2025:CGHC:8602-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Reference No. 2 of 2024

In Reference of State of Chhattisgarh R/o Thana Urla, District Raipur Chhattisgarh.

--- **Applicant**

versus

Panchram Urf Mannu Gendre, S/o Premlal Gendre, Aged About 35 Years, R/o Sakin - Hasda, Thana Berla, District Bemetara, Chhattisgarh.

--- **Respondent**

For Applicant/State	:	Mr. Shashank Thakur, Deputy A.G.
For Respondent	:	Mr. Abhishek Sinha, Senior Advocate along with Mr. Arvind Panda, Advocate

Criminal Appeal No. 151 of 2025

Panchram @ Mannu Gendre, S/o Premlal Gendre, Aged About 35 Years, R/o Hasda, Police Station - Berla, District Bemetara, Chhattisgarh.

---**Appellant**

Versus

State Of Chhattisgarh, Through P.S. Urla, District Raipur, Chhattisgarh.

... Respondent

(Cause Title taken from Case Information System)

For Appellant	:	Mr. Abhishek Sinha, Senior Advocate along with Mr. Arvind Panda, Advocate
For Respondent/State	:	Mr. Shashank Thakur, Deputy A.G.

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

***Per* Ravindra Kumar Agrawal, Judge**

19/02/2025

1. The Criminal Reference No. 2 of 2024 is the reference under Section 366(1) of the Code of Criminal Procedure, 1973 (Section 407(1) of Bharatiya Nagarik Suraksha Sanhita, 2023) made by the learned 7th Additional Sessions Judge, Raipur for confirmation of the death sentence awarded to the accused- Panchram @ Mannu Gendre, who has been convicted by the learned 7th Additional Sessions Judge, Raipur, in Sessions Case No. 180 of 2022, for the offences under Sections 363, 364 and 302 of IPC and sentenced for R.I. for 5 years with fine of Rs. 500/-, R.I. for 10 years with fine of Rs. 500/- in default of payment of fine further R.I. for 2-2 months and death sentence (subject to confirmation by the High Court) with fine of Rs. 1000/- in default of payment of fine further R.I. for 3 months.

2. The Criminal Appeal No. 151 of 2025 is filed by the appellant/ accused- Panchram @ Mannu Gendre under Section 415(2) of Bharatiya Nagarik Suraksha Sanhita, 2023, against impugned

judgment of conviction and sentence dated 28.11.2024 passed by learned 7th Additional Sessions Judge, Raipur in Sessions Case No. 180 of 2022, whereby the appellant has been convicted and sentenced for the offences under Sections 363, 364 and 302 of IPC and sentenced for R.I. for 5 years with fine of Rs. 500/-, R.I. for 10 years with fine of Rs. 500/- in default of payment of fine further R.I. for 2-2 months and death sentence (subject to confirmation by the High Court) with fine of Rs. 1000/- in default of payment of fine further R.I. for 3 months.

3. Both the Criminal Reference and Criminal Appeal are arising out of the same crime number, same sessions trial and a common judgment. Therefore, both are being heard and decided together.

4. The facts of the case, in brief, are that, on 05.04.2022, at about 10:00 PM, the mother of the deceased Smt. Pushpa Chetan/PW-1 lodged a missing report that his neighbour Panchram Satnami @ Mannu had taken her two minor sons- Divyansh and Harsh Kumar Chetan, at about 10:00 AM to visit places and after some time, he left Divyansh to her house and again taken Harsh Kumar Chetan with him, but till that time he has not returned back to her house. Despite his search in nearby places, his whereabouts could not be traced out. She described her physic and wearing of her minor son to the police. The report of Smt. Pushpa Chetan/PW-1 was reduced in writing at Police Station Urla, District Raipur, in Rojnamcha Sanha No. 47, dated 05.04.2022, which is Exhibit P-33. FIR/Exhibit P-34 was also registered as Crime No. 140 of 2022 at Police

Station Urla, District Raipur, against the appellant/ accused-Panchram Satnami @ Mannu, for the offence under Section 363 of IPC.

5. During the investigation, the mobile number of the appellant/ accused was collected and was kept under surveillance and after examining its tower location, ultimately, the appellant/accused was traced out and, on the basis of his mobile location, found at Nagpur, Maharashtra, and he was arrested on 07.04.2022 at Nagpur, and the police has taken him to Urla Police Station, Raipur. The appellant/accused was interrogated, and his memorandum statement/ Exhibit P-8 was recorded in the presence of the witnesses Ashish Yadav and Johan Dinkar on 08.04.2022 at 10:00 AM. In his memorandum statement, he disclosed the entire incident and also disclosed that he burnt the deceased near Nevnara and Akoli Khar, and he sold his motorcycle to Kiran Auto, Bhilai. He kept his shirt in his bag, and he was running the mobile SIM number of his mother. On the basis of his memorandum statement, the police proceeded towards the place where the appellant/accused alleged to have committed the murder of the deceased. The police have also called the Forensic Team at the place of the incident through the memo/Exhibit P-36. When the police reached on the spot on 08.04.2022 at about 10:30 AM along with the appellant/accused and witnesses on the pointing out of the appellant, the half-burnt dead body of the deceased was found, which has been seized vide seizure memo/Exhibit P-35. The father of the deceased, namely

Jayendra Chetan/PW-2, has identified the dead body of the deceased on the basis of his half-burnt clothes, face and hairs and identified it to be the dead body of his son Harsh Chetan and identification memo/Exhibit P-4 was prepared in the presence of the witnesses.

6. Notice under Section 175 of CRPC was issued to the witnesses of the inquest, and the inquest/Exhibit P-3 of the dead body of the deceased Harsh Chetan, aged about 4 years, was prepared on 08.04.2022 in the presence of the witnesses and thereafter, the dead body was sent for its postmortem to Ambedkar Memorial Hospital, Raipur through the constable No. 102- Abhishek Singh. The postmortem of the dead body of the deceased was conducted by Dr. M. Nirala/PW-12, who, after its postmortem, gave report/ Exhibit P-5. While conducting the postmortem, the doctor noticed that skin was missing from the left side of the head, face, left side chest and left side abdomen. Dry burns are present on bilateral hands and bilateral foots. Maggots 1.5 cm on all over the body. Skin pilling present. Second to third-degree burns are present all over the body, and total burnt surface area is 100%. After conducting the postmortem, the doctor has opined that the cause of death is burn injuries, final opinion will be given after the viscera report and circumstantial evidence provided by police, duration of death within one week prior to postmortem examination. The viscera of the dead body of the deceased was seized by the police vide seizure memo/Exhibit P-16.

7. The burnt grass along with soil, plain soil, plain grass, one burnt matchstick, one plastic container having the smell of petrol and its cap and a half-burnt piece of towel were seized from the spot on 08.04.2022 vide seizure memo/Exhibit P-10. Spot map/Exhibit P-46 was prepared by the police, and Exhibit P-49 was prepared by the Patwari. One motorcycle bearing registration No. CG-04/DS-2363, its RC book, Aadhar card of the appellant- Panchram Satnami and the insurance certificate of the motorcycle have been seized from Kiran Sahu, to whom the motorcycle was sold by the appellant vide seizure memo/Exhibit P-7. From the DVR of CCTV installed in the shop of Kiran Sahu, the CCTV footage was extracted in a pen drive through Bhavesh Rao Wadekar and the said pen drive was seized on 19.04.2022 vide seizure memo/Exhibit P-11. Another CCTV footage was extracted in a pen drive from the DVR of CCTV installed in the house of Rajesh Yadav, Ward No.4, Urla and seized vide seizure memo/Exhibit P-12. In the said CCTV footage, it has reflected that the appellant is taking the deceased with him by his motorcycle. A certificate under Section 65-B has also been obtained from Techzone Infosystems, Pandri, Raipur, which is Exhibit P-12A. Bhavesh Rao Wadekar is the owner of the said Techzone Infosystems, Raipur, who extracted the CCTV footage in the pen drive.

8. From Smt. Laxmi Koshley, one OPPO mobile phone having SIM card of Idea company bearing No. 7049257021, another Nokia mobile phone having SIM card of Idea company bearing No.

7440717348 was seized vide seizure memo/Exhibit P-13. Smt. Laxmi Koshley is the sister of the appellant- Panchram Gendre and both the aforesaid mobile phones were used by her and her son Khuman, in which on 05.04.2022 and 07.04.2022, the appellant called from his mobile phone (registered in the name of his mother) No. 8435934997. Another mobile phone having SIM No. 9753341814 has been seized from Raja Tandon vide seizure memo/Exhibit P-17.

9. The blood samples of the mother and father of the deceased were collected for the DNA test report, and the same was sent to the State FSL, Raipur, DNA Unit, from where the DNA report/Exhibit P-22 was received. According to the DNA report, the Jayendra Chetan and Smt. Pushpa Chetan was found to be the biological parents of the deceased Harsh Chetan. The viscera of the dead body, which was seized by the police vide seizure memo/Exhibit P-16 was also sent for its chemical examination to State FSL Raipur, from where the viscera report/Exhibit P-28 was received and no poisonous substance was found in the viscera of the deceased. After obtaining the viscera report, a query was made from the doctor who conducted the postmortem of the dead body, through the memo/Exhibit P-31, which was replied to by Dr. M. Nirala/PW-12 through the query report/Exhibit P-15 and replied that since no poisonous substance was found in the viscera of the deceased and his whole body was burnt. Therefore, the death of the deceased was due to burn injuries and since in the requisition memo, it has

been mentioned that on 05.04.2022, at about 10:00 AM, the appellant- Panchram Gendre @ Mannu took the minor Harsh Chetan to village Nevnara and Akoli Khar and committed his murder by pouring petrol and thus in the circumstances, the nature of death would be homicidal.

10. Dehati Merg Intimation/Exhibit P-1 was recorded on 08.04.2022, at about 11:30 AM. The appellant was arrested on 08.04.2022, and his memorandum statement/Exhibit P-8 was recorded in the presence of the witnesses. On the basis of his memorandum statement, one full shirt having the smell of petrol, and one black colour mobile having two SIM cards Nos. 8435934997 and 7415486855 and cash amount of Rs. 10,150/- have been seized vide seizure memo/Exhibit P-9. The burnt grass and soil, plain grass and soil, burnt matchstick and plastic container, half-burnt piece of towel and one full-shirt seized from the appellant were sent for chemical examination to State FSL, Raipur from where report/Exhibit P-25 was received and in a plastic container and half-burnt towel (Article ‘D’ and ‘E’), the petrol remains were found, however in other articles no petrol remains were there. The call details report of mobile No. 8435934997, which was used by the appellant, has also been obtained by the police vide Exhibit P-50. The photograph of the deceased was also taken, which is Article ‘4’.

11. Statements of the witnesses under Section 161 of CRPC have been recorded. The statement under Section 164 of CRPC of the brother of the deceased namely Divyansh (Exhibit P-51) was also recorded

and after completion of the usual investigation, a charge sheet was filed against the appellant before the learned Judicial Magistrate First Class, Raipur, for the offence under Sections 363, 364 and 302 of IPC. The case was committed to the Court of Learned Sessions Judge, Raipur and the same was transferred to the Learned Trial Court for its trial.

12. The learned trial Court has framed charge against the appellant/accused for the offence under Sections 363, 364 and 302 of IPC. The appellant abjured his guilt and claimed trial.

13. In order to prove the charge against the appellant/accused, the prosecution has examined as many as 21 witnesses and relied upon 51 documents as Exhibit P-1 to Exhibit P-51. The statement of the appellant/accused under Section 313 of CRPC has also been recorded, in which he denied the circumstances that appeared against him, pleaded innocence and submitted that he had been falsely implicated in the offence. He further submitted that he had taken both the children to eat snacks and thereafter he left them to their house, but at that time, their house was found locked. Their mother had beaten them by danda and at that time, her brother-in-law and uncle were also there.

14. After appreciating oral as well as documentary evidence led by the prosecution, the learned trial Court has convicted the appellant/ accused for the alleged offences and sentenced him as mentioned in the earlier part of the judgment, hence this reference for

confirmation of the death sentence as well as appeal filed by the appellant against his conviction and sentence.

15. Mr. Abhishek Sinha, Senior Advocate learned counsel appearing for the appellant in Criminal Appeal No. 151 of 2025 would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses, which cannot be made basis to convict the appellant in the capital offence. There is no eyewitness to the incident and the case of the prosecution is based on circumstantial evidence, but the chain of circumstances is not completed. The CCTV footage obtained by the prosecution itself is doubtful as it shows that the appellant has taken both the children with him and left them in their house after some time and there is no footage that the appellant again took the deceased alone with him. It is only surmises and conjunctures and hypothetical allegations that the appellant has taken the deceased. The last-seen theory could not be proved by the prosecution. Further, the prosecution has also not been able to prove the motive to commit the murder of the deceased against the appellant. The dead body is found in an open place. No remains of petrol have been found on the shirt of the appellant. He would also submit that the mobile call details are not sufficient to conclude the guilt of the appellant in the offence of murder of the deceased. The memorandum statement as well as the alleged seizure made from the appellant has also not been proved as the witnesses have not fully supported the prosecution

case. The conduct of the appellant was also not abnormal as he went to Nagpur in search of his job and the police arrested him from Nagpur on suspicion, therefore, there are various missing links from the chain of circumstances and the appellant is entitled to acquittal. He would also submit that the prosecution was under bounden duty to prove its case beyond reasonable doubt, when the prosecution failed to prove its case, it cannot take advantage of the fact that the accused has not been able to probabilise his defence. It is settled law that the prosecution must stand on its own. He would rely upon the judgment of **Kanhaiya Lal v. State of Rajasthan**, (2014) 4 SCC 715. He would further submit that in case it is found that the appellant has committed the murder of the deceased, the offence does not come under the purview of the rarest of the rare and capital punishment of the death sentence cannot be awarded to him.

16. Per contra, learned counsel appearing for the State vehemently opposes the submissions made by learned counsel for the appellant and has submitted that the prosecution has proved its case beyond reasonable doubt. But for minor omissions and contradictions, the evidence of prosecution witnesses is fully reliable, which is sufficient to hold guilty of the appellant in the offence in question. The complete chain of circumstances have been proved by the prosecution by leading cogent and clinching evidence and there is no whisper of doubt that the appellant is not the perpetrator of the crime. On the date of the incident, the

appellant had taken the deceased alone with him on his motorcycle but has not returned back. The appellant, after committing the murder of the deceased near village Nevnara and Akoli Khar, sold his motorcycle to one Kiran Sahu and went to Nagpur. He was using the mobile number of his mother by purchasing a new mobile phone and he could be arrested from Nagpur. The dead body was recovered on his instance from the village Nevnara and Akoli Khar. The motive has also been proved by the prosecution that the appellant had an evil eye upon the mother of the deceased, but she was not interested in him, which gives cause to commit the offence of murder of her son. From the postmortem report, the burn injuries were antemortem, which itself shows the brutality of the offence which the appellant has committed, for which the death penalty is only the appropriate punishment for the appellant, which the learned trial Court has rightly considered in its judgment of conviction and sentence. The impugned judgment of conviction and sentence passed by the learned trial Court is based on proper appreciation of evidence and gravity of the offence, which needs no interference.

