CASE NO.:
Appeal (crl.) 656 of 2004

PETITIONER:
Saibanna

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 21/04/2005

BENCH:
K. G. Balakrishnan & B. N. Srikrishna

JUDGMENT:
J U D G M E N T

B.N.SRIKRISHNA, J.

This appeal arises out of a judgment of the High Court of Karnataka upholding the conviction of the appellant on the charge of Section 302 and confirming the death penalty imposed on the accused-appellant.

The appellant-Saibanna was convicted for the murder of his wife-Nagamma, aged about 22 years, and his daughter-Vijayalakshmi, aged about 1= years. The appellant had earlier committed murder of his first wife-Malakawwa for which he was convicted in Sessions Case No. 32/88. While the appellant was an under trial prisoner, he came into contact with PW 1-Dattu, who was also an under trial prisoner. PW 1-Dattu is the father of the deceased, Smt. Nagamma. The appellant persuaded PW 1 to give his daughter- Nagamma in marriage to him. PW 1 also gave an assurance to the appellant that he would try and get the appellant acquitted in the case against him. Later on, PW 1-Dattu was discharged by the court. During the period of the trial, the appellant was on bail for sometime and he utilised this for getting married to Nagamma. He also begot a female child Vijayalakshmi from her. He was thereafter convicted in Sessions Case No. 32/88 and was handed down a sentence of life imprisonment. His appeal against conviction in that case was dismissed by the High Court of Karnataka.

While serving the sentence of life imprisonment, the appellant was released on parole for a period of one month on 19th August, 1994. On 12th September, 1994, the appellant along with his wife, deceased Nagamma, their child, Vijayalakshmi, PW 21-Sharanawwa, Mahantappa and others went in a jeep to the house of PW 1-Dattu at Bhosga Village. They had a festivity and a good festive meal. Thereafter, the appellant, Smt. Nagamma, child Vijayalakshmi, PW 1-Dattu, PW 21-Sharanawwa and Mahantappa went to the newly constructed house of PW 6-Hanumanthappa (brother of PW 1) to sleep there. During the night, suspecting the fidelity of his second wife, Nagamma, the appellant assaulted her with a jambia (a sort of long bladed knife used for attack or hunting) and inflicted 21 injuries. On being assaulted, and grievously injured, she ran out of the room and fell outside the room where PW 1 and PW 21 were sleeping. The accused also assaulted the minor child Vijayalakshmi with the jambia and inflicted 6 injuries on her. He also attempted to commit suicide by inflicting injuries on his person. As a result of the injuries inflicted, both Nagamma and minor child Vijayalakshmi died, but the appellant survived to face the trial.

The first information was lodged by PW 1 at 8:15 a.m. in the morning of 13th September, 1994 with the jurisdictional police at Afzalpur. The First Information Report was registered in Crime No. 59/94 for the offence under Sections 303, 307 and 309 IPC. The police carried out investigations during the course of which the bodies were subjected to autopsy, necessary mahazars were carried out, weapons lying at the spot were seized, clothes of the deceased and of the accused were also seized. Statements of material

witnesses came to be recorded after which the charge sheet was filed against the accused-appellant.

The prosecution examined in all 26 witnesses and got marked Ex. P 1 to P 24 as well as M.Os. 1 to 17. PW 21-Sharanawwa is the mother-in-law of the younger brother of the appellant. Her evidence is most crucial. She stated in her evidence that a day earlier to the incident when she was in Mandewal Village, the appellant came there and took her along with his deceased wife-Nagamma, deceased daughter-Vijayalakshmi and PW 5-Shashikala to Bhosga Village where the parental house of Nagamma is situated. When all of them went to the house of PW 1, the appellant requested the parents of the deceased, i.e., PW 1 and PW 8, to get him released from jail and they promised that they would try their best to do so. Thereafter, all of them took dinner after which PW 21, appellant-Saibanna, deceased Nagamma, deceased Vijayalakshmi and Mahantappa (grand-son of PW 21) went to the new house belonging to the brother of PW 1 for sleeping during the night. The witness stated that the appellant, his wife-Nagamma and his daughter-Vijayalakshmi slept in one room while PW 21 and her grand-son, Mahantappa, slept in another room. As there were lot of mosquitoes troubling them, PW 21 and Mahantappa came out of the room where they were initially sleeping and slept outside in the verandah. In the middle of the night, PW 21 heard some noise and came awake. She saw Saibanna-appellant assaulting his wife Nagamma with a knife on her chest, stomach and other parts. The injured Nagamma came out of the room shouting followed by the appellant who continued to assault her outside the room also. Upon being questioned as to why he was assaulting Nagamma, the appellant gave no reply, but went inside the room and also assaulted his daughter Vijayalakshmi and inflicted injuries on his own person with the same weapon. All this was noticed, according to witness PW 21, as there was a chimney lamp at the place which was burning. The cross-examination of this witness produced no such discrepancies or contradictions which could have led to disbelieving the witness. The trial court and the High Court have completely believed this witness, particularly, when no ill-will or animosity of this witness towards the accused was even remotely suggested. The fact that she was the close relative of the appellant (mother-in-law of the younger brother of the appellant) and that she was aged about 70 years and would gain nothing by levelling a false allegation on the appellant also weighed in the courts. The other witnesses examined were circumstantial witnesses. PWs. 4, 5, 6, 7, 8, 9, 12 and 16 who were post-incident witnesses, who spoke about the presence of PW 21 at that spot and seeing the injuries on both the deceased and also on the accused. To that extent, their evidence is corroborative. Vijayalakshmi and the appellant in the injured state were taken to a Doctor for medical aid. The Doctor-PW 10 had noticed the injuries on both of them. PW 10 clearly opined that the injuries found on the body of the accused were self-inflicted. The High Court accepted the evidence of PW 10 and also noticed that the complaints/First Information Report had been lodged without delay. Even in his statement under Section 313 of the Criminal Procedure Code, the appellant admitted his presence at the time of the offence, but denied the other incriminatory circumstances put to him.

