

(2004) 02 GAU CK 0083

In the Gauhati High Court

Case No : Criminal Death Ref. No. 1 and 13 of 2002

State of Arunachal Pradesh

APPELLANT

Vs

Tadon Tatik

RESPONDENT

Date of Decision : 06-02-2004

Acts Referred:

Assam Frontier (Administration of Justice) Regulations, 1945 — Regulation 30
Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 368
Penal Code, 1860 (IPC) — Section 302, 354(3), 361, 84

Citation : (2004) 1 GLT 360

Hon'ble Judges : P.G. Agarwal, J; I.A. Ansari, J

Bench : Division Bench

Advocate : B. Banerjee, P.P.A.P, for the Appellant; J.M. Choudhury, P. Kataki, S. Bharali and B. Sarma, for the Respondent

Judgement

P.G. Agarwal, J.—The above mentioned Death Reference and the Criminal Appeal have arisen out of the judgment and order, dated 12.11.2001, passed by the Deputy Commissioner, Pasighat in Sessions Trial Case No. GR 93/ 94 whereby the accused Tadon Tatik was convicted for the offence u/s 302 IPC and sentenced to capital punishment of death. The Reference is for confirmation as required u/s 368 Code of Criminal Procedure, read with Regulation 30(i) of the Assam Frontier (Administration of Justice) Regulation, 1945. The appeal has been preferred by the accused Appellant.

2. The incident for which the accused has been tried in the above case, took place way back on 13.7.1994 and this is second round of litigation before us. The accused was earlier tried and vide judgment dated 30.1.1997, the trial Court imposed capital punishment of death and the matter came up before this Court in Criminal Death Reference No. 1/97 and Criminal Appeal No. 96/1997 and 70(J) of 1997 which was disposed of vide judgment and order, dated 24.6.1997. The case was reported in 1997 (III) GLT 594 whereby this Court set aside the conviction and sentence and remanded the matter back for de-novo trial in accordance with law and as per directions contained therein. Pursuant to the

above directions, the case was tried de-novo and the witnesses were examined afresh and the impugned judgment was delivered by the trial Court. It may be mentioned here that as per the directions of this Court, the trial Court has engaged Shri D. Gogoi, a senior lawyer of Dibrugarh Bar to defend the accused. However, the accused made a prayer in writing that he desires to be defended by Shri Muk Pertin, the learned defence Counsel and as such the trial Court had no other alternative but to appoint Shri Muk Pertin as defence Counsel. It seems that the trial Court has complied with the directions of this Court and the constitutional right of the accused to be defended by a lawyer of his choice has prevailed and hence, no objection has been raised on that count. So far furnishing of copies of documents u/s 207 Code of Criminal Procedure is concerned, the same was duly completed with. As regards the requirement of appointment of interpreter is concerned, the trial Court has this to say:

It was also instructed by the High Court that the proceedings of the Court should be in a language which can be understood by the accused. If the accused cannot understand the proceedings an interpreter was to be appointed for him. For this the educational qualification of the accused was ascertained. The accused is an under graduate having studied upto B.A. IIIrd Year and was working as a school teacher and Office Assistant (UDC) for sometime before taking up the profession of a contractor. He is not only capable of understanding but also reading and writing English to a satisfactory level. Hence it was not necessary to appoint any interpreter during the trial.

3. The prosecution allegation, in brief, is that the accused, was a contractor by profession, used to reside along with two wives, Sumi Tatik (P.W.-6) and Parvoty Jamoh (P.W.-5). The accused had a son and daughter through his first wife Sumi Tatik (P.W.-6) and son through the second wife Parvoty (P.W.-5). From the materials on record, we find that the accused used to live with all the worldly comforts and he had also four servants for his domestic help. On the fateful day of 13.7.1994, the two wives of the accused were away from the house and around noontime while his servants were watching T.V., the accused took his children to his bed room and closed the door. After some time, as stated by Rajendra Kr. Das (P.W.-1), the accused came out of the bedroom with a dao in his hand and stated "I have finished all the children". There was blood marks on his body. The servants out of fear ran out of the room. The accused came to the police Station and reported the incident, which was registered as GD Entry. Police came to the place of occurrence and found the dead-bodies of two children and while the third was still bleeding, she was removed to Hospital where she was declared dead. On the basis of the report of the police officer, FIR was lodged and police started investigation.

