

(2020) 04 GAU CK 0004

In the Gauhati High Court

Case No : Criminal Appeal (J) No. 118 Of 2018, Death Sentence Reference No. 4 Of 2018

Noliram Kro

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 22-04-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 37, 43, 129, 313, 366, 374(2)
Indian Penal Code, 1860 — Section 302
Evidence Act, 1872 — Section 106

Citation : (2020) 04 GAU CK 0004

Hon'ble Judges : Suman Shyam, J;Hitesh Kumar Sarma, J

Bench : Division Bench

Advocate : Bijita Sarma, P C Dey

Final Decision : Disposed Off

Judgement

Hitesh Kumar Sarma, J

1. The criminal appeal (Jail) has been filed under Section 374(2) of the Cr.PC, against the judgment and order, dated 27-09-2018 and 01-10-2018

respectively, passed by the learned Sessions Judge, Karbi Anglong, Diphu, in Sessions Case No. 15 of 2016, convicting the accused-appellant, Sri

Naliram Kro and sentencing him to death by hanging and to pay a fine of Rs. 6,000/-. The death reference is made by the learned Sessions Court for

confirmation of the sentence by this Court.

2. As the Criminal Appeal and the Death Reference have arisen out of the same judgment, we have heard them together and disposed of by this

common judgment and order.

3. We have the heard learned Amicus-curiae, Ms. B Sarma for the appellant. Also

heard Mr. M. Phukan, learned Additional Public Prosecutor for the state respondent and learned counsel, Mr. P.C. Dey, appearing for the respondent No.2/informant. We have also perused the trial Court records and the judgment appealed against.

4. The prosecution case, in a narrow compass, is that at about 11.15 pm, on 19.06.2015, the elder brother of the informant (PW8) had quarrelled with his wife, Smti. Moina Hansepi and killed her by hacking with a dao. He also killed his six yearsâ?? old son, Ananda Kro and four yearsâ?? old daughter, Smti Manjumi Kropi. The occurrence took place in one of the rooms of the house of the accused-appellant. The other two sons of the accused-appellant, namely, Kiran Kro and Longbeha Kro, who were in the next room of the house, had fled away on being instructed by their mother (deceased Moina) to save their lives.

5. On the basis of above facts, PW8, Rongbon Kro, lodged the FIR (Ext.5) with Dokmoka Police Station which entered the same in the General Diary

vide GD Entry No. 334, dated 20-06-2015 and registered a case, being No. 55/2015, under Section 302 of the IPC. PW9, Sri Kalpajit Sarmah took up

the investigation of the case, arrested the accused-appellant, prepared the sketch map of the place of occurrence, seized the weapon of offence (M.

Ext.1) vide Ext4, got the post mortem examination of the dead bodies of the deceased persons conducted, collected evidence, and on completion of

investigation, laid the charge-sheet against the accused-appellant, under section 302 of the IPC.

6. After exhausting all required legal formalities, the case came up before learned Sessions Judge, Karbi Anglong, Diphu, for trial. The learned trial

Court framed a formal charge against the accused-appellant under Section 302 of the IPC to which he pleaded innocence. Therefore, the trial

commenced.

7. On conclusion of the trial, the accused-appellant was convicted for offence punishable under Section 302 of the IPC and sentenced him as indicated

above.

8. The prosecution examined as many as 9 witnesses to bring home the charge against the accused-appellant whereas the defence examined none. In

his statement under Section 313 of the Cr.P.C., the accused-appellant admitted the incriminating evidence brought against him by the prosecution. He

also admitted that he had committed the crime.

9. To ascertain as to whether the deaths involved in this case, are homicidal or not, let us, first, scrutinize the evidence of the autopsy doctor, examined as PW3.

10. PW3, Dr. Sarsing Rongpi, performed the post mortem examination on the dead bodies of deceased, Moina Hansep, Anada Kro and Monjumi

Kropi, on 20-06-2015, at Diphu Civil Hospital and recorded his findings vide Exts. 1, 2 and 3, as follows:

(Ext. 1),

â??PM done on a female dead body namely Smt. Moina Hansep

Body was found fresh. Rigor mortis was present. On external examination found â?" cut injury on the right palm and fingers. Cut injury on check, size

was about 3 inches in length x half inches in breadth. Cut injuries on the left side of the neck. Size was about 3 inches x 2 inches.

