IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CONFIRMATION CASE NO. 1 OF 2021

The State of Maharashtra .. Appellant

Versus

Sunil Rama Kuchkoravi,
presently lodged in Yerawada
Central Prison, Pune .. Respondent

....

Mrs. P.P. Shinde, APP for the appellant – State
Dr. Yug Mohit Chaudhry for the respondent

....

CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.

RESERVED ON : 8th AUGUST, 2024.
PRONOUNCED ON : 1st OCTOBER, 2024.

JUDGMENT :- (Per Prithviraj K. Chavan, J.)

1. The Additional Sessions Judge, Kolhapur has made a reference under Section 366 (1), Code of Criminal Procedure for confirmation of death sentence awarded by him to the convict in Sessions Case No. 6 of 2018, which was decided on 08.07.2021.

2. The Additional Sessions Judge convicted the accused –

Sunil Rama Kuchkoravi (for short 'convict') of the offence punishable under Section 302 of the Indian Penal Code and sentenced him to hang by neck, till he is dead. A fine of Rs.25,000/- was also imposed and in default, he was directed to undergo Rigorous Imprisonment for six months.

3. Admittedly, the convict has not preferred an appeal against his conviction and sentence of death.

4. This is a most brutal, barbaric and gruesome murder of a 60 years old mother by her son on the fateful day of 28.08.2017 at *Makadwala Vasahat*, Kolhapur. The prosecution case is described as under.

5. Deceased Yallava *alias* Chavali Appa has two sons, namely Sunil (convict) and Raju. Both are married and reside separately at *Makadwala Vasahat*, Kolhapur. Convict was accustomed to consume liquor. He used to harass his wife. The wife could not tolerate harassment at the hands of the convict and, therefore, she deserted him with three daughters and a son and came to

Mumbai. Deceased Yallava was a widow surviving on the pension of her husband to the tune of Rs.4,000/- per month. Since the convict was residing alone, Yallava used to provide him two square meals. However, the convict used to beat her on account of pension amount, which it seems, he used to demand.

6. On the fateful day of 28.08.2017, PW-6 Rakshata, an eight year old girl, who was playing in front of the house of the convict, first noticed Yellava murdered in her house and her dead body lying in a pool of blood. She also noticed convict standing over there, whose hands, clothes as well as mouth were smeared with blood. PW-6 Rakshata made a hue and cry and rushed to the house of the brother of the convict PW-4 Raju. PW-4 Raju rushed to the spot of incident only to witness the horrendous crime, wherein his mother was lying on the floor naked, in a pool of blood and her body parts i.e. liver, intestine, heart, rib and breast were eviscerated outside. Trail of blood was found flowing till the adjoining house of the convict. He also noticed two knives and one Sattur (Chopper) stained with blood, lying on the spot. By that time, the police arrived at the scene of

occurrence. PW-4 Raju slapped convict - Sunil twice out of extreme anger and anguish. The crowd over there apprehended the convict, who was later taken into the custody by the Police.

7. PW-11 Bhausaheb Malgunde, Police Sub-Inspector, then attached to the Shahupuri Police Station, Kolhapur, who arrived at the scene, had noticed that the heart of the deceased Yallava was kept in a platter and ribs were inserted in an oil bottle. Rest of the internal body parts were also found over there. PW-11 Malgunde also noticed blood stained white coloured blouse and petticoat, white coloured T-shirt with green strips, bed sheet, *Godhadi* (quilt) and a gown.

8. The Investigating Officer summoned panch witnesses. The weapons of offence as well as the blood stained clothes were duly seized under the panchanama. An inquest panchanama was also drawn at **Exhibit 30.** A spot panchanama was drawn in the presence of two respectable panch witnesses, which is proved at **Exhibit 31**. The dead body was forwarded for autopsy. The autopsy report is proved at **Exhibit 63**. The seized *muddemal*

property was forwarded for chemical analysis to the Forensic Science Laboratory.

9. PW-12 Sanjay Shivajirao More, the then Police Inspector attached to Shahupuri Police Station, Kolhapur, conducted further investigation into the crime. He had sealed the crime scene. In order to save the life of the convict from the furious mob, he shifted the convict to the police station.

10. Brother of the convict PW-4 Raju lodged a report, on the basis of which C.R. No. 347 of 2017 came to be registered against the convict. The convict was arrested vide arrest panchanama **Exhibit 48**. At the time of arrest, the convict had only a chocolate coloured *bermuda* on his person with blood stains. The same was seized under the seizure panchanama at **Exhibit 49**.

11. The convict was referred for medical examination at C.P.R. Hospital, Kolhapur. Opinion of the Doctor was sought on 10 different points. The said letter is proved at **Exhibit 65**.

Blood sample, nail clippings as well as hand and foot wash of the convict were collected and forwarded to the Forensic Science Laboratory, in a sealed condition.

12. Photographs of the scene of occurrence were snapped by a photographer, including the photographs of dead body, internal organs and the spot of incident.

13. After the investigation, a charge-sheet came to be filed against the convict in the Court of JMFC. Meanwhile, the Investigating Officer issued a letter to the Land Records Office for obtaining the map of the spot, which is proved at **Exhibit 67**. The Investigating Officer collected FSL's report on 07.09.2017 *qua* the weapons of offence used. The reports are proved at **Exhibit 42** to **Exhibit 45**.

14. In order to ascertain the motive in committing the offence, a letter was issued to the Chief Officer, Employees Provident Fund, on 19.09.2017, which is proved at **Exhibit 69**. This is in light of the fact that the convict used to harass the deceased for

the pension amount. The report in respect of DNA was forwarded by the Forensic Science Department, Kolhapur *qua* the blood samples, foot and hand wash and other articles. The same was received and is at **Exhibit 53**.

15. Statements of some of the witnesses came to be recorded by the Judicial Magistrate First Class under Section 164 of the Cr.P.C. As per the CA report at **Exhibit 75**, blood stains appeared on the body, clothes, nail clippings, *bermuda* of the convict as well as the spot of incident and over the weapons, were matched.

16. After investigation, the Investigating Officer laid a charge-sheet in the Court of the JMFC. After committal of the case to the Sessions Court, a charge was framed in terms of **Exhibit 3**. It was read over and explained to the convict, to which, he pleaded not guilty and claimed a trial.

17. To substantiate its case, prosecution examined 12 witnesses, coupled with documentary evidence in the form of

reports of the FSL, seizure, inquest as well as spot panchanamas and statements of some of the witnesses under Section 164 of the Cr.P.C. etc.

18. The Additional Sessions Judge, Kolhapur having meticulously gone through the facts and evidence and after giving full opportunity to the prosecution and the defence, found that the prosecution has proved beyond all reasonable doubts that the convict had committed most gruesome, barbaric and horrendous murder of his mother by means of a big *Sattur* and two knives. He eviscerated her body parts which he was about to eat. The learned Judge in the judgment, has considered not only the nature of evidence and the mode and manner in which the convict had committed the murder of his mother, but also made elaborate discussion on the motive, defence of the convict as to intoxication, insanity, false implication and delay in lodging an FIR etc.

19. The Additional Sessions Judge has also drawn a balance-sheet of aggravating and mitigating circumstances as enunciated

in several decisions of the Supreme Court, especially in view of the decisions in the case of ***Bachan Singh Vs. State of Punjab***[1]; ***Machhi Singh & Ors. Vs. State of Punjab***[2] as well as in the case of ***Shabnam Vs. State of UP***[3]. The Additional Sessions Judge had given pre-sentence hearing as mandated in Section 235(2) of the Cr.P.C. to both the prosecution and the defence and had concluded that convict deserves death penalty and, therefore, awarded sentence of death.

20. We heard Dr. Yug Chaudhry, learned Counsel for the convict and Mrs. P.P. Shinde, learned APP for the respondent State at a considerable length. We also heard the convict for a considerable duration, through video conferencing.

21. Although, no appeal has been preferred by the convict against his conviction and sentence of death, nevertheless, it would be expedient to reassess and evaluate the evidence adduced by the prosecution in the trial Court to substantiate his guilt, apart from the fact as to whether sufficient reasons have

1 AIR 1980, SC 989
2 1983 AIR 957
3 (2015) 6 SCC 632

been assigned to award death sentence.

