
(2013) 04 AP CK 0127

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 930 of 2011 and R.T. No. 2 of 2012

Borgam Rajender

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 235, 235(2), 313

Evidence Act, 1872 — Section 6

Penal Code, 1860 (IPC) — Section 302

Citation : (2014) 1 ALD(Cri) 324 : (2013) 2 ALD(Cri) 956

Hon'ble Judges : M.S. Ramachandra Rao, J;K.C. Banu, J

Bench : Division Bench

Advocate : V. Ravi Kiran Rao, for the Appellant;

Final Decision : Partly Allowed

Judgement

K.C. Banu, J.—Criminal Appeal is filed challenging the conviction of the appellant-accused in the judgment dt. 03-06-2011 in Sessions Case No. 7 of 2011, on the file of the VII Additional Sessions Judge (FTC), Nizamabad at Bodhan of the offence punishable u/s 302 IPC sentencing him to undergo death sentence and R.T. No. 2 of 2012 is referred for confirmation of the death sentence against the accused by the Hon''ble High Court. The case of the prosecution in brief is stated as follows:

The accused is the husband of Sharada (herein after referred to as "the deceased"). Few days prior to the date of occurrence, the accused used to suspect the character of the deceased without any reason. Day by day the accused developed grudge in his mind towards his wife and decided to murder her. On 18-06-2010, after having dinner with the family members at about 9 p.m. the accused along with his daughter Pravalika went to bed. At about 10.30 p.m. the deceased came to the house and went to the bed. At about 11 p.m. P.W.2, who is the brother of the accused and residing in the same house, came to the house. In the mid night, at about 12.10 a.m. the accused found his wife in

deep sleep. He woke up from the cot and took his daughter Pravalika from the cot and laid on the floor. Later, the accused wrapped a towel around the neck of his wife and tied tightly. She fell unconscious. Later, the accused untied the towel from the neck. He suspected that still she was having some breath. He took a knife and cut the throat and decapitated the head from the trunk. Later, he changed his clothes and threw the blood stained cloths and knife on the shelf. He dragged out the trunk from the house with the head and kept the trunk in front of the house. P.W.2 woke up on hearing some commotion outside the house and came out from the house, there he found his younger brother who murdered his wife dragging out his wife's Trunk from the house to out side the house holding head of his wife in his hand, then questioned about his act? He informed him that "idi na mata vinta ledu" (She is not hearing his words) for which he murdered her by cutting her throat. By saying so, he threw the trunk in front of the house and tied the head to the gate of the compound wall of the house with the hair and left the scene of occurrence. Then P.W.2 questioned the accused where he was going, but he did not say any answer to him. P.W.2 informed the same to P.W.1, mother of the deceased. Immediately P.W.1 rushed to the house of her daughter and found trunk of her daughter laying in front of the house and her head was found tied to the gate of the compound wall of the house. She also found pool of blood on the cot in the bed room. She went to the police station and gave a statement with regard to the act of the accused. P.W.14, Sub-Inspector of Police reduced the oral statement of P.W.1 at 1.30 a.m. and registered a case in Crime No. 190 of 2010 u/s 302 IPC and issued Ex.P-1, complaint. Ex.P-13 which is the original FIR, sent to the concerned Court and copies of the same to all concerned. P.W. 15, Circle Inspector of Police, took up the investigation and he along with P.W. 14 rushed to the scene of crime, where he summoned P.Ws.9 and 10 and later P.W.8 video-graphed the scene of crime and took the photographs of scene of crime, trunk and head of die deceased. P.W. 15 conducted scene of occurrence panchanama in the presence of P.Ws.9 and 10 and prepared rough sketch of scene of offence and seized blood stained big rug, blood stained earth and control earth under the cover of scene of crime panchanama before P.Ws.9 and 10. Later P.W. 15 examined P.Ws.1 to 9 and recorded their statements. After conducting inquest panchanama, Ex.P-3, over the trunk and head of the deceased, they were sent to the postmortem examination. P.W.11, Doctor, held autopsy over the dead body of the deceased and issued postmortem examination report Ex.P-5 concluding the cause of death is due to decapitation of head from the body. P.W. 15 arrested the accused on 20-06-2011 at Thittikota-Bodhan Bus Stand. Thereafter, the accused lead P.W. 14 and panch witnesses to his house where P.W. 14 seized the blood stained baniyan, pant and knife under a cover of seizure panchanama, Ex.P-7, and later sent him to judicial remand. After completion of investigation, P.W. 15 filed the charge sheet.

2. The learned Sessions Judge framed the following charge against the accused:

That you on the intervening night of 18/19-06-2010, at about 12.10 a.m., in

your house, situated at Tattikotagalli of Bodhan, committed murder intentionally causing the death of Borgam Sharada by cutting off her throat with a knife and decapitating the head from the trunk and that thereby you committed an offence punishable u/s. 302 of Indian Penal Code and within my cognizance.

3. When the above charge was read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried.

4. To substantiate the charges, the prosecution examined P.Ws.1 to 15 and got marked Exs.P-1 to P-14 besides case properties M.Os. 1 to 19.

