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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
B.R. GAVAI; J., K.V. VISWANATHAN; J., SANDEEP MEHTA; J.
CRIMINAL APPEAL NO. 1215 OF 2011; March 18, 2024
NAVAS @ MULANAVAS *versus* **STATE OF KERALA**

Indian Evidence Act, 1872 – Circumstantial evidence – Chain of circumstances – The circumstances set out are by themselves consistent with the sole hypothesis that the accused and the accused alone is the perpetrator of these murders which were most foul. Held, the circumstances presented in evidence in this case meets the ingredients that are required to be established. Hence, no reason to interfere with the concurrent conviction recorded by the trial Court and the High Court against the appellant. *(Para 15)*

Indian Evidence Act, 1872 – Circumstantial evidence – Panchsheel or the five principles essential to be kept in mind while convicting an accused in a case based on circumstantial evidence: - (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established, (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. *(Para 14) Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116; referred.*

Criminal Law – Appropriate sentence – Principle of proportionality – The aggravating and mitigating circumstances which the Court considers while deciding commutation of penalty from death to life imprisonment, have a large bearing in deciding the number of years of compulsory imprisonment without remission, too. In the process of arriving at the number of years which the convict will have to undergo before which the remission powers could be invoked, some of the relevant factors that the courts bear in mind are:- (a) the number of deceased who are victims of that crime and their age and gender; (b) the nature of injuries including sexual assault if any; (c) the motive for which the offence was committed; (d) whether the offence was committed when the convict was on bail in another case; (e) the premeditated nature of the offence; (f) the relationship between the offender and the victim; (g) the abuse of trust if any; (h) the criminal antecedents; and whether the convict, if released, would be a menace to the society. Some of the positive factors have been, (1) age of the convict; (2) the probability of reformation of convict; (3) the convict not being a professional killer; (4) the socioeconomic condition of the accused; (5) the composition of the family of the accused and (6) conduct expressing remorse. The Court would be additionally justified in considering the conduct of the convict in jail; and the period already undergone to arrive at the number of years which the Court feels the convict should, serve as part of the sentence of life imprisonment and before which he cannot apply for remission. These are not exhaustive but illustrative and each case would depend on the facts and circumstances therein. No interference required for sentence of offences under Section 449 and Section 309. However, sentence under Section 302

is modified from 30 years imprisonment without remission to 25 years imprisonment without remission. *(Para 57)*

Indian Evidence Act, 1872; Section 106 – Burden of proof – When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Section 106 is not intended to relieve the prosecution of its duty. However, in exceptional cases where it could be impossible or at any rate disproportionately difficult for the prosecution to establish the facts which are especially within the knowledge of the accused, the burden will be on the accused since he could prove as to what transpired in such scenario, without difficulty or inconvenience. In this case, when an offence like multiple murders is committed inside a house in secrecy, the initial burden has to be discharged by the prosecution and once the prosecution successfully discharged the burden cast upon it, the burden did shift upon the appellant being the only other person inside the four corners of the house to offer a cogent and plausible explanation as to how the offences came to be committed. The appellant has miserably failed to prove. *(Para 12)*

For Appellant(s) Mr. Renjith B. Marar, Adv. Mr. Renjith. B, AOR Ms. Lakshmi N. Kaimal, Adv. Mr. Rajkumar Pavothil, Adv. Mr. Arun Poomulli, Adv. Mr. Keshavraj Nair, Adv. Mr. Avinash Krishnakumar, Adv. Mr. Harsh Vardhan Shah Shyam, Adv.

For Respondent(s) Mr. Nishe Rajen Shonker, AOR Mrs. Anu K Joy, Adv. Mr. Alim Anvar, Adv. Mr. Abraham Mathew, Adv.

J U D G M E N T

K.V. Viswanathan, J.

1. The present Appeal arises out of the judgment of a Division Bench of the High Court of Kerala at Ernakulam in D.S.R. No. 4 of 2007 and Criminal Appeal No. 1620 of 2007 dated 09.02.2010. The Death Sentence Reference and the Criminal Appeal arose out of the judgment of the Court of the III Additional Sessions Judge (Adhoc), Fast Track Court No. 1, Thrissur in Sessions Case No. 491 of 2006.

2. The trial Court found the appellant (the sole accused) guilty for the offences punishable under Sections 302 and 449 IPC for having committed the murder of Latha (aged 39 years), Ramachandran (aged 45 years), Chitra (aged 11 years) and Karthiayani Amma (aged 80 years) after committing house-trespass. After committing the above said act, the accused attempted to commit suicide for which he was also found guilty under Section 309 IPC. The trial Court sentenced the accused to death for the offence punishable under Section 302 IPC. For the offence under Section 449 IPC, the accused was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- and, in default, to undergo simple imprisonment for six months. The accused was also sentenced to undergo simple imprisonment for two months and to pay a fine of Rs.500/- for the offence under Section 309 IPC, and in default of the payment of fine to undergo simple imprisonment for one month.

3. When the matter went for confirmation before the High Court, the High Court, while confirming the conviction, modified the sentence. The sentence of death was modified and reduced to imprisonment for life with a further direction that the accused shall not be released from prison for a period of 30 (thirty) years including the period already undergone with set off under Section 428 Cr.P.C. alone. Aggrieved, the appellant is before us in the present appeal by way of special leave.

Brief Facts:

4. The prosecution story, in brief, is that in the household of the deceased Ramachandran, there were four people residing. Apart from Ramachandran, there was his wife Latha, their daughter Chitra and Ramachandran's mother Karthiayani Amma. The appellant, according to the prosecution, had, at an earlier point in time, illicit intimacy with Latha so much so that Latha even became pregnant, later leading to termination of pregnancy. It is the prosecution case that after Latha tried to distance herself, the appellant was seriously aggrieved, and they advert to an occurrence of 03.02.2005 when the appellant is supposed to have trespassed into the house where Latha lived and even tried to harm her. They rely on Ext. P-9 to Ext.P-11 complaints.

5. The macabre incident, out of which the present case arose, happened on the night intervening 03.11.2005 and 04.11.2005. It is alleged that the accused reached the house of the deceased late at night on 03.11.2005. Having reached the house, he made a hole in the eastern side wall of the house and gained access into the house. It is the prosecution case that, having gained access and being armed with 2 (two) knives and an iron rod, he caused the death of Ramachandran and Chitra with the iron rod in the upper floor room in the northern side of the house; that he caused serious injuries to Karthiayani Amma in the northern room on the ground floor (resulting in her death subsequently) and caused the death of Latha with multiple stab injuries in the hall near the stairs on the ground floor.