22. In order to bring home guilt of the convict, prosecution examined 12 witnesses. The case is based on circumstantial evidence. Apart from oral testimonies of 12 witnesses, prosecution has placed reliance on several documents in the form of inquest panchanama **Exhibit 30**, spot panchanama **Exhibit 32** etc.

23. Indisputably, deceased Yallava died a homicidal death. The testimony of PW-5 Dr. Nikhil Jagtap, who conducted the autopsy indicates that in column no.17 of the autopsy report at **Exhibit 41**, he had described following surface injuries :-

> *"1. Cut throat incised injury of length 7 cm., maximum breadth 3 cm in center, neck cavity deep, obliquely present over anterior neck at thyroid cartilage level, with tailing on right end and right end at higher level than left end. On dissection of neck thyroid cartilage cleanly cut at the vocal cord, both carotid arteries and jugular veins cleanly cut at thyroid cartilage level, esophagus and anterior neck muscles with other soft tissues cleanly cut at the level of thyroid cartilage level, below trachea and other soft tissues absent.*
>
> *2. Incised injury of length 34 cm and maximum*

breadth 9 cm from sternal notch of neck to umbilicus cutting right breast, sternum and ribs on right side exposing chest and abdominal cavity. Portion of 6th, 7th and 8th ribs on right side not present. All thoracic and abdominal organs already eviscerated outside (brought in separate plastic bags by police).

3. Incised injury of 15 cm x 4 cm, muscle deep present over upper part of right inguinal region medial aspect with infiltration of blood in margins.

4. Incised injury of 12 cm x 4 cm, muscle deep present over upper part of right thigh medial aspect with infiltration of blood in margine.

5. Two incised injuries of 4 cm x 1 cm, muscle deep present horizontally over middle part of pubic region with infiltration of blood in margins."

On internal examination, he found that all injuries (except second injury) are antemortem in nature. According to him, haemorrahagic shock due to multiple injuries was the probable cause of death of Yallava."

24. The defence could not even slightly rebut the testimony of PW-5 Dr. Nikhil Subhash Jagtap. The witness ruled out any possibility of the death being either suicidal or accidental. Rather, there is no question of disputing the fact of a homicidal death of the deceased. The cause of Death Certificate **Exhibit 40** and the Post Mortem Notes **Exhibit 41** as well as inquest panchanama **Exhibit 30** established that the deceased Yallava

died a homicidal death. The autopsy report **Exhibit 41** also indicates following thoracic injuries:-

"20.	*Thorax -*	
	a. Walls, ribs, cartilages	*Shows injury as mentioned in column no.7.*
	b. Pleura	*Thoracic cavity empty and only contains 500 ml blood*
	c. Larynx, Trachea and Bronchi	*Trachea cleanly cut below thyroid cartilage.*
	d. Right Lung	*Both lungs pale cleanly cut & eviscerate along with trachea and brought in separate plastic bag.*
	e. Left lung	
	f. Pericardium	*Lacerated at places*
	g. Heart with weight	*Heart cleanly cut & eviscerate at the level of arch of aorta and brought in separate plastic bag.*
	i. Additional remark	
21.	*Abdomen -*	
	Walls	*Cut at places as mention in column no.17.*
	Peritoneum	
	Cavity	*Cavity empty*
	Buccal cavity, teeth, tongue and pharynx	*Intact*
	Oesophagus	*Pale cut at the level of thyroid cartilage*

	Stomach and its contents	*Small and large intestines already eviscerated and brought separately in plastic bags.*
	Small intestine and its contents	
	Large intestine and its contents	
	Liver (with wt.) and gall bladder	*All abdominal organs eviscerated and brought in separate plastic bag. All organs were pale. Left kidney absent.*
	Pancreas and Suprarenal	
	Spleen with weight	
	Kidneys with weight	
	Bladder	*Empty*
	Organs of generation	*Intact. Uterus empty*
	Additional remark with where possible, medical officer's deduction from the state of the contents of the stomach as to time of death and last meal.	*Nil*
	State which viscera (if any) have been retained fro chemical examination and also quote the numbers on the bottles containing the same.	*1) One sealed pocket containing one bottle of blood and one gauze piece containing blood for grouping.* *Pocket sealed, labeled and handed over to police*
22.	*Spine and Spinal*	*Intact not opened.*

	cord -	

Opinions as to the cause of death:-

> *"Haemorrhagic shock following multiple injuries (Unnatural)". "*

25. As already stated, the prosecutions case revolves around circumstantial evidence. The trial Court has culled out following circumstances:-

i. The deceased was last seen together with the convict.

ii. The convict had a motive to commit murder.

iii. It was a homicidal death.

iv. Weapons of offence stained with blood were recovered at the scene of occurrence itself immediately after the incident. Blood stained clothes of the deceased, convict and other articles forensically proved that it was the convict and none other, responsible for the death of the deceased and; lastly

v. The over-all conduct of the convict.

26. PW-2 Mayur, PW-4 Raju and PW-6 Rakshata are the natural and chance witnesses, who have been examined by the prosecution in order to substantiate its case. As per the testimony of PW-2 Mayur, he heard a quarrel between the convict and the deceased on the fateful day at about 12 O'clock. Thereafter, around 2.00 p.m. PW-6 Rakshata who was in 8th

standard at the relevant time testified that she was playing near the house of the convict. She further testified that Sunil committed murder of "Chavali Appa" (deceased). She is almost a direct witness, in the sense, she is as good as an eye-witness, though she did not witness the actual incident. We say so because by the time she reached the spot, the convict had almost eviscerated the inner parts of the body of the deceased and was about to proceed further to place some of the parts in the kitchen on a stove with chilli powder and salt. It can be easily inferred from all the circumstances as what might have been cooking in his mind. She noticed blood stains on the person of the convict.

27. PW-2 Mayur heard sound of the convict and Yallava around 12.00 pm. He also noticed deceased lying in a pool of blood. PW-4 Raju, who reached the spot immediately after getting the information about the act of the convict, noticed him standing on the spot itself with blood smeared Bermuda. His hands were also smeared with blood. There is hardly any cross-examination of any of the witnesses indicating possibility of any third element or third person entering into the house of the

deceased and committing her murder in such a brutal manner. It is testified by these witnesses that the hands, body and face of the convict was smeared with blood. Even PW-6 Rakshata, who was playing in the courtyard of the house of the convict, entered inside only to notice the deceased lying in a pool of blood and the convict was standing beside her.

28. We do not find anything, even remotely, to suspect the testimonies of any of these witnesses, who had seen the deceased in the company of the convict before her death. We shall discuss the scene of occurrence, inquest and other material evidence on record in context with the duration of time which must have been taken by the convict to commit the murder of the deceased, which perhaps lasted for about two hours.

29. Evidence of Investigating Officer PW-12 Sanjay More, who reached the spot of incident immediately after receiving the information, indicates that the convict was apprehended by the mob and in order to save his life from the furious crowd, he was immediately taken to the police station. It has not been seriously disputed by the defence that the convict always had a quarrel

with the deceased on account of money. The convict, therefore, had a requisite motive to eliminate his mother.

30. There is no question of PW-6 Rakshata being tutored by any one merely because her evidence came to be recorded after a span of 1½ years from the date of incident. The testimony of this witness is quite natural, acceptable and believable as neither she nor any other witness had any axe to grind against the convict. This is especially in the light of the fact that before recording the evidence of PW-6 Rakshata, the learned trial Judge had ascertained the fact that she understood the sanctity of oath. The Investigating Officer – PW-12 More had assigned satisfactory reason as to why there was delay in recoding the statement of PW-6 Rakshata. The reason assigned by the Investigating Officer is that after the incident, the family members of PW-6 Rakshata shifted her to an unknown place in view of the gruesome murder of the deceased by the convict and she being the first witness to witness the convict standing on the spot near the dead body with blood smeared clothes, face and body. Obviously, this could have adversely impacted the mind

of a small child and, therefore, she was taken away by the family members. Merely because PW-6 Rakshata was eight years old at the relevant time, does not *ipso facto* mean that her testimony should be viewed with some suspicion, especially in view of the other facts and circumstances proved by the prosecution on record.

31. There is one more very crucial angle to this case. The circumstances further indicate pathological cannibalism of the convict. Pathological cannibalism is rooted in some form of psychopathology i.e. at the core of the person's motivation such as, someone who is actually psychotic or committing the act of cannibalism to act out paraphilia. It is in the realm of pathological cannibalism that most criminal acts of cannibalism are discussed. The act of the convict was quite close to cannibalism. We do not wish to venture much into that arena for want of sufficient investigation in that regard. Nevertheless, the overall circumstances speak volumes while considering the aspect of reformation or rehabilitation of the convict. Be that as it may.

