IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CONFIRMATION CASE NO.3 OF 2017

The State of Maharashtra,
Through Sarkarwada Police Station,
District Nashik (CR No.159/2013) ... Appellant

vs.

Eknath Kisan Kumbharkar,
Age 38 years,
R/o. More Mala, Bhadange,
Babachi chawl, Kakad Bag,
Panchavati, Nashik. … Respondent

Mrs. P.P.Shinde, APP for the State.
Mr. Rohan R. Sonawane for Respondent.

CORAM : B.P.DHARMADHIKARI &
MRS. SWAPNA S. JOSHI, JJ.

DATE ON WHICH JUDGMENT IS RESERVED : 18.6.2019
DATE ON WHICH JUDGMENT IS PRONOUNCED : 06.08.2019

JUDGMENT (PER SMT. SWAPNA S. JOSHI, J.):-

1 This appeal takes an exception to the Judgment and Order dated 19th June 2017 delivered by the Additional Sessions Judge, Nashik in Sessions Case No.364 of 2013 whereby the learned Additional Sessions Judge convicted the accused-respondent (hereinafter referred to as “accused” for the sake of brevity) under

sections 302, 316 and 364 of the Indian Penal Code and accused was sentenced to suffer death for the offence punishable under Section 302 of the Indian Penal Code and directed to hang by neck till his death. He was also sentenced to suffer 10 years rigorous imprisonment and to pay a fine of Rs.5000/- for the offence punishable under Section 316 of the Indian Penal Code, in default he was sentenced to suffer six months simple imprisonment. The accused was further sentenced to suffer life imprisonment for the offence punishable under Section 364 of the Indian Penal Code.

2 The prosecution case in nutshell can be summarized as under:

Deceased Pramila was the daughter of accused and PW1 Smt. Aruna Kumbharkar. In the year 2013, Pramila performed love marriage with one Deepak Kamble resident of Kamgar Nagar. The said marriage was inter caste marriage. Accused did not like the same and therefore, he had grudge in his mind against his daughter Pramila. On the date of incident i.e. 28th June 2013 at about 5.30 am the accused went to the house of his neighbour, PW2 Pramod Ahire the complainant who was an auto rickshaw driver. Accused

informed to PW2 that his brother Navnath met with an accident and he was required to proceed to Kailash Nagar, Nandurnaka. The accused requested PW2 to take his auto rickshaw towards Kailas Nagar. Accordingly, the accused along with PW2 proceeded in the said auto rickshaw towards Malegaon stand at Panchavati, Nashik. At that place accused met with one of his friends. At that time accused informed to PW2 - Pramod Ahire that there was no occurrence of accident of his brother however, his mother was serious and her last wish was to see Pramila. The accused told PW2 that they will pick up Pramila from Mahatma Nagar, Nashik and would take her to his mother. Thereafter, they proceeded by auto rickshaw to the house of Pramila. Pramila was present in the house. Accused told mother-in-law of Pramila that his mother was interested to meet his daughter as she was seriously ill. The accused requested mother-in-law of Pramila to send her with him. Mother-in-law of Pramila informed to the accused that she was carrying nine months pregnancy and her appointment with Doctor was at 11.00 am. The accused said that he would bring Pramila back by 10.00 am. Thereafter accused along with Pramila proceeded by auto rickshaw. PW2 filled up Petrol Pump at Trimbak Naka. Thereafter as

per the directions of the accused auto rickshaw proceeded towards KTHM College. The accused then asked PW2 to stop auto rickshaw to Pandit colony. Thereafter, the accused instructed PW2 to take his auto rickshaw towards Gangapur Naka. The accused then asked PW2 to take auto rickshaw towards Savkar Hospital. Accused then asked PW2 to call watchman of the hospital. Accordingly, PW2 entered inside the hospital and called the watchman. There was no one to respond his call. After some time one ward boy came there. Thereafter, PW2 returned towards his auto rickshaw and at that point of time he saw Pramila lying down on the lap of the accused in the auto rickshaw. Her neck was strangulated by rope and the foam had come out from her mouth. PW2 was shocked to see Pramila in the said condition. He immediately enquired with the accused as to what he was doing with his daughter. Accused said that he (PW2) has no concern with the said incident and Pramila has spoiled his reputation. PW1 raised an alarm and called the nearby people for help. No one helped PW2. The accused then left that place and fled away. Pramila fell down in the auto rickshaw. PW2 took auto rickshaw to Savkar hospital. He requested Doctor to see whether Pramila was alive or not. The doctor informed PW2

that it was a police case therefore, patient should be taken to civil hospital. In civil hospital Pramila was declared as dead. Police came to the hospital. They tried to search the accused. Accused was found standing at the corner near KTHM College. He was smoking bidi at that time. Police apprehended the accused. PW2 proceeded to the police station and lodged police complaint at Exh.22.