17. He would further submit that the manner in which the appellant has committed the murder of a minor boy by causing antemortem burn injuries, can be said to be a rarest of rare case, and there is no chance of reformation of the appellant and he is burdened to the society, therefore, imprisonment for life or other sentence is completely inadequate, only the death sentence would be

appropriate punishment, which has rightly been awarded to him. He would rely upon the judgment of the Hon'ble Supreme Court in the matter of **Balwan Singh v. State of Chhattisgarh and another**, (2019) 7 SCC 781.

18. We have heard learned counsel for the parties and considered their rival submissions made hereinabove and also gone through the record of the trial Court with utmost circumspections.

19. The dead body of the deceased was found in burnt condition between Nevnara and Akoli Khar in the field, though the death of the deceased is prima facie appears unnatural, it is necessary to deal with the evidence which proves that the deceased died due to antemortem burn injuries. To determine the nature of the death of the deceased, the most important witness is the doctor, who conducted the postmortem of the dead body of the deceased. PW-12/Dr. M. Nirala, who conducted the postmortem of the dead body, stated in his evidence that on 08.04.2022, the dead body of the deceased was brought before him for its postmortem and the dead body was identified by Jayendra Chetan, Devendra Chetan and constable Abhishek Singh. On being external examination, he found that the dead body of a male child covered with a black polythene and white cloth, a foul smell was present on over body, blackish discoloured due to burn and decomposition on over body, skin missing from left side head, face, left side chest and left side abdomen, dry burn present on bilateral hands and bilateral foots, maggots 1.5 cm on all over body, skin pilling present, second to

third-degree burn present on all over body and total burn surface area 100%. On being internal examination, the skull bone and meninges intact. The diaphragm, ribs and trachea were intact, shoot particles were present in the trachea and both lobes of the lungs were intact. Since shoot particles are present in the trachea, the burn injuries are antemortem. The viscera was preserved for its chemical examination and opined that (i) the cause of death is burn injuries, (ii) final opinion will be given after the viscera report and circumstantial evidence provided by police, (iii) the duration of death within one week prior to postmortem examination.

20. When the viscera report/Exhibit P-21 was received by the police, they made a query to the doctor with respect to the nature of death, and the doctor has opined vide its query report/Exhibit P-15 that in the viscera of the deceased, no poisonous substance was found and the whole body of the deceased was burnt and thus the death of the deceased was due to burn injuries and the circumstances suggests that his death was homicidal in nature. In his cross-examination, though he stated that he could not explain the basis on which he stated that the burn area on the body of the deceased is 100%, that itself does not affect his credibility and the post-mortem report that the death of the deceased was not homicidal but for some other reason.

21. The dead body was duly identified by Jayendra Chetan/PW-2, who is the father of the deceased and he identified the dead body by his face, clothes, and hairs and proved the identification memo/Exhibit

P-4. From the DNA report/Exhibit P-22, the complainant Pushpa Chetan/PW-1 and Jayendra Chetan/PW-2 were proved to be the biological parents of the deceased Harsh Chetan, whose dead body was found on the spot and whose death was proved to be homicidal in nature. It is also not specifically denied by the appellant/accused that the dead body found on the spot is not the dead body of Harsh Chetan and belongs to someone else.

22. Further, from the Dehati Merg Intimation/Exhibit P-1, inquest/Exhibit P-3, dead body identification panchnama/Exhibit P-4, it is duly proved by the prosecution that the deceased Harsh Chetan was missing since 05.04.2022 and whose dead body was found on 08.04.2022 from Nevnara and Akoli Khar in half-burnt condition and whose death was found to be homicidal. The learned trial Court has rightly appreciated the evidence available on record and holds the death of the deceased was homicidal in nature, on which we also impress our concurrence.

23. The prosecution’s case based on circumstantial evidence and chain of circumstances are; (i) Last seen together, (ii) Conduct of the appellant, (iii) Recovery of the dead body on the instance of the accused person, (iv) Call details of the mobile phone numbers, (v) Motive, (vi) CCTV footage, and (vii) Non-explanation of the incriminating circumstances appears against him in 313 CRPC statement**.**

24. The Hon'ble Supreme Court in the case of **Madhu Vs. State of Kerala**, 2012 (2) SCC 399 has held in paragraph 5 that:

> **"5. The care and caution with which circumstantial evidence has to be evaluated stands recognized by judicial precedent. Only circumstantial evidence of a very high order can satisfy the test of proof in a criminal prosecution. In a case resting on circumstantial evidence, the prosecution must establish a complete unbroken chain of events leading to the determination that the inference being drawn from the evidence is the only inescapable conclusion. In the absence of convincing circumstantial evidence, an accused would be entitled to the benefit of doubt."**

25. In the matter of **Digambar Vaishnav and Another Vs. State of Chhattisgarh, 2019 (4) SCC 522,** the Hon'ble supreme Court has held:-

> **"14. One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion**

and existence of highly suspicious factors to inculpate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unfailingly point to the guilt.

15. This Court in Jaharlal Das v. State of Orissa, (1991) 3 SCC 27, has held that even if the offence is a shocking one, the gravity of offence cannot by itself overweigh as far as legal proof is concerned. In cases depending highly upon the circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof. The court has to be watchful and ensure that the conjecture and suspicion do not take the place of legal proof. The court must satisfy itself that various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused.

16. In order to sustain the conviction on the basis of circumstantial evidence, the following three conditions must be satisfied:

> **i.) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;**

ii.) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and

iii.) 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, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

17. In Varkey Joseph v. State of Kerala, 1993 Suppl (3) SCC 745, this Court has held that suspicion is not the substitute for proof. There is a long distance between 'may be true' and 'must be true' and the prosecution has to travel all the way to prove its case beyond reasonable doubt.

18. In Sujit Biswas v. State of Assam, (2013) 12 SCC 406, this Court, while examining the distinction between 'proof beyond reasonable doubt' and 'suspicion' has held as under:

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for

the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense".

26. In the matter of **Nagendra Sah Vs. State of Bihar, 2021 (10) SCC 725** in paragraphs 17 and 18 replying upon the golden principles enumerated in the case Sharad Birdhichand Sarda Vs. State of Maharashtra, 1984 (4) SCC 116, the Hon'ble Supreme Court has held as under:

> **"17. As the entire case is based on circumstantial evidence, we may make a useful reference to a leading decision of this Court on the subject. In the case of Sharad Birdhichand Sarda v. State of Maharashtra2, in paragraph 153, this Court has laid down five golden principles (Panchsheel) which govern a case based only on circumstantial evidence. Paragraph 153 reads thus : -**
>
> > **"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:**
> >
> > **(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.**
> >
> > **It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved"**

as was held by this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra where the following observations were made:

19…..Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused." (emphasis added).

18. Paragraphs 158 to 160 of the said decision are also relevant which read thus :

> **“158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor-General relying on a decision of this Court in Deonandan Mishra v. State of Bihar, to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:**
>
> **9…….But in a case like this where the various links as started above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, . . . such absence of explanation or false explanation would itself be an additional link which completes the chain."**
>
> **159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to**

complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied :

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,

(2) the said circumstance points to the guilt of the accused with reasonable definiteness, and

(3) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal case where this Court observed thus:

30……..Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if

other circumstances point unfailingly to the guilt of the accused." (emphasis added)"

27. In the matter of para **Surendra Kumar and Another Vs. State of Uttar Pradesh**, 2021 (20) SCC 430, the Hon'ble supreme Court has held in 11 and 12 that:-

"11. As the case against the appellants is entirely based on circumstantial evidence, it is necessary to determine whether the available evidence lead only to the conclusion of guilt and exclude all contrary hypothesis. The enunciation on the law of circumstantial evidence stood the test of time since Hanumant Vs. State of Madhya Pradesh1 where Mahajan J., has written as under:-

"10……It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a

conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused……"

12. The nature, character and essential proof required in criminal cases was discussed in detail by Fazal Ali J in Sharad Birdhichand Sarda vs. State of Maharashtra2 and the proposition of law culled out on circumstantial evidence was approved in many subsequent judgments and was recently reiterated by Krishna Murari J., writing the opinion for a three Judges Bench in Shailendra 1 AIR 1952 SC 343 2 (1984) 4 SCC 116 Rajdev Pasvan & Ors. Vs. State of Gujarat & Ors. 3 where it was succinctly laid down as under:-

"17. It is well settled by now that in a case based on circumstantial evidence the courts ought to have a conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused. Each link unless connected together to form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused."

28. There is no eyewitness in the present case. The case of the prosecution rests on the circumstantial evidence. The Supreme

Court in case of **Ravindra Singh Vs. State of Punjab**, 2022 (7) SCC 581 has held in para 10 as under:-

> **10. The conviction of A2 is based only upon circumstantial evidence. Hence, in order to sustain a conviction, it is imperative that the chain of circumstances is complete, cogent and coherent. This court has consistently held in a long line of cases [See Hukam Singh v. State of Rajasthan AIR (1977 SC 1063); Eradu and Ors. v. State of Hyderabad (AIR 1956 SC 316); Earabhadrappa @ Krishnappa v. State of Karnataka (AIR 1983 SC 446); State of U.P. v. Sukhbasi and Ors. (AIR 1985 SC 1224); Balwinder Singh @ Dalbir Singh v. State of Punjab (AIR 1987 SC 350); Ashok Kumar Chatterjee v. State of M.P. (AIR 1989 SC 1890)] that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.**
>
> **10.1. In Bhagat Ram v. State of Punjab (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion**

drawn from circumstances, the cumulative effect of the circumstances must be such as to negate the innocence of the accused and bring the offence home beyond any reasonable doubt.

10.2. We may also make a reference to a decision of this Court in C. Chenga Reddy and Ors. v. State of A.P. (1996) 10 SCC 193, wherein it has been observed that:

"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....".

IN view of the law laid down by the Hon'ble Supreme Court with respect to the consideration of circumstantial evidence in the case, we examined the evidence and circumstances that appear in the present case.

Last seen together :-

29. The last seen of the appellant with the deceased has been proved by PW-1/Pushpa Chetan (mother of the deceased),

PW-3/Bharti Yadav, PW-4/Johan Dinkar, PW-7/Smt. Shanti Yadav, PW-20/Divyansh Chetan (brother of the deceased).

30. PW-1/Pushpa Chetan has stated in her evidence that the appellant is her neighbour and since they were known to each other, the appellant used to take her sons to visit places. On 05.04.2022 also at about 10:00 AM, he took her both children to eat snacks and after some time they returned back. Her elder son got down from the motorcycle, but her younger son insisted to again visiting the places, for which she scolded him but the appellant took her younger son with him on his motorcycle. She had gone to the pond to take a bath when the appellant did not return after a considerable period, she started searching for him and asked her neighbours, then she, along with her landlord and brother-in-law went to Urla police station and lodged a missing report. After about 3 days the dead body of her son was found in the field in burnt condition. In cross-examination, she admitted the suggestion given by the appellant that the appellant had taken her minor son at about 10:00 AM, but had not returned till the evening. She did not know as to what of the places, where the appellant has taken her son. From her cross-examination, the defence could not elicit any material, which makes her evidence disbelieved that she had not seen the appellant taking her son/deceased with him. She is the natural witness, and in her presence, the appellant has taken

her younger son with him. The last-seen theory stated by her cannot be disbelieved.

31. PW-3/Bharti Yadav, who is the resident of the same vicinity, where the appellant and the deceased were residing. She stated in her evidence that she had seen the appellant had taken the deceased with him and on the next day, she came to know from the newspaper that the appellant had committed his murder. She had seen both of them together in the camera installed in her house, in which it is captured that the appellant is taking the deceased on his motorcycle. In her cross-examination, again, the suggestion given by the defence was that she had seen both of them together in the camera installed in her house. She also admitted that the appellant is her neighbour and she is well acquainted with the appellant. She denied the suggestion given by the defence that she had not disclosed in her police statement that she had seen the appellant taking the deceased by his motorcycle. From the evidence of this witness also, the last-seen theory has been duly proved by the prosecution.

32. PW-4/Johan Dinkar is the witness, who has seen the CCTV footage recovered from the DVR of the CCTV installed in the house of Rajesh Yadav (husband of PW-3/Bharti Yadav). He stated in para 6 of his evidence that on 05.04.2022 the police recovered the CCTV footage in a pen drive and when they viewed the same, it was visible in it that the appellant was

taking the deceased with him by the motorcycle. Though he has not physically seen both of them together, from the CCTV footage, he proved they were last seen together, which is corroboration by the evidence of PW-3/Bharti Yadav, who too has proved the last seen in camera/CCTV installed in her house.

33. PW-7/Smt. Shanti Yadav is the another witness of the vicinity, where the appellant and the deceased were residents. She stated in her evidence that on the date of the incident, when she was sitting outside of her house, she saw that the appellant had taken both the children of Pushpa/PW-1 and after some time, they returned back. After 5-10 minutes, he again took her son Harsh with him, but could not return back. Pushpa and the persons of the vicinity lodged his missing report, the police persons came in the night and checked the CCTV footage then they saw that the appellant was taking the deceased by his motorcycle and then they started searching the appellant. Subsequently, she came to know that the appellant had committed the murder of the deceased. Nothing specific has come in her cross-examination to disbelieve her statement made in the chief examination.

34. PW-20/Divyansh Chetan is the elder brother of the deceased, who at the earlier point in time had gone with the appellant to visit places and at the time the deceased was also there with

them. After leaving him in his house, the appellant took his younger brother with him, but could not return back and burned him in the jungle. In cross-examination, he remained firm and reiterated that the appellant had taken his younger brother with him to visit places.

35. In 313 CRPC statement of the appellant, he admitted in question No. 20, 43 and 265 that he has taken the deceased with him, but has not offered any explanation as to where he departed from the company of the deceased. The question No. 20, 43 and 265 and its answer are reproduced herein below:

> प्रश्न**-20** इसी साक्षी का कहना है कि भीड़ के लोगों ने यह भी बताया है कि उसके बच्चे को आप अभियुक्त सुबह घुमाने ले गए थे तथा अभी तक नहीं लाए हैं। क्या आपको कुछ कहना है **?**
>
> उत्तर**-** सही है।
>
> प्रश्न**-43** इसी साक्षी का कहना है कि आप अभियुक्त ने बताया था कि वह जयेन्द्र के लड़के हर्ष को घुमाकर लाता हूँ बोलकर घर से मोटर सायकल में बैठाकर ले गया था। क्या आपको कुछ कहना है**?**
>
> उत्तर**-** सही है।
>
> प्रश्न**-265** इसी साक्षी का कहना है कि दिनाँक **05.04.2022** की घटना है। आप अभियुक्त अपने साथ हर्ष चेतन का मोटर सायकल में बिठाकर ले गए थे बहुत देर तक जब आप अभियुक्त हर्ष चेतन को लेकर घर नहीं लौटे तब हर्ष चेतन की माँ और उसके सदस्य बच्चे को खोजने लगे। आपका क्या कहना है**?**

उत्तर-मैं नाश्ता कराने लेकर गया था।

From all this evidence, it has unerringly proved that the deceased was being taken by the appellant on his motorcycle and could not return back till his dead body was recovered, and thus the last-seen theory has been proved by the prosecution.