32. Turning to the spot of incident, recovery of the weapons and other articles by the Investigating Officer, the prosecution has tendered and proved the following documentary evidence:-

“1.	Inquest panchanama	**(Exh.30)**
2.	Spot panchanama	**(Exh.31)**
3.	Complaint by PW-4 Raju, dated 28.08.2017	**(Exh.37)**
4.	Cause of death certificate by Dr. Nikhil Jagtap, dated 28.08.2017	**(Exh.40)**
5.	Post Mortem Notes	**(Exh.41)**
6.	Report in respect of weapon of offence i.e. knife	**(Exh.42)**
7.	Report in respect of another weapon (Sattur)	**(Exh.43)**
8.	Report in respect of another knife	**(Exh.44)**
9.	Opinion of Dr. Nikhil Jagtap in respect of Weapon	**(Exh.45)**
10.	Arrest panchanama	**(Exh.48)**
11.	Panchanama in respect of seizure of bermuda of the accused	**(Exh.49)**
12.	*Muddemal* forwarding letter to the C.A. Office, Pune dated 13.09.2017	**(Exh.51)**
13.	DNA sample letter dated 13.09.2017 to the C.A. Office, Pune	**(Exh.53)**
14.	Form B ie. Police Report to the Civil Surgeon with the dead body	**(Exh.63)**
15.	Letter to Medical Officer, CPR Hospital, Kolhapur for medical examination of the accused	**(Exh.65)**
16.	Opinion letter to Forensic Department of Medication College, CPR Hospital, Kolhapur	**(Exh.66)**

17.	Letter to Land Record Office, Kolhapur for map of spot of incident	**(Exh.67)**
18.	Letter to Kolhapur Municipal Corporation for obtaining Death extract of the deceased	**(Exh.68)**
19.	Letter to Chief Officer, Employee Provident Fund	**(Exh.69)**
20.	Letter to MSDCL Co. for continuty of electricity on the Spot	**(Exh.70)**
21.	C.A. report dated 07.02.2018 in respect of Godhadi, cloth of deceased, blood sample from the spot, knife and barmoda of the accused	**(Exh.71)**
22.	C.A. report dated 13.12.2018	**(Exh.72) & (Exh.73)**
23.	C.A. report dated 30.11.2019	**(Exh.74)**
24.	C.A. report dated 16.08.2019	**(Exh.75)**
25.	Pursis filed by the prosecution to close the evidence	**(Exh.77)"**

33. PW-1 Guruprasad Jadhav, PW-3 Navnath Davari and PW-11 Bhausaheb Malgunde - Police Sub-Inspector, are the witnesses of spot panchanama **Exhibit 31**. As per the evidence of PW-1 Guruprasad, the spot of incident was shown by the Police Officer and accordingly a panchanama was drawn. This witness noticed a knife lying on the ground. He also noticed inner body parts scattered on the floor as well as on the platform of the kitchen. Some inner body parts were kept in an utensil. One more knife was found placed on the kitchen platform. Similarly, PW-3

Navnath spoke in tune with PW-1 Guruprasad. He added that thoracic portion of the deceased was cut. Blood was found all over the floor surrounding the dead body. One quilt stained with blood, a knife and T-shirt were also found in the first room. In the kitchen, this witness noticed heart of the deceased placed on the platform of the kitchen alongwith salt and chilli powder kept near the utensil. He corroborated the testimony of PW-1 Guruprasad that there was one more knife in the kitchen. The witnesses also noticed an oil bottle in the kitchen, wherein piece of rib was inserted. The Investigating Officer collected the blood samples and seized all the articles in the presence of these witnesses. Both these witnesses identified all the articles during trial. Photographs of the scene of occurrence were also taken.

34. The defence has not seriously disputed drawing of the spot as well as recovery panchanama. Similar is the evidence of PW-11 Malgunde - Police Sub-Inspector, who has reiterated in his cross-examination that three knives, a gown, petticoat, blous, T-shirt, bed-sheet, quilt all stained with blood were seized in the presence of panch witnesses. Both the witnesses also noticed one Sattur, a knife with wooden handle stained with blood near the

cupboard.

35. Chapter VII of the Indian Evidence Act deals with production and effect of evidence. Section 101 contemplates that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. It would be apposite to extract the relevant part from ***Dahyabhai Chhaganbhai Thakkar Vs. State of Gujarat*** [4], which reads thus :-

> *"5. .....*
>
> *Section 101 : Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*
>
> *When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*
>
> *It is fundamental principle of criminal jurisprudence that an accused is presumed to be innocent*

4 AIR 1964, SC 1563

and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in S. 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, as S.84 of the Indian Penal Code provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. This being an exception, under S.105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused, and the court shall presume the absence of such circumstances. Under S.105 of the Evidence Act, read with the definition of "shall presume" in S. 4 thereof, the court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man". If the material placed before the court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of "prudent man", the accused will have discharged his burden. The evidence so placed may not be sufficient to' discharge

the burden under S. 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the judge whether the accused had the requisite intention laid down in S. 299 of the Indian Penal Code. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity."

(emphasis supplied)

36. It would be quite crucial to state something about the coloured photographs taken at the scene of occurrence by a photographer namely Anjum Shaikh on the day of incident. These are proved at **Exhibit 91** to **Exhibit 96**. There are eight photographs of the deceased. Two photographs of both the breasts which had been chopped off the body by the convict and two photographs indicating blood on the floor with some internal body parts. A common man would find it quite difficult, distressing, frightening and unsettling even to have a glance at the photographs, which would speak more than thousand words. Words would fall short to describe the

grotesque, brutal, inhuman and most cruel act committed by the convict with his mother.

37. All the seized articles have been sent for chemical analysis to the Forensic Science Laboratory, through Police Head Constable PW-8 Tanaji Chougule and PW-9 Nathuram Gaikwad. Both these witness have testified about the same. Both these witnesses carried the *muddemal* articles to the Forensic Science Laboratory at Kolhapur and Pune respectively. There is no dispute or any reason to doubt that all the sealed *muddemal* properties have been duly forwarded to the FSL in a sealed packet and without any scope of tampering or manipulating any of the articles.

38. From the chemical analyzer's report **Exhibit 71**, the prosecution has proved that the quilt, gown, blouse, petticoat, half T-shirt, bermuda, Sattur, knives, Cotton Swabs, Earth were stained with human blood. The CA report is proved at **Exhibit 71**.

39. The report of the Chemical Analyzer dated 13.12.2018

Exhibit 72 forwarded by the Office of the Chemical Analyzer, Pune, in respect of gown, bermuda, half T-shirt, Sattur, knives shows that the DNA profiling has been done in respect of the blood stains obtained from the aforesaid articles, which were then referred to the Regional Forensic Science Laboratory, Pune (RFSL, Pune). **Exhibit 73** forwarded by the RFSL, Pune is in respect of nails swab, hand wash, foot wash, vomits of the convict and the blood on the gauze piece. The report forwarded by the FSL, Pune **Exhibit 75** reveals following results after the analysis :-

> *"Interpretation :-*
> *1) DNA profiles obtained from Ex.1 Blood stain from Ex.2 (Gown), Ex.4 Blood stain from Ex.6 (Knife), Ex.5 Blood scrapings from Ex.7 (Knife), Ex.6 Blood scrapings from Ex.8 (Sattur) and Ex.8 Blood stained cuttings from Ex.12 (Bermuda) are **identical** and from one and the same source of female origin and **matched** with DNA profile obtained from Ex.7 Blood on gauze piece of Yallava Rama Kuchkoravi.*
>
> *2. Mixed DNA profiles obtained from Ex.1 Nails of Sunil Rama Kuchkoravi is **identical** and **matched** with DNA profile obtained from Ex.7 Blood on gauze of Yallava Rama Kuchkoravi at all loci and DNA profile obtained from Ex.1 Blood stain prepared from Ex.1 Blood of Sunil Ratna Kochkoravi at 20 loci.*
>
> *Analysis started on : 04/12/2018*

Analysis completed on : 30/12/2018"

40. Thus, unchallenged CA report strengthens, substantiates and proves that gown, two knives, Sattur which were seized from the spot of incident and the bermuda of the convict with blood stains, matched with the blood stains of the deceased Yallava. The CA report further proved that the DNA profile from the nails of convict are identical with the blood on the gauze piece of Yallava.