On the basis of the said complaint, Police of Sarkarwada Police Station registered offence vide CR No.159/2013. API PW8 - Gorakshnath Giri recorded inquest panchanama. PW10 - PSI Rajesh Akhade recorded statements of witnesses. He took charge of the auto rickshaw under seizure panchanama vide Exh.13. PW10 then took charge of clothes of the accused. The accused was arrested on 28th June 2013. His clothes were taken charge under seizurepanchanama at Exh.85. On 4th July 2013 PW10 issued letter to the Medical Officer, Civil Hospital, Nashik City and produced string used in the offence and asked information whether the death of Pramila was caused by using the said string (Article-B). The Medical Officer opined that death of Pramila could have been caused by the said string. The seized articles were sent by PW10 to Chemical Analyzer's office. During the course of investigation, the

C.A. report was secured vide Exh.99. The clothes of deceased were taken charge by PW10 vide seizure panchanama Exh.45 on 1st July 2013. After completion of investigation, charge sheet was filed in the court of learned J.M.F.C., Nashik. The case was committed to the Court of Sessions, Nashik. The learned Additional Sessions Judge on recording evidence and after hearing both the sides convicted the accused as aforesaid.

3 The learned Advocate for the respondent vociferously argued that the learned trial Judge has not appreciated the evidence led by the prosecution witnesses in its proper perspective and has erroneously convicted the accused. It is submitted that there is glaring discrepancy in the testimony of the prosecution witnesses with regard to the description of string which was used to strangulate the deceased. It is submitted that few witnesses have described it as rope whereas few witnesses have termed it as a string, even there is discrepancy in the version of witnesses with regard to length of the so called string. In view thereof, it is urged that the accused be given the benefit of doubt. It is contended that it is not rarest of rare case and it can be at the most said that in a heat of passion the incident might have taken place. It is contended that

as of today, the accused is aged about 44 years old and leniency be shown. It was further argued that at the time of awarding the sentence, bifurcated hearing on the point of sentence is necessary. However, the learned trial Judge has not given a bifurcated hearing. Hence, the trial is vitiated on the said ground.

4 Per contra, the learned APP contended that the accused had a strong motive to kill his daughter as she had performed intercaste marriage against the wish of the accused. The accused was not happy with the said marriage of his daughter. He used to express his anguish in front of his wife and accordingly, he took opportunity to take his daughter with him on the pretext of meeting his mother who was allegedly on death bed and who wanted to see her grand-daughter prior to her death. The accused in a planned manner took his daughter with him in an auto-rickshaw and though he was well aware of the fact that she was carrying 9 months pregnancy, killed her in a brutal manner by strangulating her by means of string. The learned APP contended that the accused does not deserve any sympathy and the said case falls within the ambit of rarest of rare case. According to the learned APP, there are no

mitigating circumstances in the present case and the accused be awarded death penalty.

5 Considering the rival contentions of both sides, it would be advantageous to go through the evidence led by the relevant prosecution witnesses. The testimony of PW2 who is the complainant explicits that on 28th June 2013 at about 6.00 am, the accused went to the house of PW2 and started weeping. He informed PW2 that his brother Navnath met with an accident. He requested PW2 to take him by his auto-rickshaw towards Kailas Nagar where his brother was residing. On his request PW2 took the accused towards Malegaon Stand at Panchvati. The accused met one of his friends and took his mobile. The accused then asked PW2 to hault auto-rickshaw at Malegaon Stand. Thereafter, the accused informed to PW2 that there was no occurrence of accident of his brother. However, his mother was serious and her last wish was to meet his daughter Pramila. The accused told PW2 that they will pick up his daughter from Mahatma Nagar, Nashik and would take her to his mother. The accused went to the house of his daughter Pramila. The accused met the mother-in-law of Pramila and started

crying. He told her that his mother was serious and she wanted to see his daughter. Hence, requested her to send Pramila with him. The mother-in-law of Pramila – PW3 informed the accused that Pramila was carrying 9 months pregnancy and she is having appointment of Doctor at 11.00 am. The accused said that he will bring her back at about 10.00 am by auto-rickshaw.

6 According to PW2, he along with the accused and Pramila proceeded in an auto-rickshaw. The accused then asked the auto-rickshaw to hault near Savkar Hospital. Accordingly, auto-rickshaw was halted near Savkar Hospital. The accused asked PW2 to call the watchman of the Hospital. Accordingly, PW2 entered inside the Hospital and called the watchman. However, there was nobody to respond him. After sometime, ward boy of the hospital came and informed that there is no watchman. Thereafter, PW2 returned towards the auto-rickshaw. PW2 was shocked to see that Pramila fell down on the lap of the accused and her neck was strangulated by a rope and foam was coming out from her mouth. PW2 immediately asked the accused as to what he was doing with his daughter. The accused said to PW2 that he was not at all

concerned with the said incident and he further said that Pramila had spoiled his reputation. PW2 immediately raised an alarm, people gathered at that place. PW2 dragged the accused out of the auto-rickshaw. The accused got down and fled away. Pramila was lying down in the auto-rickshaw. PW2 took her to Savkar Hospital. He requested the doctor to examine Pramila. However, he refused to do so and suggested that PW2 should proceed to Civil Hospital. Accordingly, PW2 took Pramila to Civil Hospital where she was declared dead. PW2 along with Police took search of the accused. Police apprehended the accused who was near the KTHM college. PW2 proceeded to Police Station and lodged his complaint (Exh.22). PW2 identified the rope (Article – B) which was produced in the Court.

