



alleged suspicion and there is none available for the Appellant to reform himself for. Hence, looked at from any angle, despite our attempts to find some mitigating factors or other, we are unable to do so. There was no extreme mental or physical disturbance or extreme provocation for the Appellant to have committed the offence. There is nothing which could indicate that what he has done is as a result of any persistent harassment. There is no any particular justification moral or otherwise that could be given for such an offence. There are no circumstances favoring the Appellant in the present manner. The atrocity of the crime resulting in five deaths including of 3 children below 10 years of age and the brutality with which the same has been committed, leaves us no option but to confirm the order of death sentence passed by the trial Court, which we do with a heavy heart. This in our considered opinion qualifies the test of rarest of rare cases requiring the awardal of death penalty.



64. The trial Court has not passed any order as regards the victim compensation which is required to be mandatorily passed in terms of Section 357 and 357A of the Code of Criminal Procedure. Hence separate direction in that regard would have to be issued.

65. Though the matter was heard and reserved for judgment on 22.11.2022, noticing that there are several information which are required to be considered in order to consider the request of the Addl.SPP for confirmation of capital punishment we had issued directions for obtaining certain records and reports. It is after prolonged period that those reports have been furnished to us, which have been adverted to above. These records and reports being necessary we issue the following directions to be followed in all cases where the prosecution seeks for awardal of death penalty.



65.1. Whenever the public prosecutor were to seek for imposition of capital punishment or death penalty, it would be required that before the hearing on sentence, the prosecutor places on record the following details:

65.1.1. A report of the Superintendent of Jail where the Accused has been imprisoned with regard to nature of work done, conduct and behaviour in jail.

65.1.2. A psychological and physiological evaluation of the Accused at a date as close as possible to the commissioning of the offence as also a psychological and physiological evaluation report at the time when death penalty is demanded to be imposed by the public prosecutor.



65.2. Report of the jurisdictional Probation Officer containing the following details:

65.2.1. *Early family background of the appellant.*

65.2.2. *Details of siblings, if any, and their relationship with the appellant.*

65.2.3. *Any proceedings indicating history of violence or neglect against the appellant or by the appellant.*

65.2.4. *Details as regards the parents of the appellant and their opinion as regards the appellant including that of his conduct.*

65.2.5. *The present family background of the appellant including the surviving family members, relationship that he has with the surviving family members.*



65.2.6. *Education background of the appellant.*

65.2.7. *The social economic background of the appellant.*

65.2.8. *Criminal antecedents of the appellant including conviction or acquittal, if any, in other proceedings as also pending proceedings.*

65.2.9. *The assets and income of the appellant.*

65.2.10. *History of any unstable social behavior or mental or psychological ailments of the appellant.*

65.2.11. *Whether the Appellant can be reformed or rehabilitated.*

65.3. The above reports to be submitted firstly at the time when the Appellant is committed to



trial, a second report, at the time of hearing on sentence if the Appellant were to be convicted, third report at the time when the appeal is heard and the matter is reserved for judgment.

66. The Additional Registrar Judicial is directed to forward a copy of this order to the Director Public Prosecution as also to the Director General of Police, State of Karnataka for compliance. The Director Public Prosecution as also the Director General of Police are directed to issue necessary directions and/or Standard Operating Procedure to all Public Prosecutors and Investigating Officers making it mandatory for them to comply with the above directions as also the directions laid down by the Hon'ble Apex Court in ***Manoj and others vs. State of Madhya Pradesh*** in ***Crl.Appeal No.248-250/2015 dated 20.5.2022.***



67. The Additional Registrar Judicial is also directed to get translated the judgment in ***Manoj and others vs. State of Madhya Pradesh*** in ***Cri.Appeal No.248-250/2015*** into Kannada and forward the same to the Director General of Police for him to forwarded to all the Investigating Officers.

68. In the above circumstance, we pass the following:

ORDER

- i. Criminal Appeal No.100170/2020 stands dismissed.
- ii. Criminal R.C.No.100002/2020 stands allowed.
- iii. The death sentence awarded by the trial Court is confirmed. The Appellant shall be hung by his neck till death.
- iv. The Additional Registrar (Judicial) is directed to forward the above file to the concerned District Legal Service Authority (DLSA) to determine and make necessary arrangements for payment of compensation in terms of Sections 357 and 357A of the Code of Criminal Procedure, to the daughter of the deceased namely Rajeshwari.
- v. Registry is directed to furnish a copy of this judgment to the Appellant through Jail Authorities free of cost and inform him of his right to appeal to the Hon'ble Supreme Court



and transmit the trial Court records to the trial Court along with a copy of this judgment.

- vi. Though the above matter is disposed, re-list on 10.07.2023 at 2.30 p.m. for reporting compliance with the directions issued above.
- vii. We place our appreciation for the services rendered by Sri.S.L.Matti, Panel Advocate of Karnataka State Legal Services Authority.

Sd/-
JUDGE

Sd/-
JUDGE

Ln/-
List No.: 19 Sl No.: 1