
(2015) 06 JH CK 0003

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) Nos. 1045 of 2005 and 146 of 2006

Santosh Kumar Chaurasia

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 354, 354(3), 43

Evidence Act, 1872 — Section 8

Penal Code, 1860 (IPC) — Section 302, 394

Citation : (2015) 06 JH CK 0003

Hon'ble Judges : Rakesh Ranjan Prasad, J; Ravi Nath Verma, J

Bench : Division Bench

Advocate : Saket Upadhyay, for the Appellant; T.N. Verma, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. These two criminal appeals, arising out of the same case, were heard together and are being disposed of by the common judgment.

2. Cr. Appeal (D.B.) No. 1045 of 2005 is directed against the judgment of conviction dated 23.7.2005 and the order of sentence dated 26.7.2005 passed by Additional Judicial Commissioner-II-cum-Special Judge-I, C.B.I. (AHD Scam), Ranchi in S.T. No. 252 of 2001, whereby and whereunder, the court having found the appellant guilty for committing murder of one Ira Roy and for committing robbery in her house convicted him for the offence punishable under Sections 302 and 394 of the Indian Penal Code and sentenced him to undergo imprisonment for life for the offence under Section 302 of the Indian Penal Code and further to undergo rigorous imprisonment for a period of ten years for the offence under Section 394 of the Indian Penal Code. Both the sentences were ordered to run concurrently.

3. Cr. Appeal (D.B.) No. 146 of 2006 has been preferred by the State for enhancement of sentence from imprisonment of life to death sentence.

4. The case of the prosecution is that Smt. Ira Roy, aged about 71 years, living alone in the 3rd Floor of her house situated at Bardwan Compound, Ranchi, was having one son living at Delhi and two daughters; one living at Kolkata and the other one Smt. Banani Verma-the informant (P.W. 16) living at Ranchi in other Mohalla along with her husband. The informant (P.W. 16) used to take care of her mother. Almost every day she used to have had talk with her mother in the morning and also in the night so that she could know that everything is fine. As usual, the informant (P.W. 16) talked to her mother at 10 am on 21.1.2000. In the night at 10 O'clock she again rang her but she did not get any response from her mother. She again and again tried but there was no response. Ultimately, she rang to one Shankar Chandra (P.W.7), who was residing as tenant in the 2nd Floor of the said house, and requested him to see her mother as to why she is not responding. After a while, Shankar Chandra (P.W.7) called back and told the informant that the door of the house is locked from outside. In the next morning i.e. 22.1.2000 the informant again rang but there was no response. Thereupon, the informant by taking her husband-Girija Shankar Verma (P.W.9) came to her mother's house which was found to be locked from outside. Thereafter, the informant came to the flat of Shankar Chandra and from there she called Devendu Mandal (P.W.10), a friend of her brother, to come immediately who came there at about 7 am and thereafter they broke open the door and when entered into the room, they found Mrs. Ira Roy, mother of the informant, lying dead, having multiple injuries on her person on the floor under the pool of blood. They found the entire room being ransacked. There one knife having blood mark over it was lying over the table. The informant found one portable colour Akai T.V., its remote control, stabilizer as well as printed bed sheet, which had been spread over the bed, missing. The informant talked to one Dr. Prabhat Kumar (P.W.4), an Acupressure Therapist, who used to come daily to the deceased for giving treatment at 4 O'clock. He informed that previous evening also he had gone to the house of the deceased and after giving treatment he had left home at about 4:30 pm.

5. Meanwhile, when information was received at Lalpur Police Station that one lady has been killed at Burdwan Compound, entry was made to this effect in the station diary and the Officer In-charge, Indrashan Choudhary (P.W.19), as well as other police officers, including Vidhyawati Ohdar (P.W.18), came to the place of occurrence and recorded fard beyan (Ext. 6) of the informant-P.W. 16 at about 9:45 am on 22.1.2000 wherein she stated about the facts, as have been stated above, and raised suspicion against one Santosh Kumar Chourasia, an Electrician, who invariably used to come to the house of the deceased, as repairing as well as electrical works were going on since last several days. He used to have tea and breakfast there. He used to do small household works willingly. On such fard beyan, an FIR (Ext. 1) was drawn against unknown.