7 During the cross-examination, it was suggested to PW2 that as there was a dispute between him and accused on account of money transaction, he has falsely implicated the accused in the incident. In our considered view, there is no substance in the said suggestion as the accused himself has asked PW2 to take him to the house of Pramila as his mother was on death bed and she wanted to

see her. Evidence of PW2 makes amply clear that it was the accused who strangulated his daughter by means of rope (Article -B). The testimony of PW2 has not been shattered in the cross-examination. PW2 is found to be a trustworthy witness. There is nothing to disbelieve the testimony of PW1.

8 The prosecution further examined PW3. The deposition of PW3 Smt.Sangita Kamble who is mother-in-law of deceased Pramila demonstrates that on the date of incident in between 7.00 to 7.30 am the accused came to her house and said that his mother is ill and he wanted to take Pramila @ Nisha with him. Pramila was carrying pregnancy of nine months. PW3 was to take her to the hospital at 10.00 am. She told the accused accordingly. The accused said that he will bring her till 10.00 am. After 10.00 am, PW3 asked her son Deepak to see as to why Pramila did not return home. The phone call made by Deepak was attended by mother of Pramila (PW1). PW1 asked PW3 as to why she has sent Pramila with the accused. They all were worried about Pramila. At that time, somebody asked them to attend Civil Hospital, accordingly, they all went to Civil Hospital and saw the dead body of Pramila.

9 PW3 admitted during her cross-examination that Pramila used to go to her parent's house and she used to reside there. So also her parents were on visiting terms to her house. Significantly, PW3 stated that the marital life of Deepak and Nisha @ Pramila was very good. No doubt, the testimony of PW3 shows that relations between the family of accused and family of PW3 were cordial. However, the fact remains that the accused had grudge in his mind, as Pramila performed intercaste marriage which was against the desire of the accused. The testimony of PW3 corroborates with the testimony of PW2 on the aspect that on the day of incident the accused visited the house of PW3 in the morning, took away Pramila with him in the auto-rickshaw on the pretext that his mother was on death bed and she wanted to see Pramila.

10 As regards the testimony of PW1, who is the wife of the accused shows that on 28th June 2013 at about 7.00 am the accused left the house, on the pretext that his brother was ill. PW1 tried to contact her daughter Pramila, she could not contact her. In the meanwhile, she saw missed call of mother-in-law of Pramila on her

mobile. As she did not have balance in her mobile phone she proceeded to the house of Pramila. She came to know from her son-in-law that the accused had taken Pramila in rickshaw. PW1 tried to contact Pramila on phone. However, she could not contact her. They tried to search Pramila. However, Pramila was not traced out. PW1 came to know from PW2 on telephone that the accused had committed murder of Pramila by strangulating her.

11 According to PW1, her husband committed murder of Pramila as she performed love marriage out of caste. The accused used to feel that community people from his caste have not accepted him and he was defamed in the society. He, therefore, had grudge against Pramila. PW1 used to insist the accused to accompany her to the house of Pramila. Though he visited the house of Pramila he carried grudge in his mind against her. The said version of PW1 makes clear the motive of the accused to kill Pramila. PW1 categorically stated that the accused strangulated neck of Pramila by string of petticoat. She handed over the said sky blue colour petticoat to the police. She identified the said petticoat in the Court (Article-A).

A case was put up to PW1 in the cross-examination that the accused had mortgaged his motor cycle and paid the said amount to PW2 - Pramod who did not return the said amount. The said suggestion was given to put up a case that as PW2 did not want to return the said amount, he has falsely implicated the accused in this case. In any case, the testimony of PW1 shows that the accused had grudge against Pramila as she got married outside the caste. The version of PW1 that the accused strangulated neck of Pramila, by the string of her sky blue colour petticoat lends support to the prosecution case. There was no reason for PW1 to depose falsely against her own husband. The evidence of PW1 is not shaken in cross-examination.

12 According to PW5 – Dr. Vikrant Savkar on 28th June 2013 in the morning he was standing in the gallary of his residence situated in the hospital. At that time, one auto-rickshaw entered inside the gate of the hospital. PW5 went to the ground floor to inform them that hospital was closed. However, the auto-rickshaw had already arrived in the 'Varhanda' of the hospital. PW5 saw the lady lying inside the auto-rickshaw near the footstep. PW5 informed

that no medical facility was available in their hospital as there was no one in the hospital. Evidence of PW5 corroborates with the evidence of PW2 that Pramila was taken to the hospital, after the incident.

13 Overall assessment of the evidence of the aforesaid witnesses makes manifestly clear that the accused along with PW2 went in his auto-rickshaw to the house of his daughter Pramila and asked her to accompany him, on the pretext of visiting his mother who was seriously ill and wanted to see Pramila. Thereafter, the accused along with PW2 and Pramila proceeded further and near Savkar hospital, the accused asked PW2 to go and make enquiry in Savkar hospital and thereafter strangulated Pramila by means of a rope (Article – B).