In my opinion the cause of death was haemorrhage shock following multiple cut injuries.

(Ext. 2),

â??PM done on a male dead body namely Anada Kro 6 years old.

Body was found fresh. Rigor mortis was present. On external examination found â?" cut injuries on the back side of the neck. Sizes were 3 inches x 2

inches and another 1 inch x ½ inches. There is also a cut injury on the right side of the chest. Size is 4 inches x ½ inches approx.

In my opinion the cause of death was haemorrhage shock following multiple cut injuries.â??

(Ext. 3),

â??PM done on a female dead body namely Monjumi Kropi 4 years old.

Body was found fresh. Rigor mortis was present. On external examination found â?" cut injuries on the skull over temporo partial region. Size is about

6 inches x 2 inches in depth. A deep cut injury on the temporo parietal region of the skull size about 6 inches x 2 inches in depth. Fracture of skull

bones causing injury to the membrane and brain matter In my opinion the cause of death was haemorrhage shock following head injury.â??

11. PW3 has opined that the deaths were due to haemorrhage and shock resulting from the injuries as described and were homicidal in nature. In his

cross-examination, PW3 has asserted that the deaths were due to the cut injuries. The evidence of the PW3 remained completely unassailed. The

evidence of PW6 leaves us with no doubt that the deaths of the deceased persons were homicidal in nature.

12. PW1, Sri Kiran Kro, is one of the surviving sons of the appellant. On 24-01-2018, i.e., the date of deposition in the Court, he was 15 years of age.

Therefore, on the date of occurrence i.e. 19-06-2015 he was about 12 years of age. He deposed that the appellant is his father. The deceased, Moina

Hansepi, was his mother and deceased, Ananda Kro and Manjuli Kropi, were his brother and younger sister respectively. The occurrence had taken

place at about 11.00 pm on a day, in the year 2015. In one of the rooms of their dwelling house, his father and the three deceased used to sleep. He

and his younger brother Longbeha Kro (PW2) used to sleep in another room. At the time of occurrence, he heard the appellant and his mother were

quarrelling. He also heard screaming of his deceased mother after she was fatally assaulted with a weapon. It has come out from his evidence that at

the time of occurrence, apart from him, his younger brother, the appellant and the three deceased persons were present in the house. Hearing the

scream of his mother, he had hidden himself in a room and at that point of time, he had also heard his deceased brother and the deceased sister were

crying and the appellant asked them not to cry. Since they did not stop crying, the appellant had cut them. Thereafter, he had heard his mother asking

him and his younger brother to leave the house. They left their house and went to the house of nearby people and told them about the occurrence.

They had spent the night in the said house. He is very categorical that he could sense that the appellant was present at the place of occurrence at the

relevant time. In his cross-examination, he deposed that he did not know the reason for which the quarrel had taken place between the appellant and

his deceased mother. The appellant had cut the deceased persons with a dao. Next morning, this witness had come to know after he came back

home, that the deceased persons had died.

13. PW2, Sri Longbeha Kro, is the other brother of PW1 and the son of the appellant. On the date of recording his evidence, i.e. on 24-01-2018, he

was 11 years of age and as such on the date of occurrence; he was about 8 years old. His evidence is exactly the same as that of his elder brother

(PW1). He deposed that the occurrence took place at about 11.00 pm on 19-06-2015 and at the time, he heard his mother screaming. At that time, he could sense the presence of his father in the room where the occurrence had taken place. Subsequently, his father fled away from the room. On instruction of his deceased mother, he and PW1 fled away from the house and took shelter in the house of a neighbour. Both of them spent the rest of the night in the house of the neighbour. In the next morning, they came back home and learnt that the deceased persons had died. He did not see his father in their house in the morning. Later on, police had apprehended his father. In his cross-examination, he has deposed that a quarrel had taken place between his father and his mother. He had heard his deceased mother instructing them to flee away.