5. After the closure of the prosecution evidence, the accused was examined u/s 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses. He denied the same. On behalf of the accused, no oral evidence was adduced except marking Exs.D-1 and D-2.

6. The trial Court after considering both oral and documentary evidence on record, came to the conclusion that the prosecution proved its case beyond reasonable doubt for the charge u/s 302 IPC and with regard to the sentence, it was held that the manner in-which accused committed murder is shocking to the society as he separated head of his wife with knife and he committed the murder in a ghastly manner. Therefore, the case falls under the ambit of rarest of the rare cases and imposed the capital punishment of death sentence subject to the confirmation by this Court. Being aggrieved by that judgment, the appellant filed this Criminal Appeal.

7. Now, the points for determination are whether the prosecution has proved its case against the accused for the charge leveled against accused beyond all reasonable doubt and whether the judgment of the trial Court is correct, legal and proper?

8. The learned counsel for the appellant contended that all the circumstances in the chain of circumstances have not been proved beyond all reasonable doubt; that P.Ws.4 to 7 made improvements with regard to the presence of the accused at the relevant point of time of incident; that there is absolutely no motive for the accused to commit the murder of his wife; that the evidence of P.Ws.1 to 4 is not trustworthy and that the evidence of P.W.2 cannot be relied upon as he resiled from the testimony as deposed in chief examination; that the evidence of P.W.2 is very clear that the accused left the house at about 7.30 p.m. in the evening and he did not turn up to the place of occurrence; that the earliest version with regard to the incident as admitted by P.W.1 has been suppressed by the prosecution, that therefore, an adverse inference has to be drawn for non-production of earliest statement said to have been given by P.W.1 to the Sub-Inspector of Police, that the evidence on record would clearly go to show that there were no disputes existing between the accused and the deceased prior to the incident and they were living amicably and that with regard to the alleged disputes, no panchayat was held at any point of time, that on the date of incident, the accused was not present at the scene of occurrence but he went to

Hyderabad for some other work; that the arrest of the accused and recovery of M.Os. 16 to 18 are not shown to be incriminating against the accused because the same blood group of the deceased has not been found on the material objects as per the report of the Forensic Science Laboratory, Hyderabad; that there is absolutely no evidence to show that the accused was last seen alive in the company of the deceased on the date of incident at the house, that the mediators who were present at the time of arrest of accused were stock mediators and they were in the habit of signing the papers as per the dictation of the police, that therefore, Exs.P-6 and P-7 were fabricated subsequently in conformity with the case of the prosecution and hence as the prosecution failed to establish all the circumstances, the accused cannot be liable for punishment u/s 302 IPC and hence, prays to set aside the conviction and sentence recorded against the appellant.

9. On the other hand, the learned Public Prosecutor contended that P.W.14 has specifically stated that as per the narration of P.W.1, he recorded only one statement i.e. Ex.P-1 and no suggestion was given that P.W.14 suppressed the earlier written report said to have been given by P.W.1; that the evidence of P.Ws.3 and 5 would go to show that the accused and the deceased were alone residing along with their minor children in the portion of the house and that there was no scope or possibility for any third person to enter into the portion in which the accused and deceased were residing; that there was a clear motive for the accused to commit the murder as the evidence of P.Ws.3 to 5 would clearly go to show that the accused was suspecting the fidelity of his wife; that the statements of these witnesses with regard to the motive have not been denied or disputed; that in view of the fact that the case falls under the rarest of rare cases, the trial Court rightly imposed the death penalty holding that innocent woman who was sleeping on the cot was attacked by her husband within the four corners of the room and because of his barbaric and inhuman act in attacking the deceased with a knife, the head of the deceased was separated from the body and thereafter the trunk of the body was taken to the open yard of the house and the head was tied with hair of the deceased to the gate, that therefore all these aspects would clearly go to show that the case falls under rarest of rare cases and hence she prays to dismiss the Criminal Appeal.

10. There is no direct evidence to show that the accused caused injuries to the deceased and as a result of which, the head of the deceased was separated from the body/trunk. The entire case rests upon circumstantial evidence. Circumstantial evidence means the evidence afforded not by the direct testimony of an eye-witness to the fact to be proved, but by the hearing upon that fact or other and subsidiary facts which are relied upon as inconsistent with any result other than the truth of principal fact. In *Hanumant Vs. The State of Madhya Pradesh*, it was held:

10. Assuming that the accused Nargundkar had taken the tenders to his house, the prosecution, in order to bring the guilt home to the accused, has yet to prove

the other facts referred to above. No direct evidence was adduced in proof of those facts. Reliance was placed by the prosecution and by the courts below on certain circumstances, and intrinsic evidence contained in the impugned document, Exhibit P-3A. In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore it is right to recall the warning addressed by Baron Alderson, to the jury in *Reg v. Hodge* ((1838) 2 Lewin 227), where he said:--

The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.