4. In the present case, there is no eyewitness, i.e., nobody saw the accused-Appellant killing his own children. The entire prosecution case rests on the circumstantial evidence and judicial confession (Ex.1) recorded by Sri R.K. Raidya (P.W.-7).

5. The circumstance on which the prosecution has tried to establish to prove the guilt of the accused may be summed up as below:

1. The incident took place in the bed room of the accused and the dead-bodies were found inside his bed room.
2. There was no other male person in the room except the accused as the two wives of the accused were away from the house.
3. The accused came out of the room with the weapon of assault and bloodstains on his person.
4. The accused made extra judicial confession before the servants.
5. The accused reported the incident at the Police Station immediately afterwards.
6. The accused led police to the house and to the dead bodies.
7. The weapon of assault, i.e., dao and axe were seized from the possession of the accused.

6. Rajendra Kr. Das (P.W.-1) and Tasang Pasi (P.W.-4) are the two persons who were present in the house along with others when the incident took place. It maybe mentioned here that P.W.-4 happens to be a near relation (related brother of the accused-Appellant). P.W.-1 and P.W.-4 have deposed that on the day of occurrence, four of them were witnessing T.V. The accused has dictated a letter to P.W.-4 addressed to his wife (P.W.-6) and thereafter entered into bedroom and closed the door. After some time, the accused came out of his bedroom with a dao in his hand and stated that he had finished all the children. All the persons were witnessing T.V. and out of fear, they fled away. However, when P.W.-4 tried to run away, he was stopped and he saw that the accused had cut his own finger and wrapped the same in the letter addressed to his wife. The accused handed over the letter along with the cut finger to P.W.-4 for handing over to P.W.-6. P.W.-4 reported the matter to P.W.-2 in the house of Siram. The accused also went out of the house. The evidence of P.W.-1 and P.W.-4 as regards the manner in which the incident took place or witnessed by them, stands fully established and it has been supported on material points by the other witnesses. It is stated by the witness that P.W.-5 was in Govt. Hospital, Pasighat at the relevant time. It is also a fact that P.W.-6 who is the first wife of the accused stated that she was staying at her relation's house at Rasam village and on the day of occurrence, she had telephoned to the accused informing him that she is staying back at her relation's house which was not liked by the accused and she got the information about the killing of the children while she was in her friend's house.

7. P.W.-2 Ogom Jamoh is the father in-law of the accused, being the father of P.W.-5. He had fully supported the statement of other prosecution witnesses and he was informed about the occurrence by P.W.-4.

8. P.W.-9 D.S. Sharma is the S.L. of Police who has deposed about surrender of the accdused at Pasighat Police Station on 13.7.94, i.e., the day of occurrence.

He has also deposed that at that time he found the injuries on the hand of the accused and there was bleeding.

9. P.W.-12 P. Satung was the Officer-in-charge of the Police Station where the accused arrived at around 2.30 PM and reported the matter. This witness went to the house of the accused at Mirbuk village and found three children lying in injured condition in the bedroom of the accused and out of the children, the girl was alive and she was sent to Hospital where she was declared dead. The axe and the dao were seized by this witness from the possession of the accused and inquest was conducted by this officer. The I/O has also deposed that he noticed bloodstained bed sheets and blood marks on the dao etc.