Conduct of the appellant :-

36. When it has been proved by the prosecution that on the date of the incident, the deceased was being taken by the appellant by his motorcycle, but has not been returned back. After committing the murder of the deceased, the appellant went to village Karanja, Bhilai and sold his motorcycle to Kiran Kumar Sahu/PW-8 for a total consideration of Rs. 15,000/-. At the time of selling the motorcycle, the appellant has given the mobile number of his brother, because he asked him to come after 2-3 days for the purposes of name transfer and retained Rs. 10,000/- out of the sale consideration. In the evening, his brother called Kiran Kumar Sahu/PW-8 and asked about his brother and vehicle; he informed him that after selling his motorcycle, his brother had gone somewhere and then he informed him that the appellant had committed the murder of 4 a 4-year-old boy.

37. From the memorandum statement/Exhibit P-8, the appellant disclosed that after selling his motorcycle to Kiran Sahu at Karanja, he had gone to Nagpur in search of a job. He sold his two mobile phones there and purchased one small mobile and used it by fixing

the mobile SIM of his mother and when he went to Nagpur bus stand, the police arrested him.

38. PW-19/Suresh Kumar Dhruw, DSP, ACB, Raipur has stated in his evidence that during the investigation he analyzed the call details report and found the mobile number 8435934997 was registered in the name of the mother of the appellant Kumari Bai and on 05.04.2022, at about 10:35 Hrs, SMS came an then his mobile tower location was found at village Hasda, District Bemetara. On the same date, the appellant made a mobile call from the mobile number 9009389328, which was owned by Kiran Sahu to whom the motorcycle was sold and the said mobile call was made to nephew Khuman Koshley, which was also traced out. On 05.04.2022, at about 22:02 and 22:08 Hrs, the appellant made a telephone call to his nephew from the mobile number of his mother, and at that time, his tower location was found at Bhawani Nagar, Nagpur. On 07.04.2022 also, when he made conversation with his nephew Khuman Koshley and Raja Tandon, his mobile location was still at Nagpur and on the basis of the tower location, the appellant was detained on 07.04.2022 in the night at Nagpur and he was taken to Urla, Raipur on 08.04.2022.

39. In 313 CRPC statement, the appellant stated in the answer to question No. 286 that he had gone to eat snacks along with the children and left them at their house, but at that time their house was found locked and her mother had beaten her children by danda. The explanation given by the appellant is wholly unreliable

and unacceptable. When he took the children of PW-1 with him and when he returned back after some time, he ought not to leave the children at their house when he found their house locked. A contrary explanation is given by the appellant that her mother had beaten them by danda. The explanation given by the appellant is contrary to the evidence of the witnesses. Further, on the same day, when he had taken the deceased with him, he sold his motorcycle at Karanja, Bhilai and went to Nagpur, he sold his two mobile phones there, purchased one small mobile phone and used the mobile number of his mother. He can very well use his own mobile number when he sells the mobile phone to the shop. There is no explanation from the appellant that at what time he departed with the company of the deceased or when and where he dropped him. There is no evidence or suggestion to the witnesses that he came back to the house of the deceased and dropped him, and thus the conduct of the appellant is also suspicious which dragged towards his guilt.

Recovery of the dead body on the instance of the accused person:-

40. PW-4/Johan Dinkar and PW-21/Ashish Yadav are the witnesses of the seizure of the dead body at the instance of the appellant.

41. PW-4/Johan Dinkar has stated in his evidence that after 2-3 days of the date of the incident, the police persons arrested the appellant and they were being called by the police persons. When he and Ashish Yadav (Ward Member) had gone to the police station, the

appellant gave his memorandum statement, which is Exhibit P-8, in which he disclosed the entire incident and the manner in which he committed the murder of the deceased. They had gone to the place along with the police and the appellant, where the dead body was lying. In cross-examination, he remained firm in saying that after disclosing the incident by the appellant in his memorandum statement, the police persons had gone to the spot and recovered the dead body. The evidence of this witness has been supported and corroborated by the evidence of PW-21/Ashish Yadav, who too has stated that when the appellant was arrested by the police, he had gone to police station and in his presence the appellant has given his memorandum statement and thereafter the dead body was recovered and recovery panchnama/Exhibit P-35 was prepared. Both these witnesses have duly proved the memorandum statement and recovery of dead body from the field.

42. From the evidence of Ashok Baghel/PW-6, Jayendra Chetan/PW-2 and Devendra Chetan/PW-9 also, the recovery of the dead body on the instance of the appellant has been proved by the prosecution, which cannot be rebutted by the defence in their cross-examination. The recovered dead body was in burnt condition and the same was duly identified by his father/PW-2 Jayendra Chetan. The recovery of the dead body and other articles nearby the dead body has been admitted by the appellant in question No. 47, 48 and 49 of his 313 CRPC statement.

Call details of the mobile phone numbers:-

43. The investigating officer- Bharat Lal Bareth/PW-18 has stated in his evidence that during the investigation, one mobile phone having two SIM cards has been seized from the appellant vide seizure memo/Exhibit P-9 and the CCTV footage from the house of Kiran Sahu resident of Karanja, Bhilai, which was taken out by Bhavesh Rao Wadekar, was seized vide seizure memo/Exhibit P-11. The certificate under Section 65-B of the Indian Evidence Act has also been obtained which is Exhibit P-11A and the pen drive is Article 'A-1'. In between 05.04.2022 to 07.04.2022, the appellant had the telephonic call to his nephew Khuman Koshley from the mobile number of his mother i.e. 8435934997. During the investigation, the investigating officer has obtained the CDR, SDR, CAF and Tower location of the mobile numbers 8435935997, 9753341814, 7440717348, 7449257021 and 9009389328 and the tower location information was submitted through the document/Exhibit P-45. As per the tower location information, the tower location of the mobile phone, which was being used by the appellant, was found to be at Nagpur, Maharashtra. On the basis of his mobile tower location, he was taken into custody on 07.04.2022 from Nagpur.

44. PW-5/Laxmi Koshley, who is the sister of the appellant, has stated that she made a telephonic call to the appellant on the mobile number of her mother, but he has not picked up her mobile phone. When she made a telephonic call to the mobile number of the appellant, it was found switched off. The appellant was using the mobile number of her mother. When her cousin brother Raja had

made telephonic call from his mobile number, the appellant had talked to him and then he disclosed that since he was in need of money as his friend met with an accident, he sold his motorcycle and his friend is admitted in hospital at Bhanpur. They get the conversation recorded in the mobile phone and given it to the police and after 2-3 days the police had informed them that they arrested the appellant, who committed murder of a child.

45. PW-10/Raja Tandon has also supported the aforesaid evidence of PW-5/Laxmi Koshley.

46. PW-11/Khuman Koshley, who is nephew of the appellant, has proved that the appellant had made a telephonic call from the mobile number 7440717348 on his mobile number and he asked the mobile number of his maternal grandmother.

47. PW-19/Suresh Kumar Dhruw has analysed the mobile tower location and at the relevant point of time, the mobile tower location of the appellant was found at village Hasda, which is the adjoining village of Nevnara i.e. the place of incident and nearby that place, the mobile tower location of the appellant was found. From the repeated calls made by the appellant from the mobile number of his mother to the mobile phone of his nephew, his mobile tower location was found at Nagpur, from where he was arrested.

Motive:-

48. The prosecution has also led evidence with respect to motive to commit murder of the deceased. In the memorandum statement of the appellant/Exhibit P-8, the appellant disclosed that he was having evil eye upon the mother of the deceased, but she was not interested with him and to taught lesson to her, he committed murder of the deceased. The said fact has been corroborated with the evidence of PW-6, who stated in para 5 of his evidence that the appellant was having evil eye upon the mother of the deceased Pushpa Chetan and when she was not shown her interest upon him, he committed murder of her son. This part of his evidence could not be rebutted in his cross-examination, therefore, the motive is also there to commit murder of the deceased.

49. The Hon'ble Supreme Court in in the matter of **Nathuni Yadav Vs. State of Bihar**, 1978 (9) SCC 238 has held as under:

> **"Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impells a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain**

undiscoverable. Lord Chief Justice Champbell struck a note of caution in Reg v. Palmer (Shorthand Report at page 308 SCC May 1850; thus: "But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties". Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental Condition existed in She mind of the assailant."

CCTV footage:-

50. From the evidence of PW-3/Bharti Yadav, from whose house the CCTV footage was extracted from the CCTV in the pen drive, which has also been proved by PW-4/Johan Dinkar and also the presence of the appellant in the shop of Kiran Sahu, when the appellant had gone to sell the motorcycle there and on 05.04.2022 at about 1:00 PM, his presence was there in the shop of Kiran Sahu, who purchased his motorcycle, it has been observed by the learned trial Court that the act of the appellant is visible in the CCTV footage that he handed over some papers to the purchaser, who gave some money to him. From the witness Kiran Sahu/PW-8, the RTO papers, insurance certificate and the Aadhar card of the appellant have been seized vide seizure memo/Exhibit P-7.

51. After appreciating the entire evidence available on record, the learned trial Court has considered the following circumstances to convict the appellant in the offence in question, which are as below:-

> **"1.** मृतक हर्ष चेतन के शव परीक्षण प्रतिवेदन प्रदर्श पी**-5** के अनुसार मृतक के पूरे शरीर में दूसरे व तीसरे डिग्री के जले हुए घाँव मौजूद होने तथा कुल जले हुए घाँव का प्रतिशत **100** प्रतिशत होना पाया गया है तथा मृतक के शरीर पर उपस्थिति जले हुए घाँव मृत्यु के पूर्व के थे। मृतक के शरीर का पूरा भाग जला हुआ होने से मृतक हर्ष कुमार चेतन की मृत्यु जलने के कारण हत्यात्मक प्रकृति की थी ।
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> **2.** घटना दिनाँक **05.04.2022** को सुबह लगभग **10.00** बजे मृतक हर्ष चेतन को जीवित अवस्था में अभियुक्त पंचराम उर्फ मन्नू गेण्डरे के द्वारा मोटर सायकल में बैठाकर ले जाते हुए अंतिम बार देखा जाना अकाट्य साक्ष्य से प्रमाणित है।

3. घटना दिनाँक **05.04.2022** को ही अभियुक्त पंचराम गेण्डरे के विरुद्ध प्रथम सूचना पत्र प्रदर्श पी**-34** नामजद रूप से दर्ज करायी गई है।

4. अभियुक्त पंचराम उर्फ मन्नू गेण्डरे के मेमोरेण्डम कथन प्रदर्श पी**-8** में अभियुक्त के एकांकी ज्ञान में दी गई सूचना के आधार पर मृतक हर्ष चेतन का अधजला शव की बरामदगी प्रदर्श पी**-35** किया जाना प्रमाणित किया है।

5. अभियुक्त के स्वयं के एकांकी ज्ञान से घटना के बारे में बताए गए मेमोरेण्डम कथन प्रदर्श पी**-8** के तथ्य की प्रमाणितकता में घटना स्थल के पास से मृतक के शव पाए जाने तथा मृतक के शव के पास अधजला टॉवेल का टुकड़ा**,** पीले रंग का दो**-**लीटर का प्लास्टिक का डिब्बा व ढक्कन जिसमें पेट्रोल के अंश धनात्मक पाए हैं**,** अधजली माचिस की तिली की जप्ती की गई है।

6. प्रकरण में प्रस्तुत डी.एन.ए. रिपोर्ट प्रदर्श पी**-22** के अनुसार प्रार्थिया पुष्पा चेतन एवं जयेन्द्र चेतन**,** मृतक हर्ष चेतन के जैविक माता**-**पिता हैं व मृतक **4** वर्षीय बालक है।

7. अभियुक्त पंचराम उर्फ मन्नू गेण्डरे का घटना दिनाँक **05.04.2022** को घटना कारित किए जाने के पश्चात फरार हो जाना व घटना के समय अभियुक्त के मोबाईल का लोकेशन घटना स्थल के आस**-**पास पाया जाना प्रमाणित है।

8. घटना दिनाँक **05.04.2022** को घटना के पश्चात फरार होना पैसों की आवश्यकता के लिए घटना में प्रयुक्त मोटर सायकल को करंजिया भिलाई निवासी किरण कुमार साहू को मय दस्तावेज विक्रय हेतु ले जाना व विक्रय राशि की जप्ती अभियुक्त से एवं अभियुक्त के आधिपत्य की मोटर सायकल के स्वामित्व संबंधी दस्तावेज**,** मूल आधार कार्ड की जप्ती किरण साहू से किया जाना प्रमाणित है।

9. घटना दिनाँक **05.04.2022** को अभियुक्त पंचराम उर्फ मन्नू गेण्डरे के द्वारा मृतक हर्ष चेतन को गाँव लाकर कहाँ छोड़ा गया था**,** इस संबंध में साक्ष्य अधिनियम की धारा**-106** के तहत अभियुक्त पंचराम गेण्ड्रे पर था**,** लेकिन इसके विपरीत अभियुक्त मौके से फरार हो गया था। अभियुक्त का घटना के बाद पश्चावर्ती आचरण धारा**-8** साक्ष्य अधिनियम के तहत ग्राह्य है।

10. मृतक के परिजन**,** प्रकरण के अन्वेषण अधिकारी एवं अन्य स्वतंत्र साक्षियों**,** अभियुक्त के परिजन से अभियुक्त की कोई रंजिश होने संबंधी कोई साक्ष्य विद्यमान नहीं है**,** जिससे रंजिशवश अभियुक्त को मिथ्या प्रकरण में फंसाया गया जाना दर्शित हो ।**"**

52. Thus, from the closed scrutiny of evidence, it would be found proved that on 05.04.2022, the appellant took the minor boy with him and committed his murder by pouring petrol on him and sold his motorcycle to Kiran Sahu and went to Nagpur. On the basis of his mobile tower location, he was arrested from Nagpur and taken to Urla police station, Raipur. His memorandum statement has been recorded and based on it, the dead body of the deceased was recovered from the field of Nevnara and Akoli Khar in half-burnt condition. When it is proved that the appellant was last seen with the deceased and he has taken the deceased with him then the burden shifts upon the appellant to explain as to on what point of time he departed the company of the deceased, as the fact was within his special knowledge. Taking the deceased with him has been admitted by the appellant in his 313 CRPC statement. His conduct is also found suspicious and from his mobile tower location, his presence nearby the place of incident has been found proved.