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 pendency 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. In spite of the forceful arguments addressed to us by the learned Advocate-General on behalf of the State we have not been able to discover any such evidence either intrinsic within Exhibit P-3A or outside and we are constrained to observe that the courts below have just fallen into the error against which warning was uttered by Baron Alderson in the above mentioned case.

11. In *Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh*, , in para 26, it was held thus:

26. It is now well-settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well-settled that suspicion, however, grave may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. [See *Anil Kumar Singh v. State of Bihar* : (2003) 9 SCC 67 and *Reddy Sampath Kumar Vs. State of Andhra Pradesh*,

12. In *Trimukh Maroti Kirkan Vs. State of Maharashtra*, in paras 21 and 21, it was

held thus:

21. In a case based on circumstantial evidence where no eye- witness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See *State of Tamil Nadu Vs. Rajendran*, ; *State U.P. Vs. Dr. Ravindra Prakash Mittal*, ; *State of Maharashtra Vs. Suresh*, *Ganesh Lal Vs. State of Rajasthan*, and *Gulab Chand Vs. State of Madhya Pradesh*,

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram Vs. State of Himachal Pradesh*, it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with "khokhri" and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal Vs. State of Maharashtra*, the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement u/s 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State U.P. Vs. Dr. Ravindra Prakash Mittal*, the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him u/s 302 IPC. In *State of Tamil Nadu Vs. Rajendran*, the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence

showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.

When a case rests upon circumstantial evidence, all the circumstances must be firmly and cogently be established that those circumstances should be of a definite tendency unerringly pointing towards accused, and all the proved circumstances must form a chain so complete, that within all human probability, the crime was committed by the accused and none else.

13. The learned counsel for the appellant relies on the decisions reported in *Madhu Vs. State of Kerala*, wherein, at para 5, it was held:

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.

14. Similarly, he also relied upon a decision reported in *Brijesh Mavi Vs. State of NCT of Delhi*, wherein at para 15, it was held:

15. The principles of law governing proof of a criminal charge by circumstantial evidence need hardly any reiteration. From the several decisions of this Court available on the issue the said principles can be summed up by stating that not only the prosecution must prove and establish the incriminating circumstance(s) against the accused beyond all reasonable doubt but the said circumstance(s) must give rise to only one conclusion to the exclusion of all others, namely, that it is accused and nobody else who had committed the crime.

The above principle is deducible from the five propositions laid down by this Court in *Sharad Birdhichand Sarda Vs. State of Maharashtra*, which principles have been consistently followed in *Tanviben Pankaj Kumar Divetia Vs. State of Gujarat*, *Vikram Singh and Others Vs. State of Punjab*, *Aftab Ahmad Anasari Vs. State of Uttaranchal*, , *Sanatan Naskar and Another Vs. State of West Bengal*, and *Mohd. Arif @ Ashfaq Vs. State of NCT of Delhi*,

15. It is also pertinent to refer a decision in *Sharad Birdhichand Sarda Vs. State of Maharashtra*, wherein it was held thus:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must or should" and not "may be" established.

(2) the facts so established should be consistence 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.

Therefore bearing the above principles relating to the case where a case rests upon circumstantial evidence, it has to be seen whether the accused is assailant of the deceased or not.

16. The factual matrix with regard to the relationship of the accused with the deceased is not in dispute. The marriage of accused with deceased has taken place about eight years prior to the death; that the deceased gave birth to a son and daughter aged about 7 years and 4 years respectively and that both were residing in a portion of the house along with the minor children; that the house of the mother of the deceased is located at a distance of 200 yards; that the trunk of the deceased was found in front of the portion of the house in which the accused and the deceased were residing; that the head of the deceased was tied to the gate; that finding of the blood stained marks on cot inside the house i.e. bed room of the deceased and the accused are not in dispute. P.W.2 is no other than the brother of the accused. P.W.2 and his wife and children are residing in two rooms whereas the accused and family members were residing in another two rooms in the same house. It is also not in dispute that accused was working in a bakery prior to the incident and there were no cases pending against the accused prior to the incident. Similarly no panchayat was held for settlement with regard to the disputes existing between the accused and the deceased.

17. P.W.1 is the mother of the deceased. Her house is situated at a distance of 200 yards from the house where the accused and the deceased were living. She stated that at about 12.00 mid night P.W.2 came and informed that the accused killed her daughter by hacking her head with a knife, placed the trunk of the dead body in front yard of the house and tied the head to the gate of the house with the hair of the deceased. She rushed to the scene of occurrence and saw the head and trunk of the deceased as narrated by P.W. 1. Then went to the police station at about 12.00 a.m. and lodged Ex.P-1 complaint. P.W. 14 is the Sub-Inspector of Police who was present in the police station, recorded the statement of P.W.1 through her narration and after recording the same, he read over the contents to P.W. 1 who admitted the same as correct and registered the same as Crime No. 190 of 2010.

