REPORTABLE

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION

REVIEW PETITION (CRL.) NOS. 401-402 OF 2012
IN
CRIMINAL APPEAL NOS. 185-186 OF 2011

Sudam @ Rahul Kaniram Jadhav …Petitioner

The State of Maharashtra …Respondent

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

The instant review proceedings pertain to Review Petition (Cri.) No. D19901 of 2012 seeking to review the final judgment and order dated 04.07.2011 passed by this Court in Criminal Appeal Nos. 185-86 of 2011 dismissing the appeal filed by the Review Petitioner (in short "the Petitioner") and confirming his conviction under Sections 201 and 302 of the Indian Penal Code (in short, "IPC"). Vide the impugned judgment, this Court

upheld the sentence under Section 201, IPC and the death sentence under Section 302, IPC imposed upon the Petitioner.

2. The brief facts pertaining to this case are as follows:

2.1 On the morning of 21.08.2007, the bodies of four children were discovered floating in the village pond (known as Juna Pani talav) in the village of Rupla Naik Tanda, District Nanded, Maharashtra. A male child aged six years along with a female child aged ten years were found tied together, and a female child aged ten months along with a male child of two to four years, were found tied separately. The body of an unidentified woman with a mangalsutra on her neck was also subsequently discovered below a nearby boulder by the police. The deceased persons were eventually identified as Anita, the daughter of one Maroti Madavi, the two children born to her from her first husband and the two children born to her from the Petitioner. The Petitioner was found by the police on 24.08.2007, but is alleged to have absconded subsequently, and was arrested only on 22.09.2007.

3. The investigation revealed that the deceased Anita had been living with the Petitioner as his wife and had come to know about his marriage with PW-6 Muktabai. The deceased

was opposed to this relationship, which led to a serious dispute amongst the three of them. The Petitioner allegedly divorced PW-6, and agreed to pay her a sum of Rs. 15,000/-, which the deceased Anita promised to bear. Thereafter, PW-6 went to her village, and the Petitioner, the deceased Anita and her four children came to the village of Juna Pani, where, because of the strained relationship with his wife, the Petitioner murdered her and the four children by strangulating them.

4. The principal evidence put forth by the prosecution against the Petitioner includes the motive of the accused, the evidence put forth by PW-8 Prahlad that the deceased were last seen with the Petitioner, and that of PW-6 Muktabai and PW-9 Ishwar with respect to the extra-judicial confessions made to them by the Petitioner. The Trial Court convicted the Petitioner for the offences stated supra on the basis of the last seen circumstance as deposed to by PW-8; the motive of the accused as deposed to by PW-5, the mother of the deceased Anita; the extra-judicial confession made by the Petitioner to PW-9 Ishwar; the fact that the Petitioner had absconded after the commission of the offence; and his failure to explain the circumstances leading to the homicidal deaths of the deceased.

The High Court confirmed the conviction and sentence as awarded by the Trial Court, including the sentence of death, holding that the case at hand falls into the category of the rarest of rare cases warranting punishment with death. This Court, in appeal, confirmed the same.

5. Review Petition (Cri.) No. D19901 of 2012 filed by the Petitioner against the above judgment and order of this Court was dismissed by circulation vide order dated 26.07.2012. A criminal miscellaneous petition was filed by the Petitioner seeking reopening of this review petition, placing reliance on the decision of this Court in ***Mohd. Arif @ Ashfaq* v. *Registrar, Supreme Court of India***, (2014) 9 SCC 737, which held that in light of Article 21 of the Indian Constitution, review petitions arising out of appeals where the death sentence had been affirmed were required to be heard orally by a 3-Judge Bench, and specifically permitted the reopening of review petitions in all cases where review petitions had been dismissed by circulation. This Court subsequently recalled the order dated 26.07.2012 passed in Review Petition No. D19901/2012 and permitted the re-hearing of such petition in open Court.

6. Learned counsel for the Petitioner, Ms. Nitya Ramakrishnan, argued for the acquittal of the Petitioner, contending that there are various infirmities in how the material on record has been appreciated by the Courts, in addition to highlighting errors apparent on the face of the record. The broad thrust of her argument was that the entire case was built on circumstantial evidence, i.e. the "last seen" evidence, two purported extra-judicial confessions, and the motive of the Petitioner, all of which were erroneously relied upon.