14 Now, coming to the medical evidence, PW6 – Dr. Anand Pawar who performed the autopsy on the dead body of Pramila @ Nisha. He found reddish brown ligature mark in the form of pressure abrasion, around the neck. It was grooved, parchmetised, 32 cm in length, 0.4 cm to 0.6 cm width. Total neck circumference was 29 cm, at the midline it was present overlying thyroid notch,

4.8 cm below chin, 10.7 cm above supra sternal notch. On the right side it was present 4.3 cm below angle of jaw, 10 cm from right mastoid. On left side it was present 4 cm below angle of jaw, 10.5 cm below left mastoid. On the back it was present 1.2 cm below hairline. The mark was situated horizontally around the neck.

15 There was a fracture of thyroid cartilage with effusion and fracture margins and surroundings tissue. Reddish curvilinear scratch abrasion was present over right side of face. 3 cm below right eye-brow, 2.8 cm from middle line, size 1 cm x 0.2 cm. Reddish curvilinear scratch abrasion was present over right side of face 3 cm below right eye-brow and 2.1 cm from midline. Sized 0.8 cm x 0.2 cm. Reddish curvilinear scratch abrasion of size 1.1 cm x 0.2 cm was present over bridge of nose, 2.5 cm below eye-brows in midline.

16 There was a foetus in the uterus of the deceased of 9 months old. PW6 issued postmortem report (Exh.58). The cause of death according to PW6 was strangulation. The death of child was caused due to death of that woman.

17 On 4th July 2013, he received one letter from PI Crime Branch R.P. Akhade, Sarkarwada Police Station in respect of examination of ligature material relating to injury mark no.1 (Exh.59). Along with the said letter, one white colour string was brought in sealed condition. The said string was 132 cm in length and 0.4 cm in width. PW6 opined that injury no.1 was possible by the said string. Accordingly, he informed to the Police vide letter (Exh.60). PW6 returned the said string (Article-B) in sealed condition.

18 During the extensive cross-examination, PW6 stated that while conducting postmortem he has not seen alleged ligature material (Article – B). PW6 clarified that nylon means nylon string.

19 As far as investigation is concerned, it is formal in nature. PW9 has recorded seizure panchanama of the string at Civil Hospital, Nashik. He was accompanied by PSI – Shaikh and other police staff. He recorded the inquest panchanama (Exh.12). Around the neck there was a string of white colour. It was a string of petticoat. According to PW9, the said string was 4 feet in length and

5 mm in width. The said string was like nylon and silk, white in colour. The said string was seized vide panchanama Exh-82. The said string was removed by the concerned doctor and handed over to PSI - M.G.F. Shaikh. The panchanama at Exh.82 dated 28th June 2013 corroborates with the version of PW9. According to PW6 on 4th July 2013, a query was made with the Medical Officer by the Police by issuing a query letter (Exh.59) inquiring as to injury no.1 mentioned in postmortem report can be caused by the said string. On that day, the said string was received by the Medical Officer. Accordingly, he gave his opinion that the injury no.1 mentioned in postmortem report dated 28th June 2013 conducted by him, is consistent with being caused by ligature material sent for examination.

20 Much arguments were advanced by the defence counsel on the point that the said string/rope (Article-B) was not the string which was used in the offence, as there is discrepancy in the length of the said string when it was measured in the Court. In the Court, the measurement was found to be 138 cm in length. Whereas, the Medical Officer (PW6) has stated the length of the said string as 132

cm. In this context, as per the testimony of PW9 API - Suresh Padvi, the string was taken charge by PSI Shaikh as he was with PW9, at the time of inquest panchanama then it was handed over to Dr. Anand Pawar (PW6) on 28th June 2013 itself. It appears that PW6 returned the said string to the Police, at that time. Again it was handed over to the Medical Officer on 4th July 2013 while making query with regard to the said string (Article – B). Thus, we do not find any discrepancy as such in the description of the article. Suffice it to say that, string (Article B) was examined by the Medical Officer (PW6). So also at the time of inquest panchanama, the said string was seen around the neck of the dead body of deceased Pramila and the eye witness PW2 has identified the said string in the Court. There is no substance in the contention of the learned Advocate for the defence. Thus, we do not have any doubt in our mind that Pramila was strangulated by means of said string (Article B) which appears to be stretchable and therefore the length and bredth varies. The fact remains that PW2 has seen that Pramila was strangulated by means of a string or rope and the medical officer has opined the cause of death, “due to strangulation”.

21 The evidence on record thus makes clear that the accused in a planned manner, keeping grudge in his mind that his daughter Pramila performed love marriage out of their caste, without his consent and spoiled reputation of his family, committed a gruesome and brutal murder of his own daughter who was carrying nine months pregnancy. The fact that Pramila was likely give birth to the child, was well within the knowledge of the accused. The evidence of PW1 makes clear that although the accused was in visiting terms with Pramila and Pramila used to visit their house and stay there for few days, still the accused never forgot that Pramila had dis-reputed him. On the day of incident the accused in a planned manner went to the house of Pramila in the morning at 7.00 a.m. in the auto rickshaw of his neighbour. He took his daughter on the false pretext that his mother is seriously ill and she being old.