18. The incident has taken place at about 12.10 mid night on the intervening

night of 18/19-06-2010 as per the version of P.W.1. She prepared a complaint and presented to the police about the said incident. But according to P.W.14, to the narration of P.W.1, he scribed Ex.P-1. P.W. 1 is a rustic witness working as a village servant. An inadvertent admission made by P.W.1 cannot be taken advantage by the accused. The entire evidence of a witness has to be evaluated for the purpose of deciding whether there is a ring of truth in it. Evidence should not be considered on the basis of stray pieces of evidence in an isolated manner, but on the basis of total effect of the entire evidence on record. The correct method of appreciating and assessing the evidence of a witness is by scrutinizing the evidence on its merits. For this purpose, the evidence of P.W.14 who is the Sub-Inspector of Police has to be looked into.

19. P.W.14 has categorically stated that P.W.1 came to the police station and narrated the incident. To her narration, he scribed Ex.P-1, complaint and the same was signed by her and obtained thumb impression after it was recorded. He admitted in his cross examination that P.W.1 did not present any written complaint. Except giving a suggestion that Ex.P-1 statement was prepared by him with false allegations in order to suit the case of the prosecution, nothing is elicited to discredit the testimony of P.W.14. It is not even suggested to P.W.14 that P.W.1 lodged a written complaint to him and the written complaint has been suppressed by him for the reason best known to him with a view to file false case and prepared Ex.P-1 report. Therefore, the evidence of P.W.14 is very clear that P.W.1 has narrated the incident, but not lodged any written complaint to P.W. 14. Therefore, the contention of the learned counsel for the appellant that there was a suppression of earlier inscribe report of P.W.1 by the police is devoid of merit and wholly untenable.

20. P.W.2 is no other than the brother of the accused. He stated that their house is having six rooms, two rooms were given on rent, himself and his wife and children were residing in two rooms and the accused and his family members were residing in two rooms. The mess for their family and family of the accused is common but during night time, they used to sleep in separate rooms. He further stated that the accused was looking after his wife Sharada properly and there were no disputes between them. On the date of incident, all of them were sleeping. In the mid night when he heard some sound, woke up and came out of the room, at that time, he found the accused in front of his room holding the severance head of the deceased with one hand. The trunk of the body is found lying in the front yard of the house and there was blood oozing at the place where the trunk was lying. The accused later tied the severance head of the deceased to the gate of the house and the trunk was shifted to the front yard from the room by the accused. Later, the accused left the house. He fell unconscious on seeing the same. Later he went to the house of P.W.1 and informed about the occurrence. But in the cross examination, he stated that on that night his grand-mother woke him up and stated that she saw something and then he came out side and found blood flowing from the room of the accused and found trunk of the deceased in the front yard, then he went inside the room of

the accused, but he did not find the accused and he fell unconscious. He stated that he witnessed the above aspects only. But due to the threats made by the public and the police previously, he stated some other facts. He also stated that on the date of occurrence he saw the accused at 7.30 or 8 a.m. while he was leaving the house to attend his duty and that on that day he did not see him later. To some extent, he has given a complete go-by to the statement given by him in the chief examination. He has not stated that the public and police made any threats to him. The statement of P.W.2 to that extent appears to be improbable and unbelievable for the reason that when he was examined by the police or when the statement was recorded by the Magistrate P.W.13 u/s 164 Cr.P.C., he did not reveal that there were any threats made to him. The statement is marked as Ex.P-10. Ex.P-10 does not disclose about the threats made by the police or public to state the facts which he deposed in the chief examination.

21. There cannot be any dispute that evidence means viz., the chief examination, cross examination and re-examination in any. A part of the statement of the witness viz., chief examination or cross examination cannot be taken so as to assess the credibility of a witness or to evaluate the evidence of a witness. Therefore, this witness for the reason to help his own brother may try to depose something in favour of the accused so as to save him from the punishment u/s 302 IPC. So that may be the reason for resiling from the chief examination which reveals that he saw accused holding severance head of deceased with one hand trunk was lying in front-yard. If really he has not witnessed the incident as he testified in chief examination, he ought not to have gone to the portion of P.W.1. According to P.W.1, after coming to know the incident by P.W.2 only, she rushed to the house of her daughter. As a matter of fact P.W.2 woke P.W. 1 up during mid night and brought her to the house of the accused. Therefore, the spontaneous statement made by P.W.2 to P.W.1 soon after the incident falls u/s 6 of the Indian Evidence Act, 1872. It reads as follows:

Section 6 - Relevancy of facts forming part of same transaction:

Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustration

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

From the above explanation, it is clear that a fact which, though not in issue, is no connected with the fact in issue "as to form part of same transaction" becomes relevant by itself. In other words, Section 6 enacts the law that acts, declarations and incidents which constitute or accompany and explain the facts or transaction in issue are admissible for or against either party as forming parts

of the *res gestae*. Therefore, the evidence of P.W.2 to the effect that he informed the incident to P.W.1 is relevant u/s 6 of the Act.