10. In this case, we find that after the inquest, the dead-bodies were sent for post mortem examination and the post mortem was conducted over the dead-bodies of the three deceased children. However, during trial, the doctor who had conducted the post mortem, was not examined and the trial Court relied on the post mortem reports which were allowed to be exhibited as Exts. 5, 6 and 7 on the ground that during the previous trial, the doctor was examined and his evidence has not been challenged. The learned senior Counsel Mr. Choudhury has submitted that in the absence of the doctor, post mortem report cannot be relied upon. We find sufficient force in the above submission. However, Mr. Banerjee, the learned P.P., submits that non examination of Doctor who conducted the post mortem or inquest is not fatal to the prosecution and in support of his submission he has relied on a decision of the Apex Court in the case of Banwari Ram and Others Vs. State of U.P., wherein the Apex Court had observed as follows:

The arguments of the learned Counsel appearing on behalf of the Appellants that the absence of any inquest or postmortem in respect of the deceased Army personnel it has to be held that the prosecution case has not been proved beyond reasonable doubt is an argument which is merely to be mentioned for being rejected. The prosecution evidence unequivocally establishes the fact that the accused persons belonging to the Provincial Constabulary started indiscriminately firing at the Army jawans who had been called upon to take charge of the armoury. On account of such indiscriminate firing by the members of the Provincial Constabulary 12 persons belonging to the Army died whose dead bodies were recovered from the spot itself and the necessary death certificate had been issued by the medical authority. In such an event not holding of any post-mortem examination is immaterial and the contention of the learned Counsel appearing for the Appellants that the prosecution failed on that score is wholly unsustainable in law and we have, therefore, no hesitation to reject the same.

11. In the present case, we find that the post mortem examination was conducted by the doctor but for the fault of the prosecution, the doctor was not examined in the de-novo trial and as such the post mortem report can not be proved as required under the law. However, the I/O (P.W.-12) has deposed about

the inquest made by him and the inquest report (Ext. 8 and 9) have been proved. The said inquest reports have not been challenged and on perusal of the said reports, we find that the age of Odi Tatik @ Lily was about 9 years and she had a deep cut injury on the head, left ear and the brain was coming out of the said injury. The deceased Angun Tatik @ Nanu was aged about 7 years. He had a deep cut injury on the face and on the backside of neck. The other victim Ganno Tatik was aged about 2 months only and there was crack marks on the head. In this case, the witnesses have all stated about the death of the three children in the above incident and the death has also not been challenged by the defence and no plea has been raised that the children are still alive. In view of the above, we hold that non-examination of the doctor/proving of the post mortem report is not fatal to the prosecution.

12. On perusal of the impugned judgment, we find that the learned trial Court has relied on the confessional statement (Ext. 1 and Ext. 3) to bring home the charge against the accused-Appellant. Mr. Choudhury has submitted that said confessional statements cannot be read into evidence in view of the observations of this Court in earlier case. We have persued the earlier decision of this Court and find that this Court had held that the confessional statement was not voluntary and as such not admissible in evidence. Denovo trial will not change the scenario in any way and we, therefore, hold that the confessional statements cannot be relied upon and is to be excluded from consideration. However, there remains the extrajudicial confession which was made before P.W.-1 and P.W.-4 immediately after the occurrence. The above statement was made voluntarily by the accused-Appellant and there was no question of any coercion or undue influence on the accused to make the confession. P.W.-1 is the servant of the accused and P.W.-4 is the brother-in-law of the accused and as such they had no authority or other reason to force the accused to make any statement or admit the guilt. P.W.-4 happens to be the related brother of the accused and we find no reason on the part of P.W.-1 and P.W.-4 to cook up a story of confession.