6. The matter was taken up for investigation by Vidhyawati Ohdar (P.W.18) who was assisted by Indrashan Choudhary (P.W.19)-Officer In-charge of Lalpur Police Station including other police officers. During investigation, Investigating Officer

seized knife, over which blood mark was there, a piece of white cloth having blood mark over it and an empty sachet of Gutka (Tiranga) from the place of occurrence under a seizure list (Ext. 8/4). Investigating Officer got the nails of all the fingers of the deceased cut and seized it under seizure list (Ext. 8/3).

7. Thereupon, the Investigating Officer after holding inquest on the dead-body of the deceased-Ira Roy prepared an inquest report (Ext. 7) and sent the dead-body for postmortem examination which was conducted by Dr. Saroj Kumar-P.W.12 on 22.1.2000 at about 1:30 pm. Upon holding autopsy on the dead-body of the deceased, he found following injuries on the person of the deceased:--

Stab wounds :

- i. 2 x 1/2 x 2 1/2 c.m., 1 1/2 x 1/2 x 2 c.m. On right forearm front.
- ii. 1 1/2 x 1/2 x 2 c.m., 1 x 1/2 x 2 c.m. On right hand back.
- iii. 1/2 x 1/2 x 1 c.m. On right palm.
- iv. 2 x 1 x 3 c.m. On left temporal region.
- v. 1 x 1/2 x 2 c.m., 1 x 1/2 x 1 1/2 c.m. On left side of forehead.
- vi. 1 x 1/2 x 1 1/2 c.m. On left cheek.
- vii. 1 x 1/2 x 1 1/2 c.m. seven in No. on right cheek.
- viii. 1 x 1 1/2 x 2 c.m. On left breast.
- ix. 2 x 1 x 3 c.m. and 1 1/2 x 1 x 3 c.m. On back of left chest.
- x. 2 x 1 x 3 c.m. On back of right chest.
- xi. 2 x 1 c.m. x cavity deep on left lateral abdomen. The weapon passed through abdominal wall and entered into left kidney.
- xii. 2 x 1 c.m. x cavity deep on right chest front lower part. The weapon passed through chest wall cutting the costal cartilage and entered into liver.

Incised wound :

- i. 4 x 1/2 c.m. x soft tissue on left hand back.
- ii. 1 x 1/2 c.m. soft tissue, 2 x 1/2 c.m. x soft tissue on left forearm back.
- iii. 1 x 1/2 c.m. x soft tissue on right side of chin.
- iv. 1 x 1/2 c.m. x soft tissue, 1/2 x 1/2 c.m. x soft tissue and 1/2 x 1/4 c.m. x soft tissue on right lateral abdomen.

Presence of blood and blood clot was found in the abdominal cavity."

8. The doctor issued postmortem examination report (Ext. 2) with an opinion that all the ante-mortem injuries were caused by sharp cutting-cum-pointed weapon on account of which death occurred due to shock and hemorrhage.