22 Significantly PW1 immediately proceeded to the house of Pramila as she could not contact her on mobile phone. The moment she came to know from PW3 mother-in-law of Pramila that accused took Pramila with him, she immediately questioned as to why she allowed Pramila to go with her father. Perhaps PW1 had

suspected as to what was going on in the mind of her husband about their daughter. As stated by PW2, the accused took brief halt on the way to his daughter's house. He talked with someone, first he falsely told to PW2 that his brother is not well and he was required to see him. However, after some time he changed his version and said to PW2 that he is required to go to see his mother as she is not keeping well and wants to see Pramila. The accused then in the rickshaw of PW2 went to the house of Pramila. He requested her mother-in-law PW3 to send Pramila with him as his mother was ill. PW2 did not suspect any fraud played as Pramila was the daughter of accused. She however requested him to bring her back till 10 am as Pramila was required to take to the hospital. The accused was knowing that Pramila was to give birth to a child very soon still he with malafide intention took Pramila with him and near Savkar hospital deliberately asked PW2 to go inside the hospital to see the doctor and in the mean time killed his daughter. Thereafter, PW2 reached to the spot. He was shocked to see Pramila lying on the lap of accused. She was strangulated by rope/string and foam was coming out from her throat. PW2 shouted at accused as to what he was doing with his daughter. PW2 was shocked to see the incident.

On this accused said that PW2 is not concerned with the incident. He further said that Pramila spoiled his reputation. The said version of PW2 is not shattered in cross examination and it supports the case of prosecution and established the guilt of the accused. The testimony of PW1, PW2 and PW3 corroborates with each other on all material aspects. None of them had any animosity with the accused. The medical evidence supports the ocular testimony of the witnesses.

23 The Medical Officer categorically stated that the strangulation is possible by the string (Article-B) which was identified by Pramod Ahire - PW2 and Medical Officer - PW6. The spot panchanama supports the case of the prosecution. The entire case of the prosecution points out towards the guilt of the accused.

24 The learned APP placed reliance upon the Judgment in the case *Bhagwan Dass vs. State (NCT OF DELHI) reported in (2011) 6 SCC 396,* wherein the Hon'ble Apex Court held thus :-

> "In India, unfortunately, "honour killing" has become commonplace, particularly in Haryana, western Uttar Pradesh and Rajasthan. Many people feel that they are dishonoured by the behavior of the young man/woman, who is related

> to them or belonging to their caste, because he/she is marrying against their wish or having an affair with someone, and hence they take the law into their own hands and kill or physically assault such person or commit some other atrocities on them, which is wholly illegal. If someone is not happy with the behavior of his daughter or other person, who is his relation or of his caste, the maximum he can do is to cut off social relations with her/him, but he cannot take the law is not his own hands by committing violence or giving threats of violence".
>
> It was further held that ……
> ….."honour" killings have become common place in many parts of the country, particularly in Haryana, western Uttar Pradesh and Rajasthan. Often young couples who fall in love have to seek shelter in the police lines or protection homes, to avoid the wrath of kangaroo courts. We have held in Lata Singh case that there is nothing "honorable" in "honour" killings, and they are nothing but barbaric and brutal murders by bigoted persons with feudal minds. In our opinion honour killings, for whatever reason, come within the category of the rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilized behavior. All persons who are planning to perpetrate "honour" killings should know that the gallows await them".

25 Likewise, in the instant case, present accused has committed gruesome and barbaric murder of his own daughter who was carrying complete 9 months foetus, which was to be born in

near future, in feudal mind showing uncivilized behaviour.

26 In the present case, when PW2 shouted at the accused as to what he was doing with his daughter, on this accused stated that PW2 is not concerned with the incident. He further stated that Pramila has spoiled his reputation. Although the said version does not in terms make clear that the accused has confessed the crime, however, on reaction given by PW2, the accused immediately said that PW2 was not concerned with the incident and Pramila has spoiled his reputation. The said statement made by the accused makes amply clear that though he has not in terms confessed his guilt, he has warned PW2, at the same time, he has given justification for the gruesome act committed by him by saying that his daughter has spoiled his reputation.

27 Significantly, PW2 is complainant in the present case. Without any delay he has lodged the complaint. Moreover, the statement made by the accused, as per version of PW2, has not been shattered in the cross-examination of PW2.

SENTENCE

28 We have already held that accused is guilty for the offences punishable under sections 302, 316 and 364 of IPC. Accused has abducted Pramila by deceitful means, he took her with him on the false pretext of meeting her grandmother who was on death bed. The accused has committed a brutal murder of his own daughter by strangulating her by means of string/rope. The accused has also committed death of a quick unborn child of Pramila, by committing murder of Pramila. It is therefore necessary to consider whether the death penalty for the offence punishable under section 302 of IPC needs to be confirmed or some other penalty is to be imposed on the respondent - accused herein.

29 We have heard the learned APP Mrs. Prajakta Shinde for State and Mr. Rohan Sonawane, learned counsel for the Respondent.

30 The learned APP submitted that the instant case squarely comes in the category of “rarest of rare”. She contended that the accused has done to death his own daughter who had performed a love marriage outside the caste, which hurt the accused. The accused had a feeling in his mind that the said act of Pramila had

dis-reputed him in his community. He also thought that he would not be accepted by his community anymore. Keeping in mind the said grudge the accused committed murder of his own daughter. By the said act he did not spare the quick unborn child of his own daughter. The said act of the accused shows that he has no value for human life. She further contended that considering mental set up of the accused it is impossible that the accused would reform or rehabilitate. According to her, conduct of the accused shows that he is menace to the society. It was therefore submitted that considering the present case, to be the rarest of rare case, this Court should confirm the death sentence.