All these circumstances are connected with each other and complete the chain of circumstances. Thus, there are overwhelming evidence against the appellant that he committed murder of the deceased and the learned trial Court has rightly held his conviction for the alleged offence.

Non-explanation of the incriminating circumstances appears against him in 313 CRPC statement:-

53. The appellant in his 313 CRPC statement, has not explained the incriminating circumstances that appear against him, which strengthened the prosecution's case against him to complete the chain of circumstance.

54. In the matter of **Shivaji Chintappa Patil Vs. State of Maharashtra,** 2021 (5) SCC 626, the Supreme Court has held that false explanation or non-explanation in 313 CrPC statement can only be used as an additional circumstance when the prosecution has proved the chain of circumstances leading to no other conclusion than the guilt of the accused.

55. Close scrutiny of the evidence makes it clear that the appellant kidnapped the minor boy and committed his murder and the evidence available on record clearly hold that the appellant is guilty in the offence under Sections 363, 364 and 302 of IPC, which the learned trial Court has rightly appreciated in its impugned judgement and we are hereby affirmed the conviction of the appellant for the aforesaid offences.

56. Now, the next question would be the question of death sentence awarded by the learned Additional Sessions Judge to the appellant

herein directing that he should be hanged to death till his death and it has been sent to us for confirmation in accordance with Section 366 of the Cr.P.C. (Section 407 of Bharatiya Nagarik Suraksha Sanhita, 2023)

DEATH SENTENCE

57. Now, the only question is, whether this case falls under the category of rarest of rare case justifying capital punishment. Their Lordships of the Supreme Court in umpteen number of judgments have laid down principles for awarding capital punishment for which the balance between aggravating circumstances and mitigating circumstances has to be struck. Seven other factors like, age of the accused, possibility of reformation and lack of intention of murder have also to be gone into the judicial mind.

Death penalty or imprisonment for life for the commission of murder under Section 302 of the IPC has been provided. In case of conviction under Section 302 of the IPC or any conviction for an offence punishable with death or in the alternative imprisonment for life, the Court is required to assign special reasons for awarding such penalty and the special reason for awarding death sentence in accordance with sub-section (3) of Section 393 of Bharatiya Nagarik Suraksha Sanhita, 2023 (sub-section (3) of Section 354 of the Cr.P.C.). Sub-section (3) of Section 393 of the Cr.P.C. reads as under:-

> **"S. 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."**

58. The language of Section 393 (3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 354 (3) of Cr.P.C.) demonstrates the

legislative concern and the conditions which need to be satisfied prior to imposition of death penalty. The words, 'in the case of sentence of death, the special reasons for such sentence' unambiguously demonstrate the command of the legislature that such reasons have to be recorded for imposing the punishment of death sentence i.e. the Court is required to hold that it is a case of rarest of rare warranting imposition of only death sentence.

59. While dealing with the question of imposing death penalty, in the matter of **Sushil Murmu v. State of Jharkhand**, 2003 AIR SCW 6782 the Supreme Court after relying on **Bachan Singh v. State of Punjab**, AIR 1980 SC 898 has summarized the law with regard to imposition of death sentence on the basis of guidelines emerges from the case of **Bachan Singh** (supra). Brutal, grotesque, diabolical, revolting or dastardly manner in which murder committed has been considered as rarest of rare case for imposition of death penalty. Multiple murders of almost all the members of a family or a member of particular caste, community or locality has also been considered as rarest of rare case for imposing death penalty. While dealing with the imposition of death penalty in the aforesaid cases, the Supreme Court has also considered it to be a rarest of rare case in case of murder of a innocent child or a helpless woman or old or infirm person or a person vis-à-vis whom the murderer is in a dominating position or a public figure generally loved and respected by the community and for such commission of murders, death penalty can be imposed.

60. While dealing with the question of imposition of death penalty for commission of murder, the Supreme Court in **Bachan Singh** (supra) held that provision of death penalty as an alternative punishment for murder is not violative of Article 19 of the Constitution of India. Paragraph 132 of the report is relevant and reads as under:

> **"132. To sum up, the question whether or not death penalty serves any penological purpose is a difficult, complex and intractable issue. It has evoked strong divergent views. For the purpose of testing the constitutionality of the impugned provision as to death penalty in Section 302, Penal Code on the ground of reasonableness in the light of Articles 19 and 21 of the Constitution, it is not necessary for us to express any categorical opinion, one way or the other, as to which of these two antithetical views, held by the Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion on this issue, is a ground among others, for rejecting the petitioner's argument that retention of death penalty in the impugned provision, is totally devoid of reason and purpose. If notwithstanding the view of the Abolitionists to the contrary, a very large segment of people, the world over, including sociologists, legislators, jurists, judges and administrators still firmly**

believe in the worth and necessity of capital punishment for the protection of society, if in the perspective of prevailing crime conditions in India, contemporary public opinion channelized through the people's representatives in Parliament, has repeatedly in the last three decades, rejected all attempts, including the one made recently, to abolish or specifically restrict the area of death penalty, if death penalty is still a recognised legal sanction for murder or some types of murder in most of the civilized countries in the world, if the framers of the Indian Constitution were fully aware as we shall presently show they were of the existence of death penalty as punishment for murder, under the Indian Penal Code, if the 35th Report and subsequent Reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code and the insertion of the new Sections 235 (2) and 354 (3) in that Code providing for pre-sentence hearing and sentencing procedure on conviction for murder and other capital offences were before the Parliament and presumably considered by it when in 1972-1973 it took up revision of the Code of 1898 and replaced it by the Code of Criminal Procedure, 1973, it is not possible to hold that the provision of death penalty as an alternative punishment for murder, in Section 302, Penal Code is unreasonable and not in the public

interest. We would, therefore, conclude that the impugned provision in Section 302, violates neither the letter or the ethos of Article 19."

61. While dealing with the circumstances in which the death sentence may be imposed, the Supreme Court has summarized the circumstances and following guidelines have been issued for imposition of death sentence. Paragraph 179 of the report reads thus:-

"179. Soon after the decision in Furman, the Georgia Legislature amended its statutory scheme. The amended statute retains the death penalty for six categories of crime: murder, kidnapping for ransom or where victim is harmed, armed robbery, rape, treason, and aircraft hijacking. The statutory aggravating circumstances, the existence of any of which may justify the imposition of the extreme penalty of death, as provided in that statute, are:

(1) The offence of murder, rape, armed robbery, or kidnapping was committed by a person with a prior record of conviction for a capital felony, (or the offence of murder was committed by a person who has a substantial history of serious assaultive criminal convictions).

(2) The offence of murder, rape, armed robbery, or kidnapping was committed while the offender was engaged in the commission of another

capital felony, or aggravated battery, or the offence of murder was committed while the offender was engaged in the commission of burglary or arson in the first degree.

(3) The offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(4) The offender committed the offences of murder for himself or another, for the purpose of receiving money or any other thing of monetary value.

(6) The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.

(7) The offences of murder, rape, armed robbery, or kidnapping was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim.

(8) The offence of murder was committed against any peace officer, corrections employee or fireman while engaged in the performance of his official duties.

> **(9) The offence of murder was committed by a person in, or who has escaped from, the lawful confinement.**
>
> **(10) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another."**

The Supreme Court has further considered the mitigating circumstances in paragraph 204 of the said judgment as under:

> **"204. 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 accused. If the accused is young or old, he shall not be sentenced to death.**
>
> **3. The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.**
>
> **4. The probability that the accused can be reformed and rehabilitated. The State shall by**

evidence prove that the accused does not satisfy the conditions (3) and (4) above.

5. That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

6. That the accused acted under the duress or domination of another person.

7. That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."

62. After considering **Bachhan Singh** (supra), in the matter of **Machhi Singh v. State of Punjab**, (1983) 3 SCC 470 the Supreme Court has summarized the instances of imposition of death sentence in paragraph 38 which reads thus:

"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 sentence 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 along with 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."**

63. As held by the Supreme Court in the matters of **Panchhi and others v. State of U.P.**, (1998) 7 SCC 177, **Jai Kumar v. State of M.P.**, (1999) 5 SCC 1 and **State of U.P. v. Satish**, (2005) 3 SCC 114 imposition of life imprisonment is normal rule and imposition of death sentence is exception. In case of imposing death sentence,

the prosecution is required to prove that it was a case of rarest of rare and no other sentence except death sentence is adequate.

64. While dealing with the question of imposition of death penalty, the Supreme Court has held that in case of imposing death penalty, capital punishment provided by law is proper award in rarest of the rare cases and not as a normal rule and in **Sushil Murmu** (supra), the Supreme Court has summarized the law with regard to imposition of death sentence. Paragraphs 15 and 16 of the report read as under:

> **"15. The following guidelines which emerge from Bachan Singh case will have to be applied to the facts of each individual case where the question of imposition of death sentence arises: (SCC p. 489, para 38)**
>
> **(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.**
>
> **(ii) Before opting for the death penalty the circumstances of the "offender" also require to be taken into consideration along with the circumstances of the "crime".**
>
> **(iii) Life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of**

the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

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

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

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

2. When the murder is committed for a motive which evinces total depravity and meanness e.g. murder by a hired assassin for money or reward

or a cold-blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust, or murder is committed in the course of betrayal of the motherland.

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

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

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

65. While dealing with the question of brutality in the matter of **Ashrafi Lal and Sons v. State of U.P.**, AIR 1987 SC 1721 the Supreme Court has held that it is the duty of the Court to impose a proper

punishment depending upon the degree of criminality and desirability to impose such punishment. In case of gruesome murder of two innocent girls to wreak their personal vengeance over the dispute, the death sentence awarded to the appellants was confirmed. Paragraph 3 reads as under:

> **"3. We have heard learned counsel for the appellants mainly on the question of sentence but we are not impressed with his submission. The two appellants Ashrafi Lal and Babu were guilty of a heinous crime out of greed and personal vengeance and deserve the extreme penalty. This case falls within the test 'rarest of of rare cases' as laid down by this Court in Bachan Singh v. State of Punjab (1980) 2 SCC 684 : (AIR 1980 SC 898) as elaborated in the later case of Machhi Singh v. State of Punjab (1983) 3 SCC 470 : (AIR 1983 SC 957). The punishment must fit the crime. These were cold-blooded brutal murders in which two innocent girls lost their lives. The extreme brutality with which the appellants acted shocks the judicial conscience. Failure to impose a death sentence in such grave cases where it is a crime against the society particularly in cases of murders committed with extreme brutality will bring to naught the sentence of death provided by S. 302 of the Penal Code. It is the duty of the Court to impose a proper punishment depending upon the degree of criminality and desirability to impose such**

> **punishment. The only punishment which the appellants deserve for having committed the reprehensible and gruesome murders of the two innocent girls to wreak their personal vengeance over the dispute they had with regard to property with their mother Smt. Bulakan is nothing but death. As a measure of social necessity and also as a means of deterring other potential offenders the sentence of death on the two appellants Asharfi Lal and Babu is confirmed."**

66. While dealing with the question of brutality, in the case of **Subhash Ramkumar Bind @ Vakil and another v. State of Maharashtra**, AIR 2003 SC 269 the Supreme Court has held that in every incident of murder brutality is involved but that brutality by itself will not bring it within the ambit of rarest of rare cases for imposition of death penalty. The requirement to prove the fact that brutality in the present case was exceptional and rarest of rare also to show that there is something uncommon about the crime which renders the sentence of imprisonment of life inadequate and called for death sentence.

67. In the matter of **Dhananjoy Chatterjee v. State of W.B.**, (1994) 2 SCC 220 : 1994 SCC (Cri) 358 the Supreme Court while dealing with the question of penology for imposing death penalty, has held that Courts are required to impose proper punishment in the manner in which the Courts respond to the society's cry for justice against the criminals. Justice demands that Courts should impose

punishment befitting the crime so that the courts reflect public abhorrence of the crime. Paragraphs 14 and 15 are relevant and read as under:

> **"14. In recent years, the rising crime rate – particularly violent crime against women has made the criminal sentencing by the courts a subject of concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility. Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.**

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

68. While dealing with the question of imposition of death sentence affirmed by the Supreme Court, the Supreme Court in the matter of **Sonu Sardar v. State of Chhattisgarh**, (2012) 4 SCC 97 in which case death sentence upon young male has been imposed, has held that the appellant though young but having no consideration for human lives and his criminal propensities being beyond reform, is a menace to the society, death sentence is proper being a case of rarest of rare, and observed in paragraphs 18 to 22 as follows: -

> **"18. As against these aggravating circumstances, the trial court did not find any mitigating circumstance in favour of the appellant to avoid the death penalty. This is, therefore, not one of those cases in which the trial court has not recorded elaborate reasons for awarding death**

sentence to the appellant as contended by the learned counsel for the appellant.

19. Regarding the role of the appellant in the commission of the offence of dacoity and murder, we have already found that the turban and T-shirt of the appellant, which were seized and sent for examination to the Forensic Science Laboratory, had presence of human blood. We have also found that the axe and the iron rod, which were recovered pursuant to the statement of the appellant, had also bloodstains. We have also found from the evidence of PW-1 that when her mother was cooking food and came out on hearing the commotion, the appellant was demanding money from her father and her father gave to the appellant all the money which he was having in his pocket.

20. There is, therefore, clear and definite evidence in this case to show that the appellant not only participated in the crime, but also played the lead role in the offence under Section 396 IPC. This is, therefore, not a case where it can be held that the role of the appellant was not such as to warrant death sentence under Section 396 IPC.

21. In a recent judgment in Sunder Singh v. State of Uttaranchal, (2010) 10 SCC 611 this Court found that the accused had poured petrol in the room and set it to fire and closed the door of the room when all the members of the family were

> **having their food inside the room and, as a result, five members of the family lost their lives and the sixth member of the family, a helpless lady, survived. This Court held that the accused had committed the crime with premeditation and in a cold-blooded manner without any immediate provocation from the deceased and all this was done on account of enmity going on in respect of the family lands and this was one of those rarest of rare cases in which death sentence should be imposed.**
>
> **22. The facts in the present case are no different. Five members of a family including two minor children and the driver were ruthlessly killed by the use of a knife, an axe and an iron rod and with the help of four others. The crime was obviously committed after premeditation with absolutely no consideration for human lives and for money. Even though the appellant is young, his criminal propensities are beyond reform and he is a menace to the society. The trial court and the High Court were therefore right in coming to the conclusion that this is one of those rarest of rare cases in which death sentence is the appropriate punishment."**

69. While dealing with serious consideration relating to imposing of death sentence, the Supreme Court in the matter of **Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra**, (2009) 6 SCC 498 in paragraph 135, has observed as follows: -

> **"135. Right to life, in its barest of connotation would imply right to mere survival. In this form, right to life is the most fundamental of all rights. Consequently, a punishment which aims at taking away life is the gravest punishment. Capital punishment imposes a limitation on the essential content of the fundamental right to life, eliminating it irretrievably. We realise the absolute nature of this right, in the sense that is a source of all other rights. Other rights may be limited, and may even be withdrawn and then grated again, but their ultimate limit is to be found in the preservation of the right to life. Right to life is the essential content of all rights under the Constitution. If life is taken away, all other rights cease to exist."**

70. On the basis of law enunciated by the Supreme Court on the subject i.e. for imposition of death sentence, the Supreme Court in the matter of **Ramnaresh and others v. State of Chhattisgarh**, (2012) 4 SCC 257 has summarized the instances for imposition of death sentence in which the sentence other than death sentence would not be adequate or meaningful, and has observed in paragraph 76 as follows: -

> **"76. The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in Bachan Singh (supra) and thereafter, in Machhi Singh (supra). The aforesaid judgments, primarily dissect these principles into two**

different compartments—one being the "aggravating circumstances" while the other being the "mitigating circumstances". The Court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the Court. It will be appropriate for the Court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the Court as contemplated under Section 354(3) CrPC.