9. On the same day i.e. on 22.1.2000 in the evening, Investigating Officer and the Officer In-charge as well as other police officers laid a raid at one electrical shop where suspect-Santosh Kumar Chaurasia was working. While the raiding party was asking about suspect-Santosh Kumar Chaurasia from one Rajesh (P.W.11), owner of the said electrical shop, he pointed out towards a boy who appeared to be somewhat perplexed. He made an attempt to flee from there but was arrested. When suspect-Santosh Kumar Chaurasia was interrogated, he confessed his guilt and also disclosed that he after washing off the blood from the knife had kept it over the table and had also thrown the empty sachet of Tiranga at the floor. He also disclosed that he had also stolen one Akai T.V., its remote, Stabilizer, towel, one pajama and kurta and wrapped it in a bed-sheet and has kept it in his room taken on rent. On such disclosure being made, said articles were recovered from the tenanted room of the appellant and were seized under Seizure List (Ext. 8). When the raiding party had arrested Santosh Kumar Chaurasia, they found injury over his cheek and hands and, therefore, the Investigating Officer got him examined by Dr. Y.K. Choudhary who on account of his death was not examined but the injury report, prepared by him, has been proved by Indradeo Prasad (P.W.15) as Ext. 5. The stolen articles, which had been recovered from the room of the appellant, were put on test identification parade during which those articles were identified by the informant-P.W.16.

10. After completion of the investigation, when charge-sheet was submitted against the appellant, cognizance of the offence was taken and the case was committed to the Court of Sessions where the appellant was put on trial.

11. During trial, the prosecution in order to prove its case examined altogether 21 witnesses. Of them, P.W. 16-Banani Verma (informant), P.W. 9-Girija Shankar Verma(husband of the informant), P.W. 7-Shankar Chandra, tenant of the deceased, and P.W. 10-Devendu Mandal are the persons who had broken the door when they found the door locked from outside. According to them, when they entered the room, they found the dead-body of the deceased having multiple injuries lying on the ground under the pool of blood. According to P.Ws. 16 and 9, they found one Akai T.V. with remote, stabilizer, kurta, pajama, towel and bed-sheet missing. All the witnesses except P.W.9 have also testified that the appellant, an Electrician, who was doing electrical work, invariably used to visit the house of the deceased. Apart from them, P.W. 1-Sushil Bhusan Ghosh (brother of the deceased), P.Ws. 2 and 3-Kaushik Giri and Bhuneshwar Nath Gupta, both tenants of the deceased, and P.W. 4-Dr. Prabhat Kumar have also testified that they had seen the appellant at several occasions coming to the house of the deceased. P.W. 5-Vidhya Nand Singh is the witness to the seizure of the articles recovered from the room of the appellant. P.W. 6-Om Prakash, who was the witness to the seizure of those articles, recovered from the room of the deceased, has turned hostile. P.W. 11-Rajesh is the owner of the electrical shop in which the appellant was working. According to him, the appellant had worked in his shop in the evening of 21.1.2000 and he left his shop in the evening on the pretext that he has to do some electrical work and took some electrical items. In

the night the appellant did not turn up but in the morning of 21.1.2000 when the appellant came, he found him very perplexed. He was having injuries over his cheek and fingers. P.W. 13-Sanjeev Lochan, an Executive Magistrate, had conducted the test identification parade of those articles, which were recovered from the room of the appellant. During identification, articles had been identified by P.W. 16- the informant. This witness has proved test identification parade chart as Ext. 3. P.W. 18- Vidhyawati Ohdar is the Investigating Officer who was assisted in the investigation by P.W. 19-Indrashan Choudhary, the then Officer In-charge and also the other police officers. P.W. 20-Subodh Krishna Prasad, Sub-Inspector of CID is the person who had taken photographs of finger prints and foot prints from the place of occurrence but those photographs are not at all helpful to the case of the prosecution, as the prosecution never came forward with the case that those footprints or fingerprints found at the place of occurrence were of the appellant. P.W. 21- Rama Shankar Singh, an Assistant Director, posted at Regional Forensic Science Laboratory, Muzaffarpur, has proved the report as Exts. 13 and 13/1 after determining the blood groups found over the knife and a piece of cloth but that also is not, at all, material so far as the case of the prosecution is concerned.

12. After closure of the prosecution case, the appellant was questioned under Section 313 of Cr.P.C. about the incriminating evidences appearing against him to which he denied.