14. PW4, Kulendra Das, was on duty in the police station as Sentry. He has deposed that at about 2 Oâ??clock, the appellant went to the police station with a blood stained dao and on being asked, he told him that he had come after cutting three persons. Then, this witness had convinced the appellant to keep the dao on a paper and got him seated at the verandah of the police station. He had also offered him a glass of water to pacify him. The appellant had taken the water. Again, on being asked by this witness, the appellant told him that he had cut his wife and two children. This witness, thereafter, informed the Officer-in-Charge of the police station, over phone, as he was at his official residence at that point of time. The Officer-in-Charge sent the second officer to the police station and the second officer had taken custody of the appellant as well as the blood stained dao. Thereafter, the second officer had proceeded, with his staff, to the place of occurrence. After coming back to the police station, the second officer had seized the dao in his presence vide Ext.4 wherein he had put his signature as witness vide Ext. 4(1). He had also exhibited the seized dao in the Court as M. Ext. No. 1. In his cross-examination, he deposed that the appellant did not disclose before him as to what for he had cut his wife and the children.

15. PW5, Sri Profulla Nath, is another police person doing Sentry duty in the Dokmoka Police Station on the date of occurrence. He deposed that at about 1.30 am, in the intervening night of 19-06-2015 and 20-06-2015, the appellant came to the police station with a dao in his hand and told him that

he had killed his wife and two children with the dao. Then, this witness went to the official quarter of the Officer-in-Charge of the Police Station and informed him about the above facts. On arrival of the Officer-in-Charge of the Police Station, he had seized the dao from the appellant and had put him in the lockup. The Officer-in-Charge had seized the dao in his presence vide Ext.4 where he had put his signature vide Ext.4(2). He had exhibited the seized dao in the Court as M. Ext. No. 1. In his cross-examination, he deposed that on being asked as to what for he had killed his wife and children, the appellant had told him that he had done so as he was not in a fit mental condition. This witness further deposed, in his cross-examination, that he had come to know from the villagers that the appellant had mental ailments.

16. PW6, Sri Paniram Kro, is the brother of the appellant. His evidence is that the occurrence took place at about 11.00 pm on 19-06-2015. This witness resides about half-a-kilometre away from the house of the appellant. At about 3.00 am, in the intervening night of 19-06-2015 and 20-06-2015, a neighbour of the appellant came to his house and told him that the appellant had killed his wife, 5/6 years old son Ananda and the daughter Monjumi. He immediately rushed to the place of occurrence and found the dead body of Moina, i.e., the wife of the appellant, lying on the ground and the dead bodies of the two children on the bed. He had seen the cut injuries on the back of the deceased Moina and cut injuries on the neck and on the forehead of the deceased Ananda and Manjumi. He did not find the appellant at the place of occurrence when he had gone there. This witness has also deposed that the accused had surrendered in the police station. He had also come to know that the appellant had admitted to have killed his wife and two children. He was present while the dead bodies were sent for post-mortem examination in the Diphu Government Hospital. In his cross-examination, he deposed that the appellant was suffering from mental ailments now and then since the year 2011.

17. PW7, Sri Ram Sing Kro, is the father of the informant (PW8). His residence is situated at a distance of about half-a-kilometre away from the house of the appellant. In the next morning of the date of occurrence, he was informed by a neighbour of the appellant that an incident had taken place in the house of the appellant in the previous night. The appellant is his nephew. Therefore, he immediately rushed to the house of the appellant

and there he found that the dead body of the deceased/wife of the appellant was lying on the ground near the bed and the dead bodies of the two children were on the bed. The police as well as the villagers had also arrived at the place of occurrence at that point of time. He came to know from the police that the appellant had surrendered in the police station and admitted that he had killed his wife and the two children. In his cross-examination, the witness has deposed that the appellant was a mentally sick person and during the time of mental ailment, he used to suspect everybody.