6.1 Thus, she virtually seeks a re-appreciation of the entire evidence, submitting that it is permissible to raise any additional ground at the stage of review. To make this submission, learned Counsel relied on the permission given by this Court to the petitioner in ***Md. Arif @ Ashfaq*** **v.** ***Registrar, Supreme Court of India***, vide order dated 19.01.2016 passed in Review Petition (Criminal) No. 692 of 2015 in Writ Petition (Criminal) No. 77 of 2014, to raise any additional ground as may be legally permissible in the re-hearing of his review petition. The relevant observation from the said order is reproduced below:

> "We permit the petitioner to raise all such additional grounds in support of the said review petition as may be legally permissible to him."

6.2 We would like to deal with this argument raised by learned Counsel for the Petitioner at this juncture itself. It has been well-settled by a catena of decisions of this Court that review proceedings cannot be treated as an appeal in disguise. Particularly, in criminal proceedings, the scope of review jurisdiction of this Court is guided by Article 137 of the Indian Constitution as well as Order XL Rule 10 of the Supreme Court Rules, 1966, which permit the Court to correct miscarriage of justice caused by an error apparent on the face of the record. In this regard, it would be fruitful to refer to the decision of this Court in ***Vikram Singh* v. *State of Punjab***, (2017) 8 SCC 518, where the Court was re-hearing a review petition against the award of the death penalty to the review petitioner therein, pursuant to the decision in ***Md. Arif @ Ashfaq* v. *The Registrar, Supreme Court*** (supra). In this decision, after comprehensively explaining the scope of the review jurisdiction of this Court in criminal proceedings and revisiting its earlier decisions on this aspect, including ***P.N. Eswara Iyer* v. *The***

Supreme Court, (1980) 2 SCR 889 and ***Suthendraraja* v. *State***, (1999) 9 SCC 323, this Court concluded as follows:

> "**23.** In view of the above, it is clear that scope, ambit and parameters of review jurisdiction are well defined. Normally in a criminal proceeding, review applications cannot be entertained except on the ground of error apparent on the face of the record. Further, the power given to this Court under Article 137 is wider and in an appropriate case can be exercised to mitigate a manifest injustice. By review application an applicant cannot be allowed to reargue the appeal on the grounds which were urged at the time of the hearing of the criminal appeal. Even if the applicant succeeds in establishing that there may be another view possible on the conviction or sentence of the accused that is not a sufficient ground for review. This Court shall exercise its jurisdiction to review only when a glaring omission or patent mistake has crept in the earlier decision due to judicial fallibility. There has to be an error apparent on the face of the record leading to miscarriage of justice to exercise the review jurisdiction under Article 137 read with Order 40 Rule 1. There has to be a material error manifest on the face of the record with results in the miscarriage of justice." (emphasis supplied)

6.3 We prefer not to burden this judgment with further discussion on this issue. Suffice it to say that there can be no argument that this Court cannot re-appreciate evidence in its entirety in the exercise of its review jurisdiction. Furthermore, it is evident that the reference to "*additional grounds*" in the

observations in the order dated 31.10.2018 in ***Md. Arif @ Ashfaq* v. *State (NCT of Delhi)*** (supra) reproduced above pertains to additional grounds which could have been raised by the review petitioner before this Court in the exercise of its review jurisdiction and had not been raised when the review petition had originally been filed before this Court.

6.4 In fact, a reading of the entire order reveals that the Court at that juncture was dealing with a criminal miscellaneous application seeking that the scope of the permission granted by this Court in ***Md. Arif @ Ashfaq* v. *The Registrar, Supreme Court*** (supra) to re-hear review petitions dismissed vide circulation be extended to also include cases where a curative petition had been dismissed vide circulation after the dismissal of review, since this category of cases had been specifically denied the relief of re-hearing by the Court. With particular regard for the fact that the petitioner therein was the only person to be denied an open Court hearing due to this limitation, and in light of the limited grounds on which a curative petition could be filed, which meant that the rejection of a review petition could never be completely reconsidered in curative jurisdiction, this Court in its order dated 31.10.2018

extended the relief of re-hearing to dismissed curative petitions as well. It was while doing so that the observations that have been relied upon by learned Counsel for the Petitioner came to be passed.