31 Per contra, Mr. Sonawane, learned counsel for the accused submitted that there is no criminal antecedent record of the accused. The accused is around 44 years old. Hence, leniency be shown to him.

32 The death penalty would be warranted or not and under what circumstances it would be warranted in that respect has been succinctly laid down by the Their Lordships of the Hon'ble Apex Court in the case of ***Jagmohan Singh v. State of Uttar Pradesh***[1],

1. 1973(1) SCC 20

Bachan Singh v. State of Punjab[2] and also of the Bench of three Hon'ble Judges in case of ***Macchi Singh and Ors. v. State of Punjab***[3]. There are various judicial pronouncement by the Hon'ble Apex Court, explaining the legal position. In case of ***Shabnam v. State of Uttar Pradesh***[4], Their Lordship have reiterated the legal position. Paragraph 24 of the said judgment reads as under :-

> "*24. We would not lumber the discussion by tracing the entire death penalty jurisprudence as it has evolved in India, but only limit the exercise to cull out the determinants which would weigh large in our mind to award appropriate sentence while balancing the mitigating and aggravating circumstances. We are mindful of the principles laid down by this Court in Jagmohan Singh v. State of U.P., Bachan Singh v. State of Punjab and Machhi Singh v. State of Punjab as followed by this Court upto the present. The aforesaid decisions indicate that the most significant aspect of sentencing policy in Indian criminal jurisprudence regarding award of death penalty is that life sentence is a rule and death sentence is an exception only to be awarded in "rarest of rare cases." 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 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. The circumstances which should or should not be taken into account, and the*

2. 1980(2) SCC 684
3. 1983(3) SCC 470
4 2015 (6) SCC 632

circumstances which should be taken into account along with other circumstances, as well as the circumstances which may, by themselves, be sufficient, in the exercise of the discretion regarding sentence cannot be exhaustively enumerated."

33 In case of ***Ramnaresh v. State of Chattisgarh***[5], the following principles are laid down by the Hon'ble Apex Court :

"Aggravating Circumstances:

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

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

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

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

(5) Hired killings.

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

5. (2012) 4 SCC 257

(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 Code of Criminal Procedure.

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

(10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

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

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

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

Mitigating Circumstances:

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

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

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

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

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

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

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

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

Principles:

(1) The Court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence.

(2) In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant circumstances.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime."

34 The Hon'ble Apex Court has thus held that most significant aspect of sentencing policy in Indian criminal jurisprudence regarding award of death penalty is that life sentence is a rule and death sentence is exception only to be awarded in rarest of rare case. It is further held that death sentence must be imposed only when life imprisonment appears to be altogether inadequate punishment having regard to relevant circumstances of the crime.

35 The Hon'ble Apex Court has culled out various aggravating circumstances and mitigating circumstances in case of ***Bachan Singh (supra).*** The guiding principles are laid down by the Hon'ble Apex Court in the case of ***Bachan Singh vs. State of Punjab***[6] which read thus:

> *(i) the extreme penalty of death need not be inflicted except in 'rarest of rare' case of extreme culpability;*
>
> *(ii) before opting for the death penalty the circumstances of the 'offender' also required to be taken into consideration along with the circumstances of the 'crime';*
>
> *(iii) life imprisonment is the rule and death sentence is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and*
> *provided and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances; and*
>
> *(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."*

36 If the aforesaid guidelines and principles are to be

6. 1980 Cri.L.J. 636

applied in the present case, the following aggravating circumstances and mitigating circumstances are to be considered.

Aggravating Circumstances

1. The accused was deadly against the marriage of his daughter Pramila, which was an intercaste marriage. The accused was of 'Gavali' caste and Pramila married with a person of 'Matang' caste. The accused thought that due to the said marriage, people from his caste have not accepted the said marriage and he was defamed in his community and society. The accused therefore kept anger in his mind and then without expressing his feelings particularly to his daughter's family, in a planned manner went to her house on the day of incident and committed the cold blooded murder of his daughter as well as her quick unborn 9 months old child in a diabolic manner. It was a honour killing.

2. The mother in law of the deceased had accepted the said marriage and she used to take care of her daughter in law Pramila and therefore had decided to take her to the hospital at 10.00 am, as Pramila was carrying 9 months pregnancy and accordingly requested the accused to bring her back home by 10.00 am. Thus

deceased Pramila was happy in the matrimonial home. The accused has infringed the right to life of Pramila as well as her 9 months old quick unborn child.

3. The medical evidence shows that Pramila died due to strangulation by the string/ rope (Article-B).

4. The accused confessed immediately after the incident before PW2 that Pramila had spoiled his reputation, in order to justify his act. He also said that PW2 was not concerned with the said act.

5. The gruesome act of the accused shocked the conscience of the society.

6. The accused has committed offence violating the principles under Article 21 of the Constitution of India.

Mitigating Circumstances

1. In any case there is no evidence on record to show that accused was mentally disturbed. In a planned manner he committed a cold blooded murder of his own daughter and her 9 months quick unborn child.