13. The law regarding extra judicial confession is more or less well settled. In the case of State of Punjab v. Gurdip Singh reported in judgment Today 1999 (6) SC 514, the Apex Court has considered its earlier judgments and held that it is not open to any Court to start with presumption that extra judicial confession is a weak type of evidence. The Court reiterated earlier decision that an extrajudicial confession can be made basis for conviction and the evidentiary value of confession depends upon veracity of the witnesses. In cases where confession has been made to person unconnected with police, it can be treated as substantive evidence (State of U.P. v. M.K. Anthony AIR 1985 SC 1985). In the instant case, we find that extra judicial confession, deposed by P.W.-1 and P.W.-4, has been corroborated on material points and so far P.W.-1 and P.W.-4, they are independent persons and they were no way connected with police.

14. In catena of decisions, the Apex Court has held that where a case rests squarely on circumstantial evidence, inference of guilt can be justified when all

the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or guilt of any other person. It is also well settled that the prosecution is required to establish all these incriminating circumstances through cogent evidence and the suggestions must be conclusive in nature.

15. In *Padala Veera Reddy v. State of A.P.*, it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

16. In the present case, we find that the circumstances, as stated above, have been fully established by the prosecution that it was the accused alone with his minor children in the bedroom and the dead bodies were found inside the bedroom of the accused. The accused opened the door of the bedroom and came out with bloodstain wearing apparel along with the weapon of assault, i.e. dao etc. He made extrajudicial confession before his servants and then his post crime conduct of going to police station to make a clean breast of everything, we, therefore, find that the circumstantial evidence established by the prosecution makes out a complete chain to show that it was the accused-Appellant only who killed his own children.

17. The circumstantial evidence also rules out the possibility that any other person other than the accused was involved in the murder and the trial Court, therefore, rightly relied on the circumstantial evidence.

18. In the present case, we find that the accused was examined u/s 313 Code of Criminal Procedure and although the learned Deputy Commissioner, who functioned as Sessions Judge, is not a judicial officer, has examined the accused as required under the law and all the materials and circumstances appearing against the accused were put to the accused to enable the latter to explain anything, if he so desires. It seems that the accused has taken up a plea of denial stating that he was badly injured in the forest on 13.7.94 and thereafter he became senseless and he does not remember anything. During the course of trial, the learned defence Counsel has tried to make out a case that the accused is entitled to protection u/s 84 of the IPC, as he was suffering from insanity. The

defence has referred to the evidence of the two wives of the accused and P.W.-2 to show that the accused was suffering from some sort of mental illness. It was also suggested that as the accused has killed his own children, he must be an insane person. From the evidence of the two wives-P.W.s-5 and 6, we find that the accused person is no doubt a hot-tempered person and he likes to do everything on his own way. So far the plea of insanity, the Hon'ble Supreme Court has the occasion to consider the provisions of Section 84 IPC in the case of Ratan Lal Vs. The State of Madhya Pradesh, Sheralli Wali Mohammed Vs. The State of Maharashtra, Oyami Ayatu Vs. The State of Madhya Pradesh, In the above decisions the Apex Court has laid down the following guiding principles:

1. The Court shall presume absence of insanity.
2. Burden of proof of insanity is on the accused though it is not that heavy as that of the prosecution to prove an offence.
3. Every minor mental aberration is not insanity and unless the cognitive faculty of mind is destroyed as a result of unsoundness to such an extent as to render one incapable of knowing the nature of his act.
4. The accused must suffer from legal insanity and not merely medical insanity.
5. The crucial point on which the unsoundness of mind has to be proved is the time when the crime is actually committed.

There is a clear difference between the medical insanity and legal insanity. In *Mayajul Ali v. State of Assam* (1987) 2 GLR (NOC) 4 it was held-

Prevalence of unsoundness of mind at the time of commission of crime is the measure in scale to extent the privilege of the Exception of Section 84 IPC. It must be independently made out that the accused was actually in a state of unsoundness of mind. No doubt previous record and subsequent development may play parts as circumstances to the nearness of the people, but that should not be made ground by Court to presume that prevalence of unsoundness of mind at the time of commission of the crime. Satisfactory evidence must be in regard to establish the plea and liberal consideration will prove dangerous for criminal trial.