6.5 In view of the above discussion, we are constrained to reject the contention raised by learned Counsel for the Petitioner that the above observations have created a window for this Court to re-appreciate the entire evidence on record while hearing review petitions. The submissions of learned Counsel for the Petitioner have to be considered keeping the above discussion in mind.

7. With respect to the evidence for the circumstance of “last seen”, learned Counsel led us through the evidence of PW-8 Prahlad to point out the inherent improbabilities in his testimony, pointing out that he had testified that his statement was recorded by the police on 19.8.2007, whereas the bodies of the deceased were discovered only on 21.8.2007. She argued that the Trial Court had erroneously supplied possible reasons to explain this incongruity, which went to the root of the matter, since PW-8 is a timeline witness, especially in the absence of any re-examination in this regard.

7.1 With regard to the evidence of PW-9 Ishwar, one of the witnesses for the extra-judicial confessions, it was argued that since his statement was only recorded on 30.11.2007, there was a high likelihood of concoction of evidence, rendering it unreliable. She also contended that there was a complete absence of any semblance of a timeline in PW-9's testimony, which also materially contradicted the "last seen" testimony, inasmuch as PW-9 deposed that he saw the Petitioner with his wife and children four to five days before the purported extra judicial confession was made.

7.2 Coming to the second extra judicial confession, learned Counsel pointed out that the High Court and this Court had erred in relying on the testimony of PW-6 regarding the confession made by the Petitioner to her over a mobile phone conversation, by ignoring the admission to the contrary made in the cross-examination. The testimony of PW-6 pertaining to the extra-judicial confession had been correctly discarded by the Trial Court on this basis. The Trial Court had further found such testimony unreliable due to non-corroboration by call records. It was contended that the High Court and this Court had both overlooked this aspect and wrongly relied on this

extra-judicial confession, and this Court had even gone on to incorrectly note that the Trial Court had relied on the confession, which was an error apparent on the face of the record.

7.3 It was further submitted that PW-13, the Investigation Officer had deposed that he had not obtained the call records of PW-9's mobile (to which the Petitioner had allegedly made calls and over which he had allegedly made the extra-judicial confession to PW-6) even though he deposed in the same breath that he had called for the same but could not obtain them. In such a situation, the Court was entitled to proceed on the basis that such evidence had not been adduced even though it could have been, and on that basis draw an adverse inference against the prosecution under Section 114 of the Evidence Act, 1872.

7.4 With respect to the motive, it was submitted that the motive for the commission of the offence was weak since the dispute between the Petitioner and the deceased Anita regarding the Petitioner's relationship with PW-6 Muktabai had already been settled.

7.5 She therefore argued that there was no reliable evidence connecting the Petitioner to the crime, in the absence of direct or forensic evidence.

7.6 On the aspect of sentencing, learned Counsel argued that the Petitioner had no previous record of bad behaviour, and further that the death penalty may not be imposed for a conviction based solely on circumstantial evidence. It was further submitted that this Court, while imposing the death penalty, had travelled beyond the record to observe that the face of the deceased had been crushed with a stone, which had unfairly prejudiced the Court.

8. Learned counsel for the Respondent, i.e. the State of Maharashtra, Mr. Nishant Ramakantrao Katneshwarkar, on the other hand, argued in favour of the judgments rendered by the Courts. In particular, he stressed that even if part of the testimony of PW-6 had been misread by the Courts, her evidence against the Petitioner remained unshaken on other aspects, such as motive, since she had deposed that the Petitioner had admitted to her that he had been harassing Anita. He also highlighted that as per the Post Mortem Report (Exh. P-43) of the deceased Anita, as spoken to by the

examining doctor PW-4, the probable cause of her death was asphyxia due to throttling, and PW-4 had specifically denied the possibility of self-strangulation.

8.1 On the aspect of sentencing, he argued that in light of the menace posed to society, even if the death penalty were to be commuted, a minimum mandatory sentence of 30 years must be imposed upon the Petitioner.