6. The prosecution case is that PW-1 Thankamani, the domestic help, who had seen the family hale and hearty the previous evening i.e., 03.11.2005, had come to sweep the house on the morning of 04.11.2005 at around 07:00 a.m. While sweeping the courtyard, she found that, unlike on normal days when the family would come out of the house in the morning, no one came out that day. While sweeping, she found that a hole had been dug on the eastern side wall of the house and to her horror also found that blood was dripping from a pipe adjoining the western side wall of the house. She raised an alarm resulting in the neighbours converging on the property.

7. It is PW-2 (Shyama Sundaran), a neighbour, who called the police after witnessing the commotion outside the house. PW-30 (KT Kumaran) the ASI rushed to the spot with his police party and reached at 08:25 AM. He also found a hole in the wall on the eastern side of the house and also that telephone cable was cut. He instructed PW-6 (Balan) & PW-23 (Rajan) to break open the door on the western side of the house first. PW-6 & PW-23 broke open the outer door but found that the inner door was also locked and it could not be opened. It was then decided to break open the door on the front side of the house. PW-4 (Sandeep) removed the tile portion above the porch and entered the porch. He then broke open the door using a pestle and entered the *poomukham* (veranda). PW-4 then broke the glass ventilator above the main door and inserted his hand to open the door latch. As they entered, they found Latha's dead body in the passage near the stairs. The body of Ramachandran and Chitra were found dead in the upper floor room on the northern side of the house. Karthiyani Amma was found in the northern room on the ground floor unconscious. PW-6 & PW-23 took Karthiyani Amma to hospital. It was PW-32 (Ajaya Kumar), the Investigating Officer of the case, who reached the spot at 09:15 AM and saw blood droplets starting from the northern room on the ground floor to the room on the south. When he opened the door, he found the accused lying on the floor with a cut injury on his left wrist.

8. PW-30, ASI registered the *suo motu* FIR and PW-32, conducted the investigation. The appellant was sent up for trial. In all, the prosecution examined 32 witnesses (PWs 132) and proved Exhibits P1 to P45 series. Material Objects [M.Os.] 1-122 were also

marked by the prosecution. The accused did not examine any defence witnesses; but proved Exhibits D1-D5. The accused also gave a statement while being examined under Section 313 Cr.P.C. At the Section 313 stage, he advanced a version to the effect that there was a pact between him and Latha to commit suicide; that he had come to the house of Latha on 03.11.2005 with the intention that both of them shall commit suicide; that Latha had kept the door open as usual and he gained entry into the house through such door; that after he entered the house, he found Latha and others were all lying dead/injured; that on account of grief, he had cut his left wrist in an attempt to commit suicide and that he was found available in the house in an unconscious state. The appellant was clearly implying that somebody else had gained access into the house and caused the death of all victims. It is then that he proceeded to commit suicide.

9. The case entirely rests on circumstantial evidence. Both the trial Court and the High Court have closely marshalled the circumstantial evidence in the case to arrive at the conclusion that the accused alone is responsible for the death of the four deceased. Additionally, it also relied on the fact that the accused having been found present in the house had offered no plausible and cogent explanation about the sequence of events that had transpired inside, leading to the sole and irresistible conclusion that the accused has perpetrated the heinous crime.

Contentions:

10. We have heard Mr. Renjith B. Marar, learned counsel for the appellant, who advanced elaborate arguments, covering the entire spectrum by making available a chart setting out the summary of the deposition of the prosecution witnesses, the relevant exhibits marked and the argument of the defence in separate columns. He mainly contended that the case made out by the prosecution falls short of the proof needed in a case which is based entirely on circumstantial evidence. Learned counsel contended that with the available evidence it would be unsafe to sustain the conviction and pleaded for outright acquittal. The specific contentions of the learned counsel challenging certain individual circumstances have been dealt with hereinbelow while tabulating the circumstances. Alternatively, learned counsel pleaded that the sentence of 30 years without remission is excessive and prayed that the sentence may be appropriately tailored to meet the ends of justice.

11. Shri Jayanth Muth Raj, learned senior counsel, for the State vehemently rebutted the arguments of the counsel for the appellant and contended that the trial Court and the High Court have correctly arrived at the conclusion of guilt. Learned senior counsel contended that the case actually warranted death penalty but the High Court has modified it to a sentence of imprisonment for 30 years without remission for the offence under Section 302. According to the learned senior counsel, the sentence did not deserve any further modification.

Discussion:

12. We have carefully considered the submissions of the learned counsel for the respective parties and have perused the material on record, including the relevant original trial Court records. The circumstances that unerringly point to the guilt of the appellant as it emerges from the deposition of the witnesses and the duly proved exhibits can be summarized as under:

(i) There was the incident on 03.02.2005 when the accused allegedly trespassed into the house and had thrown a *koduval* (curved sword) at deceased Latha. This highlights the friction between the accused and deceased Latha. Ext. P9 - P11 complaint of 03.02.2005

has been marked by the prosecution. It also forms an important piece of evidence to establish motive.

ii) PW-3, Raman, an auto driver, deposed that on the night of 03.11.2005, the accused engaged his services to go to Orumanayur. The accused asked him to stop at a place called Muthenmavu (which is the place where the house of the deceased was situated) and he paid him Rs.70/-. We have seen the original deposition and it clearly records that it was at 10.30 PM on the night of 03.11.2005 that the accused engaged the services of PW-3 at Guruvayur auto stand to reach the area where the house of the deceased was located. Mr. Renjith B. Marar, learned counsel, has challenged the evidence of PW-3 on the ground that no test identification parade was held and the identification was for the first time at the police station. This submission need not detain the court as nothing much turns on it. The presence of the accused even otherwise, at the scene of occurrence has been spoken to by PW-1, PW-2, PW-4, PW-6, PW-23, PW-30 and PW-32, as has been discussed hereinbelow.

iii) PW-1 Thankamani has clearly spoken about the fact that, on 03.11.2005, when she left the house after her work at 7.30 p.m. all the deceased were hale and hearty. On the morning of 04.11.2005, it was she who detected the dripping of the blood from the pipe adjoining the western wall, and a hole being made in the eastern side wall of the house.

iv) The evidence of PW-1, 2, 4, 6, 23, 30 and 32 speaks about the appellant lying in the southern room of the house and being taken to the hospital from there. PWs 1,2,4,6,23 & 30 also speak about the hole that has been made on the eastern wall of the house. The seizure of M.O. 29,30,31,32,33 & 34 items i.e., 2 (two) knives, 2 (two) knife sheaths, iron rod and bag recovered also contributes as a link in the chain.

v) On 4.11.2005, M.O. 29 & 30 (Knives found in the southern room on the ground floor where the accused was found) were seized and taken into custody under Ext. P-12 (Scene Mahazar). M.O. 33 (Iron rod) was also seized and taken from the northern room in the upper floor, vide the same Ext. P-12.

