CASE NO.:
Appeal (crl.) 1178 of 2001

PETITIONER:
VASHRAM NARSHIBHAI RAJPARA APPELLANT

Vs.

RESPONDENT:
STATE OF GUJARAT RESPONDENT

DATE OF JUDGMENT: 24/04/2002

BENCH:
Doraiswamy Raju & Brijesh Kumar

JUDGMENT:

RAJU, J.

The appellant, head of the family which consisted besides himself, his wife, four daughters and a son aged about 5 years, stood charged for committing a brutal and cold blooded murder of his wife and four daughters by setting them on fire, when they were stated to be fast asleep under an impression that they were safe in their own house, and convicted for the offence of murder under Section 302 IPC and awarded death sentence by the learned trial judge which in turn was also confirmed by the High Court. Though charged with an offence under Section 201 IPC also, the trial court acquitted him of the same. Before the High Court, confirmation case No.3 of 2000 and Criminal Appeal No.540 of 2000 filed by the appellant came to be disposed of together and while confirming the conviction and imposition of the death sentence, the appeal came to be dismissed by a Division Bench of the Gujarat High Court at Ahmedabad.

The area of controversy is very narrow in that as to whether it is homicidal as per the prosecution version or by sheer accident, as sought to be contended on behalf of the appellant. The occurrence was in the very house where the family lived wherein the appellant, the five members who died and his son lived and the manner in which the five members met their gruesome end is due to flames which engulfed them when they were asleep at 3 a.m. in the early morning hours on 22.5.99. Whether the said fire broke out accidentally or was the making of the appellant deliberately, alone is the dispute since that he struck a match which resulted in the huge fire due to the spilling of petrol accidentally near the cots on which the victims were sleeping is the fact which gives the turn or twist to the whole case. In short whether the appellant designedly sprinkled the petrol which he admittedly procured and kept in the house, though a controversy was raised as to the quantity procured by him, on the sleeping members of the family and set fire to them or that it was a mere case of accidental spill, as the appellant would try to make others to believe.

The skeletal facts necessary to appreciate the claims on behalf of the appellant are that the appellant was a fruit vendor selling mainly bananas in his hand cart in the city of Rajkot, that he got married to Savitaben, and through her had four daughters Raju Ben @ Nirmala, Harshidd, Usha and Guddi and a son Kishan. Eight months prior to the date of occurrence, the appellant purchased the house from his nephew PW-14, for Rs.1,75,000/- prior to which he was living in Ashapura Nagar locality in Rajkot. A portion of the price Rs.40,000/- remained yet to be paid and though the family started living in the house, it appears the wife and daughters did not like the house and started pressurising him to sell and purchase another house in some other locality. The appellant who got agitated

by all these seems to have purchased five litters of petrol in a plastic can 'Car boy' from Jayanth Petrol Pump, Rajkot and kept the same in the kitchen. On 21.5.99, after dinner at about 9 p.m. the appellant and his son had gone to sleep on the terrace of the house and other members slept in the rear room of the size 9'X10' on the ground floor. At about 3 a.m. early next morning, the appellant collected the petrol in a steel bowl and sprinkled the same on his wife and daughters who were sleeping and by lighting a match set them on fire and in the process was said to have also sustained burn injuries on his left ear, left shoulder and right thumb. There was huge fire in the room in which the deceased members of the family were sleeping and apprehending that he may also get burnt, ran away from the room by closing the door from outside and went to HUDCO Police Chowky. He seems to have stated that when he was lighting a lamp of petrol he sustained burn injuries and his wife and daughters seriously got caught in the big fire in the house and that they should be saved. On the direction of the chowkidar to go to the hospital for treatment he went by an auto-rickshaw to the hospital and got examined by the doctor PW-9 around 3.30 p.m. and the statement then made by him was that he sustained burn injury while preparing tea at his house. The huge fire resulted in the destruction of television set and other articles. Neighbours gathered and the brother of the appellant PW-13 brought the dead bodies to the hospital and identified them to be that of the wife and daughters of the appellant. Post mortem was conducted and the medical opinion as to the cause of death was due to shock and extensive burns and failure of cardio respiratory system due to those extensive burns. A dying declaration was also recorded from the appellant by the Executive Magistrate between 10.30 a.m and 11 a.m. with an endorsement of the doctor that the appellant/patient remained conscious throughout. The appellant was later discharged on 3.6.99 when he came to be arrested in connection with the case registered against him under Section 302 IPC.