9. We have perused the record of the case after hearing the learned Counsel on either side.

10. At the outset, it is important to note that the entire case of the prosecution is built upon circumstantial evidence. As already mentioned supra, this Court, in appeal, affirmed the findings of the Courts below regarding the conviction of the Petitioner. For the reasons already noted above, we cannot delve into the submissions of either party that pertain to appreciation of evidence anew. However, we deem it appropriate to briefly refer to the evidence on record, i.e. the circumstance of the Petitioner being last seen with the deceased as deposed by PW-8, the extra judicial confessions made to PWs 6 and 9, and the motive of the Petitioner.

11. The “last seen” circumstance is spoken to by PW-8 Prahlad, who deposed that on 19.08.2007, when he was at his house, the Petitioner along with his wife and four children came to his house and asked for water, and further that though he requested the Petitioner to stay back, the Petitioner left with his family.

12. PW-9 Ishwar’s testimony pertains to an extra judicial confession, as he deposed that the Petitioner had confessed before him that he had strangulated the four children and the deceased Anita to death, and thrown their bodies in the pond, as Anita was harassing him.

13. The deposition of PW-5, Anusayabai, the mother of the deceased Anita, as well as that of PW-6 Muktabai, is pertinent with respect to the motive of the Petitioner to commit the murders. As per PW-5, her daughter bore two children with her first husband Anil Gedam, but Anita started living with the Petitioner after Anil deserted her. PW-5 deposed that the Petitioner had married PW-6 Muktabai, and that the Petitioner had committed the murder of Anita and her children on account of the dispute caused by the Petitioner’s marriage with PW-6.

13.1 PW-6 Muktabai, in her turn, deposed that a few days after her marriage with the Petitioner, while they were visiting PW-6's parental village, Anita had visited them, claiming that the Petitioner was her husband and they had two children together, and went to the Police Station with the Petitioner. However, only Anita returned, saying that the Petitioner had run away, and subsequently stayed for a few days with PW-6. A few days after Anita had left, the Petitioner returned to PW-6, and revealed that Anita was harassing him, also admitting that he had two children with her. He later got arrested and Anita got him released. After a few days, Anita again confronted PW-6 and the Petitioner, who offered to maintain both women, but Anita was not amenable to the offer. The Petitioner then wrote PW-6 a divorce, and Anita agreed to pay Rs. 15,000/- to PW-6.

14. We are of the considered opinion that there is no ground for interference with any finding of the Courts with respect to the appreciation of the testimony relating to the "last seen" circumstance, the extra judicial confession made to PW-9, and the motive of the Petitioner.

14.1 However, crucially, this Court, in appeal, also relied upon the deposition of PW-6 with respect to the extra-judicial

confession made to her, inasmuch as she deposed in her examination-in-chief that the Petitioner had confessed to her over a telephonic call that he had murdered the deceased. However, it is clear that the Court omitted to appreciate that PW-6 had admitted in her cross-examination that the Petitioner had *not* told her that he had murdered the deceased, which in fact was a reason for the Trial Court to not rely on her testimony. Thus, we find substance in the submission of the learned Counsel for the Petitioner that this Court committed an error apparent on the face of the record in placing reliance upon the extra judicial confession allegedly made by the Petitioner before PW-6, by noting that such evidence had been relied upon by the Courts below, when in fact it had been rightly rejected by the Trial Court.

15. There is yet another crucial aspect of the matter that we must turn our attention to. We find strength in the submission made by the Counsel for the Petitioner that this Court, in determining the correctness of the quantum of sentence assessed by the High Court, while noting that the offence appeared to be premeditated and well-planned, erroneously observed that the Petitioner had crushed the face of the

deceased Anita to avoid identification. We find that this observation is unsupported by the medical evidence on record. PW-4, the doctor who conducted the post-mortem (at Exh. P-25) on Anita's body, only deposed to the presence of contused lacerated wounds on her face. There is no evidence to the effect that her face was marred beyond recognition or that there appeared to be any attempt to do so. We find that this is yet another error apparent on the face of the record.