41. It can thus be seen from the evidence of the prosecution witnesses and the CA report that the convict used three different weapons in brutally murdering his mother – Yallava in a cold blooded manner. It would also be pertinent to describe the weapons in order to understand and evaluate not only the impact of those weapons, but the manner in which, the convict must have used different weapons while committing the offence, which perhaps lasted for more than two hours. It also reflects as to how the convict had already preplanned and premeditated a design in his mind as to how he would dissect the body of the deceased after killing her brutally. A bare look at the

photographs would make the picture clear.

42. In that context, evidence of PW-4 Dr. Nikhil Jagtap would be relevant to whom the weapons were sent by the Investigating Officer Shri. More. The reports of PW-5 Dr. Nikhil Jagtap are proved at **Exhibit 42** to **Exhibit 44**. He testified that Sattur and knives are sharp edged weapons. Sattur has a heavy sharp edge while both the knives were of sharp edged. He opined that the injuries described by him in the autopsy report are possible by means of all these weapons. According to this witness, the chop injuries, incised injuries, the cut throat injury, fracture of bones, linear abrasion, all could be caused by a Sattur.

43. It reveals from the record that during the trial, the defence had raised a point that the offence has been committed by the convict under the influence of liquor. The prosecution did not produce medical certificate, which could be a missing link in the chain of circumstances and, therefore, the convict is entitled to a benefit of doubt. The record reveals and it has come in the evidence as well as in the statement of the convict under section 313 of the Cr.PC. that he was addicted to liquor. However,

there has been no suggestion to any of the prosecution witnesses that at the time of his arrest, the convict was under the influence of liquor. There is neither any whisper or suggestion to any of the witnesses regarding the convict being under the influence of liquor at the relevant time, in view of Section 85 of the Indian Penal Code. Even, there is no defence evidence adduced by the convict to substantiate the said fact. Interestingly, it is not the defence of the convict in view of Section 85 of the I.P.C. that he was intoxicated or was forced to consume liquor without his knowledge or against his will. Rather, it seems that he had voluntarily consumed liquor and, therefore, he is not entitled to avail the said defence which is *ex facie* unacceptable, improbable and unbelievable. In that context, we had already discussed the ratio laid down by the Supreme Court in the case of ***Dayabhai Chhaganbhai Thakkar*** hereinbefore.

44. It is also evident from the impugned judgment that the defence has also raised a ground of unsoundness of his mind in view of Section 84 of the IPC. However, there is absolutely no material placed on record in that regard. Section 84 of the IPC

reads thus :-

> *"**84. Act of a person of unsound mind** – Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."*

45. While determining whether the convict is entitled to the benefit of Section 84 of the Code, the Court has to consider the circumstances as that preceded, attended or followed the crime but it is equally true that such circumstances must be established by credible evidence. The trial Court rightly rejected the said plea for want of any evidence or material during trial. Even, there is no suggestion put to any of the prosecution witnesses in that regard.

46. At this stage, it would be advantageous to look into a decision of the Supreme Court in case of ***Seralli Wali Mohammed V. State of Maharashtra***[5]. The ratio *decidendi* is that it would be most dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. The mere fact that no motive was proved as to why the convict

5 AIR 1972, SC 2443

murdered his wife and child nor the fact that he made no attempt to run way when the door was broken open, could not indicate that he was insane or that he did not have the necessary *mens rea* for the commission of the offence. The convict in that case was charged under section 302 of the IPC for having caused the death of his wife and a female child with a chopper. While rejecting his plea of insanity the Supreme Court observed that the law presumes every person of the age of discretion to be sane unless the contrary is proved.

47. In the case of ***Ravinder Kumar and Anr. Vs. State of Punjab***[6], the Hon'ble Supreme Court held that :-

> *"No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel*

6 (2001) 7 SCC 690

the full dimension of the mental disposition of an offender towards the person whom he offended."
(emphasis supplied)

48. The prosecution herein, has proved the motive behind the offence, as already discussed. Similarly, from the entire circumstances on record, the prosecution has succeeded in showing that the convict had some ill-intention towards his mother and, as such, the said ill-intention swelled up in his mind to such a degree as to impel him to commit the murder of the deceased in such a brutal manner. This cannot be construed as a fatal weakness of the prosecution. The Supreme Court, has, therefore, rightly observed that it is almost impossible for the prosecution to unravel a full dimension of the mental disposition of an offender towards the person whom he offended.

49. By taking a false defence in view of Section 85 of the Indian Penal Code, the convict impliedly admitted his guilt. Such an admission in a criminal proceeding cannot be construed as a confession, nevertheless, it can be said to be proved on behalf of the convict himself and he is estopped from denying the same. It could be said to be the best evidence against the

convict himself, though not conclusive. It shifts the onus upon the maker on the principle that what he himself admits to be true, may be reasonably presumed to be true unless the presumption is rebutted.

50. The trial Court, after having taken into consideration all the facts, evidence and circumstances on record concluded that the prosecution has proved its case beyond reasonable doubt and having drawn a balance-sheet of aggravating and mitigating circumstances, reached a conclusion that despite giving maximum weightage to the mitigating circumstances, aggravating factors out-weighed the mitigating circumstances and, therefore, in his wisdom, awarded death penalty.

51. At the cost of repetition, we deem it necessary to elaborate a bit on Section 105 of the Indian Evidence Act. Essentially, in the case at hand, the convict had attempted to bring his case within the purview of Section 105 of the Indian Evidence Act in view of Section 85 of the Indian Penal Code. It was, therefore, incumbent upon the convict to discharge the said burden in view of Section 105 of the Evidence Act. The law contemplates that

the Court shall presume the absence of such circumstances. If Section 105 of the Indian Evidence Act is read with the definition of "shall presume" in Section 4 thereof, the Court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that the said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. In the case at hand, the convict failed to rebut the said presumption as no material has been placed by him in that regard, indicating that he had been intoxicated or was forced to consume liquor without his knowledge or against his will. There is absolutely nothing to hold that the convict was intoxicated or under the influence of liquor. It is even not the defence of the convict that he did the act which he did not intend and did not know that it would likely to cause death of his mother. As such, taking a false defence would also tantamount to an additional circumstance pointing towards the guilt of the convict. It has strengthen the chain of circumstances already firmly established.

52. The Supreme Court in case of ***G. Parshwanath Vs. State of***

Karnataka[7] has categorically observed that taking a false defence would also tantamount to an additional circumstances pointing towards the guilt of the convict. It would be apposite to extract para 23 of the said judgment, which reads thus :-

> "*23. If all the circumstances mentioned above are taken together coupled with the absence of any material to indicate that Chethana had committed suicide with the child, they lead to only one inference that in all human probability the murders of the deceased were committed by the appellant alone and none else. From the evidence of PW-3 ASI Nagaraj, it is clear that the appellant knowing fully well that he had committed murders of his wife and child gave false opinion to the police on the basis of which UDR proceedings were initiated. By examining the refrigerator repairer it was sought to be suggested by the appellant that he was not present in his house when the incident had taken place. Thus, the defence of the appellant was that a fire had taken place in his house and both the deceased had died because of inhaling of carbon monoxide after which their bodies were burnt because the house was engulfed in fire. However, at another stage the defence of the appellant was that his deceased wife with his child had committed suicide because her parents were pressurizing her to leave matrimonial home for their selfish purpose of having income of the deceased. Whereas, the deceased was not inclined to leave her matrimonial home, thus more than one and totally inconsistent defences have been taken by the appellant. All the defences were false to the knowledge of the appellant. Not a single defence was found to be probable or plausible either by the trial court or by the High Court. The appellant could not explain satisfactorily the circumstances in which his wife and child met violent deaths. Therefore, offering of false explanation by the*

7 AIR 2010 SC 2914

appellant regarding death of his wife and child will have to be regarded as an additional circumstance against him strengthening the chain of circumstances already firmly found."

53. It can be seen that all the defences taken by the convict were false to his knowledge. Not a single defence was found to be probable or plausible by the trial Court. As already stated, offering a false explanation or giving a false defence, can be regarded as an additional circumstance against the convict strengthening the chain of the circumstances, already firmly found.