After completion of the investigation charge sheet was filed and on committal to the Court of Sessions, charge was framed under Section 302 and 201 IPC. On commencement of trial, after recording the evidence of prosecution witness, the circumstances against the appellant were explained and the statement also came to be recorded under Section 313 Cr.P.C. The stand of the appellant was one of denial and he preferred not to examine any witnesses for defence. During the course of recording further statement, the appellant tendered his written statement Ex.109 in vernacular language, the translation of which is stated to be as follows:

"I, the undersigned respectfully state that my explanation in this case is as under:

(1) The correct version of the incident is that I was thinking to commit suicide before the incident. So I brought petrol on the day of the incident and I thought to commit suicide in the night of the incident. Therefore, I took out petrol in the muddamal bowl. At that time weight of petrol was felt less in weight and I was going by carrying the bowl trembling and the bowl had fallen down from my hand and petrol spread around. Thereafter, again I took out petrol in the bowl and at that time petrol was spilt on the cot as my leg got struck with the cot of my wife. Thereafter, I sat for sometime and put the petrol can and the bowl in the kitchen. I dropped the idea of committing suicide. After some time I ignited the stove and suddenly there was a blaze and fire. I was not knowing that petrol might have been leaked from the can. I also got burnt and I came out of the house. In the meantime, the fire increased quickly and the smoke started coming out. I shouted and went to the police chowky and told to call the fire brigade. They sent me to the hospital. Thereafter, I came to know that my wife and daughter have expired due to burns. I have neither put them on fire her (sic) killed.

(2) After purchasing this house, I purchased another house as we did not like this house. I was trying to sell this house.

(3) It is not true that I have killed my wife as the (sic) did not like the house.

I am innocent and it is required to declare me innocent."

After completion of trial and conclusion of arguments the learned trial judge came to the conclusion that it was the appellant, who alone was inside the house and poured petrol on the bodies of the deceased and by setting fire to them committed murder and imposed the sentence of death for the offence under Section 302 IPC. The learned trial judge specifically found the following incriminating circumstances against the appellant, which proved the guilt of the appellant beyond reasonable doubt. The existence of misunderstandings and disputes over the purchase of the house where they were residing among the appellant and the wife and daughters; the purchase of five litters of petrol in a plastic can and keeping it in the kitchen, though he had no vehicle for its use; that the appellant alone was present in the house besides the deceased members at 3 a.m. when the incident had taken place; that the appellant alone poured petrol on the deceased members when they were asleep and set them on fire resulting in their deaths, placing in a safe place on the terrace his son to save his life; that due to the highly inflammable nature of petrol five liters poured on the bodies of the deceased ladies they were engulfed in huge fire and got roasted without any chance to escape from the interior room where they were sleeping; that the appellant made no attempts to save the ladies and himself alone ran away from the house and gone to the hospital where he gave also a false version that he had sustained burn injuries due to flames of kerosene stove while preparing tea; that the appellant had not then informed about fire incident involving the lady members or the injuries sustained by them, due to sprinkling or spilling as the appellant would like to claim of petrol on their bodies. The report of the Forensic Science Laboratory Ex.42 and the panchnama of the place of occurrence the details of place of incident, the bowl, half burnt pieces of quilt and coired thread of wooden cots on which also the presence of petrol was detected; that the plea raised as in the written reply was not probable or believable and was not only false and got up and belied by the fact that no petrol was detected on his body; the fact that the theory of fire taking place due to electric short-circuit was also completely ruled out and found raised merely to mislead the court and that all those circumstances found amply proved only led to the inevitable conclusion that the appellant alone was the culprit.

The learned judges in the High Court also gone into the merits at great length and detail and apart from affirming the incriminating circumstances found sufficiently established by the trial court, also held that the false plea set up by the appellant also militated against his innocence and the absence of proper or reasonable explanation and/or a false explanation given regarding the incriminating circumstances strengthened and completed the chain and further held that the prosecution has proved the charge beyond any reasonable doubt and the guilt of the accused conclusively. The case was considered to be one of the "rarest of rare cases" justifying the imposition of death sentence and thus the sentence also was confirmed by the High Court.

Shri U.U. Lalit, appearing for the appellant, contended that except that the appellant was present at that time in the house, no other circumstance could really incriminate the appellant and that the immediate conduct subsequent to the occurrence and the urge in him to save the others would belie the claim that he committed the offence. Though, motive seems to have been taken as the strongest circumstance, none of the witnesses specifically spoke about the same and the evidence on record was really inadequate to come to such a conclusion. Argued the learned counsel further that all the circumstances noticed by the courts below even taken together could not lead to the only hypothesis of guilt of the appellant and militate against the occurrence being a mere accident and not

homicidal. So far as the extreme punishment of death is concerned, it was urged that the case on hand can not be considered to fall in the class or category as to warrant the same and having regard to the broader aspects of the case and the need to maintain the son, the extreme penalty is not warranted in the case. Per contra, Mrs. Wahi for the State with equal force contended that the concurrent findings recorded by the courts below are well merited and the punishment of death imposed cannot be said to uncalled for or unjustified.