13. Thereupon, the trial court having placed implicit reliance on the testimonies of the witnesses proving several circumstances appearing against the appellant and also the factum of recovery of looted articles from the room of the appellant, did find the appellant guilty for committing murder of the deceased and also for committing offence of robbery and thereby the court recorded the order of conviction and sentence against the appellant which is under challenge.

14. Mr. Saket Upadhyay, learned counsel appearing for the appellant, submits that according to the case of the prosecution, the Investigating Officer recorded the fard beyan of the informant-P.W. 16 at 9:45 am and then got certain articles seized from the place of occurrence and also prepared an inquest report before the case was registered and thereby entire case gets vitiated as the investigation of the case under the scheme of Cr.P.C. would have been taken only after registration of the case.

15. Further, it was submitted that the factum of seizure of the looted articles from the room of the appellant has not been established by the prosecution, as the P.W. 5, a seizure list witness, though has said that in his presence articles had been recovered from the room of the appellant and had put his signature over the seizure list but in his cross-examination he has testified that he reached at the house of the appellant when the police after seizing the articles from the room of the appellant were making preparation of packing it and therefore, he cannot say as to which articles had been recovered from where.

16. In this regard, it was further submitted that the recovery of looted articles is being used as incriminating against the appellant but the appellant was never questioned about the said fact in his statement made under Section 313 Cr.P.C. and thereby taking that fact to be incriminating against the appellant would be great prejudicial to the appellant.

17. Further, it was submitted that as per the case of the prosecution, repairing works were going on in the house of the deceased where flooring, colouring etc. were going on along with electrical fittings. For that purpose, 7 to 8 persons as per evidence of P.W. 16 were working and, therefore, anyone of them may commit offence and thereby in absence of any cogent material or any concrete proof showing culpability of the appellant, the trial court can certainly be said to have committed illegality in recording the order of conviction and sentence against the appellant and thereby the order of conviction and sentence is fit to be set aside.

18. As against this, Mr. B.M. Tripathy, learned senior counsel appearing for the informant, submits that the consistent evidence is there that the appellant at the time of occurrence was working as Electrician in the house of the deceased and had developed intimacy with the deceased by rendering small household works and thereby he was able to have a trust of the deceased on him only for the purpose that he may have access to the house at any point of time to which the appellant wishes. Taking advantage of this situation, the appellant by betraying trust committed murder of the deceased so that he may take away valuables from the house of the deceased. In fact, he did so which is evident from the fact that the looted articles were recovered from the house of the appellant and those articles had been identified by the witnesses particularly by P.W.16. Thus, it was submitted that it is a full proof case of circumstantial evidence where each and every circumstance, appearing against the appellant, points towards the guilt of the appellant and, therefore, the trial court did not commit any illegality in recording the order of conviction and sentence against the appellant and hence it never warrants to be interfered with by this Court.

19. Having heard learned counsel for the parties and on perusal of the record, we do find from the testimony of the informant (P.W. 16) that the deceased-Smt. Ira Roy was residing alone at the 3rd Floor of her house, whereas the informant (P.W. 16), daughter of the deceased, residing with her husband (P.W.9), used to have had talk with her mother every day. On 21.1.2000 when the informant rang to her mother, no response was made. She frantically called her mother again and again but result was the same and, therefore, she asked one Shankar Chandra (P.W.7), a tenant residing in 2nd Floor of the said house, to see her mother. Shankar Chandra (P.W.7) when came to the flat of the deceased, he found the door of the room locked from outside, information of which was given to the informant who on the next morning at 6:30 am came and found the door locked. Thereupon, the informant called Devendu Mandal (P.W.10), a friend of her brother, who came over there and then all of them broke open the door and