vi) Another important circumstance is the report of the Finger Print Expert (Ext.P-22). The Finger Print Expert has opined that the chance finger print on the water bottle found at the scene of the crime (marked as C-9 by the Expert) was identified as the left thumb impression of the appellant in the slip made available with the Expert for verification (marked as “S” by the expert). The Expert concluded in P22 that since the identical ridge characteristics are present in their nature and relative possessions, the finger impressions “C9” and “S” are identical i.e. that they are the impressions of the same finger of the person. The Expert concluded that, in his opinion, that the chance print marked as C-9 and developed by him from the scene of crime on 04.11.2005 is made by the left thumb of the appellant.

vii) The prosecution case is also that there were writings on the wall and on certain objects in the southern room of the ground floor where the accused was found. The writings indicate that these were parting messages of the accused (as the High Court labels them) since he had decided to commit suicide. The writings were in the following words “*Do not enter here*”; “*Shyaman, you are a O, you should not desire the ruppam of a woman, money will make people traitors, you are O, you should not destroy the local area*”; The mirror had the writing with pen on it reading '*Latha, I love you*' and same was underlined and below that it was written '*Salim, I love you' and 'Yahio I lo*” and below that '*Shabna I lo*”; The aforesaid wall had one wall clock with the label 'Samaya Quartz' inside. On it, it was written with marker pen '*Latha, I love you*'; On the wall, below the clock, it was written “*My name is Nawas, reason for my death is Latha, so myself and Latha decided to*

die together.....Confirm by Navaz P.M.”; “Yahayikka knows that now I shall not be there, wherever, no harm should happen to Yahayikka. I may be an idiot”; “*For Salim to know, even if I am not there, you shall always be in my eyes”. Near to that it was written “night =12 O’clock, I am at the house of Latha” in two lines. Below that it was written “6 to 7= Finishing”; “I have no role in the looting of 6 lakhs. I was present in the said vehicle. This is true*” and near to that it was written “*for police to know where I was for all these days, no child knows*”.

Specimen of these writings was taken and referred to the handwriting expert. The Handwriting Expert produced P-42 report. PW-32, the Investigating Officer spoke about the seizure of a mirror, a samaya quartz clock and the November-December, 2005 page of Guruvayur Cooperative Urban Bank Calendar. All these items had writings on them at the scene of the crime. Twenty black and white photographs of the handwritings were taken. These were termed ‘question’ writings and marked by the Handwriting Expert in the report for his reference as Q1, Q2, Q3, Q4, Q5, Q5A, Q6, Q6A to Q6P. The Expert was also furnished with the ‘standard’ writings by Appellant marked by the Expert for his reference as S1 to S49. In Ext. P-42, the Handwriting Expert concludes that, on comparison, the ‘question’ and ‘standard’ writings are by the same person. He concluded that they agree in general writing characteristics such as skill, speed, spacing, relative size and proportionate spelling errors. The Expert opined that similarities found between the question and standard writings are significant and numerous and there did not exist any material differences. Only with regard to the signature stamp in Q6(q), the expert concluded that it was not possible to arrive at any definite conclusion regarding the authorship for want of sufficient data on that score. With regard to all others, it was concluded that the person who wrote the blue enclosed writings stamped and marked as ‘standard’ writings also wrote the red enclosed ‘question’ writings. The High Court has found that this aspect of handwriting was not even seriously challenged by the accused. Mr. Renjith B. Marar, learned counsel, contended that the handwriting expert had not been examined. In support thereof, he relies on the judgment of this Court in ***Padum Kumar v. State of Uttar Pradesh, (2020) 3 SCC 35***. The submission flies in the face of Section 293 of the Code of Criminal Procedure. Exhibit P-42 Report is prepared by Dr. K.P. Jayakumar, Joint Director (Research), Forensic Science Laboratory, Thiruvananthapuram. The report is duly marked and exhibited and proved as Exhibit P-42. The Joint Director who occupies a position above the Deputy Director and Assistant Director, is encompassed in the phrase “Director” used in Section 293(4)(e). This position is expressly settled by the judgment of this Court in ***Ammini & Others v. State of Kerala, (1998) 2 SCC 301***. The relevant para of which is extracted hereinbelow:

“11. …..The trial court was also wrong in holding that the report given by the Forensic Science Laboratory with respect to the contents of MO 44 was not admissible in evidence as it was signed by its Joint Director and not by the Director. On a true construction of Section 293(4) CrPC it has to be held that Joint Director is comprehended by the expression “Director”. The amendment made in clause (e) of Section 293(4) now indicates that clearly. If the Joint Director was not comprehended within the expression Director then the legislature would have certainly named him while amending the clause and providing that Section 293 applies to the Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory. **A Joint Director is a higher officer than a Deputy Director or an Assistant Director and, therefore, it would be unreasonable to hold that a report signed by Joint Director is not admissible in evidence though a report signed by the Deputy Director or Assistant Director is now admissible.** In our opinion the High Court was right in holding that the report made by the Joint Director was admissible in evidence and that it deserved to be relied upon.”

(Emphasis Supplied)

Hence, the report Ex. P-42 is admissible even without the examination of Dr. K. P. Jayakumar. (See also ***Bhupinder Singh v. State of Punjab****, (1988) 3 SCC 513* & ***State of H.P. v. Mast Ram****, (2004) 8 SCC 660*) viii) The evidence of the doctors PWs-10 & 19, who conducted the post-mortem of Latha & Chitra respectively, fixed the timing of death between 6-18 hours prior to 6.25 PM on 04.11.2005. Evidence of PW-25, Doctor who conducted post-mortem of Ramachandran stated that the death occurred 12-18 hours prior to 6:25PM. This synchronizes with the time that the accused made entry into the house.

ix) The hair strands found on the body of Chitra were found to be similar and identical to the hair of the accused. In Ext.P41(b), which is the report of Dr. R. Sreekumar, Assistant Director (Biology) in the forensic laboratory, it is opined that the hairs in Item 45 (hairs from the belly of Chitra) are human scalp hairs which are similar to the sample scalp hairs in Item 58 (a tuft of black hairs) which is the combed hair and cut hair of the appellant. Challenging the circumstances, Mr. Renjith B. Marar, learned counsel, contends that PW-27 Annamma John does not speak about the hair being seized and that there was no seizure memo spoken to in her 161 statement. This submission has no merit since Exhibit P-26 is the seizure mahazar of the objects collected by PW-27 on 04.11.2005, the day the sordid incident was unravelled. In the Inquest Report also PW-14 mentions about the collection of hair from the body of the deceased Chitra by PW-27.

x) It is also important to note that the 2 (two) strands of hair found on one of the knives, was found to be Latha's as per FSL Report (Ex. P. 41(b)).

xi) The testimonies of the Doctors PWs, 10, 19, 25 and 26, clearly bring out that the injuries sustained by the deceased could be caused by means of M.O. 29, 30 and 33. This is an additional circumstance.