Aggravating Circumstances:

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 CrPC.

(9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

(10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a

daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold-blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating Circumstances:

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired

his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though the prosecution has brought home the guilt of the accused."

The Supreme Court has summarized following principles for consideration for imposition of capital sentence: -

> **(1) The Court has to apply the test to determine, if it was the "rarest of rare" case for imposition of a death sentence.**
>
> **(2) In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.**
>
> **(3) Life imprisonment is the rule and death sentence is an exception.**
>
> **(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations.**
>
> **(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime."**

71. In order to decide whether death sentence would be the only meaningful and adequate sentence, the courts are required to draw a balance sheet of aggravating and mitigating circumstances. The Supreme Court in **Ramnaresh** (supra) has further observed in paragraph 79 as follows: -

> **"The Court then would draw a balance sheet of aggravating and mitigating circumstances. Both**

> **aspects have to be given their respective weightage. The Court has to strike a balance between the two and see towards which side the scale/balance of justice tilts. The principle of proportion between the crime and the punishment is the principle of "just deserts" that serves as the foundation of every criminal sentence that is justifiable. In other words, the "doctrine of proportionality" has a valuable application to the sentencing policy under the Indian criminal jurisprudence. Thus, the court will not only have to examine what is just but also as to what the accused deserves keeping in view the impact on the society at large."**

72. The Supreme Court in the matter of **Shankar Kisanrao Khade v. State of Maharashtra**, (2013) 5 SCC 546 (Hon'ble Mr. Justice Madan B. Lokur in a separate but concurring judgment) reiterated the law laid down in **Bachan Singh** (supra) and **Machhi Singh** (supra) and ultimately in paragraph 52 held that the tests which have to be applied while awarding death sentence are "crime test", "criminal test" and the "R-R test" and not the "balancing test". Paragraph 52 of the report states as under (SCC p. 576, para 52): -

> **"52. Aggravating circumstances as pointed out above, of course, are not exhaustive so also the mitigating circumstances. In my considered view, the tests that we have to apply, while awarding death sentence are "crime test", "criminal test" and the "R-R test" and not**

"balancing test". To award death sentence, the "crime test" has to be fully satisfied, that is, 100% and "criminal test" 0%, that is, no mitigating circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc. the "criminal test" may favour the accused to avoid the capital punishment. Even, if both the tests are satisfied, that is, the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the rarest of the rare case test (R-R test). R-R test depends upon the perception of the society that is "society-centric" and not "Judge-centric", that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of intellectually challenged minor girls, suffering from physical disability, old and infirm women with those disabilities, etc. Examples are only illustrative and not exhaustive. The courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the Judges."

In paragraph 106, their Lordships also considered and suggested several reasons, cumulatively taken, for converting the death penalty to that of imprisonment for life. Paragraph 106 of the said report states as under: -

> **"106. A study of the above cases suggests that there are several reasons, cumulatively taken, for converting the death penalty to that of imprisonment for life. However, some of the factors that have had an influence in commutation include:**
>
> **(1) the young age of the accused (Amit v. State of Maharashtra, (2003) 8 SCC 93 : 2003 SCC (Cri) 1959, aged 20 years, Rahul, Rahul v. State of Maharashtra, (2005) 10 SCC 322 : 2005 SCC (Cri) 1516, aged 24 years, Santosh Kumar Singh v. State, (2010) 9 SCC 747 : (2010) 3 SCC (Cri) 1469, aged 24 years, Rameshbhai Chandubhai Rathod (2) v. State of Gujarat, (2011) 2 SCC 764 : (2011) 1 SCC (Cri) 883 aged 28 years and Amit v. State of U.P., (2012) 4 SCC 107 : (2012) 2 SCC (Cri) 590, aged 28 years);**
>
> **(2) the possibility of reforming and rehabilitating the accused in Santosh Kumar Singh[42] and Amit v. State of U.P.[44] the accused, incidentally, were young when they committed the crime);**
>
> **(3) the accused had no prior criminal record (Nirmal Singh, v. State of Haryana, (1999) 3 SCC 670 : 1999 SCC (Cri) 472, Raju v. State of Haryana.**

(2001) 9 SCC 50 : 2002 SCC (Cri) 408, Bantu v. State of M.P., (2001) 9 SCC 615 : 2002 SCC (Cri) 777, Amit v. State of Maharashtra[40], Surendra Pal Shivbalakpal, Surendra Pal Shivbalakpal v. State of Gujarat, (2005) 3 SCC 127 : 2005 SCC (Cri) 653, Rahul[41] and Amit v. State of U.P.[44]);

(4) the accused was not likely to be a menace or threat or danger to society or the community (Nirmal Singh[45], Mohd. Chaman, Mohd. Chaman v. State (NCT of Delhi), (2001) 2 SCC 28 : 2001 SCC (Cri) 278, Raju[46], Bantu[47], Surendra Pal Shivbalakpal[48], Rahul[41] and Amit v. State of U.P.[44]).

(5) a few other reasons need to be mentioned such as the accused having been acquitted by one the courts (State of T.N. v. Suresh, (1998) 2 SCC 372 : 1998 SCC (Cri) 751, State of Maharashtra v. Suresh, (2000) 1 SCC 471 : 2000 SCC (Cri) 263, State of Maharashtra v. Bharat Fakira Dhiwar, (2002) 1 SCC 622 : 2002 SCC (Cri) 217, State of Maharashtra v. Mansingh, (2005) 3 SCC 131 : 2005 SCC (Cri) 657 and Santosh Kumar Singh[42]);

(6) the crime was not premeditated (Kumudi Lal Kumudi Lal v. State of U.P., (1999) 4 SCC 108 : 1999 SCC (Cri) 491, Akhtar v. State of U.P., (1999) 6 SCC 60 : 1999 SCC (Cri) 1058, Raju[46] and Amrit Singh v. State of Punjab, (2006) 12 SCC 79 : (2007) 2 SCC (Cri) 397);

(7) the case was one of circumstantial evidence (Mansingh[53] and Bishnu Prasad Sinha v. State of Assam, (2007) 11 SCC 467 : (2008) 1 SCC (Cri) 766).

In one case, commutation was ordered since there was apparently no "exceptional" feature warranting a death penalty (Kumudi Lal[54]) and in another case because the trial court had awarded life sentence but the High Court enhanced it to death (Haresh Mohandas Rajput v. State of Maharashtra, (2011) 12 SCC 56 : (2012) 1 SCC (Cri) 359)."

Further, their Lordships also laid down the principal reasons for confirming death penalty in paragraph 122 which are as under:-

"(1) the cruel, diabolic, brutal, depraved and gruesome nature of the crime (Jumman Khan v. State of U.P., (1991) 1 SCC 752 : 1991 SCC (Cri) 283, Dhananjoy Chatterjee[34], Laxman Naik v. State of Orissa, (1994) 3 SCC 381 : 1994 SCC (Cri) 656, Kamta Tewari v. State of M.P., (1996) 6 SCC 250 : 1996 SCC (Cri) 1298, Nirmal Singh[45], Jai Kumar[30], Satish, State of U.P. v. Satish, (2005) 3 SCC 114 : 2005 SCC (Cri) 642 Bantu[47], Ankush Maruti Shinde v. State of Maharashtra, (2009) 6 SCC 667 : (2009) 3 SCC (Cri) 308, B.A. Umesh, B.A. Umesh v. State of Karnataka, (2011) 3 SCC 85 : (2011) 1 SCC (Cri) 801 Mohd. Mannan Mohd. Mannan v. State of Bihar, (2011) 5 SCC 317 : (2011) 2 SCC (Cri) 626 and Rajendra Pralhadrao Wasnik, (2012) 4 SCC 37);

(2) the crime results in public abhorrence, shocks the judicial conscience or the conscience of society or the community (Dhananjoy Chatterjee[34], Jai Kumar[30], Ankush Maruti Shinde[63] and Mohd. Mannan[65]);

(3) the reform or rehabilitation of the convict is not likely or that he would be a menace to society (Jai Kumar[30], B.A. Umesh[64] and Mohd. Mannan[65]);

(4) the victims were defenceless (Dhananjoy Chatterjee[34], Laxman Naik[60], Kamta Tewari[61], Ankush Maruti Shinde[63], Mohd. Mannan[65] and Rajendra Pralhadrao Wasnik, (2012) 4 SCC 37);

(5) the crime was either unprovoked or that it was premeditated (Dhananjoy Chatterjee[34], Laxman Naik[60], Kamta Tewari[61], Nirmal Singh[45], Jai Kumar[30], Ankush Maruti Shinde[63], B.A. Umesh[64] and Mohd. Mannan[65]) and in three cases the antecedents or the prior history of the convict was taken into consideration (Shivu v. R.G., High Court of Karnataka; 2007 Cr.L.J. 1806, B.A. Umesh and Rajendra Pralhadrao Wasnik, (2012) 4 SCC 37).”

73. Thereafter, the three-Judge Bench of the Supreme Court entertained the review petitions in the matter of **Rajendra Pralhadrao Wasnik v. State of Maharashtra** (2019) 12 SCC 460 and held that the probability that a convict can be reformed and

rehabilitated is a valid consideration for deciding whether he should be awarded capital punishment or life imprisonment and responsibility that convict is not capable of being reformed and rehabilitated is upon the prosecution to prove to the court. It has been observed by their Lordships as under: -

> **"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) CrPC 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.**
>
> **47. Consideration of the reformation, rehabilitation and reintegration of the convict**

into society cannot be overemphasised. Until Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580], the emphasis given by the Courts was primarily on the nature of the crime, its brutality and severity. Bachan Singh (supra) 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 [Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498 : 2009 2 SCC (Cri) 1150] and in Sangeet v. State of Haryana, (2013) 2 SCC 452 : 2013 2 SCC (Cri) 611, where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in Sangeet (supra) "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."**

74. Again, in the matter of **Lochan Shrivas v. State of Chhattisgarh**, 2021 SCC OnLine SC 1249 reiterating the principle of law laid down in **Rajendra Pralhadrao Wasnik** (supra) particularly taking notice of paragraphs 45 and 47 of that judgment, held that it is the bounden duty of courts to take into consideration the probability of the accused being reformed and rehabilitated and also to take into consideration not only the crime but also the criminal, his state of mind and his socio-economic conditions, and their Lordships proceeded to commute the accused death sentence to life imprisonment by holding and relying upon its earlier judgment in the matter of **Sunil v. State of Madhya Pradesh**, (2017) 4 SCC 393 as under: -

> **"56. The appellant is a young person, who was 23 years old at the time of commission of the offence. He comes from a rural background. The State has not placed any evidence to show that there is no possibility with respect to reformation and the rehabilitation of the accused. The High Court as well as the trial court also has not taken**

into consideration this aspect of the matter. The appellant has placed on record the affidavits of Leeladhar Shrivas, younger brother of the appellant as well as Ghasanin Shrivas, elder sister of the appellant. A perusal of the affidavits would reveal that the appellant comes from a small village called Pusalda in Raigarh district of Chhattisgarh. His father was earning his livelihood as a barber. The appellant was studious and hardworking. He did really well at school and made consistent efforts to bring the family out of poverty. The conduct of the appellant in the prison has been found to be satisfactory. There are no criminal antecedents. It is the first offence committed by the appellant. No doubt, a heinous one. The appellant is not a hardened criminal. It therefore cannot be said that there is no possibility of the appellant being reformed and rehabilitated foreclosing the alternative option of a lesser sentence and making imposition of death sentence imperative.

57. A bench consisting of three Judges of this Court had an occasion to consider similar facts in the case of Sunil v. State of Madhya Pradesh, (2017) 4 SCC 393. In the said case too, the appellant-accused was around 25 years of age who had taken away a minor girl. The accused had committed rape on the said minor and caused her death due to asphyxia caused by strangulation. The trial court had sentenced the

accused for the offences punishable under Sections 363, 367, 376(2)(f) and 302 of the IPC and awarded him death penalty. The same was upheld by the High Court. In appeal, this Court held thus:

> **"12. In the present case, we do not find that the requirements spelt out in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] and the pronouncements thereafter had engaged the attention of either of the courts. In the present case, one of the compelling/mitigating circumstances that must be acknowledged in favour of the appellant-accused is the young age at which he had committed the crime. The fact that the accused can be reformed and rehabilitated; the probability that the accused would not commit similar criminal acts; that the accused would not be a continuing threat to the society, are the other circumstances which could not but have been ignored by the learned trial court and the High Court.**
>
> **13. We have considered the matter in the light of the above. On such consideration, we are of the view that in the present case, the ends of justice would be met if we commute the sentence of death into one of**

> **life imprisonment. We order accordingly. The punishments awarded for the offences under Sections 363, 367 and 376(2)(f) IPC by the learned trial court and affirmed by the High Court are maintained."**
>
> **58. We are also inclined to adopt the same reasoning and follow the same course as adopted by this Court in the case of Sunil (supra). The appeals are therefore partly allowed. The judgment and order of conviction for the offences punishable under Sections 363, 366, 376(2)(i), 377, 201, 302 read with Section 376A of the IPC and Section 6 of the POCSO Act is maintained. However, the death penalty imposed on the appellant under Section 302 IPC is commuted to life imprisonment. The sentences awarded for the rest of the offences by the trial court as affirmed by the High Court, are maintained."**

75. Thereafter, the Supreme Court in the matter of **Mofil Khan and another v. State of Jharkhand**, 2021 SCC OnLine SC 1136 relying upon its earlier judgment in **Rajendra Pralhadrao Wasnik** (supra) and **Mohd. Mannan v. State of Bihar,** (2019) 16 SCC 584 held that the possibility of reformation and rehabilitation of the convict is an important factor which has to be taken into account as a mitigating circumstance before sentencing him to death and observed as under:-