when entered into the room, they found the deceased-Ira Roy lying dead on the floor having multiple injuries on her person. They found the entire room being ransacked. There other witnesses i.e. P.W. 1-Brother of the deceased, P.Ws. 2 and 3- tenants in the house of the deceased, came and also saw the dead-body lying on the floor. All of them i.e. P.Ws. 1, 2, 3, 4, 8, 10 and 16, who are in visiting term with the deceased, have testified that the appellant, an Electrician, used to come to the house of the deceased invariably and they had seen him coming over there. According to P.Ws. 3 and 4, the deceased had introduced him (accused) by saying that he is a good electrician and usually does small household works for her. Similar is the testimony of P.W. 16 who has testified that on one pretext or the other the appellant used to visit her mother invariably every day and used to have tea and breakfast. From the testimonies of these witnesses, it get established that the appellant was in visiting term with the deceased and used to do small household works for the deceased and the deceased had developed some kind of affection for him. Nothing has been elicited from the witnesses so as to have have any slightest doubt over the factum of the accused visiting the deceased for doing electrical works, which was going on, and doing some small household works for the deceased.

20. Further, it appears that on account of the said fact when suspicion was raised by the informant-P.W. 16 about the involvement of the appellant in the said crime, Investigating Officer along with the Officer In-charge of Lalpur Police Station including other police officers came to the shop of Rajesh-P.W.11, owner of the electrical shop, where the appellant used to work. According to P.W. 18, when he was asking about the appellant from P.W.11, he signaled towards the appellant who was also there but appeared to be quite perplexed and was having injuries over his cheek and hands which facts also get established from the evidence of P.W.11 who has testified that when the appellant came to his shop in the morning, he found injuries on his cheek and hands. That apart, when the appellant was taken into custody, he was referred to Dr. Y.K. Choudhary who examined him and found injury on his person which is evident from the injury report (Ext. 5).

21. It be stated that Dr. Y.K. Choudhary on account of his death could not be examined but the injury report has been proved by Indradeo Prasad-P.W.15, clerk in the surgery department at RMCH.

22. Further, it appears that on the same day i.e. 22.1.2000 when raid was laid in the room of the appellant, one portable colour Akai T.V., its remote, stabilizer, towel, kurta, pajama and printed bed sheet were recovered in presence of two witnesses i.e. P.Ws. 5 and 6. P.W. 5 has supported the said fact in his evidence but P.W.6 did not support the said fact and thereby he has been declared hostile. In spite of that, there appears to be no reason to disbelieve the factum of recovery of those articles as P.W.18-Investigating Officer and P.W.5-seizure list witness have categorically said about seizure of those articles, which articles when were put on test identification parade, conducted by P.W.13- an Executive

Magistrate, the informant-P.W.16 identified said T.V (Ext. II), Stabilizer (Ext. I), Remote Control (Ext. IV), Kurta (Ext. III), Paijama (Ext. III/I), Towel (Ext. III/II), Bed-sheet (Ext. III/III).

23. Argument was advanced that these are the common items and therefore, it cannot be taken to be the stolen properties. It is true that those articles are the common articles but according to the informant-P.W.16, she could identify the stabilizer as at one place it had rust over it and so far as paijama, kurta, towel and bed-sheet are concerned, she identified as the towel and bed-sheet had a particular design. Thus, there appears to be no reason to cast doubt over the articles being stolen articles.

24. Going further into the matter, we do find that at the place of occurrence, empty sachet of Gutka (Tiranga) had been found along with knife and white cloth having blood marks. Sachet of Gutka (Tiranga) was seized under seizure list (Ext. 8/4) which fact has also been testified by the P.Ws. 2 and 9. Further, P.W. 2 in his evidence has testified that he had seen the appellant taking Gutka (Tiranga) which fact has been corroborated by P.W.11, owner of the shop where the appellant was working.

25. Further, we do find that the Investigating Officer in course of inspection of the place of occurrence also did find that two empty cups of tea having residue of tea were found from the house of the deceased which fact also indicates towards the guilt of the appellant as P.W. 16 in her evidence has categorically said that the appellant used to have had tea and breakfast invariably.