xii) Ext.P41(c), which is the report of the Scientific Assistant (Chemistry), FSL, Thiruvananthapuram, clearly establishes that the black coloured ink in Item 66 (the marker pen with trade brand label as Kolor Pik permanent XL marker) and 67 (1 black coloured plastic cap) is similar to the ink used in the black coloured writings in Item 63 (wooden frame) item 64 (wall clock) with trade label samay and item 65 (calendar of Guruvayur Cooperative Urban Bank). Item numbers referred to here are the ones given for reference by the Scientific Assistant in her report. The Marker pen (part of M.O. 95) was recovered from the southern room where the Appellant was found, and rightly an inference has been drawn that the writings on M.O. 43 (Wall Clock) M.O. 90 (Mirror) and M.O. 94 (2005 Calendar) are the writings of the accused by using M.O 95 (marker pen)

xiii) At the site where the hole was drilled, soil/powder was available. It is found in the forensic report that the soil/powder on M.O. 34 bag (found in the room where the accused was found) and seized as per Ext.P-12 scene mahazar, was apparently similar to the soil/powder seized near the hole. Equally so, in the M.O. 71 shirt belonging to the accused, apparently similar soil/powder was found. These are established by the FSL report (Exh. 41(a)). Further, the nail clippings of the accused taken by PW-31 dated 14.11.2005 revealed apparently similar soil/powder to the soil/powder found at the site of the hole as per FSL report (Exh. 41(a)). This is a circumstance relied upon by the prosecution to establish that the accused gained access through the hole that he dug. The argument of the accused that the nail clippings were taken on 14.11.2005 and no importance could be attached has rightly been rejected by the High Court saying that it is not even the case of the accused that the soil/powder detected from the hole at the scene of occurrence was planted on his nail. Mr. Renjith B. Marar, learned counsel for the appellant contended that

Exhibit P-41(a) report was not put in the Section 313 questioning in the context of the soil particles on the wall tallying with the soil particles in the nail clippings and on the shirt and the bag found in the room where the accused was present. We have called for the original record and examined the Section 313 statement and had the Malayalam version read over to us. We have also seen the translated version of Section 313. Exhibit P-41(a) was put in question no. 52 but it was in the context of item 68 cable and as to how it could be cut with the knives (item 22 and 23). To that extent, Mr. Renjith B. Marar is right that the report was not put in this context. The report was put to the accused albeit in the context of the cable and knives. However, viewed in the conspectus of the other circumstances even if this circumstance is eschewed, it will not make any difference to the ultimate conclusion. The further argument that there was no seizure memo for the nail clippings is clearly incorrect. PW-31 Dr. Hitesh Shankar has clearly deposed that he had collected the nail clippings and hair samples and the blood of the accused-appellant and after sealing and labeling them handed it over to the police constable-4628. Exhibit P-45(i) marked by PW-32 Ajay Kumar, Investigating Officer as part of the property list, mentions about the collection of nail clippings, hair sample and sodium fluoride tube. Hence, the contention that the chain of custody is not established cannot be countenanced. There is no reason to disbelieve PW-31 Dr. Hitesh Shankar and the documents in support of the same.

xiv) The evidence of the prosecution witnesses and even the version of the accused establishes his presence at the scene of occurrence. His explanation that deceased Latha would always leave the door open for him to enter and that when he entered, he found them already dead and lying on the floor wounded has been found to be false. If the appellant's own case is that he entered the house that night, no cogent explanation has been given as to who opened the door. However, we have not gone by his version. His presence at the scene of crime is established by the evidence of PW-1, PW-2, PW-4, PW-6, PW-23, PW-30 and PW-32.

xv) The appellant was the only other person inside the house, with the other three being dead and one Karthiayani Amma, who was injured and unconscious and who later died in that state itself. There is no cogent and plausible explanation forthcoming from the accused as to what transpired at the scene of occurrence on the night intervening 03.11.2005 and 04.11.2005. This coupled with the fact that his relationship with the deceased Latha was strained clearly point to his guilt. Section 106 of the Indian Evidence Act, 1872 states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. We are conscious of the warning administered by Justice Vivian Bose, rightly, in ***Shambhu Nath Mehra vs. The State of Ajmer,*** 1956 SCR 199 to the effect that Section 106 is not intended to relieve the prosecution of its duty. However, ***Shambhu Nath Mehra*** (supra) itself recognizes that in exceptional cases where it could be impossible or at any rate disproportionately difficult for the prosecution to establish the facts which are especially within the knowledge of the accused, the burden will be on the accused since he could prove as to what transpired in such scenario, without difficulty or inconvenience. In this case, when an offence like multiple murders is committed inside a house in secrecy, the initial burden has to be discharged by the prosecution. Once the prosecution successfully discharged the burden cast upon it, the burden did shift upon the appellant being the only other person inside the four corners of the house to offer a cogent and plausible explanation as to how the offences came to be committed. The appellant has miserably failed on that score. This can be considered as a very important circumstance, constituting a vital link in the chain.

13. Though the trial Court and the High Court have adverted to few other circumstances, we are satisfied that the circumstances set out hereinabove are by

themselves consistent with the sole hypothesis that the accused and the accused alone is the perpetrator of these murders which were most foul.

14. It is also to be noted that the law on the appreciation of circumstantial evidence is well settled and it will be an idle parade of familiar learning to deal with all the cases. We do no more than set out the holding in ***Sharad Birdhichand Sarda*** vs. ***State of Maharashtra (1984) 4 SCC 116***, which dealt with the *panchsheel* or the five principles essential to be kept in mind while convicting an accused in a case based on circumstantial evidence:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047] "Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

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

15. We are convinced that the circumstances presented in evidence in this case more than meets the ingredients that are required to be established. We find no reason to interfere with the concurrent conviction recorded by the trial Court and the High Court against the appellant for the offences under Section 302 (murder), 449 (house-trespass) and 309 (attempt to commit suicide) and we maintain the conviction.

Discussion on Sentence:

16. Coming to the sentencing, while the trial Court imposed the sentence of death, the High Court has modified it to that of imprisonment for 30 years with no remission. Mr. Renjith B. Marar, learned counsel, made an impassioned plea as part of his alternative submission that imprisonment for 30 years without remission is excessive and disproportionate. Mr. Jayanth Muth Raj, learned senior counsel, left no stone unturned in contending that the appellant has got away lightly and that he is fortunate to have escaped the gallows.

17. The question before us is what should be the appropriate sentence and whether the High Court was justified in adopting the ***Swamy Shraddananda v. State of Karnataka, (2008) 13 SCC 767*** line of cases and even it was justified whether the fixing of the quantum

at 30 years without remission was the appropriate sentence, in the facts and circumstances of the case?