“10. It is well-settled law that the possibility of reformation and rehabilitation of the convict is an important factor which has to be taken into account as a mitigating circumstance before sentencing him to death. There is a bounden duty cast on the Courts to elicit information of all the relevant factors and consider those regarding the possibility of reformation, even if the accused remains silent. A scrutiny of the judgments of the trial court, the High Court and this Court would indicate that the sentence of death is imposed by taking into account the brutality of the crime. There is no reference to the possibility of reformation of the Petitioners, nor has the State procured any evidence to prove that there is no such possibility with respect to the Petitioners. We have examined the socio-economic background of the Petitioners, the absence of any criminal antecedents, affidavits filed by their family and community members with whom they continue to share emotional ties and the certificate issued by the Jail Superintendent on their conduct during their long incarceration of 14 years. Considering all of the above, it cannot be said that there is no possibility of reformation of the Petitioners, foreclosing the alternative option of a lesser sentence and making the imposition of death sentence imperative. Therefore, we convert the sentence imposed on the Petitioners from death to life. However, keeping in mind the gruesome murder of the entire family of their

> **sibling in a pre-planned manner without provocation due to a property dispute, we are of the opinion that the Petitioners deserve a sentence of a period of 30 years."**

76. Very recently, their Lordships of the Supreme Court in the matter of **Bhagwani v. State of Madhya Pradesh**, 2022 SCC OnLine SC 52 relying upon its earlier pronouncement in **Bachan Singh** (supra), **Machhi Singh** (supra), **Mohd. Mannan** (supra), **Mofil Khan** (supra) and **Rajendra Pralhadrao Wasnik** (supra), finding that possibility of reformation and rehabilitation of accused have not been considered, commuted the death sentence to life imprisonment by holding as under:-

> **"21. The Appellant was aged 25 years on the date of commission of the offence and belongs to a Scheduled Tribes community, eking his livelihood by doing manual labour. No evidence has been placed by the prosecution on record to show that there is no probability of rehabilitation and reformation of the Appellant and the question of an alternative option to death sentence is foreclosed. The Appellant had no criminal antecedents before the commission of crime for which he has been convicted. There is nothing adverse that has been reported against his conduct in jail. Therefore, the death sentence requires to be commuted to life imprisonment. However, taking into account the barbaric and savage manner in which the offences of rape and**

> **murder were committed by the Appellant on a hapless 11 year old girl, the Appellant is sentenced to life imprisonment for a period of 30 years during which he shall not be granted remission.**
>
> **22. The Appeals are partly allowed. The conviction of the Appellant under Sections 363, 366A, 364, 346, 376D, 376A, 302, 201 of Penal Code, 1860 ("IPC") and Section 5(g)(m) read with Section 6 of The Protection of Children from Sexual Offences Act, 2012 is upheld and the sentence is converted from death to that of imprisonment for life for a period of 30 years without remission."**

77. Similarly, in the matter of **Pappu v. State of Uttar Pradesh**, 2022 SCC OnLine SC 176 their Lordships of the Supreme Court while commuting the death sentence to life imprisonment, held as under:-

> **"164. It could readily be seen that while this Court has found it justified to have capital punishment on the statute to serve as deterrent as also in due response to the society's call for appropriate punishment in appropriate cases but at the same time, the principles of penology have evolved to balance the other obligations of the society, i.e., of preserving the human life, be it of accused, unless termination thereof is inevitable and is to serve the other societal causes and collective conscience of society. This has led to**

> **the evolution of 'rarest of rare test' and then, its appropriate operation with reference to 'crime test' and 'criminal test'. The delicate balance expected of the judicial process has also led to another mid-way approach, in curtailing the rights of remission or premature release while awarding imprisonment for life, particularly when dealing with crimes of heinous nature like the present one."**

78. In the light of aforesaid proposition of law, we are required to scrutinize the case in hand minutely in the light of aggravating circumstances and mitigating circumstances of the present case and to draw a balance-sheet to decide whether present case falls within the category of rarest of rare, whether there is no chance of reformation of the appellants, whether imprisonment for life which is the rule would not be adequate and would not meet the ends of justice and whether imposition of death penalty would be the only appropriate and meaningful sentence.

79. In case of imposing capital sentence, the law requires the court to record special reasons for awarding such sentence. Therefore, we have to consider matters like nature of the offence, how and under what circumstances it was committed, the extent of brutality with which the offence was committed, the motive for the offence, any provocative or aggravating circumstances (crime test) at the time of commission of the crime, the possibility of the convict being reformed or rehabilitated, adequacy of the sentence of life

imprisonment and other attending circumstances, and to see whether the State has brought out any evidence to establish that the appellant / accused cannot be reformed or rehabilitated and as to whether effective opportunity of hearing was granted to the appellant / accused on the question of sentence.

80. At this stage, it would be appropriate to notice the special reasons recorded by the learned 7th Additional Sessions Judge while awarding sentence to the appellant herein in paragraphs 168 to 178 of the judgment which are as under: -

> **"**168- उभयपक्ष के तर्क पर विचार किया गया। भारतीय दण्ड संहिता की धारा-364, 302 के अनुसार अभियुक्त को या तो आजीवन कारावास या मृत्युदण्ड (हत्या की गंभीरता के आधार पर) से दंडित किया जाएगा और जुर्माने से भी दंडित किया जाएगा, किंतु दं.प्र.सं. की धारा 354 (3) यह प्रावधान करती है कि जब भी कोई न्यायालय मृत्युदण्ड अधिरोपित करती है तो उसे विशेष कारण अभिलिखित करना चाहिए। माननीय उच्चतम न्यायालय के अनेक न्यायदृष्टांतो से यह स्थापित हो गया है कि आजीवन कारावास नियम है और मृत्युदण्ड अपवाद है। इस संबंध में माननीय उच्चतम न्यायालय का न्यायदृष्टांत "रोनल जेम्स बनाम स्टेट ऑफ महाराष्ट्र, (1998) 3 एससीसी 625, "अलाउद्दीन मियां बनाम स्टेट ऑफ बिहार" (1989) 3 एससीसी 5, "नरेश गिरि विरूद्ध स्टेट ऑफ एम०पी०" (2001) 9 एससीसी 615" अवलोकनीय है।
>
> 169- Sushil Murma V. State of Jharkhand के तात्कालिक मामले में माननीय उच्चतम न्यायालय ने मृत्युदण्ड अधिरोपित करने के संबंध में विधि को निम्नलिखित रूप से संक्षेपित किया है:-

(1) चरम दण्डता के गंभीरता मामलों के सिवाय मृत्युदण्ड की चरम सीमा को प्रणित करना जरूरी नहीं होता है।

(2) मृत्युदण्ड का निर्णय लेने के पहले "अपराधी" की अवस्था के साथ-साथ "अपराध" की परिस्थितियों को भी ध्यान में लेना अपेक्षित है।

(3) आजीवन कारावास एक नियम है तथा मृत्युदण्ड एक अपवाद है।मृत्युदण्ड तभी अधिरोपित होना चाहिए, जब अपराध की सुसंगत परिस्थितियों के बारे में आजीवन कारावास सर्वथा अपर्याप्त दण्ड प्रतीत होता हो और यदि, और केवल यदि, आजीवन कारावास के दण्ड का विकल्प अपराध की प्रकृति तथा परिस्थितियों और अन्य परिस्थितियों के संबंध में अन्तः करण से प्रयुक्त न हो सकता है।

(4) प्रवर्धक तथा अल्पीकरण करने वाली परिस्थितियों का पक्का चिट्ठा लेखबद्ध होना चाहिए और ऐसा करने में अल्पीकरण करने वाली परिस्थितियों को पूरा महत्व देना होता है तथा इससे पहले की विकल्प प्रयुक्त हो, प्रवर्धक तथा अल्पीकरण करने वाली परिस्थितियों के बीच न्यायपूर्ण संतुलन करना होता है।

(5) विरलतम मामलों में जब लोक समाज के सामूहिक अन्तःकरण को इतना आघात पहुंचा है कि वे न्यायिक शक्ति केन्द्र के संधारको से उनकी व्यक्तिगत राय, जिसका मृत्युदण्ड प्रतिधारण करने की वांछनीयता या अन्यथा से

संबंध है, को विचार में लाये बिना मृत्युदण्ड दिये जाने की आशा करेंगे, तब मृत्युदण्ड अधिनिर्णित हो सकता है।

(अ) जब अत्यधिक क्रूर, वीभत्स, पाश्विक, घृणित या नृशंस ढंग से हत्या की गई हो, ताकि लोक समाज का उग्र तथा चरम रोष भड़क उठे ।

(ब) जब हत्या ऐसे हेतुक के लिए की गई हो जो पूर्ण दूराचारिता तथा निकृष्टता प्रकट करें, उधारणार्थ, धन या पुरस्कार के लिए भाड़े के हत्यारे द्वारा हत्या अथवा धनप्राप्ति के लिए किसी व्यक्ति की निष्ठुर हत्या जिसकी तुलना में हत्यारा प्रभावशाली स्थिति में या विश्वासनीयता की स्थिति में हो अथवा मातृभूमि से विश्वासघात करने के क्रम में हत्या की गई हो।

(स) जब अनुसूचित जाति का अल्पसंख्यक समुदाय आदि के सदस्य की हत्या निजी करणों से नहीं की जाती है, बल्कि ऐसी परिस्थितियों में की जाती है जो सामाजिक रोष भड़काती है या "वधु-दहन" या "दहेज हत्याओ" के मामलों में या जब एक बार फिर से दहेज खींचने की खातिर दुबारा शादी करने के क्रम में या आसक्ति के कारण दूसरी महिला से विवाह करने के लिए हत्या की गई हो।

(द) जब अपराध अनुपात में प्रचुर हो, उदाहरण के लिए जब अनेक हत्यायें, जैसे कि किसी परिवार के सभी या लगभग सभी सदस्यों की हत्या या किसी विशेष जाति, समुदाय या परिक्षेत्र के बृहत संख्या वाले व्यक्तियों की हत्या की जाती है।

(त) जब हत्या का शिकार कोई निर्दोष बच्चा या कोई असहाय महिला या वृद्ध अथवा कमजोर व्यक्ति का ऐसा व्यक्ति जिसकी तुलना में हत्यारा प्रभावशाली स्थिति में हो या समाज का कोई महत्वपूर्ण व्यक्ति जो सामान्य रूप से समुदाय के लिए प्रतिकर तथा सम्मानीय हो।

170- Macchi Singh Vs. State of Punjab माननीय उच्चतम न्यायालय ने बच्चन सिंह के प्रकरण में सूचित पथ प्रदर्शक निम्नलिखित प्रस्तावों का वर्णन किया जो बचन सिंह के वाद में से उभरकर सामने आयेः-

(1) मृत्युदण्ड का चरम दण्ड, सिवाय अत्यंत दण्डयता के मामलों में, नहीं देना चाहिए ।

(2) मृत्युदण्ड का विक्कूप ढुंढने के पहले "अपराधी" की परिस्थितियों का भी अपराध की परिस्थितियों के साथ विचार करना चाहिए ।

(3) आजीवन कारावास नियम है और मृत्युदण्ड एक अपवाद, दूसरे शब्दों में मृत्युदण्ड सिर्फ उसी समय देना चाहिए जब अपराध से संबंधित परिस्थितियों में आजीवन कारावास अत्यंत अपर्याप्त मालूम पड़े और सिर्फ उस समय देना चाहिए कि जब आजीवन कारावास का दण्ड विवेकपूर्ण ढंग से, अपराध की प्रकृति और परिस्थितियों एवं सभी प्रासंगिक परिस्थतियों को देखते हुए नहीं दिया जा सकता।

(4) प्रवर्धक और न्यूनीकारक परिस्थतियों का एक तुलना पत्र (Balance sheet) बनाना चाहिए और ऐसा करते समय न्यूनीकारक परिस्थितियों को पूरी वरीयता ओर विद्युप का

अभ्यास करने के पहले प्रवर्धक और न्यूनीकारक परिस्थितियों के बीच समतापूर्ण संतुलन बनाना चाहिये ।

171- मच्छी सिंह (Macchi Singh) के प्रकरण में और भी देखा गया-इस मार्ग दर्शन को लागू करने के लिये साथ-साथ निम्न प्रश्नों को करना और उत्तर पाना चाहिए-

(अ) क्या अपराध के बारे में कुछ असामान्य है, जो आजीवन कारावास के दण्ड को अपर्याप्त कर देता है और मृत्युदण्ड की अपेक्षा करता है?

(ब) क्या अपराध की परिस्थितियों ऐसी है कि अल्पकारक परिस्थितियों को अधिकतम महत्व देने के बाद भी, जो अपराध के पक्ष में बोलती है, मृत्युदण्ड के अतिरिक्त कोई विकल्प नहीं है।

172- मच्छी सिंग एवं बच्चन सिंग के प्रकरणो में जो गंभीर परिस्थितयों एवं शननकारी परिस्थितयों बताई गई है वह निम्नानुसार है-

(1) हत्या, बलात्कार, सशस्त्र, डकैती, अपहरण जैसे जघन्य अपराधों की कारित करने से संबंधित अपराध जिसमें मृत्युदण्डके लिए दोषसिद्धि का पूर्व इतिहास हो या गंभीर हमलों और आपराधिक दोषसिद्धि का पर्याप्त इतिहास रखने वाले व्यक्ति द्वारा किए गए अपराध ।

(2) अपराध तब किया गया था जब अपराधी एक अन्य गंभीर अपराध को कारित करने में संलग्न था ।

(3) यह अपराध बड़े स्तर पर जनता में भय का माहौल पैदा करने के इरादे से किया गया था और एक हथियार या उपकरण द्वारा सार्वजनिक स्थान पर किया गया था जो स्पष्ट रूप से एक से अधिक लोंगों के जीवन के लिए खतरनाक हो सकता था।

(4) हत्या या अपराध फिरौती के लिए किया गया था या पैसे या मौद्रिक लाभ प्राप्त करने के लिए किए गए अपराधों की तरह किया गया था।

(5) अनुबंध के अनुसार पैसा लेकर की गयी हत्यांए ।

(6) यदि केवल इच्छा को पूरा करने के लिए अपमानजनक रीति से अपराध किया गया और अपराध के समय पीडित के साथ अमानवीय व्यवहार करते हुए यातना दी गयी।

(7) यदि अपराध एक व्यक्ति द्वारा विधिक अभिरक्षा में रहते हुए किया गया था।

(8) यदि हत्या या अपराध किसी व्यक्ति को विधिक रूप से अपने कर्तव्य का पालन करने से रोकने के लिए किया गया था जैसे कि वह किसी को अपनी अभिरक्षा में लेने वाला हो या किसी अन्य की अभिरक्षा में रखने वाला हो। उदाहरण के लिए द०प्र०सं० की धारा 43 के तहत अपने कर्तव्य के विधिक निर्वहन करने वाले व्यक्ति की हत्या की गयी हो।

(9) जब अपराध अनुपात में बहुत अधिक हो जैसे कि पूरे परिवार या किसी विशेष समुदाय के सदस्यों की हत्या का प्रयास करना ।