18. PW8, Sri Rongbon Kro, is the informant and a cousin of the appellant. He has deposed that in the night of occurrence, his father (PW7) told him, over phone, to come home stating that some incident had taken place in their house. He was staying in a rented house at Diphu undergoing his post graduate studies. But, he came next morning and reached home at about 9.30 am and, thereafter, he went to the house of the appellant and found the dead body of the wife of the appellant lying on the ground and the dead bodies of six years old son and three year old daughter of the appellant lying on the bed with cut injuries on their bodies. He also deposed that the other two children of the appellant had fled away from their house at the time of occurrence to save their lives. He further deposed that he was told by PW7 (his father) and PW6 that the appellant had killed his wife and two children out of anger as his wife had told him to take medicine. This witness had lodged the FIR vide Ext.5 wherein Ext.5(1) is his signature. In his cross-examination, he deposed that the deceased wife had asked the appellant to take medicine as he was suffering from mental ailments since the year 2011. It has also come out from his evidence that in the year 2012, they had taken the appellant to the mental hospital at Tazpur for his treatment.

19. PW9, Sri Kalpajit Sarmah, is the Sub-Inspector of Police, posted at Dokmoka Police Station. It has come out from his evidence that at about 1.30 am, on 20-06-2015, the appellant went to the police station and informed that he had cut his wife and two children with the dao in his hand, and then surrendered. Such information was entered in the General Diary, vide GD Entry No. 334 dated 20-06-2015, by the Officer-in-Charge of the police station and instructed him to take necessary action. This witness seized the dao from the possession of the appellant in presence of witnesses. He also

exhibited the GD Entry and the seizure List, being Exts. 6 & 4 respectively. He also exhibited the seized dao as M. Ext. No. 1. At about 6.45 am on

20-06-2015 this witness went to the place of occurrence with the Officer-in-Charge of the police station, prepared sketch map of the scene of

occurrence vide Ext.7, recorded statements of the witnesses, conducted inquest upon the three dead bodies and sent the dead bodies to the Diphu

Civil Hospital for post mortem examination. Thereafter, the FIR was lodged in this case stating therein about the occurrence. Accordingly, the

Officer-in-Charge of the police station had registered police case NO. 55/2015 under Section 302 of the IPC and entrusted the investigation to him.

20. It appears from the evidence on record that there is no eye witness to the occurrence and as such there is no direct evidence. The entire

prosecution case rests on circumstantial evidence.

21. The evidence of PW1 and PW2, have corroborated the evidence of each other in respect of the occurrence. It has come out from their evidence

that at the time of the occurrence both of them were staying in a room of their dwelling house and in the other room, the appellant along with their

mother, brother Ananda and sister Mnjumi and the deceased were staying. According to both of them, a quarrel had taken place between the

appellant and their deceased mother and thereafter their father (the appellant), had fatally assaulted their mother with a weapon. The other two

deceased who were the son and the daughter of the appellant, namely, Ananda and Manjumi, aged about 6 years and 4 years respectively, were also

killed by the appellant by inflicting injuries upon them as they did not stop crying after their mother was assaulted by the appellant. Both the witnesses

have also stated that they had heard their mother, deceased Moina, screaming and instructing them to leave the house so as to save their lives. The

evidence of PW1 & PW2 is found to be consistent and truthful and therefore, any possibility of their evidence being the outcome of tutoring can be

completely ruled out.

22. The evidence of PW1 and PW2 shows that the appellant and the three deceased persons were the only persons in the room where the occurrence

took place and except the appellant all other inmates of the room were found dead with fatal injuries on their persons as indicated in the evidence of

PW3 (autopsy doctor) vide Exts. 1, 2 and 3 respectively.

23. The autopsy doctor (PW3) has opined that the deceased Moina Hansepi, Anand Kro and Manjumi Kropi had died due to grievous injuries

sustained in their bodies.

24. The evidence of PW1, PW2, PW6, PW7, PW8 and PW9 is very categorical that the dead bodies of the three deceased persons were found lying

at the place of occurrence, i.e., inside the room of the dwelling house where they used to sleep with the appellant.

25. PW4 and PW5 are police personnel. Both of them deposed that they were on Sentry duty in Dokmoka Police Station on the night of the

occurrence and the appellant had appeared in the police station with a blood stained dao in his hand, which was, later on, seized vide Ext.4 in their

presence. Both of them had put their signatures in the seizure list vide Ext.4(1) and 4(2) respectively. The PW4 deposed that immediately after

appearance of the appellant in the police station with a dao in his hand, he had informed the same to the Officer-in-Charge, who, in turn, had sent the

second officer to the police station. Then, the second officer, examined as PW9, had seized the dao from the possession of the appellant, vide Ext.4.