18. The trial court imposed the sentence of death as far as the offence punishable under Section 302 IPC was concerned. The trial court recorded that the appellant had committed the murder of four persons; that the appellant was blood-thirsty; that he had illicit love affair with deceased Latha, the wife of deceased Ramachandran; that she even became pregnant because of him and then fell out with the appellant; that there was an attempt to cause bodily injury earlier to Latha by throwing a *koduval* (curved sword) on 03.02.2005; that the nature of the injuries inflicted upon the deceased persons indicate that the murders were committed in an extremely brutal and dastardly manner; that they were premeditated and cold blooded murders; that the entire family was eliminated including an innocent child aged eleven years and a hapless 80 years old lady and that the collective conscience of the community was shocked. The trial court also noted that the accused attempted to commit suicide by cutting the vein in his left forearm but however discarded that circumstance and passed a sentence of death.

19. The High Court first recorded that there was no question of interfering with the sentence under Sections 449 and 309 IPC and the question was only whether the sentence of death ought to be confirmed or not. Thereafter, the High Court delved into the balance sheet of aggravating and mitigating circumstances. The High Court, while recording the argument of the prosecution, noticed that there was prior planning; that four lives were snuffed out and the entire family was wiped out including a child and an aged woman; that the deceased were unarmed and defenceless and no provocation or resistance was offered by them; that the offence was committed after mischievously planning the operation and after gaining access to the closed house in the night by making a hole on the wall; that the incident reflected a dare devil attitude; that the nature of weapons used by the accused, namely, the knife and the iron bar is also taken as an aggravating circumstance; that the nature and number of injuries inflicted on deceased Latha (43 of which 38 were stab injuries) was also an aggravating circumstance and that there were prior instances of involvement by the accused in attempting to assault Latha.

20. Dealing with the mitigating circumstance, the High Court noticed the contention of the defence, to the effect that there was no semblance of any element of gain, profit or advantage for the accused; that rightly or wrongly the accused was labouring under an impression of deprivation in love; that the accused was in an extremely agitated and excited state of mind; that there was indication to show that at some point of time deceased Latha had herself suggested commission of suicide together; that the accused had no motive whatsoever against Ramachandran, Chitra and Karthiayani Amma; that he had great affection for Chitra and referred to Ramachandran in endearing terms; that he had not used any weapon against Karthiayani Amma; that he did not make any attempt to flee from justice and in fact attempted to commit suicide; that he was a young man of twenty eight years; that he was still young and not lost to civilization and humanity and the final contention of the defence that he was not a menace to the society.

21. Thereafter, the High Court dealt with the precedents laid down by this Court in ***Bachan Singh v. State of Punjab (1980) 2 SCC 684, Machhi Singh v. State of Punjab (1983) 3 SCC 470*** to examine whether the litmus test, namely, that the alternative option being unquestionably foreclosed was fulfilled or not. Thereafter, the High Court noticed the judgment of this Court in ***Swamy Shraddananda (supra)*** and the holding thereon that to avoid a sentence of death, it is possible for the courts to device a graver form of sentence of imprisonment for life beyond fourteen years which would ensure that the

society is insulated from the criminal for such period as the court may specify, including if the facts warranted, the entire rest of his life.

22. Thereafter applying ***Swamy Shraddananda (supra)***, the High Court observed as follows:

"54. A question still remains whether the instant case is one in which the graver alternatives of a life sentence are also unquestionably foreclosed. We have rendered our anxious consideration to all that all the relevant inputs. We are unable to agree that all the options now available can be said to be unquestionably foreclosed in the given circumstances. In every case of death sentence, the court must consider the purpose of the sentence. The theory of reformation will have no place whatsoever in a case of imposition of death sentence. In a case like the instant one, the consideration of compensation/restoration cannot also have any place, as all the members of the family have been liquidated by the conduct of the accused. The purpose of a death sentence - of eliminating the menace to the society in the form of a hardened criminal and to save society from the activities of such criminal may not also have much role, given the alternative option of a life sentence which will ensure that the accused does not come into contact with the society thereafter.

59. Let it not be assumed that this court does not perceive the instant one to be a serious and dastardly crime. We, to say the least, are convinced that the offence committed calls for societal abhorrence and disapproval. But, the totality of circumstances instill in us the satisfaction that this is not a case where the range of further options available to the court after **Swamy Shraddananda** (supra) are unquestionably foreclosed. Placing fetter on the powers of the Executive under Section 432 and 433 Cr.P.C. for a prescribed period (and with due caution administered that the powers under Article 72 and Article 161 should not be lightly invoked to get over the prescription of such period fixed by this Court) a sentence of imprisonment for life which shall ensure that the offender does not get exposed to society for a period of 30 years can be imposed. We are not prescribing the 'entire rest of the life' as the period, as fixed by their Lordships in **Swamy Shraddananda** (supra), considering the totality of circumstances and because of the optimistic faith in the infinite capacity of the human soul to repent and reform."

Holding so, the High Court modified the sentence of death to that of imprisonment for life with the further direction that the accused shall not be released from prison for a period of 30 (thirty) years including the period already undergone with set off under Section 428 Cr.P.C. alone.

23. The State is not in appeal, having accepted the verdict of the High Court. It is only the appellant who is in appeal. It is his submission that the imposition of 30 (thirty) years sentence without remission is excessive and the counsel urges that a suitable lesser sentence be imposed under the ***Swamy Shraddananda*** principle. This is the alternative submission advanced.

24. Swamy Shraddananda (supra), since affirmed subsequently in Union of India v. V. Sriharan alias ***Murugan and Others, (2016) 7 SCC 1***, resolved a judge's dilemma. Often it happens that a case that falls short of the rarest of the rare category may also be one where a mere sentence of 14 years (the normal benchmark for life imprisonment) may be grossly disproportionate and inadequate. The Court may find that while death penalty may not be warranted keeping in mind the overall circumstances, a proportionate penalty would be to fix the period between 14 years and for the imprisonment till rest of the life without remission. Addressing this issue felicitously in ***Swamy Shraddananda (supra)*** Justice Aftab Alam speaking for the court, held as follows:

"92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh *or it may be highly disproportionately inadequate*. When an appellant comes to this Court carrying a death sentence awarded by the

trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all."