54. The law on the aspect of circumstantial evidence is no more *res integra* as there are numerous decisions of this Court as well as the Supreme Court in that regard. When there is no direct evidence and the decision has to be based on the circumstantial evidence, a few guidelines and salient features have been enunciated in various decisions, including a well known judgment in the case of ***Sharad Birdhi Chand Sarda Vs. State of Maharashtra***[8]. Broadly speaking, the evidence must satisfy the following tests :-

8 1984 AIR 1622

> *"(a) The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;*
>
> *(b) Those circumstances should be of definite tendency unerringly pointing towards the guilt of the accused;*
>
> *(c) 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 accused and none else;*
>
> *(d) 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 accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."*

55. Learned trial Court has correctly appreciated all the circumstances emerged from the over all evidence adduced by the prosecution. The chain of all the circumstances is intact. All the circumstances unerringly points towards the guilt of the convict. There is no reason for inferring any other hypothesis than that of the guilt of the convict. The evidence is consistent, inspiring, well corroborated and cogent in nature. Rather, the convict himself admitted the guilt by taking a false defence of

committing such a brutal murder of his mother while under the influence of liquor, which could also be an important circumstance against the convict. The deceased was, through out in the custody of the convict when she was done to death by him. The prosecution has established that the convict always used to pickup quarrel with the deceased on account of demand of the pension amount.

56. Dr. Yug Choudhry, would argue that the convict belongs to a de-notified tribe. He has two children and a wife to look after. He is an illiterate labour, who was accustomed to consume liquor heavily. There are no criminal antecedents or history. He had no vices and, therefore, he deserves leniency. Dr. Choudhry would also argue that in view of the report of the Probationary Officer, the convict used to consume flesh of cats and pigs and, therefore, perhaps he might have committed the said act, which according to the Counsel is a mitigating circumstance thereby entitling him to have his sentence reduced to the period which he has already undergone. The wife of the convict alongwith the children had already abandoned his company due to the harassment and ill-treatment by him and, therefore, there is no

question of he being worried about them. The second argument of Dr. Choudhry is quite shocking that the convict used to consume flesh of cats and pigs and, therefore, perhaps he might have committed the offence, meaning thereby Mr. Choudhry impliedly admits that the convict has in fact a tendency of cannibalism. To release such a person would amount to giving him a free ride and freedom to commit similar offence *qua* the members of the society. There is no question of considering it as a mitigating circumstance and showing any leniency to the convict. Rather, it is the most aggravating circumstance. We, therefore, out rightly reject the argument of Dr. Choudhry. We are surprised as to how such an argument can be made, when in fact, the conviction of the appellant has not been challenged by Mr. Choudhry.

57. The trial Court, after holding the convict guilty of the offence of murder, heard him on the point of sentence. It reveals from the record that advocate for the convict sought two days time and accordingly it was granted. The learned Judge heard the convict, his advocate and the learned Public

Prosecutor. The convict has been granted full opportunity and was also made aware about the punishment which could be awarded. It appears that the convict feigned innocence as regards the incident in question by contending that he had no knowledge as to how and in what manner it had occurred. He being the only bread earner of his family, prayed for taking a lenient view before the trial Court. Apart from the said aspect, learned Counsel for the convict had also put-forth ground of young age as well as two daughters to be looked after by him.

58. Learned APP, however, strongly advocated awarding death penalty to the convict categorizing the case as the one falling under the doctrine of "rarest of the rare case". It appears that the learned APP in the trial Court placed reliance on several decisions of the Supreme Court in order to bring home the point as to how it was a premeditated and cold blooded murder by the convict of his mother.

59. The learned Judge, thereafter, jotted down various aggravating and mitigating circumstances and finally concluded

that the convict deserve death penalty.

60. Before we embark upon the issue as to whether death penalty awarded by the trial Court needs to be confirmed or whether the convict deserves life sentence in the alternative, it would be essential to revisit the crime and the mode and manner in which it has been committed by the convict as well as the criminal. In fact, we have sufficiently and elaborately discussed the mode and the manner in which the convict had committed the crime, which needs no reiteration.

61. It was indeed an extremely barbaric, inhuman, heinous as well as grotesque murder of a hapless, helpless and fragile old mother by her son. It was indeed a cold blooded and preplanned murder. The convict used to pickup quarrel with the deceased Yallava on account of demand of money to fulfill his vice of liquor. As such, on the fateful day, he entered her house. He was armed with a small knife, admeasuring 7 inch long with a steel blade admeasuring 3.5 inch long with a yellow grip. Another knife admeasuring 10.5 inch long with 6 inch blade and

a Sattur, admeasuring 14.5 inch long with 9.5 inch long steel blade. The width of the blade is around 2 inch. Sattur is mostly used by the butchers. Use of such kind of dangerous weapons itself indicates that the convict had a well hatched plan in his mind and was determined not only to simply kill his mother but to butcher her in a most cruel and barbaric manner. In view of the report of the Probationary Officer, the convict was accustomed to slaughter pigs and cats for eating their flesh (meat). Since he was habituated of slaughtering and eating flesh of pigs and cats, perhaps he must have killed his mother in the similar manner in order to eat her flesh, which is evident from the record. We have, therefore, in para 31 of our judgment expressed our view as to how there is a strong probability of the convict having syndrome of pathological cannibalism. The convict cannot be said to be a naive person. Rather, he feigned innocence. This could also be a motive of the convict which is almost an impossibility for the prosecution to unravel the full dimension of his mental disposition towards the deceased as has been enunciated by the Supreme Court in the case of ***Ravinder Kumar & Anr.*** (supra).

62. It is apparent from the evidence on record that he removed the clothes of his mother and thereafter inflicted multiple blows by means of the Sattur and knives. He did not stop there. He cut and removed both of her breasts. He removed her intestine, heart, liver and ribs and eviscerated outside. He kept the ribs in an oil bottle. He kept heart of his deceased mother in a utensil over the platform of the kitchen. He soaked and moped the blood scattered on the floor, meaning thereby he tried to destroy the evidence also. As already stated, the cause of death was due to multiple injuries caused to the victim by sharp edged weapons. The brutality and cruelty with which the convict had dealt with the body of his mother is evident from the fact that he had even cut the genital organ of his mother, which is one of the causes associated with her death. Torture and pain with which the deceased must have suffered is unimaginable and unfathomable. The convict had torn apart right portion of her body and thereafter removed the soft organs as above. He had also cut neck of the deceased. An old fragile defenseless lady had absolutely no chance to defend herself from a well built hefty son to whom she used to provide meals twice a

day, in view of the fact that wife and children of the convict had already abandoned him, perhaps because of his such conduct. The act of the convict in committing the murder of his mother even cannot be compared with an act of a butcher, who chops the flesh. It is unfathomable as to what must have been in the mind of the convict when he used the weapons such as knives and sattur while committing the murder of his mother. The conduct of the convict even cannot be regarded as a "Betrayal of Trust" of his mother as it would be too small a word to describe what he did. We do not think anything more is required to be said in that regard as we have already stated in the foregoing paragraphs.

63. Following are the aggravated circumstances, which can be culled out from the facts and evidence on record :-

i. The deceased was in the custody of the convict, in the sense, she was last seen alive together in his company for more than two hours.

ii. The body of the deceased was lying on the floor with most

of her soft internal organs eviscerated outside namely, liver, heart, ribs and intestine etc.

iii. The heart was found kept in a platter on the kitchen platform.

iv. The ribs were found in an oil bottle along with chilli powder and salt. This also indicates an additional motive of cannibalism.

v. Bermuda, cloths, hands and even mouth of the convict was found stained with blood, which was a case quite close to **cannibalism**, *albeit*, there is no direct evidence in that regard.

vi. The motive to commit the murder was the refusal on the part of the deceased to fulfill the demand of her pension by the convict to satisfy his addiction of liquor.

vii. No regards for human life and limb by the convict looking to the manner in which the offense had been committed.

viii. False defence under Sections 84 and 85 of the IPC.

ix. For the first time, in his statement under Section 313 of the Cr.P.C., the convict raised another false defence as regards his alleged illicit relationship with the mother of PW-6 Rakshata. However, no such suggestion had been given to any of the prosecution witnesses or to the Investigating Officer during the course of evidence. The defence, therefore, is improbable, unacceptable and unbelievable. Rather, the testimony of PW-6 Rakshata was found to be quite natural. It inspires full confidence. She was the one who first noticed deceased lying in a pool of blood and the convict standing near her body. She was just short of an eye witness, for, had she entered the house a few minutes before, she could have noticed the act.