22. P.W.3 is the wife of P.W.2. According to her evidence, after the dinner at about 10.30 p.m. they went to sleep. The accused and his wife slept in their rooms and herself and P.W.2 slept in their room. As far as this part of statement is concerned, it has not been denied or disputed in the cross examination. Once a fact has been stated by witness and the same has not been denied or disputed in the cross examination, it can be said that such a fact is admitted. Therefore from the evidence of P.W.3, it is clear that on the date of incident, the accused and the deceased alone slept in their room. No doubt she made improvements stating that during mid night, she heard cries at about 10.30 p.m. and she found the accused going to his bed room and that her husband returned to home at about 11 p.m. and she heard P.W.2 crying. This part of the evidence can be said to be improvement because those aspects have not been stated by witness to the police during the course of investigation when she was examined under sub-section (3) of Section 161 Cr.P.C. Therefore at best this improvement can be brushed aside and this improvement cannot be a material omission so as to doubt her evidence and to that extent only, her evidence cannot be accepted.

23. P.W.4 is the another daughter of P.W.1 who is residing with P.W.1. According to her, at about 12.30 mid night, P.W.2 came to the house of P.W. 1 and informed that the accused tied the head of the deceased to the gate of the house and placed the trunk in the front yard. They rushed to the scene of occurrence. No suggestion was given to this witness with regard to the above statement. Therefore, the evidence of P.W.2 that he went to the house of P.W.1 and informed about the incident, remained unchallenged.

24. P.W.5 is the neighbour to the accused. It is not in dispute that his house is located to quite opposite to the house of the accused. His evidence would clearly go to show that the accused and his wife were residing in the portion of the house which contains two rooms. Though he stated that the deceased was killed by the accused on the intervening night of at about 12.30 and 12.45 mid night, but he is not an eye witness to the incident. Therefore his evidence can be taken to the extent that the accused and his wife were residing in the portion of the house at the relevant point of time of incident.

25. P.W.6 is also resident of the locality and a tenant in the portion of the house of the accused. His evidence does not incriminate anything against the accused. He stated that he found trunk in front of the house and head of the deceased was tied to the gate. But his evidence is relevant with regard to the motive.

26. P.Ws.4 to 6 have categorically stated that the accused was having a suspicion against the character of the deceased. That evidence was also remained unchallenged because there was no cross examination.

27. P.W.7 is another tenant of P.W.2. He stated that the accused developed suspicion against the character of the deceased. However, he made certain

improvements viz., that on the date of incident at about 10.30 p.m. himself and his wife were chitchatting and at that time, the accused and his wife also chitchatting; that at about 10.30 p.m. the accused and the deceased went inside their house; that at about 12.10 mid night he came out of his portion on hearing the cries of P.W.2; that P.W.2 informed him that the accused killed his wife and left the house. These aspects have been clearly admitted by P.W.14 to the effect that P.W.7 has not stated those aspects before him. This aspect is clearly an improvement. Simply because a witness is making improvements in the evidence that cannot a ground to discredit his entire testimony. The fact that P.W.7 is a tenant of P.W.2 is not a dispute. The fact that the accused and the deceased were residing in the portion of the house is not denied or disputed. Therefore, to that extent only his evidence can be taken into consideration. An improvement would not discredit the evidence of a witness. The evidence of a witness will have to be assessed by its intrinsic worth.

28. In view of the above discussion, it is clear that there is no scope or possibility for any third person to commit the murder of the deceased in such a inhuman manner which is shocking to everybody. If it is a case of some third person attacking the deceased, there would be a some resistance from the accused at the time of incident and there would be a forcible entry by outsiders into the house causing damage to the doors. As seen from the Observation Report, no damage was caused to the main entrance door of the portion of the house in which accused and deceased were residing. If it is a case of third person causing the death, the trunk and the head of the deceased would have been found in the bed room of the accused only. If a third party assailant caused an injury, there is no need for them to carry the trunk and left the trunk in front of the house and tied the head of the deceased to the gate. Therefore the possibility of third person committing the act is ruled out, then, there is a scope for the accused alone to commit the murder as he himself and the deceased were alone were residing in their portion along with the minor children aged about 7 and 5 years.

29. There is no dispute with regard to the scene of occurrence. P.W.9 is the one of the mediators at the time of observation of the scene of occurrence. The place of occurrence is the bed room of the accused. Ex.P-4 is observation report scribed by P.W. 15 in the presence of P.W.9. As seen from Ex.P-4, it is clear that the house is consisting of two rooms, 1st room is the kitchen and another room is bed room, on the western side there is double cot bed, upon which red and white colour bed sheet is covered and two green colour pillows on the southern side towards head of the cot, on the said bed sheet (bontha) the pool of blood is found dry and there was earth control marks of blood from the bed room of the accused to the place where trunk of the body lying. They have found the blood stains dry on the floor. Therefore it suggests that after killing the deceased the trunk of the deceased was dragged outside of the bed room. Except a suggestion that police obtained his signatures on the blank papers, nothing has been elicited to discredit the testimony of P.W.9 and the recitals in Ex.P-4. Even the accused did not deny about scene of occurrence and what his only contention is that, he

was not present at the house on that date.