25. In ***V. Sriharan (supra)***, a Constitution Bench of this Court affirmed the principle laid down in ***Swamy Shraddananda (supra)***. It first affirmed the principle that imprisonment for life meant imprisonment for rest of the life, subject however, to the right to claim remission, as provided in the Constitution and the statutes. It was further held that the judgment in ***Swamy Shraddananda (supra)*** did not violate any statutory prescription. The Court went on to observe that all that ***Swamy Shraddananda (supra)*** sought to declare was that within the prescribed limit of the punishment of life imprisonment, having regard to the nature of offence committed by imposing life imprisonment for a specified period would be proportionate to the crime as well as the interest of the victim. Thereafter, in the same judgment Ibrahim Kalifulla, J., in a passage which repays study held as under:

"98. While that be so, it cannot also be lost sight of that it will be next to impossible for even the lawmakers to think of or prescribe in exactitude all kinds of such criminal conduct to fit into any appropriate pigeonhole for structured punishments to run in between the minimum and maximum period of imprisonment. Therefore, the lawmakers thought it fit to prescribe the minimum and the maximum sentence to be imposed for such diabolic nature of crimes and leave it for the adjudication authorities, namely, the Institution of Judiciary which is fully and appropriately equipped with the necessary knowledge of law, experience, talent and infrastructure to study the detailed parts of each such case based on the legally acceptable material evidence, apply the legal principles and the law on the subject, apart from the guidance it gets from the jurists **and judicial pronouncements revealed earlier,** to determine from the nature of such grave offences found proved and depending upon the facts noted, what kind of punishment within the prescribed limits under the relevant provision would appropriately fit in. In other words, while the maximum extent of punishment of either death or life imprisonment is provided for under the relevant provisions noted above, it will be for the courts to decide if in its conclusion, the imposition of death may not be warranted, **what should be the number of years of imprisonment that would be judiciously and judicially more appropriate to keep the person under incarceration, by taking into account, apart from the crime itself, from the angle of the commission of such crime or crimes, the interest of the society at large or all other relevant factors which cannot be put in any straitjacket formulae."**

(Emphasis Supplied)

It will be clear from the paragraph above that the question of fixing the number of years within the maximum, in the case of life imprisonment, was to be left to the courts. It was mandated that the courts would with its experience, knowledge of law, the talent and infrastructure after studying the detailed parts of each case, with the guidance from the jurists and judicial pronouncements revealed earlier would decide judiciously about the period of incarceration which the case warranted. It was also indicated that for this, apart from the crime itself; the angle of the commission of such crime or crimes; the interest of

society at large and all other relevant facts which cannot be put in any straitjacket formulae would be taken into account.

26. Once the court decides that the death penalty is not to be imposed and also that the convict cannot be released on the expiry of 14 years, the guidelines set out in ***Swamy Shraddananda (supra), V. Sriharan (supra)*** and the line of cases which have applied these judgments will have to be considered and principles, if any, set out therein have to be applied.

27. How much is too much and how much is too little? This is the difficult area we have tried to address here. As rightly observed, there can be no straitjacket formulae. Pegging the point up to which remission powers cannot be invoked is an exercise that has to be carefully undertaken and the discretion should be exercised on reasonable grounds. The spectrum is very large. The principle in ***Swamy Shraddananda (supra)*** as affirmed in ***V. Sriharan (supra)*** was evolved as the normally accepted norm of 14 years was found to be grossly disproportionate on the lower side. At the same time, since it is a matter concerning the liberty of the individual, courts should also guard against any disproportion in the imposition, on the higher side too. A delicate balance has to be struck. While undue leniency, which will affect the public confidence and the efficacy of the legal system, should not be shown, at the same time, since a good part of the convict's life with freedom is being sliced away (except in cases where the Court decides to impose imprisonment till rest of the full life), in view of his incarceration, care should be taken that the period fixed is also not harsh and excessive. While by the very nature of the task mathematical exactitude is an impossibility, that will not deter the Court from imposing a period of sentence which will constitute "a just dessert" for the convict. Precedents can be good pointers as advised in ***V. Sriharan (supra)***. A survey of the previously decided cases applying the ***Swamy Shraddananda (supra)*** principle would be a safe and legitimate guide. It is in pursuance of that mandate that we have made a survey of some of the cases to see how ***Swamy Shraddananda (supra)*** had come to be applied in the course of the last decade and a half.

28. In ***Swamy Shraddananda (supra)*** itself, on facts, after finding that it was a murder of the wife in a systematic preplanned manner coupled with the fact that it was a murder for gain, this Court directed that the appellant therein be not released from prison for the rest of his life.

29. In ***Haru Ghosh v. State of West Bengal, (2009) 15 SCC 551*** which involved the murder of two individuals and the attempt to murder the third by the accused who was out on bail in another case, after conviction, this Court while commuting the death penalty after taking into account the aggravating and mitigating circumstances imposed a sentence of 35 (thirty five) years of actual jail sentence without remission. It was noted that commission of the offence was not premeditated since he did not come armed and that the accused was the only bread earner for his family which included two minor children.

30. In ***Mulla & Another v. State of U.P., (2010) 3 SCC 508*** the accused/appellant, along with other co-accused, was found guilty of murdering five persons, including one woman. This Court confirmed the conviction but modified the sentence. This Court stressed on the fact that socioeconomic factors also constitute a mitigating factor and must be taken into consideration as in the case the appellants belonged to extremely poor background which prompted them to commit the act. The sentence was reduced from death to life imprisonment for full life, subject to any remission by the Government for good reasons.

31. In ***Ramraj v. State of Chhattisgarh, (2010) 1 SCC 573*** which involved the murder of his wife, this Court imposed a sentence of 20 (twenty) years including remissions.

32. In ***Ramnaresh and Others vs. State of Chhattisgarh., (2012) 4 SCC 257*** the convicts were sentenced to death by the lower court, with the High Court confirming the sentence, on finding them guilty of raping and murdering an innocent woman while she was alone in her house. This Court confirmed the conviction but found the case did not fall under the 'rarest of rare' category for awarding death sentence. Ultimately, after setting out the well-established principles and on consideration of the aggravating and mitigating circumstances, this Court, while commuting the sentence from death imposed a sentence of life imprisonment of 21 (twenty one) years.

33. ***Neel Kumar v. State of Haryana, (2012) 5 SCC 766*** was a case where the accused committed murder of his own four-year old daughter. This Court, after considering the nature of offence, age, relationship and gravity of injuries caused, awarded the accused 30 (thirty) years in jail without remissions.

34. In ***Sandeep v. State of Uttar Pradesh, (2012) 6 SCC 107*** which involved the murder of paramour and the unborn child (foetus), this Court, while considering the facts and circumstances awarded a period of 30 (thirty) years in jail without remission.

35. In ***Shankar Kisanrao Khade vs State of Maharashtra, (2013) 5 SCC 546,*** the accused was convicted for raping and murdering a minor girl aged eleven years and was sentenced to death for conviction under S. 302 of IPC, life imprisonment under S. 376, seven years RI under S. 366-A and five years RI under S. 363 r/w S. 34. This Court confirmed the conviction but modified the death sentence to life imprisonment for natural life and all the sentences to run consecutively.

36. ***Sahib Hussain v. State of Rajasthan, (2013) 9 SCC 778,*** concerned killing of five persons including three children. This Court, taking note of the fact that the guilt was established by way of circumstantial evidence and the fact that the High Court had already imposed a sentence of 20 (twenty) years without remission, did not interfere with the judgment of the High Court.