26. Thus, from the evidences following facts get established:--

"(i) the appellant at the time of occurrence was working in the house as Electrician and was in visiting term with the deceased;

(ii) the appellant had become quite intimate with the deceased probably for the reason that he may have access in the house at any time;

(iii) articles looted from the house of the deceased were recovered from the possession of the appellant;

(iv) the appellant was having fresh injuries on his person which the appellant in all probabilities would have received during resistance being made by the deceased in course of being stabbed;

(v) empty sachet of Gutka (Tiranga), which the appellant used to consume, was found from the place of occurrence;

(vi) two cups of tea were found below the stairs case which in all probabilities must have been used by the appellant and

(vii) the appellant after occurrence was found in perplexed condition, a relevant fact admissible under Section 8 of the Evidence Act."

27. The aforesaid circumstances unerringly point towards the guilt of the

appellant only and not towards any other person.

28. It would be worth to note here that according to learned counsel for the appellant, the factum of recovery of the articles from the room of the appellant be not taken to be incriminating against the appellant as the said fact was never put to him in his statement made under Section 313 Cr.P.C. but on perusal of the statement made under Section 313 Cr.P.C., we do find that the submission made in this regard is not correct as the specific questions were put regarding recovery of articles from his room.

29. Further, the submission, which has been advanced, is that before the case was instituted the Investigating Officer started the investigation which cannot form part of the evidence legally but we do not find any substance in the submission, as we do find that on 22.1.2000 at 9:45 am fard beyan was recorded and only thereafter either certain materials were seized or inquest report was prepared.

30. Having regards to the facts as stated above, we do find that the prosecution has been able to establish its case beyond the reasonable doubts and thereby the trial court is absolutely justified in recording the judgment of conviction and order of sentence against the appellant.

31. Accordingly, the judgment of conviction and order of sentence passed against the appellant is hereby affirmed.

32. Consequently, Cr. Appeal (D.B.) No. 1045 of 2005 stands dismissed.

33. Coming to Cr. Appeal (D.B.) No. 146 of 2006, it be again stated that this appeal has been preferred by the State for enhancement of the sentence from life imprisonment imposed upon the accused-Santosh Kumar Chaurasia to death sentence.

34. According to Mr. T.N. Verma, learned counsel for the appellant-State, in the facts of the case, which the court has noticed, it can be said that the murder has been committed in an extremely brutal, grotesque, diabolical, revolting and dastardly manner so as to arouse intense and extreme indignation of the community and that too, for the purpose of having some gain by taking away house hold articles and that the accused-Santosh Kumar Chaurasia has committed murder of a helpless woman of 71 years old residing alone and thereby the murderer was in dominating position and under the circumstances, the accused-Santosh Kumar Chaurasia warrants to be awarded with death sentence.

35. Learned counsel in support of his submission has referred to a decision rendered in a case of Sushil Murmu Vs. State of Jharkhand, AIR 2004 SC 394 : (2004) CriLJ 658 : (2003) 10 JT 340 : (2003) 10 SCALE 670 : (2004) 2 SCC 338 : (2003) 6 SCR 702 Supp : (2003) AIRSCW 6782 : (2003) 8 Supreme 699 .

36. As against this, Mr. Saket Upadhyay, learned counsel for the respondent-

accused submits that this is not the rarest of rare case which warrants death sentence.

37. Under the circumstances, it is to be decided as to whether this case falls in a category of rarest of rare cases so as to appellant be awarded with death penalty?

38. Before coming to the conclusion, it would be profitable to take notice of the decision rendered in a case of Bachan Singh Vs. State of Punjab, AIR 1980 SC 898 : (1980) CriLJ 636 : (1982) 1 SCALE 713 : (1980) 2 SCC 684 : (1980) SCC(Cri) 174 : (1983) 1 SCR 145 , wherein Their Lordships while determining the constitutional validity of death penalty, examined the sentencing procedure embodied in sub-section (3) of Section 354 CrPC and held as under :--

"164. (b) While considering the question of sentence to be imposed for the offence of murder under Section 302 of the Penal Code, the court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence."