The evidence of PW5 has corroborated the evidence of PW4 as regards the appearance of appellant at the police station with a dao in his hand.

There are minor factual discrepancies as to who had seized the dao from the possession of the appellant. According to PW4, the dao was seized by

the second officer but according to PW5, it is the Officer-in-Charge of the Police Station. But, the evidence of PW9, the SI of Police of the said police

station, shows that at the relevant point of time, he was in the police station and on receipt of the information from the Officer-in-Charge, over phone,

he had seized the dao from the possession of the appellant in presence of witnesses, vide Ext.4. The contents of Ext.4 also shows that PW9 had

seized the dao in presence of PWs 4 & 5. The evidence of PW5 to the effect that he had informed about the appearance of the appellant in the police

station to the Officer-in-Charge in his quarter receives corroboration from the fact that the Officer-in-Charge in turn had told PW9, over phone, about

the incident instructing him to take necessary action. The evidence of PWs 4 and 5 also shows that the appellant had told them that he had killed his

wife and two children by cutting them with the dao he was carrying. The evidence of PWs 4 and 5 as regards the fact of surrender of the appellant in

the police station with a dao in his hand has remained completely unassailed during their cross-examination.

26. From the evidence of PWs.6, 7 & 8, it appears that they had adduced oral evidence to suggest that the appellant was mentally unsound. The

evidence of PW5 also shows that on being asked as to what for he had killed his wife and children, the appellant had told him that he had killed them

as he was mentally unsound. The evidence of PW8 shows that the quarrel between the appellant and his deceased wife had taken place as his wife

(deceased) had asked him to take medicine for his mental ailments. It has also come out from the evidence of PWs. 6 & 8 that the appellant was

suffering from some mental ailment since the year 2011 and in the year 2012, he was even taken to the mental hospital at Tezpur for treatment.

However, there is no medical evidence, documentary or oral, to substantiate the evidence of PWs. 6 & 8 in respect of the mental unsoundness of the

appellant at any point of time, particularly at the relevant time of occurrence.

27. Evidently, PW8 had visited the place of occurrence on the next day of the day of occurrence. He has categorically stated that he had heard about

the fact that the appellant and his wife (deceased) had a quarrel before the occurrence from PWs. 6 & 7. But, PWs 6 & 7 themselves have not stated

about such fact in their evidence and have also not deposed that they had ever told PW8 about any quarrel between the appellant and his wife

(deceased). In the absence of any medical evidence as to his mental health at the time of occurrence, we are unable to take a view on the question of

mental unsoundness or insanity of the appellant being the plausible cause of the incident.

28. On appreciation of the evidence on record, we have found the following circumstantial evidence against the appellant:

a) The evidence of PWs 1 & 2 shows that the appellant and the three deceased persons were only present in the room where the occurrence had

taken place and that except the appellant, other inmates were found dead with fatal injuries on their persons as indicated in Exts. 1, 2 and 3

respectively;

b) The evidence of PWs 1 & 2 shows that a quarrel had taken place between their mother (deceased) and the appellant just before the occurrence;

c) The PWs 1 & 2 had heard their mother screaming after she was assaulted and

they had also heard their deceased mother asking them to leave the house so that no harm could be caused to them by the appellant;

d) The evidence of PWs 1 & 2 also shows that on the instruction of their mother, they had fled away from their house and had taken refuge in the house of a neighbour and when they came back home, in the next morning, they did not find the appellant in the house and had only found the dead bodies of their mother, brother Ananda and sister Manjmli lying in the room with injuries on their bodies;

e) It has further come out from the evidence of PWs 1 & 2 that they had heard their father (appellant) asking the other two deceased, namely, Ananda and Manjumi, aged about 6 and 4 years respectively, to stop crying while assaulting their mother (deceased) and they were also killed by the appellant as they did not stop crying;

f) The absence of the appellant in his house in the next morning, as deposed by PWs 1 & 2, received corroboration from the evidence of PWs 4 & 5

as both of them deposed that the appellant had surrendered in the police station, with a dao in his hand, at about 1.30 am, in the intervening night of 19-