30. The police also conducted inquest on the dead body of the deceased under Ex.P-3 and found the trunk in front of the house and head tied to the gate. The inquest mediators report is Ex.P-3. The deceased died as a result of severance of head. Similarly P.W.11 is the Doctor who conducted autopsy on the dead body of the deceased on the same day and opined that the cause of the death is due to decapitation of the neck totally separated from the body (cutting neck muscles, major blood vessels and nerves trachea and esophagus). He opined that separation of the neck from the body of the deceased is possible to have been caused with a knife. The evidence of P.W.11 and the recitals in Ex.P-11 were remained unchallenged. Therefore, homicidal nature of the death of the deceased is established beyond all reasonable doubt.

31. P.W.15 arrested the accused on 20-06-2010 at about 3.45 p.m. The accused gave a confessional statement, Ex.P-6 offering to show the place where he had kept the blood stained knife etc. In pursuance of the said confession statement, the accused led the police and mediators to his house and produced the same from his house. They were seized by the police as per Ex.P-7, seizure report. When these material objects have been sent to the Forensic Science Laboratory, the chemical examiner found human blood on these items. Similarly the police also seized the certain clothes of the deceased viz., the blouse, saree and petty coat of the deceased. They contained B group of blood but the same group of blood has not been found on the clothes of the deceased or the knife allegedly used in commission of offence. The prosecution need not prove its case with a conclusive proof because the material objects contained human blood, it can be said to be incriminating against accused. There is a possibility for the assailant to use the weapon like M.O.16 in the commission of offence. Therefore this circumstance can be taken as an additional link in the chain of circumstances to infer that it is the accused and none else who committed the offence of murder of his own wife. So in view of the above discussion, it is clear that the prosecution established its case beyond all reasonable doubt for the charge u/s 302 IPC. Therefore the conviction of the appellant u/s 302 IPC is sustainable under law.

32. The plea of the accused was that on the date of the incident he was present at Hyderabad. The burden is on the accused to show that he was somewhere else other than the place of occurrence at the time of incident. He has to establish his plea of alibi by positive evidence. But he failed to establish the same by preponderance of probability. This plea appears to be false in view of the fact that prosecution discharged its burden in proving the charge beyond all reasonable doubt. This false plea can be taken as additional link to the chain of circumstances.

33. Coming to the question of sentence, the learned counsel for the appellant placed reliance on the decisions reported in Brajendrasingh Vs. State of Madhya Pradesh, wherein, the Supreme Court in para 23 held as follows:

23. Now, coming to the question of quantum of sentence, it is always appropriate for this Court to remind itself of the need for recording of special reasons, as contemplated u/s 354(3) Code of Criminal Procedure, where the Court proposes to award the extreme penalty of death to an accused. This leads us to place on record the principles governing exercise of such discretion which have been stated in a very recent judgment of this Bench in the case of Ramnaresh (supra) wherein the Court, after considering the entire law on the subject, recapitulated and enunciated the aggravating and mitigating circumstances as well as the principles that should guide the judicial discretion of the Court in such cases. This Court held as under:

The above judgments provide us with the dicta of the Court relating to imposition of death penalty. Merely because a crime is heinous per se may not be a sufficient reason for the imposition of death penalty without reference to the other factors and attendant circumstances.

Most of the heinous crimes under the Indian Penal Code are punishable by death penalty or life imprisonment. That by itself does not suggest that in all such offences, penalty of death should be awarded. We must notice, even at the cost of repetition, that in such cases awarding of life imprisonment would be a rule, while "death" would be the exception. The term "rarest of rare case" which is the consistent determinative rule declared by this Court, itself suggests that it has to be an exceptional case. The life of a particular individual cannot be taken away except according to the procedure established by law and that is the constitutional mandate. The law contemplates recording of special reasons and, therefore, the expression "special" has to be given a definite meaning and connotation. "Special reasons" in contra-distinction to "reasons" simpliciter conveys the legislative mandate of putting a restriction on exercise of judicial discretion by placing the requirement of special reasons.

Since, the later judgments of this Court have added to the principles stated by this Court in the case of Bachan Singh (supra) and Machhi Singh (supra), it will be useful to restate the stated principles while also bringing them in consonance, with the recent judgments.

The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in the case of Bachan Singh (supra) and thereafter, in the case of 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 circumstance". 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 u/s 354(3) Code of Criminal Procedure.

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 u/s 43 Code of Criminal Procedure.
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 pre-ordained 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 eye-witness though prosecution has brought home the guilt of the accused.

While determining the questions relatable to sentencing policy, the Court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

Principles:

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 circumstances.

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.

Stated broadly, these are the accepted indicators for the exercise of judicial discretion but it is always preferred not to fetter the judicial discretion by

attempting to make the excessive enumeration, in one way or another. In other words, these are the considerations which may collectively or otherwise weigh in the mind of the Court, while exercising its jurisdiction. It is difficult to state, it as an absolute rule. Every case has to be decided on its own merits. The judicial pronouncements, can only state the precepts that may govern the exercise of judicial discretion to a limited extent. Justice may be done on the facts of each case. These are the factors which the Court may consider in its endeavour to do complete justice between the parties.