37. In ***Gurvail Singh & Anr. v. State of Punjab, (2013) 2 SCC 713*** which involved the murder of four persons, this Court weighed the mitigating factors i.e., age of the accused and the probability of reformation and rehabilitation, and aggravating factors i.e., the number of deceased, the nature of injuries and the totality of facts and circumstances directed that the imprisonment would be for a period of 30 (thirty) years without remission.

38. In ***Alber Oraon v. State of Jharkhand, (2014) 12 SCC 306*** which involved the murder by the accused of his livein partner and the two children of the partner, this Court, even though it found the murder to be brutal, grotesque, diabolical and revolting, applied the proportionality principle and imposed a sentence of 30 (thirty) years over and above the period already undergone. It was ordered that there would be no remission for a period of 30 (thirty) years.

39. In ***Rajkumar v. State of Madhya Pradesh, (2014) 5 SCC 353,*** which involved the rape and murder of helpless and defenceless minor girl, this Court commuting the death penalty imposed a sentence of 35 (thirty five) years in jail without remission.

40. In ***Selvam v. State, (2014) 12 SCC 274,*** the accused was found guilty of rape and murder of nine year old girl. This Court imposed a sentence of imprisonment for a period of 30 (thirty) years without any remission, considering the diabolic manner in which the offence has been committed against the child.

41. In ***Birju v. State of Madhya Pradesh, (2014) 3 SCC 421,*** the accused was involved in the murder of a one-yearold child. This Court noted that various criminal cases were pending against the accused but stated that it cannot be used as an aggravating factor as the accused wasn't convicted in those cases. While commuting the death penalty, this Court imposed a sentence of rigorous imprisonment for a period of 20 (twenty) years over and above the period undergone without remission, since he would be a menace to the society if given any lenient sentence.

42. In ***Tattu Lodhi v. State of Madhya Pradesh, (2016) 9 SCC 675*** this Court was dealing with an appeal preferred by the accused who was sentenced to death after he was found guilty of committing murder of a minor girl and for kidnapping and attempt to rape after destruction of evidence. This Court reduced the sentence from death to life imprisonment for a minimum 25 (twenty five) years as it noted that there exists a possibility of the accused committing similar offence if freed after fourteen years. This Court also opined that the special category sentence developed in ***Swamy Shradhanand (supra)*** serves a laudable purpose which takes care of genuine concerns of the society and helps the accused get rid of death penalty.

43. ***Vijay Kumar v. State of Jammu & Kashmir, (2019) 12 SCC 791*** was a case where the accused was found guilty of murder of three minor children of the sister-in-law of the accused. This Court, taking note of the fact that the accused was not a previous convict or a professional killer and the motive for which the offence was committed, namely, the grievance that the sister-in-law's family was not doing enough to solve the matrimonial problem of the accused, imposed a sentence of life imprisonment till natural death of the accused without remission.

44. In ***Parsuram v. State of Madhya Pradesh, (2019) 8 SCC 382,*** the accused had raped and murdered his own student. The Trial Court sentenced the accused to death which was affirmed by the High Court. This Court took into consideration the mitigating factors i.e., that the accused was twenty two years old when he committed the act and the fact that there exists a possibility of reformation and the aggravating factors i.e., that the accused abused the trust of the family of the victim. After complete consideration and reference to some precedents, this Court imposed a sentence of thirty years without any remission.

45. In ***Nand Kishore v. State of Madhya Pradesh, (2019) 16 SCC 278,*** the accused was sentenced to death by the Trial Court and the High Court for committing rape and murder of minor girl aged about eight years old. This Court noted the mitigating factors i.e., age of the accused at the time of committing the act [50 years] and possibility of reformation and imposed a sentence of imprisonment for a period of 25 (twenty five) years without remission.

46. ***Swapan Kumar Jha v. State of Jharkhand and Another, (2019) 13 SCC 579*** was a case relating to abduction of deceased for ransom and thereafter murder by the accused. This Court took into consideration the mitigating factors i.e., young age of the accused, possibility of reformation and the convict not being a menace to society. On the other side of the weighing scale, was the fact that the accused had betrayed the trust of the deceased who was his first cousin and the fact that the act was premeditated. This Court modified the death sentence to one of imprisonment for a period of 25 (twenty five) years with remissions.

47. ***Raju Jagdish Paswan v. State of Maharashtra, (2019) 16 SCC 380*** was a case where the accused was convicted for the rape and murder of minor girl aged about nine

years and sentenced to death by the trial court which was affirmed by the High Court. This Court noted the mitigating factors i.e., murder was not preplanned, young age of the accused, no evidence to show that the accused is a continuing threat to society and the aggravating factors i.e., the nature of the crime and the interest of society, if petitioner is let out after fourteen years, imposed a sentence of life imprisonment for 30 (thirty years) without remission.

48. In ***X v. State of Maharashtra, (2019) 7 SCC 1*** the accused was sentenced to death by this Court on his conviction for committing rape and murder of two minor girls who lived near his house. However, in review, the question placed before the Court was whether post-conviction mental illness be a mitigating factor. This Court answered it in the affirmative but cautioned that in only extreme cases of mental illness can this factor be taken into consideration. The Court reduced the sentence from death to life imprisonment for the remainder of his life as he still poses as a threat to society.

49. In ***Irappa Siddappa Murgannavar v. State of Karnataka, (2022) 2 SCC 801***, this Court affirmed conviction of the accused, inter alia, under S. 302 and 376 but modified the sentence from death to life imprisonment for minimum 30 (thirty years). This Court stated that mitigating factors such as young age of the accused, no criminal antecedents, act not being pre-planned, socioeconomic background of the accused and the fact that conduct of the accused inside jail was 'satisfactory' concluded that sufficient mitigating circumstances exists to commute the death sentence.

50. In ***Shiva Kumar v. State of Karnataka, (2023) 9 SCC 817,*** this Court opined that the facts of the case shocked the conscience of the Court. The accused was found guilty of rape and murder of a twenty eight year old married woman who was returning from her workplace. Despite noting that the case did not fall under the 'rarest of rare' category, the Court stated that while considering the possibility of reformation of the accused, Courts held that showing undue leniency in such a brutal case will adversely affect the public confidence in the efficacy of the legal system. It concluded that a fixed term of 30 (thirty years) should be imposed.

51. In ***Manoj and Others v. State of Madhya Pradesh, (2023) 2 SCC 353,*** the three accused were sentenced to death by the lower court and confirmed by the High Court on their conviction under Section 302 for committing murder, during the course of robbery, of three women. This Court, while modifying the sentence from death to life imprisonment for a minimum 25 (twenty five) years, took into consideration the non-exhaustive list of mitigating and aggravating factors discussed in ***Bachan Singh (supra)*** to establish a method of principled sentencing. This Court also imposed an obligation on the State to provide material disclosing psychiatric and psychological evaluation of the accused which would help the courts understand the progress of the accused towards reformation.