06-2015 and 20-06-2015.

g) The evidence of PWs 4 & 5 to the effect that the accused-appellant had admitted before them that he had killed his wife and two children is

corroborated by the evidence of PWs 1 & 2, as they had found the dead bodies of the wife of the appellant and his two children lying at the place of

occurrence.

h) The fact that the PW9 had seized the weapon of offence, i.e., the dao, from the possession of the appellant, vide Ext.4, is also a circumstance to

connect the appellant with the offence.

i) The appellant had also admitted, in his statement under Section 313 of the Cr.P.C. that he had killed his wife and two children, which is also another

circumstance against the appellant.

29. To appreciate as to whether the circumstances above are sufficient to hold that the accused-appellant had committed the crime, let us consider the

law as enunciated by the Honâ??ble Supreme Court in Hanumant Vs. State of Madhya Pradesh reported in AIR 1953 SC 34,3 dealing with the

nature of proof required to establish a criminal charge by circumstantial

evidence. The Honâ??ble Supreme Court has observed as under:

â??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.â??

30. The above principle has been consistently followed by the Apex Court in a catena of subsequent judgments. In *Sharad Birdhi Chand Sarda vs*

State Of Maharashtra, reported in AIR 1984 SC 1622, the Apex Court had laid down the following golden principles for proof of a criminal charge

which solely rests on circumstantial evidence:

â??152. 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 ""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.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.â??

31. From the evidence on record it has also come out that the accused-appellant and the victims were together at the relevant time of occurrence.

While the three victims staying with him had died and he is the only survivor, the appellant is required to give an explanation as to under what

circumstances the victims died as provided in Section 106 of the Indian Evidence Act. But, in his statement under Section 313 of the Cr.P.C., the

appellant has admitted to have committed the murder of the victims. Such admission of the appellant is an additional link to the circumstances narrated

above. The facts established by the above circumstances are so consistent that they unerringly point to the guilt of the appellant and are not

explainable to any other hypothesis except that the appellant is guilty.

32. In view of above, we hold that the order of conviction of the appellant recorded by the learned trial Court is based on cogent evidence on record

and, therefore, requires no interference.

33. Now, coming to the question of sentence/confirmation of sentence imposed by the learned trial Court, the law is well settled that imposition of life

imprisonment is a rule and awarding of death sentence is an exception and it is only in the rarest of rare cases that a sentence of death is to be

awarded.

34. The law, in respect of awarding of death sentence has been laid down in the case of Bachan Singh vs State Of Punjab, reported in (1980) 2 SCC

684 and Machhi Singh and Ors. V. State of Rajasthan, reported in 1983 (3) SCC 470. The principles which emerged in Bachan Singh (supra) have

been elaborated in Machhi Singh (supra).

35. In Bachan Singh (supra), the Apex Court, upon considering suggestions coming from the bar dealing with the standard of aggravating and

mitigating circumstances that have to be kept in mind while awarding death

sentence, has enumerated the following facts:

Aggravating Circumstances:

202. Drawing upon the penal statutes of the States in U.S.A. framed after Furman v, Georgia, in general, and Clauses 2(a), (b), (c), and (d) of the

Indian Penal Code (Amendment) Bill passed in 1978 by the Rajya Sabha, in particular, Dr. Chitale has suggested these "aggravating circumstances":

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

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

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was

committed -

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

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or

public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public

servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who

had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said

Code.

203. Stated broadly, there can be no objection to the acceptance of these indicators but as we have indicated already, we would prefer not to fetter

judicial discretion by attempting to make an exhaustive enumeration one way or the other.

Mitigating Circumstances :

206. Dr. Chitale has suggested these mitigating factors:

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

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

(2) The age of the 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.

207. We will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of

sentence. Some of these factors like extreme youth can instead be of compelling importance. In several States of India, there are in force special

enactments, according to which a 'child' that is, 'a person who at the date of murder was less than 16 years of age', cannot be tried, convicted and

sentenced to death or imprisonment for life for murder, nor dealt with according to the same criminal procedure as an adult. The special Acts provide

for a reformatory procedure for such juvenile offenders or children.â??