16. Having found there have been errors apparent on the face of the record in the appreciation of evidence by this Court in appeal, we must now consider the effect thereof on the conviction as well as on the sentence awarded. We find it worth repeating that we do not seek to re-appreciate the evidence on record, and merely wish to determine whether the evidence as assessed by this Court in appeal, keeping aside the extra-judicial confession to PW-6, was sufficient to affirm the finding of guilt and the award of the punishment of death to the Petitioner.

17. As noted previously, the evidence relied upon in the instant case is purely circumstantial, including the motive to commit the offence, the circumstance of the deceased being

last seen with the Petitioner, and two extra-judicial confessions. Thus, keeping aside the extra-judicial confession to PW-6, it is evident that evidence as to the circumstance of motive, the "last seen" circumstance as well as one extra-judicial confession still survive. It is our considered view that the chain of circumstances establishing the guilt of the Petitioner beyond reasonable doubt is not materially affected even if we discard one of the two extra-judicial confessions. Thus, we find that this Court rightly affirmed the conviction of the Petitioner under Sections 302 and 201, IPC, and there is no cause for us to interfere with such finding of guilt in the exercise of our review jurisdiction.

18. We must now turn our attention to the question of whether the evidence on record, apart from the extra-judicial confession to PW-6 and the observation pertaining to the facial injuries of the deceased Anita, is sufficient to affirm the death sentence awarded to the Petitioner.

18.1 At this juncture, it must be noted that though it may be a relevant consideration in sentencing that the evidence in a given case is circumstantial in nature, there is no bar on the award of the death sentence in cases based upon such

evidence (see ***Swamy Shraddananda* v. *State of Karnataka***, (2007) 12 SCC 288; ***Ramesh* v. *State of Rajasthan***, (2011) 3 SCC 685).

18.2 In such a situation, it is up to the Court to determine whether the accused may be sentenced to death upon the strength of circumstantial evidence, given the peculiar facts and circumstances of each case, while assessing all the relevant aggravating circumstances of the crime, such as its brutality, enormity and premeditated nature, and mitigating circumstances of the accused, such as his socio-economic background, age, extreme emotional disturbance at the time of commission of the offence, and so on.

18.3 In this regard, it would also be pertinent to refer to the discussion in ***Ashok Debbarma* v. *State of Tripura***, (2014) 4 SCC 747, where this Court elaborated upon the concept of "residual doubt"—which simply means that in spite of being convinced of the guilt of the accused beyond reasonable doubt, the Court may harbour lingering or residual doubts in its mind regarding such guilt. This Court noted that the existence of residual doubt was a ground sometimes urged

before American Courts as a mitigating circumstance with respect to imposing the death sentence, and noted as follows:

> "**33.** In *California* v. *Brown* [93 L Ed 2d 934 : 479 US 538 (1987)] and other cases, the US courts took the view, "residual doubt" is not a fact about the defendant or the circumstances of the crime, but a lingering uncertainty about facts, a state of mind that exists somewhere between "beyond a reasonable doubt" and "absolute certainty". The petitioner's "residual doubt" claim is that the States must permit capital sentencing bodies to demand proof of guilt to "an absolute certainty" before imposing the death sentence. Nothing in our cases mandates the imposition of this heightened burden of proof at capital sentencing.
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> **34.** We also, in this country, as already indicated, expect the prosecution to prove its case beyond reasonable doubt, but not with "absolute certainty". But, in between "reasonable doubt" and "absolute certainty", a decision-maker's mind may wander, possibly in a given case he may go for "absolute certainty" so as to award death sentence, short of that he may go for "beyond reasonable doubt". Suffice it to say, so far as the present case is concerned, we entertained a lingering doubt as to whether the appellant alone could have executed the crime single-handedly, especially when the prosecution itself says that it was the handiwork of a large group of people. If that be so, in our view, the crime perpetrated by a group of people in an extremely brutal, grotesque and dastardly manner, could not have been thrown upon the appellant alone without charge-sheeting other group of persons numbering around 35. All the element test as well as

> the residual doubt test, in a given case, may favour the accused, as a mitigating factor." (emphasis added)