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.

Every punishment imposed is bound to have its effect not only on the accused alone, but also on the society as a whole. Thus, the Courts should consider retributive and deterrent aspect of punishment while imposing the extreme punishment of death. Wherever, the offence which is committed, manner in which it is committed, its attendant circumstances and the motive and status of the victim, undoubtedly brings the case within the ambit of "rarest of rare" cases and the Court finds that the imposition of life imprisonment would be inflicting of inadequate punishment, the Court may award death penalty. Wherever, the case falls in any of the exceptions to the "rarest of rare" cases, the Court may exercise its judicial discretion while imposing life imprisonment in place of death sentence.

34. He also relied upon the decision reported in *Ajay Pandit @ Jagdish Dayabhai Patel and Another Vs. State of Maharashtra*, wherein, in para 43, it was held thus:

43. Later, in *Allauddin Mian and Others Vs. State of Bihar*, this Court also considered the effect of non-compliance of Section 235(2) Code of Criminal Procedure and held that the provision is mandatory. The operative portion of the judgment reads as follows:

10. ...The requirement of hearing the accused is intended to satisfy the rule of natural justice. It is a fundamental requirement of fair play that the accused who was hitherto concentrating on the prosecution evidence on the question of guilt should, on being found guilty, be asked if he has anything to say or any evidence to tender on the question of sentence. This is all the more necessary since the Courts are generally required to make the choice from a wide range of discretion in the matter of sentencing. To assist the Court in determining the correct

sentence to be imposed the legislature introduced Sub-section (2) to Section 235. The said provision therefore satisfies a dual purpose; it satisfies the rule of natural justice by according to the accused an opportunity of being heard on the question of sentence and at the same time helps the Court to choose the sentence to be awarded. Since the provision is intended to give the accused an opportunity to place before the Court all the relevant material having a bearing on the question of sentence there can be no doubt that the provision is salutary and must be strictly followed. It is clearly mandatory and should not be treated as a mere formality.

35. Similarly, the learned Public Prosecutor relied on the decisions reported in *Bachan Singh Vs. State of Punjab*, wherein the Supreme Court in paras 202 and 206 held as follows:

202. In *Rajendra Prasad*, the majority said: "It is constitutionally permissible to swing a criminal out of corporeal existence only if the security of State and society, public order and the interests of the general public compel that course as provided in Article 19(2) to (6)." Our objection is only to the word "only". While it may be conceded that a murder which directly threatens, or has an extreme potentiality to harm or endanger the security of State and society, public order and the interests of the general public, may provide "special reasons" to justify the imposition of the extreme penalty on the person convicted of such a heinous murder, it is not possible to agree that imposition of death penalty on murderers who do not fall within this narrow category is constitutionally impermissible. We have discussed and held above that the impugned provisions in Section 302, Penal Code, being reasonable and in the general public interest, do not offend Article 19, or its "ethos"; nor do they in any manner violate Articles 21 and 14. All the reasons given by us for upholding the validity of Section 302, Penal Code, fully apply to the case of Section 354(3), Cr.P.C., also. The same criticism applies to the view taken in *Bishnu Deo Shaw Vs. State of West Bengal*, which follows the dictum in *Rajendra Prasad* (ibid).

206. According to some Indian decisions, the post-murder remorse, penitence or repentance by the murderer is not a factor which may induce the Court to pass the lesser penalty (e.g. *Emperor Vs. Mominuddi Sardar*,). But those decisions can no longer be held to be good law in view of the current penological trends and the sentencing policy outlined in Sections 235(2) and 354(3). We have already extracted the views of Messenger and Bittner (ibid), which are in point.

36. He also relied upon a decision reported in *Machhi Singh and Others Vs. State of Punjab*, paras 38 & 39, wherein the Supreme Court in paras 38 and 39 held as follows:

8. In order to apply these guidelines inter-alia the following questions may be asked and answered:

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

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

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

37. He also relied upon a decision reported in State of Rajasthan Vs. Kheraj Ram, wherein, the Supreme Court in paras 37 and 38, held as follows:

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

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

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

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

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

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

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

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances 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.

38. As per the above principles, it has to be seen that whether case falls under rarest of the rare cases. No doubt the act of the accused is very inhuman and shocking the conscious of any prudent man because after separating the head from the body, the trunk of the body was dragged in front of the house and head was tied to the gate. There is absolutely no evidence to show as to what

circumstances, the accused has taken extreme recourse to do away the life of his wife. There is no evidence to show that the accused has entertained any animosity so as to eliminate the deceased. Similarly there is no evidence to show as to what transpired in the house on the factual day. The incident has taken place in four corners of the house. For about eight years accused and deceased lived together and they were blessed with two children. The accused used to quarrel with deceased having suspicion about her character. It is not the case of prosecution that the accused saw the deceased with some other person in compromising position so that it gave the accused grave and sudden provocation. The act of the accused found to be deliberate. From the facts and circumstances, the case does not fall under rarest of rare case.