39. In the case of Machhi Singh and Others Vs. State of Punjab, AIR 1983 SC 957 : (1983) CriLJ 1457 : (1983) 2 Crimes 268 : (1983) 2 SCALE 1 : (1983) 3 SCC 470 : (1983) 3 SCR 413 , it was held by the Hon'ble Supreme Court that the case fell in the category of the rarest of rare cases calling for capital punishment since the victim of murder was an innocent child who could not have or had not provided even an excuse, much less a provocation for murder or the murder was committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner which aroused intense and extreme indignation of the community. The motivation of the perpetrator, the vulnerability of the victim, the enormity of the crime, the execution thereof are factors which normally weigh with the court in awarding the death sentence terming it as the rarest of rare cases.

40. Subsequently, the Hon'ble Supreme Court in a case of Sangeet and Another Vs. State of Haryana, AIR 2013 SC 447 : (2013) CriLJ 425 : (2013) 1 Crimes 25 : (2013) 1 RCR(Criminal) 114 : (2012) 11 SCALE 140 : (2013) 2 SCC 452 did observe that the circumstances of the criminal referred to in Bachan Singh appeared to have taken a bit of back seat in the sentencing process and held that despite Bachan Singh, the "particular crime" continues to play a more important role than the "crime and criminal". The conclusion, which was arrived at by Their Lordships, is as follows:--

"1. The application of aggravating and mitigating circumstances needs a fresh look. This Court has not endorsed that approach in Bachan Singh. In any event, there is little or no uniformity in the application of this approach.

2. "77.2. Aggravating circumstances relate to the crime while mitigating

circumstances relate to the criminal. A balance sheet cannot be drawn up for comparing the two. The considerations for both are distinct and unrelated. The use of the mantra of aggravating and mitigating circumstances needs a review."

3. "77.3. In the sentencing process, both the crime and the criminal are equally important. We have, unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become Judge-centric sentencing rather than principled sentencing."

4. "77.4. The Constitution Bench of this Court has not encouraged standardisation and categorisation of crimes and even otherwise it is not possible to standardize and categorise all crimes."

41. The Hon'ble Supreme Court in a case of *Rajendra Pralhadrao Wasnik Vs. The State of Maharashtra*, AIR 2012 SC 1377 : (2012) CriLJ 1917 : (2012) 1 Crimes 342 : (2012) 3 SCALE 182 : (2012) 4 SCC 37 : (2012) AIRSCW 1939 : (2012) 2 Supreme 196 while taking notice of the principle enunciated in *Bachan Singh* (supra) and *Machhi Singh* (supra) did observe as follows:--

"Though law enunciated by this Court in a recent judgment has already noticed that elaborates the principle that were stated in *Bachan Singh* (supra) and thereafter in *Machhi Singh* (supra) case. Aforesaid judgment primarily discussed this principle into two different components and one being aggravating circumstances while the other being the mitigating situation.

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 consequent aspect of the 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, two is the primary duty of the court. It will be appropriate that the court altogether has come a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and proper and effective and meaningful reasonings by the court, as contemplated under Section 354(3) Cr.P.C."

""Aggravating circumstances - (Crime test)

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

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

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

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

money or monetary benefits.

(5) Hired killings.

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

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

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

(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 behaviour 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 behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

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

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

42. Again we may refer to a decision rendered in a case of Amrit Singh Vs. State of Punjab, AIR 2007 SC 132 : (2007) CLT 520 Supp : (2007) CriLJ 298 : (2006) 10 JT 1 : (2006) 11 SCALE 309 : (2006) 8 SCR 889 Supp wherein the Hon''ble Supreme Court commuted death sentence to that of life imprisonment in a case where a 7-8 years old girl was raped and murdered by the accused aged 31 years. The Hon''ble Supreme Court did notice the manner in which the deceased was raped and murdered, but held that it could have been a momentary lapse on the part of the accused, seeing a lonely girl at a secluded place and there was no premeditation for commission of the Crime. Thus, we can say that "criminal test" was applied in favour of the accused in place of death sentence.