19. In the present case, we find that there is no medical evidence to show that at the relevant time, the accused was suffering from any insanity. He was a contractor by profession having truck etc. and he was looking after his business and the family nicely. P.W.-11 Dr. T. Tali examined the accused in the month of December, 1998 and found no sign of mental disorder. The medical report of the year 1998 is not relevant as the incident had taken place in 1994. The burden was on the defence but they have failed to establish the same and we hold that the trial Court rightly rejected the plea of insanity.

20. In view of what has been stated above, we have no hesitation to hold that the circumstantial evidence and the extrajudicial confession have fully

established the guilt of the accused and it was he, who had killed his own children and as such, his conviction u/s 302 IPC needs no interference. The appeal filed by the Appellant stands dismissed.

21. Now coming to the question of sentence/confirmation of capital punishment, we may recapitulate the observations of the Apex Court in the case of *Lehna Vs. State of Haryana*, wherein the Apex Court observed as follows

The other question of vital importance is whether death sentence is the appropriate one. Section 302 IPC prescribes death or life imprisonment as the penalty for murder. While doing so, the code instructs the Court as to its application. The changes which the Code has undergone in the last three decades clearly indicate that Parliament is taking note of contemporary criminological thought and movement. It is not difficult to discern that in the Code, there is a definite swing towards life imprisonment. Death sentence is ordinarily ruled out and can only be imposed for "special reasons", as provided in Section 354(3). The Apex Court further provided as follows:

This is some indication by the legislature that reformation and rehabilitation of offenders and not mere deterrence, are now among the foremost objects of the administration of criminal justice in our country. Section 361 and Section 354(3) have both entered the statute-book at the same time and they are part of the emerging picture of acceptance by the legislature of the new trends in criminology. It would not, therefore, be wrong to assume that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors. Criminal justice deals with complex human problems and diverse human beings. A Judge has to balance the personality of the offender with the circumstances, situations and the reactions and choose the appropriate sentence to be imposed.

22. In the case of *Bachan Singh Vs. State of Punjab*, the Apex Court laid down the following guidelines for consideration where the question 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 has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

23. In the case of *Machhi Singh and Others Vs. State of Punjab*, the Apex Court provided as follows:

The following questions maybe 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?

24. In *Lehna* (supra) the Apex Court further provided as follows:

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

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

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.

(3) 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, or in cases of "bride burning" or "dowry deaths" or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

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

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

25. In the light of the above proposition of law guidelines, let us examine what

are the aggravating circumstances and what are the mitigating circumstances appearing against the accused Appellant.

Aggravating circumstances:

1. This is a case of cold blooded murder.
2. The victims are all children aged about 9 years, 7 years and the youngest is only two months old.
3. The victims did not contribute or provoke the incident.
4. The entire incident is heinous and nauseating concerning killing of own children of the accused.

Mitigating circumstances:

1. There is no pre-plan action of the accused for the incident.
2. The accused had no apparent motive for the killing.
3. The killing was not made for any reward.
4. The victims were the own children of the Appellant-convict.

26. The trial Court had given the following reasons for imposing the sentence of death:

It is well accepted that a death sentence is inflicted in the rarest of rare cases. The accused has caused the deaths of three innocent children who were his own sons and daughter. He had no enmity with the children but it was only done to inflict revenge and mental torture to his wife. Taking out his revenge on the children and killing his own progeny shows an extremely cruel and warped personality. The poor children were cut down in their childhood and the fact that a person could murder an infant of barely 3 months shows extreme barbarism and cold bloodedness. The sight of a young child is enough to move a human being to tenderness and love and to murder one in cold blood is the worst of crimes. Further the accused does not also have the mitigating plea of illiteracy, ignorance, poverty or a brutish life. Here is a well-educated person who has studied upto B.Sc. IIIrd year. He worked in government jobs in various capacities and was even a teacher. Later the accused took up the profession as a contractor and was successfully managing his business. Such a person has sufficient reason and is generally a pillar of the society. He should be able to understand his actions and subsequent consequences. Therefore this Court can have no sympathy on him.