39. One of the contentions raised by the learned counsel for the appellant is that Section 235(2) Cr.P.C. has not been properly enforced by the learned Sessions Judge because the learned Sessions Judge has not elicited any information from the accused so as to impose the extreme penalty of death sentence. On this aspect, he relied upon a decision reported in *Rajesh Kumar Vs. State through Govt. of NCT of Delhi*, wherein in para 52, it was held as follows:

52. Therefore, it is clear from the purpose of Section 235(2) as explained in the aforesaid cases, that the object of hearing u/s 235(2) being intrinsically and inherently connected with the sentencing procedure, the provision of Section 354(3) which calls for recording of special reason for awarding death sentence must be read conjointly with Section 235(2) of 1973 Code. This Court is of the opinion that special reasons can only be validly recorded if an effective opportunity of hearing contemplated u/s 235(2) of Code of Criminal Procedure is genuinely extended and is allowed to be exercised by the accused who stands convicted and is awaiting the sentence. These two provisions do not stand in isolation but must be construed as supplementing each other as ensuring the constitutional guarantee of a just, fair and reasonable procedure in the exercise of sentencing discretion by the court.

40. He also relied on *Ajay Pandit Alias Jagdish Dayabhai Patel (supra)*, wherein the Supreme Court in para 46, held as follows:

33. In our view, the principles laid down in the above cited judgments squarely applies on the question of awarding of sentence and we find from the records that the High Court has only mechanically recorded what the accused has said and no attempt has been made to elicit any information or particulars from the accused or the prosecution which are relevant for awarding a proper sentence. The accused, of course, was informed by the Court of the nature of the show-cause-notice. What was the nature of show cause notice? The nature of the show-cause-notice was whether the life sentence awarded by the trial court be not enhanced to death penalty. No genuine effort has been made by the Court to elicit any information either from the accused or the prosecution as to whether any circumstance exists which might influence the Court to avoid and not to award death sentence.

41. He also relied on Absar Alam @ Afsar Alam Vs. State of Bihar,), wherein, the Supreme Court in para 7, held as follows:

7. In Gyasuddin Khan @ Md. Gyasuddin Khan Vs. The State of Bihar, , the facts were that in the morning hours of 09.04.1996, in the precincts of a police camp stationed near a village in Bihar, a policeman deployed in the police picket to contain the terrorist activities, unleashed terror by indulging in a firing spree, killing three of his colleagues instantaneously and this Court, relying on Shamshul Kanwar Vs. State of U.P., Om Prakash Vs. State of Haryana, held that the mental condition or state of mind of the accused is one of the factors that can be taken into account in considering the question of sentence and in the facts of the case, the killing of two other policemen without premeditation and without any motive whatsoever was an act done out of panic reaction and in a state of frenzy and it was not one of the rarest of rare cases where death sentence could be awarded.

42. No doubt as seen from the above decisions, it is clear that the Court ought to have taken active role in eliciting information with regard to the imposition of sentence. As seen from the impugned judgment, when the Court questioned him with regard to the quantum of sentence to be imposed, for which, the accused stated that he is nothing to state. He has requested the Court to reduce the quantum of sentence. The defence counsel requested the Court to take a lenient view. From the above circumstances, it is not a case of violation of the mandatory provision of Section 235(2) Cr.P.C.

43. For the aforesaid reasons, we are of the opinion that in the absence of any circumstances preceding the incident resulting the death, though the act committed by the accused is very heinous in nature, it will not come under the rarest of the rare cases. Therefore imposing extreme penalty of sentence of death is not warranted in the facts and circumstances of the case. But however, considering the facts that an inhuman act has been caused by the accused, we impose the sentence of imprisonment for life with a direction that he shall not be released from the prison till the rest of his life in view of the decision reported in Swamy Shraddananda @ Murali Manohar Mishra Vs. State of Karnataka, , wherein it was held in para 66 as follows:

66. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment that subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then the Court should do? If the Court's option is limited only to two punishments, one a sentence of

imprisonment, for all intents and purposes, of not more than 14 years and the other death, the court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the court, i.e., the vast hiatus between 14 years" imprisonment and death. It needs to be emphasized that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years imprisonment would amount to no punishment at all.

It is further held:

In the light of the discussion made, above we are clearly of the view that there is good strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of fourteen years and further to direct that the convict must not be released from prison for the rest of his life or for the actual term as specified in the order, as the case may be.

44. In the result, the Referred Trial No. 2 of 2012 is answered. Crl.A. No. 930 of 2011 is allowed in part. Accordingly, the conviction of the trial Court is confirmed. The sentence of imprisonment for death is set aside instead the minimum sentence prescribed u/s 302 IPC is imposed sentencing him to undergo imprisonment for life with a direction that the appellant shall not be released from the prison till the end of his life. Miscellaneous petitions if any pending shall stand closed.