We have carefully considered the submissions of the learned counsel appearing on either side. The entire case against the appellant rests only on circumstantial evidence, and having regard to the manner, place and time of occurrence it was difficult for the prosecution to gather or produce any direct or ocular evidence for the commission of the murder. As indicated even at the outset, the area of controversy is very limited and even the indisputable facts placed on record, some of which by the very admission of the appellant, would provide sufficient basis for legitimately inferring the actual role played by the appellant and it is in this context only both the courts below have chosen to appreciate and highlight the varying as well as the falsity of the plea of the very appellant. Every one of the circumstances found established in this case definitely form a chain of evidence so complete and definite as not to leave any doubt that the appellant has been carefully planning and meticulously preparing at every stage to get rid of the wife and the daughters as a whole lot. On the evidence on record it could not be properly contended that the courts below found the appellant guilty solely on the basis of the falsity of the stand or explanation given by him of the occurrence. The circumstances held proved in this case by cogent and convincing materials brought on record are sufficient to substantiate the homicidal crime committed by the appellant beyond reasonable doubt and bring home the guilt of the accused with reasonable and positive definiteness. The false nature of the varying explanations and the narration in the written statement of events as to how the incident took place has been highlighted by the courts below more in the process of finding out the reasonableness of the explanation and plausibility of its acceptance, more as an additional circumstance to reinforce the conclusions arrived at and not to use such reasoning as a substitute for the ordinary proof normally expected of the prosecution to substantiate the guilt of the accused. The reliance placed by the courts below on the deposition of PW-14 (the nephew), PW-13 (the brother), PW-6 (living in the house opposite to the appellant), PW-7, PW-8 (the panch witnesses) and the facts noticed in the panchnama relating to the place of the incident Ex.P-82 to arrive at the conclusions cannot be said to be either inappropriate, unreasonable or unjustified. Both the courts below have analysed the materials carefully and in their proper perspective and the manner of appreciation of evidence by them cannot be said to be either perverse or suffer from any glaring infirmities. It cannot also be legitimately contended that improper and wrong inferences have been drawn from the materials placed on record or facts proved. Therefore, we see no reason to interfere with the concurrent findings of facts recorded by the courts below on the guilt of the appellant.

As for the quantum of sentence, we have given our careful consideration in the light of the submissions of the counsel on either side. As to what category a particular case would fall depends, invariably on varying facts of each case and no absolute rule for invariable application or yardsticks as a ready reckoner can be formulated. In Panchhi & Others vs State of U.P. [1998(7) SCC 177] it has been observed that the brutality of the manner in which the murder was perpetrated may not be the sole ground for judging whether the case is one of the "rarest of rare cases", as indicated in Bachan Singh vs State of Punjab [1980 (2) SCC 684] and that every murder being per se brutal, the distinguishing factors should really be the mitigating or aggravating features surrounding the murder. The intensity of bitterness, which prevailed, and the escalation of simmering thoughts into a thirst for revenge or retaliation were held to be also a relevant factor. In Om Prakash vs State of Haryana [1999 (3) SCC 19] dealing with a case of murder of seven persons, some totally innocent too, over a dispute relating to a small house in a village, this court observed that the particular and peculiar facts and circumstances of each case should be properly balanced and noticing the mentally depressed condition of the accused, held the case to be not

one of those rarest of rare cases where the lesser sentence of life imprisonment could not be said to be adequate, despite the fact that the accused was guilty of committing a gruesome act of a premeditated and well thought out murder. While striking a contrast with such of those cases where the extreme punishment of death is warranted, it was also observed that the one dealt with therein was neither a crime committed because of lust for wealth or women (neither for money such as extortion, dacoity or robbery nor even for lust and rape) or an anti-social act involving kidnapping and trafficking in minor girls or of an anti-social element dealing in dangerous drugs which affects the entire moral fibre of the society and kills a number of persons nor was committed for power or political ambitions or as part of organized criminal activities. No doubt those cannot be said to be exhaustive of such category but merely enumerative of the criminal intent of the worst type, destructive of the basic orderliness fundamental to the very existence of a welfare oriented society

Considering the facts of the case presented before us, it is on evidence that despite his economic conditions and earnest attempt to purchase a house for the family after raising loans, the wife and daughters were stated to be not pleased and were engaging in quarrels constantly with the appellant. Though they were all living together the continuous harassment and constant nagging could have very well affected his mental balance and such sustained provocation could have reached a boiling point resulting in the dastardly act. As noticed even by the High Court the appellant though hailing from a poor family had no criminal background and it could not be reasonably postulated that he will not get rehabilitated or that he would be a menace to the society. The boy of tender age would also once for all be deprived of the parental protection. Keeping in view all these aspects, in our view, it could not be said that the imposition of life imprisonment would not adequately meet the requirements of the case or that only an imposition of the extreme punishment alone would do real or effective justice. Consequently, we direct the modification of the sentence of death into one of rigorous imprisonment for life, by partly allowing the appeal to that extent. In other respects the appeal shall stand dismissed. The appellant shall undergo the remaining period of sentence, as above.

J.
[Doraiswamy Raju]

J.
[Brijesh Kumar]

April 24, 2002.