43. In case of Rameshbhai Chandubhai Rathod Vs. The State of Gujarat, AIR 2011 SC 803 : (2011) CriLJ 1458 : (2011) 2 JT 33 : (2011) 1 RCR(Criminal) 728 : (2011) 1 SCALE 757 : (2011) 2 SCC 764 : (2011) 1 SCC(Cri) 883 : (2011) 1 SCR 829 : (2011) AIRSCW 1026 , the Hon''ble Supreme Court commuted death sentence to life imprisonment of the accused committing rape and murder of a girl of 8 years. It was found that the accused at the time of the commission of crime was 27 years old and possibility of reformation could not be ruled out. Thus, the criminal test was applied considering the age of the accused and possibility of reformation of the accused being there.

44. Applying another mitigating circumstances in a case of Surendra Pal Shivbalak pal Vs. State of Gujarat, (2004) CriLJ 4642 : (2004) 8 SCALE 145 : (2005) 3 SCC 127 : (2005) 1 UJ 232 , the Hon''ble Supreme Court commuted death sentence to that of life imprisonment in a case where the accused aged 36 years had committed rape and murder of a minor girl. The Hon''ble Court having noticed that at the time of occurrence, the accused had no previous criminal record and that he would not be a menace to the society in future, commuted the death sentence into life imprisonment.

45. In the line of those cases, the case of Amit @ Ammu Vs. State of Maharashtra, AIR 2003 SC 3131 : (2003) CriLJ 3873 : (2003) 1 JT 423 Supp : (2003) 135 PLR 400 : (2003) 6 SCALE 244 : (2003) 8 SCC 93 : (2003) 2 SCR 285 Supp : (2003) 2 UJ 1404 : (2003) AIRSCW 3980 : (2003) 5 Supreme 576 be referred to wherein the Hon''ble Supreme Court again commuted death sentence to life imprisonment in a case where the accused aged 20 years had raped and murdered a girl of 11-12 years. The Hon''ble Court having noticed that the accused had no previous criminal track record and also there was no evidence that he would be a danger to the society in future, "criminal test" was applied;

absence of previous track record and danger to the society were considered to avoid death sentence.

46. Thus, having noticed all those decisions rendered by the Hon''ble Supreme Court, referred to above, the court, before coming to the conclusion as to whether the death sentence or the life sentence be awarded, is duty bound to consider the cumulative effect of both, mitigating circumstances as well as aggravating circumstances, and after balancing if the court finds that it is the rarest of rare cases and that imposition of any other punishment i.e. life imprisonment would be completely inadequate and would not meet the ends of justice, death sentence be awarded.

47. If those tests, referred to above, are applied, we do find that though aggravating circumstances are there in the case, as it was a murder of a 71 years old lady living alone with brutality as multiple stab injuries were inflicted, but at the same time, mitigating circumstances are also there. Admittedly, there was no animosity in between the accused-Santosh Kumar Chaurasia and the deceased or her family members and that the accused-Santosh Kumar Chaurasia at the time of occurrence seems to be 19 years old and thereby possibility of reformation could not be ruled out and that no previous criminal record of the accused-Santosh Kumar Chaurasia is there and as such, he would not be a menace to the society in future. Thus, the mitigating circumstances appearing in the case outnumber the aggravating circumstances.

48. In such circumstances, the accused-Santosh Kumar Chaurasia never warrants to be awarded with death sentence.

49. Thus, Cr. Appeal (D.B.) No. 146 of 2006 stands dismissed.