18.4 While the concept of "residual doubt" has undoubtedly not been given much attention in Indian capital sentencing jurisprudence, the fact remains that this Court has on several occasions held the quality of evidence to a higher standard for passing the irrevocable sentence of death than that which governs conviction, that is to say, it has found it unsafe to award the death penalty for convictions based on the nature of the circumstantial evidence on record. In fact, this question was given some attention in a recent decision by this Bench, in ***Md. Mannan @ Abdul Mannan* v. *State of Bihar***, R.P. (Crl.) No. 308/2011 in Crl. A. No. 379/2009 (decision dated February 14, 2019), where we found it unsafe to affirm the death penalty awarded to the accused in light of the nature of the evidence on record, though the conviction had been affirmed on the basis of circumstantial evidence.

18.5 In ***Md. Mannan*** (supra), this Court affirmed the proposition that the quality of evidence is a relevant circumstance in the sentencing analysis, referring to the following observations of this Court in ***Santosh Kumar***

Satishbhushan Bariyar* v. *State of Maharashtra, (2009) 6 SCC 498:

> "**56.** At this stage, *Bachan Singh* [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] informs the content of the sentencing hearing. The court must play a proactive role to record all relevant information at this stage. Some of the information relating to crime can be culled out from the phase prior to sentencing hearing. This information would include aspects relating to the nature, motive and impact of crime, culpability of convict, etc. Quality of evidence adduced is also a relevant factor. For instance, extent of reliance on circumstantial evidence or child witness plays an important role in the sentencing analysis. But what is sorely lacking, in most capital sentencing cases, is information relating to characteristics and socio-economic background of the offender. This issue was also raised in the 48th Report of the Law Commission."
> (emphasis added)

18.6 The Court also relied on ***Ramesh* v. *State of Rajasthan*** (supra) and ***Ram Deo Prasad* v. *State of Bihar***, (2013) 7 SCC 725, which follow ***Bariyar*** (supra) in this respect, and referred to ***Sushil Sharma* v. *State (NCT of Delhi)***, (2014) 4 SCC 317, ***Kalu Khan* v. *State of Rajasthan***, (2015) 16 SCC 492 and ***Sebastian @ Chevithiyan* v. *State of Kerala***, (2010) 1 SCC 58, where a similar position has been adopted.

18.7 We find it pertinent to observe that the above trend only affirms the "prudence doctrine" enunciated by this Court in ***Bachan Singh* v. *State of Punjab***, (1980) 2 SCC 684. In this regard, we may refer to the following observations made in ***Bariyar*** (supra):

> "**149.** Principle of prudence, enunciated by *Bachan Singh* [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] is sound counsel on this count which shall stand us in good stead—whenever in the given circumstances, there is difference of opinion with respect to any sentencing prop (*sic*)/rationale, or subjectivity involved in the determining factors, or lack of thoroughness in complying with the sentencing procedure, it would be advisable to fall in favour of the "rule" of life imprisonment rather than invoking the "exception" of death punishment."

18.8 The Court in ***Bariyar*** (supra) further observed that the irrevocable punishment of death must only be imposed when there is no other alternative, and asserted that in cases resting on circumstantial evidence, the doctrine of prudence should be invoked:

> "**167.** The entire prosecution case hinges on the evidence of the approver. For the purpose of imposing death penalty, that factor may have to be kept in mind. We will assume that in *Swamy Shraddananda (2)*, this Court did not lay down a firm law that in a case involving circumstantial evidence, imposition of death penalty would not be permissible. But, even in relation thereto the question which

would arise would be whether in arriving at a conclusion some surmises, some hypothesis would be necessary in regard to the manner in which the offence was committed as contradistinguished from a case where the manner of occurrence had no role to play. Even where sentence of death is to be imposed on the basis of circumstantial evidence, the circumstantial evidence must be such which leads to an exceptional case.