36. In *Bachan Singh (supra)*, the Honâ??ble Supreme Court has also laid down the guiding principle for awarding of death sentence. The relevant

paragraph of *Bachan Singh (supra)* is reproduced below:

â??209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of

aggravation. ""We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and

undulating society."" Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must

receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be

bloodthirsty. Hanging of murderers 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 caution and compassion which they have

always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts,

aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous 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.â??

37. In Machhi Singh (supra) the Honâ??ble Apex Court has held that the guidelines indicated in Bachan Singh case (supra) will have to be culled out

and applied to the facts of each individual case where the question of imposing of death sentences arises:

â??38. In this background the guidelines indicated in Bachan Singh case 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 case:

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

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

the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment

appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the

option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and

all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be

drawn up and in doing so the mitigating circumstances 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.â??

38. In Machhi Singh (supra) the Honâ??ble Apex Court also held that following situations to be considered in respect of awarding death sentence :

â??I. Manner of commission of Murder.

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

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

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

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

II. Motive for Commission of murder.

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over

property of a ward or a person under the control of the murderer or vis -a-vis whom the murderer is in a dominating position or in a position of trust, or

(c) a murder is committed in the course for betrayal of the mother land.

III. Anti-Social or Socially abhorrent nature of the crime.

35. (a) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances

which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place

or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting

dowry once again or to marry another woman on account of infatuation.

IV. Magnitude of Crime.

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

V. Personality of Victim of murder.

37. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder.

(b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-a vis whom the murderer is in a position

of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the

murder is committed for political or similar reasons other than personal reasons.â??

39. In paragraphs 35 and 36 of the impugned judgment, the learned trial Court has recorded the mitigating and aggravating circumstances. Both these

paragraphs are quoted below for convenience of discussion:

â??35. Only mitigating circumstance I have noticed as raised by the defence counsel is that the accused was not convicted earlier by the court law

and is a poor tribal people.

36. There must be the following aggravating circumstances in support of inflicting the death sentence:

(i) One victim of murder was the wife of the accused person and the rest victims of murder were too much minor helpless children of the accused.

One child was 6 years old and another was only 4 years old.

(ii) The accused made several dao blows to his deceased wife. The deceased children were cut to death on spot.

(iii) The occurrence took place inside the dwelling house of the accused in midnight. The accused was sufficiently matured at the time of occurrence.

(iv) The murders were premeditated.

40. In paragraph 37 of the impugned judgment, the learned Court below has observed as follows:

â??Therefore, on careful comparison of aggravating and mitigating circumstances in the present case, as above, and keeping in view the principle of

law laid down in the aforesaid case laws I am of the firm opinion that the

aggravating circumstances are grave and far more serious as against the mitigating circumstances pointed out on behalf of the accused person.â??

41. On quantum of sentence, Ms. B Sarma, learned Amicus Curiae has submitted, and Mr. M Phukan, learned Additional Public Prosecutor has fairly agreed that in the instant case when a balance sheet in respect of aggravating and mitigating circumstances is drawn, the mitigating circumstances weigh more in favour of the appellant and, therefore, this is not a case where the appellant is required to be awarded the extreme penalty of death sentence.

It has also been submitted by the learned Amicus Curiae and fairly agreed by the learned Additional Public Prosecutor that the case in hand does not fall in the category of the rarest of the rare cases for awarding death sentence.

42. The aggravating circumstances in this case are as follows:

- (a) The appellant had murdered his wife and two minor helpless children of 6 years and 4 years of age respectively;
- (b) The appellant being the husband and father respectively of the deceased persons was in a position of trust, which he has betrayed;
- (c) The appellant had brutally inflicted several cut injuries on each of the deceased persons, which had caused their death;
- (d) The crime of murder of the wife and two children of the appellant is enormous and they were killed mercilessly.