64. There are very few mitigating circumstances namely, there are no antecedents to his discredit. The case is based on circumstantial evidence. The convict was around 35 years of age at the time of committing offence. Since his wife and children

had already abandoned him much before the incident, there is no question of looking after them. There was no complaint from the Jail authorities till date.

65. In order to ascertain whether life imprisonment can be said to be completely futile, as the sentencing aim of reformation can be said to be unachievable and to get ourselves satisfied whether there is any remote possibility of the convict getting reformed, if awarded life sentence, we have asked the learned APP to tender material in that regard. We are mindful of the fact that we should also focus on the circumstances relating to the criminal, along with other circumstances and not only to the crime. We have, therefore, asked the learned APP to place on record all the relevant material in order to achieve the said purpose.

66. The Superintendent of Yerawada Central Prison, Pune by his communication dated 09.07.2024 forwarded a comprehensive report which comprises a report of the Probationary Officer, Kolhapur, in respect of the financial, social and educational background of the convict as well as the report

of a Psychologist and a Psychiatrist. It also comprises the medical examination report of the convict. He was lodged in Nagpur Central Prison and in Kolhapur Central Prison also.

67. The report dated 03.07.2024 forwarded by the District Probationary Officer, Kolhapur to the Superintendent of Yerawada Central Prison, Pune, indicates that the convict is a resident of a locality called *Makadwala Vasahat*, Kolhapur with a criminal background. He was earning his livelihood by working as a labourer. He was a habitual drunkard. He used to assault and abuse his wife, children and his mother under the influence of liquor. On the day of murder of his mother, he had purchased certain tablets from a medical store and had consumed the same. Since he was residing in the locality known as *Makadwala Vasahat*, the convict used to kill pigs and cats and used to consume their flesh. His friends' circle has criminal background. In that year, one of his daughters was admitted in an Ashram School. His wife works as a domestic maid and fulfill the basic needs of the family. His wife used to earn Rs.9,000/- per month while doing the work as a domestic help. The convict

had no agricultural land or any income other than labour. The eldest daughter of the convict was aged about 20 years, who is married and resides at Belgaum with her husband. The second daughter is 17 years old, who is prosecuting her studies in 11th standard (Arts). She resides with her mother. The third daughter is aged about 15 years, studying in 10th standard and also resides in a Ashram school. He has a son aged about 8 years studying in 4th standard. As such, the so called mitigating circumstance to look after his family has collapsed.

68. The Medical Superintendent, Sassoon General Hospital, Pune by communication dated 09.07.2024 has forwarded a Psychiatric Assessment Report received from its Department of Psychiatry to the Superintendent of Yerawada Central Prison, Pune about over all health and behaviour of the convict, which is extracted below :-

"DEPARTMENT OF PSYCHIATRY
B.J. Government Medical College & Sassoon General Hospital, Pune
---
BJGMC/PSY/316/2024 *Date : 09/07/2024*

To,
The Medical Superintendent,
Sassoon General Hospital,

Pune

Subject: *Psychatric assessment report of Mr. Sunil Rama Kuchkorvi*

Reference : *1) Letter from Deputy Superintendent Yerawada Central Prison, Yerwada, Pune OW No. 7380/2024 dated 03/07/2024*

2) Letter from Deputy Superintendent Yerwada Central Prison, OW No.4913/2024 dated 08/07/2024

3) Psychological assessment report from Lecturer, Department of Clinical Psychology, Maharashtra Institute of Mental Health, Pune dated 08/07/2024

Respected Sir,

This is to inform you that Mr. Sunil Rama Kuchkorvi, 41 years old male, was admitted in the Psychiatry ward from 02/07/2024 to till date as per the above mentioned reference letters. His MRD no: I/08/041246 and his MLC no: 20643 dated 02/07/2024. His identification marks are 1) Black mole over left elavicle and 2) Black mole mover palmar surface of left hand.

The details of history of Mr. Sunil Rama Kuchkorvi were obtained from the examinee himself. The Deputy Superintendent of Yerwada Central Prison also provided additional information as per reference letter no.2. As per available documents he had complaints of headache, constipation in the past for which he was treated with medications however there were no behavioural complaints or evidence of any psychiatric illness noted in the examinee.

Behaviour of Mr. Sunil Rama Kuchkorvi was observed while his stay in ward by staff nurses and doctors. He complained of intermittent headache, decreased sleep and

worrying thoughts about his and his family's well-being. He was started on Tab Amitriptyline 25mg and Tab Clonazepam 0.25 mg on which he reported significant improvement. His dermatology referral was done in view of complaints of itching all over body for which he was started on Tab. Cetrizine 10 mg. Tab. Ivermeetin 2 mg and 5% permethrin cream 30 gm all over body below neck which was continued during his stay in the ward. His psychological assessment was done by Lecturer, Department of Clinical Psychology. Maharashtra Institute of Mental Health, Pune on 05/07/2024 which did not find any significant psychopathology as per reference no.3.

He was speaking and behaving properly with medical staff and police personnel during his stay in the ward. He was taking proper self-care during ward stay. He did not show any abnormal behaviour during ward stay. He was not given any psychiatric treatment during his stay in the ward.

Conclusion

1) As per history given by Mr. Sunil Rama Kuchkorvi, documents provided by jail authorities, psychological assessment report and clinical examination during the stay in this ward from 02/07/2024 to till date, Mr. Sunil Rama Kuchkorvi doesn't have any significantly active psychopathology at present.

2) Mr. Sunil Rama Kuchkorvi has real life worries about his and his family's well-being.

Sd/-
Dr. Sachin G. Mahajan
Assistant Professor,
Department of Psychiatry,
B.J. Government Medical (College
and Sassoon General Hospital, Pune

Forwarded by

Sd/-

Dr. Niteen Abhivant
Associate Professor and Head
Department of Psychiatry,
B.J. Government Medical College
and Sassoon General Hospital, Pune"

69. This report indicates that the convict does not have any significantly active psychopathology at present. However, he has real life worries about his and his family's well being. His behaviour, conduct, proper self care etc. is evident from the report, which needs no reiteration.

70. The convict cannot be said to be quite young or even old, as he was 35 years of age at the relevant time.This cannot be said to be a mitigating circumstance. He is already a married man with three daughters and one son. His eldest daughter appears to have been married. The convict was matured enough at the time of commission of the offence to understand and differentiate between good and bad. It is not the case that due to grave or sudden provocation, he committed such an act. Merely because there are no antecedents, would not *ipso facto* mean that he would not commit any such offence in future, in light of the fact that the report of the Probationary Officer indicates that he is

from the community having criminal background. The report of the Probationary Officer dated 03.07.2024 has already been referred hereinabove. The report further indicates that he was a habitual drunkard who used to abuse and beat his wife, children and mother under the influence of liquor. It seems that on the day of incident, he had purchased certain tablets from a medical store and thereafter consumed liquor. The Probationary Officer could not find as to what kind of tablets were taken by the convict before consuming liquor, if any. Perhaps the convict might have been suggested to take such a defence, however, neither there is any material to indicate the name of any such Medical Store nor anything to indicate what kind of tablets were allegedly consumed. Normally, no Pharmacist would sell any schedule drug across the counter *sans* a prescription of a doctor. It is, therefore, difficult to construe that the convict was not in his senses at the time of committing the offence.

71. The report also reveals that he being a resident of *Makadwala Vasahat*, was accustomed to consume flesh (meat) of pigs and cats after killing them. His friends' circle has a criminal background. It is an important aspect to be considered while

awarding the sentence. There is no question of the convict being worried about the welfare of his wife and children since the wife herself appears to have been earning her livelihood and residing separately from the convict, much before the incident in question, as already stated.

72. Apart from the extreme brutality, cruelty and barbarism with which the convict had murdered his mother in a cold blooded manner, one cannot turn nelson's eye that his conduct was akin to cannibalism and, therefore, he could be a potential threat and danger to the inmates in the jail, in case, sentence of life imprisonment is awarded. A person who could commit such a heinous crime by killing his mother, can do so with anyone else, including his own family. His social integration, therefore, is unquestionably foreclosed. These are 'special reasons' as mandated in Section 354(3) of the Cr.P.C. It would be extremely difficult to fathom his psychology and mindset, though the report of the Psychiatrists, Psychologist and his overall conduct in different jails, appear to be normal.