(10) जब पीडित निर्दोष, असहाय या एक व्यक्ति रिश्ते और सामाजिक मानदंडों के विश्वास पर भरोसा करता है, जैसे कि एक बच्चा, असहाय महिला, एक बेटी या एक भतीजी पिता/चाचा के साथ रहती है और एसी विश्वसनीय व्यक्ति द्वारा अपराध किया जाता है।

(11) जब हत्या किसी ऐसे उद्देश्य के लिए की जाती हो जो पूर्ण भ्रष्टता और नीचता का प्रमाण देता है।

(12) जब बिना उकसावे के निर्मम हत्या हो जाती है।

(13) अपराध इतनी कूरता से किया जाता है कि यह न केवल न्यायिक विवेक को बल्कि समाज के विवेक को भी चुभता है या झगझोर देता है।

शमनकारी परिस्थितियांः-

(1) जिस तरीके और परिस्थितियों में अपराध किया गया था, उदाहरण के लिए सामान्य रूप से इन सभी स्थितियों की विपरीत चरम अधिकतम मानसिक या भावनात्मक अशांति या अत्यधिक उकसावा ।

(2) अभियुक्त की उम्र एक प्रासंगिक विचार है, लेकिन अपने आप में एक निर्धारक कारक नहीं है।

(3) अभियुक्त की पुनः अपराध में शामिल नहीं होने की संभावना और अभियुक्त के सुधरने और पुनर्वास की संभावना ।

(4) अभियुक्त की स्थिति से पता चलता है कि वह मानसिक रूप से दोषपूर्ण था और उस मानसिक दोष ने उसके आपराधिक आचरण की परिस्थितियों को समझने की उसकी क्षमता को कम कर दिया था।

(5) ऐसी परिस्थितियों जो जीवन के सामान्य क्रम में, इस तरह के व्यवहार को संभव बनाती है और उस स्थिति में मानसिक असंतुलन को जन्म देने का प्रभाव डाल सकती है जैसे कि लगातार उत्पीड़न जो वास्तव में अभियुक्त को मानव व्यवहार के ऐसे चरम पर ले जाता है कि मामलें के तथ्यों और परिस्थितियों में, अभियुक्त का मानना था कि वह अपराध करने में नैतिक रूप से उचित था ।

(6) जहाँ साक्ष्य का उचित विवेचना करने पर न्यायालय का विचार है कि अपराध पूर्व निर्धारित तरीके से नहीं किया गया था और मृत्यु के परिणामस्वरूप एक और अपराध हुआ और यह कि इसे प्राथमिक अपराध के परिणाम के रूप में माना जा सकता है।

(7) जहाँ एकमात्र प्रत्यक्षदर्शी की गवाही पर भरोसा करना पूरी तरह से असंरक्षित है, यद्यपि अभियोजन पक्ष ने अभियुक्त के अपराध को सिद्ध कर दिया है।

उच्चतम न्यायालय ने मृत्युदण्ड लागू करने के लिए विचारण निम्नलिखित सिद्धांतो को संक्षेप में प्रस्तुत किया है-

(1) न्यायालय को यह निर्धारित करने के लिए परीक्षण लागू करना होगा कि क्या यह मृत्युदण्ड देने के लिए "विरलतम से विरल" (Rarest of Rare Cases) मामला था ।

(2) न्यायालय की राय में, किसी भी अन्य दंड अर्थात आजीवन कारावास को लागू करना पुरी तरह से अपर्याप्त होगा और न्याय के उद्देश्य को पूरा नहीं करेगा।

(3) आजीवन कारावास नियम है और मृत्युदण्ड एक अपवाद है।

(4) अपराध की प्रकृति और परिस्थितियों और सभी प्रासंगिक विचारों को ध्यान में रखते हुये आजीवन कारावास का दंड देने के विकल्प का सावधानीपूर्वक उपयोग नहीं किया जा सकता है।

(5) वह रीति (योजनाबद्ध या अन्यथा) और तरीका (क्रूरता और अमानवीयता की सीमा, आदि) जिससे अपराध कारित किया गया था और वे परिस्थितियों जिनके कारण ऐसा जघन्य अपराध कारित हुआ ।

173- मृत्युदण्ड के संबंध में माननीय उच्चतम न्यायालय का न्यायदृष्टांत क्रिमिनल अपील क्रमांक-143/2007 "ओ एम ए उर्फ ओम प्रकाश एवं एक अन्य बनाम स्टेट ऑफ तमिलनाडु" निर्णय दिनाँक 11/12/2012 अवलोकनीय है, जिसमें माननीय उच्चतम न्यायालय ने "गुरूबख्श सिंह सिब्बा बनाम स्टेट ऑफ पंजाब" (1980) एस०सी०सी० 565 को संदर्भित करते हुए पैरा 5 व 6 में निम्नानुसार अवलोकित किया है-

5. The majority referred to the decision in Gurbaksh Singh Sibbia Vs. State of Punjab[3] and stated that the observations made therein aptly applied to the desirability and feasibility of saying down standards

in the area of sentencing discretion in the case of Gurbaksh Singh (Supra) the Constitution Bench had observed thus-

"judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of then decisions."

6. After stating broad guidelines relating to the mitigating circumstances, the magority ultimately ruled thus-

"Judges should never be bloodthirsty, Hanging of murdered has never been too good for them. Facts and Figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency a fact which attests to the cautin and compassion which they sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupusious care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases

when the alternative option is unquestionably foreclosed."

174- इसी प्रकार माननीय उच्चतम न्यायालय ने "बच्चन सिंह बनाम स्टेट ऑफ पंजाब" (1980) एस०सी०सी० 584" में निम्नानुसार अभिनिर्धारित किया है:-

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

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

(iii) Life imprisonment is the rule and death sentence is an exception 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 improve 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 doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck

between the aggravating and the mitigating circumstances before the option is exercised. "

10. Thereafter, the Court stated that to apply the said guidelines, the following questions and required to be asked and answered:-

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life adequate 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?"

175- इसी प्रकार माननीय उच्चतम न्यायालय ने "हरेश मोहन दास राजपूत विरूद्ध स्टेट ऑफ महराष्ट्र" निर्णय दिनाँक 20-09-2011 उच्चतम न्यायालय में "विरलतम से विरलतम मामला" कब होता है, इस संबंध में पैरा 14 में विवेचित किया है:-

"Rarest of the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of "Rarest of the rare case". There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. The accused may be a menace to the society and would

continue to be so, threatening its peaceful and harmonious co-existence. The manner in which the crime is committed must be such that it may result in intense and extreme indication of the community and shock the collective conscience of the society where an accused does not act on any spur-of-the-moment provocation and indulges himself in a deliberately planned crime and meticulously excuses it, the death sentence may be the most appropriate punishment for such a ghastly crime. The death sentence may be warranted where the victims are innocent children and helpless women. Thus, in case the crime is committed in a most cruel and inhuman manner which is an extremely brutal, grotesque, diabolical, revolting and dasrerdly manner, where his act affects the entire moral fiber of the society, e.g. crime committed for power of political ambition or indulge in organized criminal activities, death sentence should be awarded.

इसी प्रकार माननीय उच्च न्यायालय बिलासपुर के न्यायदृष्टांत छ०ग० विरूद्ध संदीप जैन दांडिक निर्देश क्रमांक-01/2023 दिनाँक 01-12-2023, AIR Online 2023 CHH 835. ILR 2024, छ०ग० भाग दो 177 एवं छत्तीसगढ़ राज्य विरूद्ध राम सोनी, CRC/1517/2018 दिनांक 31-01-2020, छत्तसीगढ़ राज्य विरूद्ध शेख कोराम, दांडिक रिफरेन्स नंबर 1/2021, अपील नंबर 1270/2021, निर्णय दिनाँक 13-06-2022 अवलोकनीय है। इसी प्रकार माननीय उच्चतम न्यायालय द्वारा अभिनिर्धारित न्यायदृष्टांत सोनू सरदार बनाम छ०ग० राज्य ((2012)}4

एस०सी०सी० 97 (AIR 2012 SC 1480)), रामनरेश और अन्य बनाम छ०ग० राज्य ((2012) 4 एससीसी 257 (AIR 2012 SC 1357)) अवलोकनीय है जिमें माननीय न्यायालय द्वारा उपरोक्त समस्त उपरोक्त प्रकरणों को भी उल्लेखित किया गया है।

पंजाब राज्य विरूद्ध मंजित सिंह 2009 (14) SCC 31 में माननीय उच्चतम न्यायालय ने यह अभिनिर्धारित है कि यह दोहराना आवश्यक है कि मृत्युदंड का चयन केवल सबसे दुलर्भ मामलों में ही किया जाना चाहिए और तब तब अभियुक्त की अपराधशीलता अत्यंत गंभीर हो, या जब अभियुक्त को समाज के लिए एक बड़ा खतरा या निर्दयी अपराधी पाया जाए या जहाँ अपराध एक संगठित तरीके से किया गया हो और वह भयावह, निर्मम, जघन्य और अत्यंत बर्बर हो या जहाँ निर्दोष और अचेतन व्यक्तियों पर बिना किसी उकसावे के हमला कर उनकी हत्या की जाती हो।

दिलीप प्रेम नारायण तिवारी विरूद्ध महाराष्ट्र राज्य 2010 (1) SCC 775 में माननीय उच्चतम न्यायालय के इस संबंध में यह संप्रेक्षित किया है कि जहाँ अपराध बहुत सोचे समझे तरीके से अत्यंत क्रूरता एवं बर्बरता के साथ किए गए हों, वहाँ उचित दंड पर विचार करने के लिए अपराध की प्रकृति और गंभीरता ही महत्वपूर्ण है, न कि अपराधी। यदि एक अपराध के लिए उचित दंड नहीं दिया जाता है तो न सिर्फ प्रकरण के पीडित व्यक्ति के संबंध में बल्कि उस समाज के संबंध में भी जिसके विरूद्ध अपराध किया गया है, न्यायालय अपने कर्तव्य के पूर्ति में विफल होती है। अपराध

के लिए निर्धारित दंड अप्रसांगिक नहीं होना चाहिए बल्कि उसे अपराध में किये गये क्रूरता और बर्बरता के अनुरूप और संगत होना चाहिए ।जिसके साथ अपराध किया गया है। अपराधा की गंभीरता समाज की गंभीर निंदा को आकर्षित करता है और अपराधी के साथ इस प्रकार किये गये न्याय में समाज के उस पुकार की प्रतिक्रिया होनी चाहिए।

इस न्यायालय के समक्ष विचारणीय इसी स्वरूप के प्रकरण में माननीय उच्चतम न्यायालय के न्यायदृष्टांत शिवम विरूद्ध छ.ग. राज्य 1998(1)SCC 149 में जिसमें तीन व्यक्तियो का सिर काटकर हत्या तथा एक 10 वर्षीय बालक को जीवित आग में जलाया गया था, यह सम्प्रेक्षित किया है कि इसमें 4 लोगों की इस प्रकार से हत्या की गयी है, जो अत्यंत क्रूर, घातक और भयावक स्वरूप का है, जिसमें मानव गरिमा की पूरी तरह से अनदेखी की गयी है, किया गया अपराध पूर्व नियोजित था और माननीय सर्वोच्च न्यायालय ने अपराध की जानकारी और परिस्थितियों के प्रकाश में मामले को दुर्लभतम में दुर्लभ श्रेणी का पाते हुए उसमें मृत्युदण्ड दिया जाना उचित पाया है।

हत्या जैसे गंभीर अपराध में एक उचित और न्यायपूर्ण सजा निर्धारित किये जाने के उद्देश्य से अथवा उसके दुर्लभतम मामला होने के विनिश्चय हेतु अपराध की संपूर्ण परिस्थितियों, उसमें अभियुक्त के आशय तथा अपराध की गंभीरता को प्रभावित करने वाले असीमित परिस्थितियों के प्रकाश में एक उचित और न्यायपूर्ण दंड निर्धारित करने का ऐसा कोई निश्चित सूत्र नहीं है जो सभी मामलों में समाने

रूप से पिरोया जा सके, इसलिए इसके अभाव में प्रत्येक प्रकरण के तथ्य पर आधारित विवेक अनुसार निर्णय ही एक मात्र ऐसा तरीका है, जिसमें निर्णय अंतर्गत न्यायसंगत ढंग से दंड अवधारित किया जा सकता है।

इस प्रश्नाधीन सत्र प्रकरण में दर्शित हत्या की घटना, उसकी परिस्थितियां, अबोध, मासूम 4 वर्षीय बालक की हत्या, अभियुक्त के एकतरफा प्रेम एवं वासना की पूर्ति नहीं होने से क्षुब्ध होकर एक महिला के गरिमा के विपरीत उसे सबक सिखाए जाने के लिए उसके अबोध बालक की हत्या किया जाना तथा दोषसिद्ध अभियुक्त का उपरोक्तानुसार हत्या की घटना योजनाबद्ध तरीके से किया जाना प्रस्तुत मामले का तथा इसमें की गयी हत्या की घटना का अत्यंत गंभीर, बर्बर तथा भयावह निर्मित करता है।

176- अभियुक्त की स्थिति उपरोक्त न्यायदृष्टांत के प्रकाश में इस प्रकरण को देखा जावें तो अभियुक्त, मृतक हर्ष चेतन का पड़ोसी था, अभियुक्त, मृतक को अकसर मोटर सायकल में घूमाने ले जाता था, जिससे मृतक का अभियुक्त से न्यास एवं वैश्वासिक संबंध का था। मृतक हर्ष चेतन जो 4 वर्षीय अबोध बालक था, उसे अभियुक्त के द्वारा घुमाए जाने एवं खिलाने-पिलाने एवं बहलाने के कारण मृतक का लगाव होना और खुशी-खुशी अभियुक्त के साथ घटना दिनाँक को जाना स्वाभाविक था ।

वास्तव में अभियुक्त का मृतक के परिजन से किसी प्रकार का कोई पूर्व विवाद या रंजिश नहीं था, मात्र एकतरफा प्रेम एवं वासना की पूर्ति नहीं होने के कारण मृतक हर्ष चेतन की माँ को सबक सिखाए जाने के लिए अपनी प्रतिरक्षा करने में असक्षम अबोध