2. The accused is aged about 50 years old. There is no question of showing any mercy to him. He has committed murder of his own daughter and unborn grand child as he thought that his reputation was spoiled due to the intercaste marriage performed by his daughter.

37 It can be thus seen that the aforesaid aggravating circumstances are available whereas none of the mitigating circumstances are available. There are thus no mitigating circumstances against the accused.

38 In the instant case, the accused has been charged under section 364 of IPC i.e. for abduction of his daughter to commit murder. The accused took his daughter deceased Pramila from her in-laws house, on the pretext that his mother is on death bed and she wants to see her prior to her death. Thus, with deceitful intention he took away his daughter from her house with him in an auto-rickshaw. Significantly, PW3 mother-in-law of Pramila specifically told the accused that she was to be taken to the hospital. The accused was well aware that Pramila was carrying 9 months pregnancy and she was to be taken to the hospital. He falsely

promised that he would bring Pramila upto 10.00 am and then took her away in an auto-rickshaw. The accused instead of taking Pramila to his mother's house, he took her near Savkar Hospital. He deliberately sent PW2 inside the hospital to call the watchman of the Hospital and after PW2 left that place and went near the hospital, immediately strangulated Pramila by means of the string/rope, commonly used in petticoat. He strangulated Pramila till she took her last breath. It shows the inhuman conduct of the accused in respect of his own daughter who was carrying 9 months pregnancy. In a crooked manner the accused kept grudge in his mind that Pramila performed intercaste marriage and he felt that community people have not accepted the said marriage and it dis-reputed him. Thus, the accused has committed offences under sections 302, 316 as well as 364 of IPC. Thus, it is a case of honour killing. It is worthwhile to note that it seems that one year prior to the incident i.e. from the day of marriage of Pramila, the accused had grudge in his mind. The accused with pre-meditation, in a planned manner committed a diabolic and gruesome murder of his own daughter Pramila, who was happily residing with her husband and in-laws. Pramila must be having dreams about her would be

child. The accused killed not only his daughter but also his grand child who was in the womb of Pramila. The accused was well aware of the consequences of his act.

39 Thus, transgression of harmful act of murder of 9 months pregnant daughter can be only prevented by awarding a severe punishment. The accused is nothing but menace to the society. He has broken the traditional value of father and daughter relationship. The accused ought to have taken care of his pregnant daughter who accompanied him in good faith to see her ailing grandmother, who was on death bed whereas the accused has committed murder of his own daughter with a revengeful attitude and keeping in mind a motive. The accused noway deserves any leniency. The accused has infringed the right to live with human dignity and decency in respect of his daughter as well as grand child who was unborn. In such circumstances, we are of considered opinion that the case falls under “rarest of rare category”. The accused does not deserve any mercy as such.

40 The act of the accused, killing his own daughter who was carrying 9 months pregnancy, clearly indicate that the accused

is unfit to revert back to the civilized society. The accused will be dangerous to any member of the society including his wife. The conduct of the accused is beyond reproachment. All the aforesaid aggravating circumstances explicit that it is rarest of rare case and the accused has thus committed a diabolic and brutal murder of his daughter who was to give birth to a child in near future or may be on the same day. Being a heinous offence, it pricks the judicial conscience. By killing his own daughter, the accused has tried to shatter the basic foundation of the relationship between father and daughter, grandfather and grand child. It was in fact a well planned cold blooded murder. In view thereof, in our considered view, sentencing the accused with imprisonment for life would not be a proper sentence for him.

41 It has been made clear by the Hon'ble the Apex Court that the rarest of rare case test depends upon the perception of the Society and the approach should be "society-centric" and not "judge centric". The test has to be applied whether the society will address awarding of death sentence to the crime in question.

42 Thus, their Lordships have held that most significant aspect of sentencing policy in Indian Criminal Jurisprudence regarding award of death penalty is that life sentence is a rule and death sentence is an exception only to be awarded in "the rarest of the rare case".

43 The Hon'ble Apex Court has culled out various aggravating circumstances and mitigating circumstances. Similarly, the Hon'ble Apex Court has laid down principles requiring the Court to apply the test to determine, if it is rarest of the rare case for imposition of death sentence. Only in case when the life imprisonment appears to be inadequate arrangement, death sentence must be imposed. The Court has to come to the conclusion that imposition of life imprisonment would be completely inadequate and would not meet the ends of justice. Death sentence should be imposed when the option to impose sentence of imprisonment of life cannot be exercised, considering the nature and circumstances of the crime. It is to be considered whether the offence was planned and the manner in which it was committed. The Hon'ble Apex Court has laid down aforesaid guiding principles.

44 The learned Advocate for the respondent vehemently argued that the hearing on the point of sentence has to be given on the next day of pronouncement of judgment. In support of this contention, he placed reliance upon Criminal Appeal No.1482/1483 of 2018 in case of ***Channu Lal Verma v. The State of Chhattisgarh***. Paragraph 17 of the judgment reads as under :-

> *"17. Another aspect that has been overlooked by the High Court is the procedural impropriety of not having a separate hearing for sentencing at the stage of trial. A bifurcated hearing for conviction and sentencing was a necessary condition laid down in Santosh Bariyar (supra). By conducting the hearing for sentencing on the same day, the Trial court has failed to provide necessary time to the appellant to furnish evidence relevant to sentencing and mitigation."*

The Hon'ble Apex court held that imposition of death sentence was not only option and hence, the same needs to be commuted to imprisonment for life.