73. The case, therefore, falls within the doctrine of 'rarest of

rare' dictum in light of several pronouncements, especially the law laid down by the Supreme Court in the case of ***Bachan Singh*** *(supra).* In line of precedents of the Supreme Court, there has been an elaborate discussion on whether a separate hearing on the issue of sentence is mandatory after recording the conviction of a convict for the offences punishable with death. The trial Court has indeed followed the dictum in Section 235(2) and 354(3) of the Cr.P.C. The trial Court has assigned special reasons for awarding death penalty. The Constitution Bench decision in the case of ***Bachan Singh*** *(supra)* reiterated the importance of sentencing hearing. The Court noted thus :-

> *"151. Section 354(3) of the Cr.P.C. 1973 mark a significant shift in the legislative policy underlying the Code of 1898, as in force immediately before April, 01, 1974, according to which both the alternative sentences of death or imprisonment for life provided for murder and for certain other capital offences under the Penal Code, where normal sentences. Now according to this changed legislative policy which is patent on the face of Section 354(3), the normal punishment for murder and six other capital offences under the Penal Code, is imprisonment for life (or imprisonment for a term of years) and death penalty is an exception.*
> *[….]*
>
> *152. In the context, we may also notice section*

> *235(2) of the Code of 1973, because it makes not only explicit, what according to the decision in Jagmohan's case was implicit in the scheme of the Code,* ***but also bifurcates the trial by providing for two hearings, one at the preconviction stage and another at the pre-sentence stage.***
> *[….]*
> *163. [….]* ***Now, Section 235(2) provides for a bifurcated trial and specifically gives the accused person a right of pre-sentence hearing, at which stage, he can bring on record material or evidence, which may not be strictly relevant to or connected with the particular crime under inquiry, but nevertheless, have, consistently with the policy underlined*** *in Section 354(3) a bearing on the choice of sentence. The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302, Penal Code,* ***the Court should not confine its consideration "principally' or merely to the circumstances connected with particular crime, but also give due consideration to the circumstances of the criminal."***
>
> *(emphasis supplied)*

74. The law laid down in ***Bachan Singh*** (supra) requires meeting the standard of "rarest of rare" for award of death penalty which requires the Courts to conclude that the convict is not fit for any kind of reformatory and rehabilitation scheme. As noted in ***Santosh Kumar Satishbhushan Bariyar Vs. State of***

Maharashtra[9], this requires looking beyond the crime at the criminal as well. It is noted in para 66 thus :-

> *"66. The rarest of rare dictum, as discussed above, hints at this difference between death punishment and the alternative punishment of life imprisonment. The relevant question here would be to determine whether life imprisonment as a punishment will be pointless and completely devoid of reason in the facts and circumstances of the case?* ***As discussed above, life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second exception to the rarest of rare doctrine, the court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigour when the court focuses on the circumstances relating to the criminal, along with other circumstances.*** *This is not an easy conclusion to be deciphered, but Bachan Singh sets the bar very high by introduction of the rarest of rare doctrine."*
>
> *(emphasis supplied)*

75. A similar point was enunciated by the Supreme Court in case of ***Anil Vs. State of Maharashtra***[10]. We extract para 33 of the said decision as below :-

> *"33. In Bachan Singh this Court has categorically stated,*

9 2009 (6) SCC 498
10 2014 (4) SCC 69

> *'the probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to the society', is a relevant circumstance, that must be given great weight in the determination of sentence. This was further expressed in Santosh Kumar Satishbhushan Bariyar.* ***Many a times, while determining the sentence, the court take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials.*** *We, therefore, direct that the criminal courts, while dealing with the offences like Section 302 IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case."*
>
> *(emphasis supplied)*

76. In a recent decision, the Hon'ble Supreme Court in case of **Sundar @ *Sundarrajan Vs. State by Inspector of Police***[11] has elaborately discussed on the aspect of death penalty. It has been stated that the State must equally place all material and circumstances on the record bearing on the probability of

11 2023 Live Law (SC) 2017

reformation. The Supreme Court observed that many such materials and aspects are within the knowledge of the State which has had custody of the accused both before and after the conviction. Moreover, the Court cannot be an indifferent bystander in the process. The process and power of the Court may be utilized to ensure that such material is made available to it to form a just sentencing decision bearing on the probability of reform. It would be expedient to extract para 69 to 76, which reads thus :-

> *"**69**. In Suo Motu W.P. (Crl.) No. 1/2022 titled **In re: Framing Guidelines Regarding Potential Mitigating Circumstances to be Considered while Imposing Death Sentences,** this Court took note of the difference in approach in the interpretation of Section 235(2) of CrPC and referred the question for consideration of a larger bench. While it took note of the conflict on what amounted to 'sufficient time' at the trial court stage to allow for a separate and effective sentencing hearing, it noted that all the decisions also had the following common ground:*
>
> > *27. The common thread that runs through all these decisions is the express acknowledgment that meaningful, real and effective hearing must be afforded to the accused, with the opportunity to adduce material relevant for the question of sentencing.*

70. *In the present case, the judgment of the Trial Court dealing with sentencing indicates that a meaningful, real and effective hearing was not afforded to the petitioner.*

71. *The Trial Court did not conduct any separate hearing on sentencing and did not take into account any mitigating circumstances pertaining to the petitioner before awarding the death penalty. In the course of its judgment, the trial court merely noted the following, before awarding the death penalty:*

> *In present day circumstances it has become common of kidnapping of children and elders for ransom and kidnapped being murdered if expected ransom is not received. In this situation unless the kidnappers for ransom are punished with extreme penalty, in future kidnapping of children and elders for ransom would get increased and the danger of society getting totally spoiled, would have to faced is of no doubt. Hence having regard to all these it is decided that it would be in the interests of justice to award to the 1st accused the extreme penalty. Not only that the court saw the mother of the deceased boy profusely crying and weeping in court over the death of her son in court and the scene of onlookers in court having wept also cannot be forgotten by anyone. Hence it is decided that such offenders have to be punished with extreme penalty; in the interests of justice*

72. *The High Court took into account the gruesome and merciless nature of the act. It reiterated the precedents stating that the death penalty is to be awarded only in the rarest of rare cases. However, it did not specifically look at any mitigating circumstances bearing on the petitioner. It merely held that:*

> *28. In a given case like this, it is an inhuman and a merciless act of gruesome murder which would shock the conscience of the society. Under the circumstance, showing mercy or leniency to such accused would be misplacing the mercy. That apart, showing leniency would be mockery on the criminal system. Therefore, the death penalty imposed by the trial Judge, has got to be affirmed, and accordingly, it is affirmed.*

73. *This Court examined the aggravating circumstances of the crime in detail. However, as regards the mitigating circumstances, it noted that:*

> *31. As against the aforesaid aggravating circumstances, learned counsel for the accused-appellant could not point to us even a single mitigating circumstance. Thus viewed, even on the parameters laid down by this Court, in the decisions relied upon by the learned counsel for the accused-appellant, we have no choice, but to affirm the death penalty imposed upon the accused appellant by the High Court. In fact, we have to record the aforesaid conclusion in view of the judgment rendered by this Court in Vikram Singh & Ors. Vs. State of Punjab, (2010) 3 SCC 56, wherein in the like circumstances (certainly, the circumstances herein are much graver than the ones in the said case), this Court had upheld the death penalty awarded by the High Court.*

74. *The above sequence indicates that no mitigating circumstances of the petitioner were taken into account at any stage of the trial or the appellate process even though the petitioner was sentenced to capital punishment.*

75. In terms of the aggravating circumstances that were taken note of by this Court in appeal, our attention has been drawn to the following circumstance:

> *30. […]*
> *(vii) The choice of kidnapping the particular child for ransom, was well planned and consciously motivated. The parents of the deceased had four children – three daughters and one son. Kidnapping the only male child was to induce maximum fear in the mind of his parents. Purposefully killing the sole male child, has grave repercussions for the parents of the deceased. Agony for parents for the loss of their only male child, who would have carried further the family lineage, and is expected to see them through their old age, is unfathomable. Extreme misery caused to the aggrieved party, certainly adds to the aggravating circumstances.*

We wish to note that the sex of the child cannot be in itself considered as an aggravating circumstance by a constitutional court. The murder of a young child is unquestionably a grievous crime and the young age of such a victim as well as the trauma that it causes for the entire family is in itself, undoubtedly, an aggravating circumstance. In such a circumstance, it does not and should not matter for a constitutional court whether the young child was a male child or a female child. The murder remains equally tragic. Courts should also not indulge in furthering the notion that only a male child furthers family lineage or is able to assist the parents in old age. Such remarks involuntarily further patriarchal value judgements that courts should avoid regardless of the context.