बालक का अपहरण, हत्या करने के आशय किया जाकर निर्दयता पूर्वक जीवित बच्चे के सिर पर टॉवेल लपेटकर पेट्रोल डालकर आग लगाकर जलाकर हत्या करना व बच्चे के बचाव के चिल्लाने पर घटना स्थल से चले जाना, उसकी अपराधिकता निश्चित ही बर्बरता की पराकाष्ठा है ऐसे कृत्यों की मिसाल बहुत ही कम मिलती है इस नृशंस एवं हृदयहीन हत्या को धिक्कारने के लिये कड़े से कड़े शब्द भी कम पड़ेगे। अभियुक्त न तो विकृतचित है न ही मानसिक रोगी है। वह करीब 35 वर्ष का होकर बौद्धिकता से परिपक्व मस्तिष्क का है। वह अपने कृत्यों का परिणाम को समझा सकता था। उसके चेहरे पर घृणित कृत्य के लिए पश्चाताप के कोई लक्षण नहीं दिखाई पड़ते है। अपराध को कम करने वाली कोई परिसीमनकारी परिस्थिति खोजने के पश्चात भी नहीं पायी जाती है। अपराध का हेतुक, अपराध में की कुरता, अपराध करने का प्रकार, पक्षकारों के मध्य वैश्वासिक संबंध एवं न्यास की स्थिति, हर्ष चेतन का सर्वथा निर्दोष, असहाय एवं निहत्था होना, अभियुक्त की प्रेरणा, मृतक की कमजोरी, अपराध की भयावहता एवं उसका निष्पादन से सभी तथ्य इस तथ्य एवं परिस्थितियों इस प्रकरण को विरलतम से विरलतम अर्थात सर्वाधिक दुर्लभमामला (Rarest of Rare Cases) बनाती है। ऐसा बर्बरता पूर्ण व्यवहार जो कि अभियुक्त द्वारा वैश्वासिक संबंध की स्थिति में था उसका दोष अत्यधिक भृष्टता का अनुपात ग्रहण कर लेता है। अभियुक्त के कृत्य की प्रकृति को दृष्टिगत रखते हुये उसे समाज में जीने का अधिकार नहीं है तथा उनके साथ न्यायिक नम्रता की गई तो इसे न्यायिक पंगुता मानकर ऐसे अपराधी अपराध करने के लिये प्रोत्साहित होगे और तब इस समाज को विधि या कानून की मदद से चला पाना कठिन होगा । अभियुक्त सामाजिक, नैसगिंग विधि एवं नियम द्वारा अधिरोपित कर्तव्य का उचित रूप से

पालन न किये जाने का दोषी होने के साथ साथ बर्बतरता पूर्ण अपराधिक कृत्य किये जाने का दोषी है। ऐसा विरलतम से विरल (Rarest of Rare Cases) कृत्य इस कारण अक्षम्य है क्योकि मात्र अभियुक्त के उक्त अपराधिक बर्बरता पूर्ण कृत्य के कारण 4 वर्षीय अबोध मासूम बालक की मृत्यु कारित करने का कोई कारण नहीं था, मात्र मृतक की माँ से एकतरफा प्रेम व वासना की पूर्ति का आशय एकपक्षीय था, मृतक हर्ष चेतन निर्दोष था, वह अपने मनुष्य के रूप में जन्म होने के कारण, मनुष्य को मनुष्य के रूप में जीवन जीने का जो अधिकार प्राप्त हुआ था वह प्राप्त नहीं कर सके और वे असामयिक रूप से, मानवीय मूल्यों के विरुद्ध नृशंस तरीके से मृत्यु को प्राप्त हुआ है। इन गंभीर कारको के विपरीत, अभियुक्त की उम्र भी कम करने वाला कारक नहीं है क्योकि वह 35 वर्ष का बौद्धिकता से परिपक्व मस्तिष्क का है, हॉलांकि जिस तरह से अपराध किया गया है, उसे देखते हुए ऐसा कोई कारण दर्शित नहीं हुआ है कि अभियुक्त के पास जघन्य अपराध को किए जाने का कोई तत्कालिक कारण रहा हो, अभियुक्त ने योजनाबद्ध तरीके से घटना दिनाँक 05.04.2022 की सुबह प्लास्टिक के डिब्बे में पेट्रोल भरवाकर मोटर सायकल की डिक्की में टॉवेल और पेट्रोल को रखा गया तत्पश्चात प्रार्थिया पुष्पा चेतन के घर आकर प्रार्थिया के बचों को नाश्ता कराता हूँ, कहकर घूमाने ले गया । अल्प समय पश्चात प्रार्थिया के पुत्र दिव्यांश चेतन को वापस छोड़ा व मृतक हर्ष चेतन को पुनः हत्या करने से आशय से घूमाने लेकर गया। अभियुक्त ने हत्या की योजना उस दिन प्रातः से ही बनाकर रखा था, जिसकी तैयारी घटना कारित किए जाने के पूर्व की गई थी। घटना के बाद अभियुक्त फरार हो गया था, जिससे यह भी स्पष्ट दर्शित है कि अभियुक्त को अपने कार्य एवं परिणाम की संपूर्ण जानकारी थी, उसके बाद उसने उसके द्वारा

निर्मित योजनानुसार मृतक हर्ष चेतन की घटना स्थल नेवनारा व अकोलीखार के मध्य सुनसान स्थान पर जहाँ मृतक के बचाव हेतु कोई उपस्थित नहीं था। असहाय एवं स्वयं की प्रतिरक्षा करने में असक्षम 4 वर्षीय बालक की बर्बरतापूर्वक पेट्रोल डालकर निर्दयतापूर्वक आग जलाकर हत्या की गई है। एक जीवित व्यक्ति को आग लगाए जाने पर जो शारीरिक एवं मानसिक पीड़ा सहनी पड़ेगी उसको शब्दो में व्यक्त नहीं किया जा सकता है। अभियुक्त द्वारा कारित अपराध अत्यंत गंभीर प्रकृति का है। अभियुक्त के द्वारा एक 4 वर्षीय अबोध बालक जो निहत्था, प्रतिरोधहीन, निर्दोष एवं प्रतिरक्षा करने में असहाय था, पूर्व नियोजित योजना बनाकर राक्षसी आक्रमण किया गया है। घटना दिनाँक को अभियुक्त ने संपूर्ण तैयारी कर ली थी अथार्त एक सोची समझी रणनीति थी । मच्छी सिंग एवं बच्चन सिंग के प्रकरण में अभिनिर्धारित की गई परिस्थितियाँ क्रमांक-10, 11, 12, 13 इस प्रकरण में लागू होती है।

177- चिकित्सीय साक्षी डॉ. एम निराला (अ.सा.-12) के साक्ष्य के अनुसार मृतक के पूरे शरीर में दूसरे व तीसरे डिग्री के जले हुए घाँव मौजूद होने तथा कुल जले हुए धाँव का प्रतिशत 100 प्रतिशत होना पाया गया है तथा मृतक के शरीर पर उपस्थिति जले हुए घाँव मृत्यु के पूर्व के थे। मृतक के शरीर का पूरा भाग जला हुआ होने से मृतक हर्ष कुमार चेतन की मृत्यु जलने के कारण हत्यात्मक प्रकृति की थी। मृतक पाश्विक आक्रमण का विरोध करने की स्थिति में नहीं था। वास्तव में मृतक एक 4 वर्षीय बालक था, जिसकी सामान्य प्रज्ञा वाले व्यक्ति से सहायता एवं रक्षा की अपेक्षा की जाती है। इसके विपरीत अभियुक्त के द्वारा अपने सामाजिक, नैसर्गिक विधि एवं नियम के द्वारा अधिरोपित कर्त्तव्य का उचित रूप से पालन न किए जाने का दोषी है। अभियुक्त पंचराम उर्फ मन्नू गेण्डरे के द्वारा अपने

एक तरफा प्रेम संबंध की असफलता का बदला प्रार्थिया पुष्पा के मासूम बच्चे को जिंदा जलाकर उसकी हत्या कर लिया गया है। 4 वर्षीय अबोध मासूम बच्चे के जंघन्य हत्या उसके ऊपर पेट्रोल डालकर आग लगाकर की गई है। अभियुक्त के द्वारा किया गया हत्या का घिनौना कृत्य दिलदहला देने वाला मानवता को शर्मसार करने वाला एवं सामाजिक मूल्यों के साथ कूठाराघात करने वाला है। सामाजिक परिवेश में इस तरह की घटना से जनमानस पर व्यापक प्रतिक्रिया परिलक्षित होकर अभियुक्त, समाज के लिए घातक है। इस प्रकार अभियुक्त के योजनाबद्ध तरीके से किए गए अपराध बर्बरतापूर्ण अपराधिक कृत्य से अभियुक्त में सुधार की कोई गुंजाईश नहीं है एवं वह पुनः मानव समाज में शामिल होने के लायक नहीं है। इस प्रकरण में अभियुक्त को मृत्यु दंड कारित करना ही समाज के हित एवं मानव जीवन की सुरक्षा हेतु उपयुक्त होगा ।

178- अतः प्रकरण की समस्त परिस्थितियों एवं उभयपक्षों के तकों पर गहराई से मनन करने के उपरांत उपरोक्त लेखबद्ध कारणों से अभियुक्त को आजीवन कारावास की सजा को आरोपित करने के निवेदन को अस्वीकार किया जाता है। प्रतिरक्षा पक्ष के अधिवक्ता के द्वारा अभियुक्त को परिवीक्षा अधिनियम का लाभ प्रदान किए जाने का निवेदन किया है, किन्तु अभियुक्त के द्वारा अवयस्क मृतक हर्ष कुमार चेतन को उसके संरक्षक की विधिपूर्ण संरक्षकता में से बहलाकर उसका व्यपहरण कर हत्या किए जाने के आशय से उसे टॉवेल से लपेटकर तथा उसके ऊपर सिर से पेट्रोल डाला और माचिस से उस पर आग लगाकर उसकी मृत्यु कारित कर हत्या कारित किए जाने के अपराध में दोषी पाया गया है। अभियुक्त को अपराधी परिवीक्षा अधिनियम का लाभ दिया जाना उचित प्रतीत नहीं है। दण्ड विधि का उद्देश्य न केवल अपराध को दंडित करना है,

अपितु संविधान द्वारा निर्मित विधि के प्रति समाज में आस्था को अक्षुण्ण बनाए रखना है तथा दण्ड के माध्यम से समाज में अपराध की पुनरावृत्ति को कड़ाई से रोकना भी है। अभियुक्त पंचराम उर्फ मन्नू गेण्डरे के उक्त क्रूरतम आपराधिक कृत्य को दृष्टिगत रखते हुए अभियुक्त पंचराम उर्फ मन्नू गेण्डरे को भारतीय दण्ड संहिता की धारा- 363, 364, 302 के अपराध के आरोप में दंडित किया है।"

81. A careful perusal of the findings so recorded would show that,

(1) the trial Court had convicted the appellant and imposed death penalty on the very same day.

(2) the trial Court has not taken into consideration the probability of the appellant being reformed and rehabilitated;

(3) the trial Court has taken into consideration only the crime and the manner in which it was committed, and it has not taken into consideration the criminal's state of mind and his socio-economic conditions;

(4) the trial Court has not given any effective opportunity of hearing on the question of sentence to the appellant herein as held by the Supreme Court in Mohd. Mannan (supra); and

(5) similarly, no evidence was brought on record on behalf of the prosecution to prove to the court that convict cannot be reformed or rehabilitated by producing material about his conduct in jail, and no opportunity was given to the accused to produce

evidence as held by the Supreme Court in Rajendra Pralhadrao Wasnik (supra).

82. We have to apply all the above-stated principles noticed herein supra in the present case to decide whether the learned Additional Sessions Judge is justified in awarding death sentence to the appellant and for confirmation of death sentence.

83. In the present case, the deceased was the neighbour of the appellant, aged about 4 years. On 05.04.2022, the appellant took the minor boy/deceased on the pretext of visit places and had gone by his motorcycle. The appellant brutally murdered the deceased by pouring petrol and set him ablaze and thereafter the appellant sold his motorcycle to Kiran Sahu at Karanja, Bhilai and had gone to Nagpur. As such, the offence of murder was committed by the appellant. The barbaric act of the appellant was not only inhuman but extremely shocking and cruel.

84. The appellant was aged about 35 years at the time of commission of the offence. No criminal antecedent has been brought against him and he has committed the offence of murder of 4 years old boy. He murdered him brutally, which makes his act totally barbaric and condemnable, as such the appellant has committed offence against an innocent, minor and defenceless child, who has not even crossed the age of 5 years.

85. After consideration of the Crime Test, it bring us to rarest of rare test. After considering oral and documentary evidence available on

record and the entire material produced by the prosecution, the question would be, whether this the rarest of rare case and whether the death sentence awarded should be confirmed?

86. The appellant was a young person, aged about 35 years at the time of commission of offence. He is the resident of village Hasda in Bemetara district, which is remote village of said Bemetara district. The State has not brought on record any evidence to demonstrate that there is no possibility with respect to reformation and rehabilitation and even that aspect has not been considered by the learned trial Court, while awarding death sentence to the appellant herein. The appellant has no criminal antecedent, though he has committed an offence, which is henius one. At this stage, we are reminded of what John F. Kennedy had said “children are the world’s most valuable resources and best hope for the future”. Thus, in absence of evidence on record that there is no possibility with respect to reformation and rehabilitation of the appellant as he was young person, when he committed the offence and he is not likely to be a menace or threat or danger to the society or to the community, there is nothing to suggest that he is likely to repeat similar crime in future and following the law laid down by the Hon’ble Supreme Court in Amit case (supra), Santosh Kumar Singh (supra), Ramesh Bhai Chandu Bhai Rathod (supra) and Lochan Shriwas (supra), in which considering the young age of the accused, the death sentence is converted into that of imprisonment for life. Upon thoughtful consideration, we are of the view that

extreme sentence of death penalty is not warranted in the facts and circumstances of the case. We are of the opinion that this is not the rarest of rare case in which major penalty of sentence of death awarded has to be confirmed. In our view, imprisonment for life would be completely adequate and would meet ends of justice accordingly. We direct commutation of death sentence into imprisonment for life. We further direct that the life sentence must extend to the imprisonment for reminder of natural life of the appellant herein Panchram @ Mannu Gendre.

87. Consequently, the Criminal Reference No. 2 of 2024 made by the 7th Additional Sessions Judge, Raipur to the extent of confirmation of imposition of death sentence to the appellant Panchram @ Mannu Gendre is hereby rejected.

88. The Criminal Appeal No. 151 of 2025 filed on behalf of the appellant Panchram @ Mannu Gendre is partly allowed. The conviction of the appellant under Section 302 of IPC is maintained. However, his sentence of death is commuted to life imprisonment by maintaining the fine amount. We further direct that life sentence must extend to the imprisonment for reminder of natural life of the appellant herein. Conviction and sentence awarded to the appellant under Sections 363 and 364 of IPC are hereby affirmed. All the sentences are directed to run concurrently.

89. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing

his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

90. The Registrar (Judicial) is directed to send a duly attested copy of this judgment to the concerned trial Court as mandated under Section 371 of Code of Criminal Procedure (Section 412 of Bharatiya Nagarik Suraksha Sanhita, 2023) for needful.

91. Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

ved

HEAD NOTE

Before awarding capital punishment, the Court has to strike a balance between the aggravating and mitigating circumstances viz. mental and emotional condition, age, possibility of reformation and rehabilitation of the accused, brutality and the manner in which the offence is committed, which makes the case fall under the category of rarest of rare case and death penalty would be the only appropriate and meaningful sentence.