45 In this respect, the learned APP invited our attention to the judgment of the trial Court and pointed out that although the judgment was pronounced and the sentence was also imposed on the same day, necessary time was given to the respondent and his

advocate on the point of sentence. At the relevant time, the learned Advocate for the respondent did not raise any grievance as such. Now at the appellate stage, there is no point in raising such objection. Opportunity was given to the accused and he has made submissions as indicated in paragraphs 101 to 103 of the trial Court judgment.

46 The provisions under section 235 of Cr.P.C. are to be looked into which read as under :-

> *"(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.*
>
> *(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to law."*

47 The learned counsel for the respondent – accused placed reliance upon the judgment in case of ***Accused 'X' vs. State of Maharashtra*** in Review Petition (Criminal) No.301 of 2008 in Criminal Appeal No.680 of 2007, wherein in paragraph 30 of the judgment, the Hon'ble Apex Court discussed the guidelines given in ***Rajendra Prahladrao Wasnik v. State of Maharashtra*** *(Review Petition (Crl.) Nos.306-307 of 2013)*. The Hon'ble Apex Court has made general observation that in cases where the death penalty may

be awarded, the Trial Court should give an opportunity to the accused after conviction which is adequate for the production of relevant material on the question of the propriety of the death sentence. This is evidently at the best directory in nature and cannot be taken to mean that a pre-sentence hearing on a separate date is mandatory.

48 In paragraph 33 of its judgment, it is discussed that :-

> *"33. There cannot be any doubt that at the stage of hearing on sentence, generally, the accused argues based on the mitigating circumstances in his favour for imposition of lesser sentence. On the other hand, the State/the complainant would argue based on the aggravating circumstances against the accused to support the contention relating to imposition of higher sentence. The object of Section 235(2) of the Cr.P.C is to provide an opportunity for accused to adduce mitigating circumstances. This does not mean, however, that the Trial Court can fulfill the requirements of Section 235(2) of the Cr.P.C. only by adjourning the matter for one or two days to hear the parties on sentence. If the accused is ready to submit his arguments on this aspect on the very day of pronouncement of the judgment of conviction, it is open for the Trial Court to hear the parties on sentence on the same day after passing the judgment of conviction. In a given case, based on facts and circumstances, the Trial Court may choose to hear the parties on the next day or after two days as well."*

49 In paragraph 34 of the same judgment, it is held thus :

> *"34. In light of the above discussion, we are of the opinion that as long as the spirit and purpose of Section 235(2) is met, inasmuch as the accused is afforded a real and effective opportunity to plead his case with respect to sentencing, whether simply by way of oral submissions or by also bringing pertinent material on record, there is no bar on the pre-sentencing hearing taking place on the same day as the pre-conviction hearing. Depending on the facts and circumstances, a separate date may be required for hearing on sentence, but it is equally permissible to argue on the question of sentence on the same day if the parties wish to do so."*

50 Thus, the aforesaid guidelines are issued in the above discussed judgment of the Hon'ble the Apex Court.

51 Hence, we are of the considered view that in the instant case opportunity of pre-conviction hearing is given to the accused and the accused has availed the said opportunity as he desired to do so.

52 We are in agreement with the arguments advanced by the learned APP. We have perused the judgment passed by the trial Court. A hearing was given to the accused prior to imposing sentence. He has been heard on the point of sentence as reflected from paragraphs 101 to 103 of the judgment. At the relevant time

no objection was raised by the accused or his advocate. In these circumstances, in our considered opinion, the learned trial Court has followed necessary procedure and hence, there is no need to keep the hearing on the point of sentence on the next day of pronouncement of judgment.

53 In our considered view, the trial Court has given a separate hearing for sentencing at the stage of trial. The hearing on the point of sentence was no doubt on the same day, however, the learned Advocate for the accused as well as accused have not made any request for giving hearing on the next day. The trial Court has provided necessary time to the respondent to furnish evidence relevant to sentencing and mitigation.

54 In the result, the reference made by the learned Sessions Judge in Confirmation Case No.3 of 2017 is answered in the affirmative. The death penalty imposed by the learned Sessions Judge for the offences punishable under section 302 as well as the sentences awarded under sections 316 and 364 of the IPC are confirmed.

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55 We place on record our appreciation for the valuable assistance rendered by the learned APP Mrs. Prajakta Shinde and Mr. Rohan Sonawane, learned counsel for the respondent.

(MRS. SWAPNA S. JOSHI, J.) **(B.P.DHARMADHIKARI, J.)**

. After judgment is pronounced learned counsel seeks stay of execution to enable accused to explore possibility of approaching the Hon'ble Apex Court. In view of section 415 (3) of Cr.P.C., we stay the execution of sentence till the expiry of appeal period.

(MRS. SWAPNA S. JOSHI, J.) **(B.P.DHARMADHIKARI, J.)**

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