76. *In* ***Rajendra Pralhadrao Wasnik v State of Maharashtra 2019 (12) SCC 460,*** *a three judge bench of this Court took note of the line of cases of this Court which underline the importance of considering the probability of reform and rehabilitation of the convicted accused before sentencing him to death. The court observed:*

> *43. At this stage, we must hark back to Bachan Singh and differentiate between possibility, probability and impossibility of reform and rehabilitation. Bachan Singh requires us to consider the probability of reform and rehabilitation and not its possibility or its impossibility.*
> *[…]*
> *45. The law laid down by various decisions of this Court clearly and unequivocally mandates that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. This is one of the mandates of the "special reasons" requirement of Section 354(3) Cr.PC. and ought not to be taken lightly since it involves snuffing out the life of a person.* ***To effectuate this mandate, it is the obligation on the prosecution to prove to the court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated.*** *This can be achieved by bringing on record, inter alia, material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the convict can produce evidence on these*

issues as well.

46. If an inquiry of this nature is to be conducted, as is mandated by the decisions of this Court, it is quite obvious that the period between the date of conviction and the date of awarding sentence would be quite prolonged to enable the parties to gather and lead evidence which could assist the trial court in taking an informed decision on the sentence. But, there is no hurry in this regard, since in any case the convict will be in custody for a fairly long time serving out at least a life sentence.

47. ***Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be overemphasised. Until Bachan Singh, the emphasis given by the courts was primarily on the nature of the crime, its brutality and severity. Bachan Singh placed the sentencing process into perspective and introduced the necessity of considering the reformation or rehabilitation of the convict.*** *Despite the view expressed by the Constitution Bench, there have been several instances, some of which have been pointed out in Bariyar and in Sangeet v. State of Haryana where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in Sangeet "In the sentencing process, both the crime and the criminal are equally important."* ***Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and***

> ***analyse this information is certainly not an easy task but must nevertheless be undertaken.*** *The process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social reintegration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible.*
>
> *(emphasis supplied)"*

77. We have considered the entire material as regards educational, financial, social, psychological and psychiatric aspects *qua* the convict placed before us by the State in order to ascertain whether there is any possibility or probability of reformation or rehabilitation of the convict. We have also given due consideration not only to the entire facts and evidence connected with the crime, but also the circumstances of the convict. He is not at all fit for any kind of reformatory and rehabilitation scheme. Life imprisonment would be completely futile as the sentencing aim of reformation is completely unachievable. During interaction with the convict through Video Conferencing, we do not find any remorse, penitence or repentance on his face. Normally, a deep regret should have

come from him by a deep sense of guilt. He just feigned innocence contending that he does not remember anything.

78. From the evidence discussed hereinabove and having given due consideration to the aggravating and mitigating circumstances, we have absolutely no doubt or second thought in our mind that the convict is not at all fit for any kind of reformation. Having juxtaposed the aggravating and mitigating circumstances, we find that the aggravating circumstances out weighed the mitigating circumstances. We are quite conscious of the fact that it is not an easy conclusion to be deciphered to categorize the case as a 'rarest of the rare' one. The convict would be a continuing threat to the society even after completion of his sentence of life, if awarded. We are mindful of the fact that in view of the dicta in the case of ***Bachan Singh*** (supra), in which it has been succinctly differentiated between possibility, probability and impossibility of reform and rehabilitation. ***Bachan Singh*** (supra) requires us to consider the probability of reform and rehabilitation and not its possibility or its impossibility. We have given a meaningful, real and effective hearing to Dr. Yug Choudhry, who in his erudite arguments tried

to impress upon us as to how it is probable for the convict to get reformed if he is released having already undergone the sentence till the date of hearing. We are afraid, we cannot buy such an argument. We have taken into account not only the gruesome, merciless, brutal and inhuman act of the convict but also the improbability of his reformation in case he is awarded an alternative sentence of life imprisonment. The act of the convict had indeed shocked the conscious of the society.

79. Under the circumstances, showing mercy or leniency to such a person, would be misplacing the concept of mercy. That apart, showing leniency would be a mockery on the criminal justice system. Therefore, death penalty imposed by the trial Court, needs to be confirmed and accordingly stands confirmed. It is a well settled law that possibility of reformation and rehabilitation of the convict is an important factor which is to be taken into account as a mitigating circumstance before sentencing him to death.

80. We have elucidated all the important information and factors regarding the probability of reformation and

rehabilitation from the State and considered the same. The conduct of the convict in the Jail as per the reports of the Superintendent of Jail at Yerawada, Pune and Nagpur Central Prison, Nagpur has already been discussed hereinbefore. In the sentencing process, both the crime and criminal are equally important. Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the Courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and analyse this information is certainly not an easy task but must nevertheless be undertaken. This has been observed by the Supreme Court in case of ***Sundar @ Sundarrajan*** (supra).

81. The Supreme Court went on to observe that the process of rehabilitation is also not a simple one since it involves social reintegration of the convict into Society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social integration of the convict may not be

possible. If that should happen, the option of a long duration of imprisonment is permissible. Here in the case at hand, indeed reintegration of the convict into Society apart from the improbability of rehabilitation, would be quite risky in light of the discussion made hereinabove. It would be equally risky even to award imprisonment for life, for, he would be a potential danger to the other inmates in the Jail looking to his propensity and inclination towards cannibalism. The case, therefore, falls within the 'rarest of rare' category justifying award of capital punishment.

82. The Supreme Court in the case of ***Manoj & Ors. Vs. State of Madhya Pradesh***[12], while reiterating on the aspect of sentencing in para 247 held thus :-

> *"247.The goal of reformation is ideal, and what society must strive towards – there are many references to it peppered in this court's jurisprudence across the decades – but what is lacking is a concrete framework that can measure and evaluate it. Unfortunately, this is mirrored by the failure to implement prison reforms of a meaningful kind, which has left the process of incarceration and prisons in general, to be a space of limited potential for systemic reformation. The goal of*

12 2022 Live Law (SC) 510

> *reformative punishment requires systems that actively enable reformation and rehabilitation, as a result of nuanced policy making. As a small step to correct these skewed results and facilitate better evaluation of whether there is a possibility for the accused to be reformed (beyond vague references to conduct, family background, etc.), this court deems it necessary to frame practical guidelines for the courts to adopt and implement, till the legislature and executive, formulate a coherent framework through legislation. These guidelines may also offer guidance or ideas, that such a legislative framework could benefit from, to systematically collect and evaluate information on mitigating circumstances."*
>
> *(emphasis supplied)*

83. We have given a liberal and expansive scope to the mitigating circumstances. We have also meticulously considered the reports of the State as regards the psychological and Psychiatrist evaluation. The report of the Probationary Officer, the report of the concerned persons and having taken a holistic view of all the aggravating and mitigating circumstances as well as the probability of reformation of the convict, we are of the considered view that this is a fit case to confirm the death penalty awarded by the trial Court.

84. A corollary of the entire discussion made hereinabove is that there is absolutely no chance of reformation or

rehabilitation of the convict. Life imprisonment would be completely futile since the sentencing aim of reformation is completely unachievable. Having given due consideration to all the aggravating and mitigating circumstances, we are of the firm view that this is a fit case wherein the death penalty awarded by the trial Court needs to be confirmed.

85. We, accordingly, confirm the sentence of the death, awarded by the trial Court to the convict - Sunil Rama Kuchkoravi.

A certified copy of the judgment shall immediately be given to the convict, free of cost in view of the proviso to Sub-Section (2) of Section 363 of the Code of Criminal Procedure.

The convict is informed about his right to prefer an appeal before the Hon'ble Supreme Court within 30 days.

86. Reference is answered accordingly.

(PRITHVIRAJ K. CHAVAN, J.) **(REVATI MOHITE DERE, J.)**