43. The mitigating circumstances, in the opinion of this Court, are as follows:

- (a) That the appellant was aged about 42 years at the relevant time of occurrence;
- (b) That immediately before the occurrence, there had taken place a quarrel between the appellant and his deceased wife;
- (c) That the appellant had surrendered in the police station with the weapon of offence in his hand immediately after the occurrence and had admitted that he had killed his wife and two children with the said weapon of offence;
- (d) That in his statement, under Section 313 of the Cr.P.C., the appellant had admitted that he had killed his wife and two children;
- (e) That there is absolutely no attempt made by the appellant to cover up his crime;
- (f) That although the learned trial Court had held, while referring to the

aggravating circumstances, that there was premeditation on the part of the appellant to commit the offence, but, on examination of the evidence on record, we fail to find any materials to hold that there was any premeditation on the part of the accused-appellant in the commission of the crime;

(g) The murder of the deceased was neither cold blooded nor for personal gain of the appellant.

(h) There is also no motive found from the evidence on record for commission of crime by the appellant;

(i) That the appellant was never convicted earlier.

44. In view of the aggravating and mitigating circumstances mentioned above, in our considered opinion, the mitigating circumstances, particularly, the age of the appellant, absence of premeditation, the fact that a quarrel had taken place between the appellant and his deceased wife immediately before the occurrence and that it was not a cold blooded crime committed by the appellant for his personal gain, weighed more in favour of the appellant.

45. In view of above, we do not find that the instant case falls within the ambit of the rarest of rare cases and, therefore, we hold that the death sentence awarded to the appellant is disproportionate to the crime committed by him. However, considering the fact that the appellant had killed three persons including his wife and two minor and helpless children brutally, to show too much leniency to him in respect of the punishment shall also not be in the greater interest of the society. Accordingly, in our view, the ends of justice will be met if we commute the death sentence awarded by the learned court below to life imprisonment and direct that he shall not be released from the prison for the rest of his life.

46. Accordingly, we commute the death sentence to imprisonment for life, which shall mean the rest of the life of the appellant.

47. The Reference under Section 366 of the Cr.P.C. is answered accordingly.

48. The appeal preferred by the appellant is, however, disposed of with the above modification in respect of the sentence.

49. We have also taken note of the submission of the learned counsel for the informant, Mr. P.C. Dey, that only a sum of Rs.1,50,000/- each as compensation to next of kin has been granted by the District Legal Services Authority as per direction of the learned trial Court contained in

paragraph 40 of the impugned judgment. It has also been brought to our notice that one of the two Next-of-Kin of the victim has died during the pendency of this appeal.

50. Mr. Dey has referred to the order of this Court in I.A. (Crl.) No. 823/2017 and submitted that referring to the decision of Honâ??ble Apex Court

in Suresh V. State of Haryana, reported in (2015) 2 SCC 227 and Manohar Singh v. State of Rajasthan, reported in (2015) 3 SCC 449, this Court had

directed the Assam State Legal Services Authority to pay an amount of Rs.5 Lakhs to the applicant as compensation being the victim of the crime.

That apart, as per the Assam Victim Compensation Scheme, 2012, as amended by Govt. of Assam vide Notification No. PLA.524/2015/Pt./190

(ECF-38361) dated 01-02-2019, compensation in case of death has been fixed at Rs.5 Lakhs. Therefore, we order that an amount of Rs.5 Lakhs be

paid as compensation to the surviving next of kin, i.e., the victim of the crime as provided in the Assam Victim Compensation Scheme, 2012 as

amended vide the Notification dated 01-02-2019, within 2 (two) months from the date of receipt of a certified copy of this order after deducting the

amount already received by the surviving next of kin. While releasing the amount, the Member Secretary, Assam State Legal Services Authority shall

ensure that the amount is put in a fixed deposit in the name of the next of kin of the victim of the crime in a nationalised bank till he attains the age of

21 years, with liberty to the jurisdictional Sessions Judge to release part of the said amount in case of extreme necessity of the next of kin of the victim

of the crime subject to recording his satisfaction with reasons.

51. Send down the LCR with a copy of this judgment and order.

52. A copy of this judgment be sent to the jurisdictional District Legal Services authority for compliance.

53. This Court records its appreciation for the assistance rendered by learned Amicus Curiae, Ms. B Sarma. We direct that the learned Amicus

Curiae be paid an amount of Rs. 7,500/-, as remuneration.