52. In ***Madan vs State of U.P., 2023 SCC OnLine SC 1473,*** this Court was dealing with a case wherein the accused was sentenced to death, along with other coaccused, for murdering six persons of his village. This Court called for the jail conduct report and psychological report of the accused which were satisfactory and depicted nothing out of the ordinary. This Court also took into consideration the old age of the accused and period undergone [18 yrs.] as mitigating factors. This Court concluded that the case did not fall under the rarest of rare category and commuted the death sentence to life imprisonment for minimum 20 (twenty years) including sentence undergone.

53. In ***Sundar vs State by Inspector of Police- 2023 SCC OnLine SC 310***, this Court, while sitting in review, commuted death sentence awarded to accused therein to life

imprisonment of minimum 20 (twenty years). The accused had committed rape and murder of a 7-year-old girl. Factors that influenced this Court to reach such a decision were the fact that no court had looked at the mitigating factors. It called for jail conduct and education report from the jail authorities and found that the conduct was satisfactory and that accused had earned a diploma in food catering while he was incarcerated. Apart from the above, the Court noted the young age of the accused, no prior antecedents to reach a conclusion warranting modification in the sentence awarded.

54. In ***Ravinder Singh vs State Govt. of NCT of Delhi- (2024) 2 SCC 323,*** the accused was convicted under Sections 376, 377 & 506 of the IPC for raping his own 9year-old daughter by the Sessions court and conviction was confirmed by the High Court. The Sessions Court, while imposing life imprisonment, also stated that the accused would not be given any clemency by the State before 20 years. This Court clarified that, as discussed in ***V. Sriharan (supra)***, the power to impose a special category sentence i.e., a sentence more than 14 years but short of death sentence can only be imposed by the High Court or if in appeal, by this Court. Considering the nature of the offence committed by the accused and the fact that if the accused is set free early, he can be a threat to his own daughter, this Court imposed a minimum 20 (twenty years) life imprisonment without remissions.

55. A survey of the **27 cases** discussed above indicates that while in **five cases**, the maximum of imprisonment till the rest of the life is given; in **nine cases**, the period of imprisonment without remission was 30 years; in **six cases**, the period was 20 years (In ***Ramraj (supra)***, this Court had imposed a sentence of 20 years including remission); in **four cases**, it was 25 years; in another set of **two cases**, it was 35 years and in **one case**, it was 21 years.

56. What is clear is that courts, while applying ***Swamy Shraddananda (supra)***, have predominantly in cases arising out of a wide array of facts, keeping the relevant circumstances applicable to the respective cases fixed the range between 20 years and 35 years and in few cases have imposed imprisonment for the rest of the life. So much for statistics. Let us examine how the judgments guide us in terms of discerning any principle.

57. A journey through the cases set out hereinabove shows that the fundamental underpinning is the principle of proportionality. The aggravating and mitigating circumstances which the Court considers while deciding commutation of penalty from death to life imprisonment, have a large bearing in deciding the number of years of compulsory imprisonment without remission, too. As a judicially trained mind pores and ponders over the aggravating and mitigating circumstances and in cases where they decide to commute the death penalty they would by then have a reasonable idea as to what would be the appropriate period of sentence to be imposed under the ***Swamy Shraddananda (supra)*** principle too. Matters are not cut and dried and nicely weighed here to formulate a uniform principle. That is where the experience of the judicially trained mind comes in as pointed out in ***V. Sriharan (supra).*** Illustratively in the process of arriving at the number of years as the most appropriate for the case at hand, which the convict will have to undergo before which the remission powers could be invoked, some of the relevant factors that the courts bear in mind are:- (a) the number of deceased who are victims of that crime and their age and gender; (b) the nature of injuries including sexual assault if any; (c) the motive for which the offence was committed; (d) whether the offence was committed when the convict was on bail in another case; (e) the premeditated nature of the offence; (f) the relationship between the offender and the victim; (g) the abuse of trust if any; (h) the criminal antecedents; and whether the convict, if released, would be a

menace to the society. Some of the positive factors have been, (1) age of the convict; (2) the probability of reformation of convict; (3) the convict not being a professional killer; (4) the socioeconomic condition of the accused; (5) the composition of the family of the accused and (6) conduct expressing remorse.

These were some of the relevant factors that were kept in mind in the cases noticed above while weighing the pros and cons of the matter. The Court would be additionally justified in considering the conduct of the convict in jail; and the period already undergone to arrive at the number of years which the Court feels the convict should, serve as part of the sentence of life imprisonment and before which he cannot apply for remission. These are not meant to be exhaustive but illustrative and each case would depend on the facts and circumstances therein.

58. How do these factors apply to the case at hand? The act committed by the accused was pre-planned/premeditated; the accused brutally murdered 4 (four) persons who were unarmed and were defenseless, one of whom was a child and the other an aged lady. It is also to be noted that by the act of the accused, three generations of single family have lost their lives for no fault of theirs; Nature of injuries inflicted on Latha, Ramachandran and Chitra highlights the brutality and coldbloodedness of the act.

59. On the mitigating side, the accused was quite young when he committed the act i.e., 28 years old; The act committed by the accused was not for any gain or profit; accused did not try to flee and in fact tried to commit suicide as he was overcome with emotions after the dastardly act he committed; accused has been in jail for a period of 18 years and 4 months and the case is based on circumstantial evidence. We called for a conduct report of the appellant from the Jail Authorities. The report dated 05.03.2024 of the Superintendent, Central Prison and Correctional Home, Viyyur, Thrissur has been made available to us. The report indicates that ever since his admission to jail, he had been entrusted with prison labour work such as duty of barber, day watchman and night watchman. Presently, he has been assigned the job as convict supervisor for the last one and a half years. The report clearly indicates that no disciplinary actions were initiated against him in the prison and that the conduct and behavior of the appellant in prison has been satisfactory so far.

Conclusion:

60. For the reasons stated above, we uphold the judgment of the High Cout insofar as the conviction of the appellant under Sections 302, 449 and 309 IPC is concerned. We also do not interfere with the sentence imposed on the accused for the offence under Section 449 and Section 309 of IPC. We hold that the High Court was justified on the facts of the case in following ***Swamy Shraddananda (supra)*** principle while imposing sentence for the offence under Section 302 IPC. However, in view of the discussion made above, we are inclined to modify the sentence under Section 302 imposed by the High Court from a period of 30 years imprisonment without remission to that of a period of 25 years imprisonment without remission, including the period already undergone. In our view, this would serve the ends of justice.

For the reasons stated above, the Appeal is partly allowed in the above terms.