168. We must, however, add that in a case of this nature where the entire prosecution case revolves round the statement of an approver or is dependent upon the circumstantial evidence, the prudence doctrine should be invoked. For the aforementioned purpose, at the stage of sentencing evaluation of evidence would not be permissible, the courts not only have to solely depend upon the findings arrived at for the purpose of recording a judgment of conviction, but also consider the matter keeping in view the evidences which have been brought on record on behalf of the parties and in particular the accused for imposition of a lesser punishment…"

(emphasis added)

18.9 In light of the above discussion, we find it appropriate to gauge, in the exercise of our review jurisdiction, whether there is a reasonable probability that this Court, in appeal, on the strength of the evidence on record as it stands, without the errors apparent on the face of the record, would have concluded that the balance of aggravating and mitigating

circumstances lies in favour of preserving the Petitioner's life. Such probability would be sufficient to set aside the sentence of death affirmed by this Court, in light of the doctrine of prudence, which really only reflects the dictum of this Court in ***Bachan Singh*** (supra) that the Court must keep in mind while awarding the punishment of death that the alternative option, i.e. imposition of life imprisonment, must be *unquestionably foreclosed*.

19. We make it clear that we do not wish to re-enter into an appreciation of the aggravating and mitigating circumstances relied upon by the Courts until this stage to award the death sentence to the Petitioner. However, before proceeding further, we would like to briefly revisit the sentencing assessment already done by this Court in appeal. While arriving at the conclusion that the instant case fell into the category of the rarest of rare cases, this Court took into account the premeditated nature of the crime, and its brutal and barbaric nature, observing that the same was sufficient to shock the collective conscience of the society. The Court also opined that the Petitioner was a menace to society and could not be

reformed, and that lesser punishment would expose society to peril at his hands.

20. Evidently, even the fact that the evidence was circumstantial in nature did not weigh very heavily on the Court's mind, let alone the strength and nature of the circumstantial evidence. Be that as it may, we find that the material on record is sufficient to convince the Court of the Petitioner's guilt beyond reasonable doubt; however, the nature of the circumstantial evidence in this case amounts to a mitigating circumstance significant enough to tilt the balance of aggravating and mitigating circumstances in the Petitioner's favour, keeping in mind the doctrine of prudence. Moreover, it is also possible that the incorrect observations pertaining to Anita's facial injuries further led the Court to conclude in favour of imposing the death sentence on the Petitioner. Thus, we are of the considered opinion that there was a reasonable probability that this Court would have set aside the sentence of death in appeal, since the only surviving evidence against the Petitioner herein pertains to his motive to commit the crime, the circumstance of "last seen" and a solitary extra-judicial confession. In other words, it cannot be said that the

punishment of life imprisonment is unquestionably foreclosed in the instant case, in spite of the gravity and barbarity of the offence.

21. We are thus compelled to conclude that the award of the death penalty in the instant case, based on the evidence on record, cannot be upheld.

22. At the same time, we conclude that a sentence of life imprisonment simpliciter would be inadequate in the instant case, given the gruesome nature of the offence, and the menace posed to society at large by the Petitioner, as evinced by the conduct of the Petitioner in jail. As per the report submitted in pursuance of the order of this Court dated 31.10.2018, it has been brought on record that the conduct of the Petitioner in jail has been unsatisfactory, and that he gets aggressive and indulges in illegal activities in prison, intentionally abusing prisoners and prison staff and provoking fights with other prisoners. Two FIRs have also been registered against the Petitioner for abusing and threatening the Superintendent of the Nagpur Central Prison.

22.1 As this Court has already held in a catena of decisions, by way of a via media between life imprisonment

simpliciter and the death sentence, it may be appropriate to impose a restriction on the Petitioner's right to remission of the sentence of life imprisonment, which usually works out to 14 years in prison upon remission. We may fruitfully refer to the decisions in ***Swamy Shraddhananda (2)*** **v.** ***State of Karnataka***, (2008) 13 SCC 767 and ***Union of India*** **v.** ***V. Sriharan***, (2016) 7 SCC 1, in this regard. We therefore direct that the Petitioner shall remain in prison for the remainder of his life.

23. In light of the above discussion, the review petitions are allowed to the extent that the sentence of death awarded to the Petitioner is commuted to imprisonment for the remainder of his life sans any right to remission.

.....J.
(N.V. Ramana)

.....J.
(Mohan M. Shantanagoudar)

.....J.
(Indira Banerjee)

New Delhi;
October 01, 2019.