The act has been carried out in a cruel and barbaric manner. It was not an action on the spur of the moment but the crime is premeditated and a pre-planned murder as discussed earlier in the evidence. The accused has gone against the basic human nature of protecting its children even at the cost of his own life. There are numerous instances in various mythologies whereby the sons have

killed their own parents but now where the parents have killed their own sons. This is a crime of grave and heinous nature and deserves to be inflicted the strongest punishment possible. Because of his barbaric and cruel act carried out in a cold blooded manner against his own innocent children who had done nothing to harm him the guilty man deserves to get the capital punishment.

27. Mr. Banerjee, the learned P.P. for the State of Arunachal Pradesh has placed reliance on a decision of the Apex Court in the case of Om Prakash @ Raja Vs. State of Uttaranchal, The facts in Om Prakash (supra) were altogether different although the killing was made by domestic servants and the victims were inmates of the house. The High Court as well as the Apex Court held that the crime had been Overly preplanned and committed in a brutal and diabolical manner. Three out of the four inmates of the house in which he was employed, were eliminated. There was an attempt to kill the fourth person (P.W.-I) also. The accused had inflicted injuries on the young Sarit Khanna in such a cruel manner that his neck was practically severed from his body. Multiple injuries are inflicted on the vital parts of other victims. The cruel tendency of the Appellant was writ large even in the manner of attack. His antecedents also reveal a cruel and savage behaviour on his part. The evidence on record reveals that he killed a pet bird and pierced feathers inside the nose of the hen. He was determined to kill all the members of the Khanna family to take revenge on a flimsy ground.

28. In the present case, all the victims were own children of the accused and there was no motive to kill them. Admittely, there was no pre-planning and as revealed from the evidence on record, the incident took place at the spur of moment. The evidence shows that the accused person is a hot tempered man and he could not bear the temporary absence of his first wife and he was provoked on getting telephonic call from P.W.-6 that she is staying back at her relation's house and she will not come back to the company of the accused.

29. In the case of State of Rajasthan Vs. Kheraj Ram, the Apex Court upon consideration of the guidelines in Machi Singh (supra) observed as follows:

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

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community (SCC pp. 487-88, paras 32-33)

(2) When the murder is committed for a

(3) 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, or in cases of bride burning" or "dowry deaths" or when murder is

committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation (SCC p. 488, para 35)

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed. (SCC p. 488, para 36)

(5) When the victim of murder is an innocent child, or a helpless woman or an old or infirm person or a person vis-a-vis whom the murderer is in a dominating position or a public figure generally loved and respected by the community. (SCC pp. 488-89, para 37)

If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the rarest of rare cases, the circumstances of the case are such that death sentence is warranted, the Court would proceed to do so.

30. In the present case, we find that only "aggravating circumstances which justify" imposing sentence of death is that all the victims are innocent children of the accused. However, this is not a case of pre-plan and meticulous exercise of murder as the accused soon after the incident came out of the room and made a clean brush of everything. He even cut his own finger and dictated a letter for sending it to his wife so that she can use it for the purpose of divorcing him. The accused, thereafter, went to the police station and surrendered himself. All these things go to show that the accused person at no point of time tried to seal himself or hid his guilt. The occurrence took place in broad day light. After giving anxious consideration to all these aspects of the matter, we find that this to be borderline case, i.e., the accused may be either given the death sentence or spare from the extreme penalty. There is no doubt that the accused has committed a serious crime, yet we do not find that the accused-Appellant will be a menace to the society and accordingly we refuse to confirm the sentence of death. The accused-Appellant is sentenced to imprisonment for life and to pay a fine of Rs. 10,000/-, in default, to undergo further imprisonment for two months.

31. The Death Reference as well as the appeal stand disposed of as indicated above.