Upon careful consideration of the entire material evidence, both the Sessions Court and the High Court concurrently found that the prosecution had proved beyond reasonable doubt that the accused was guilty of the offence under Section 302 IPC. Although, originally the accused had been charged under Section 303 IPC, when the Sessions Court was at the stage of sentencing, it was brought to its attention that Section 303 IPC had been struck down as unconstitutional by this Court in Mithu v. State of Punjab . The Sessions Court was of the view that, on the evidence, the charge of Section 302 IPC was made out and the appellant could be convicted of offence under Section 302 IPC as there was no prejudice caused to him by the change of the charge.

The Sessions Court took the view that the case belonged to the category of "rarest of rare cases" and that there were no mitigating circumstances and that the only condign punishment was sentence of death. In the High Court, however, there was disagreement between the two learned Judges hearing the

appeal and the confirmation reference. One learned Judge took the view that the appropriate punishment would be life imprisonment, while the other took the view that it was a fit case in which death sentence had to be imposed. The case was placed before a third learned Judge of the High Court, who took the view that the case at hand was a "rarest of rare case" involving pre-planned brutal murders without provocation and, hence, a fit case where the death sentence imposed by the Sessions Court had to be confirmed.

The learned counsel for the appellant and the State have taken us through the record. We have also heard the learned counsel on both sides and concur with the finding of the Sessions Court as well as the High Court in appeal that the appellant is guilty of the offence of murder under Section 302 IPC of his wife-Nagamma and his minor daughter-Vijayalakshmi. The question is, what should be the appropriate punishment to be imposed in this case ?

In the case of Bachan Singh v. State of Punjab the constitutional validity of the provision for death penalty was upheld. The Constitutional Bench pointed out that the present legislative policy discernible from Section 235(2) read with Section 354(3) of the Code of Criminal Procedure is that "it is only when the culpability assumes the proportion of total depravity that 'special reason' within the meaning of section 354(3) for imposition of the death sentence can be said to exist". Broad illustrative guidelines of such instances were also indicated therein. It was laid down that the legislative policy applied in section 354(3) of the Code of Criminal Procedure is that, if a person convicted of murder, life imprisonment is the rule and death sentence an exception to be imposed in the "rarest of the rare" cases.

In Machhi Singh v. State of Punjab it was observed that it was only in rarest of rare cases, when the collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty.

A reading of Bachan Singh (supra) and Machhi Singh (supra) indicates that it would be possible to take the view that the community may entertain such sentiment in the following illustrative circumstances:

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

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

3. When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath; or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

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

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

In Sevaka Perumal v. State of Tamil Nadu this Court cautioned:
"Undue sympathy to impose inadequate sentence would
do more harm to the justice delivery system to undermine
the public confidence in the efficacy of law and society
could not long endure under serious threats. If the courts
did not protect the injured, the injured would then resort to
private vengeance. It is, therefore, the duty of every court
to award proper sentence having regard to the nature of the
offence and the manner in which it was executed or
committed etc."

In Devender Pal Singh v. State of NCT of Delhi the death sentence was upheld by this Court on application of these broad tests by a majority of 2:1 notwithstanding the dissenting view of Shah, J. holding the accused to be innocent.

It is not necessary to multiply authorities which are mere instances of application of the tests evolved by Bachan Singh (supra) read in the light of Machhi Singh (supra) to different fact situations. The High Court has enumerated the following circumstances in this case as indicative that it is one of the "rarest of rare cases" where imposition of death penalty is justified.

1. The accused was already convicted to life imprisonment for murder of his first wife Malakawwa. He committed the present murders while he was out on parole.
2. That the murder was the result of preplanning on his part is evident from the fact that the murder weapon is a jambia, a hunting knife used for attack, not ordinarily available in a house.
3. Even if the accused had some reason to suspect the fidelity of his wife, which motivated him to murder her, there could have been absolutely no reason for killing the defenceless child of 1= years of age.
4. The murders were committed when the victims were helpless and asleep.
5. No extenuating circumstances in favour of the accused were either pleaded or proved.

The learned counsel for the appellant, however, contended that notwithstanding these reasons enumerated by the trial court and the High Court, the case did not fall within the parameters for being an exceptional one deserving the death penalty. Reliance was placed on the judgment of Ranjit Singh alias Roda v. Union Territory of Chandigarh . It was contended that it was also a case where the accused had committed the offence of murder when he was out on parole while serving life imprisonment for his first conviction. Notwithstanding such conduct of the accused, this Court reduced the sentence of death imposed on him to one of rigorous imprisonment for life. The reason why this was done by this Court is seen in Para 2 of the judgment. The Court was confronted with the case of two accused, both with identical motive of vendetta and revenge, and both had behaved in a cruel manner in inflicting as many as 32 injuries with knives on the deceased who died immediately as a result of the assault on him. Strangely, however, one of them had been awarded life imprisonment while the other was awarded death penalty. It was in these circumstance that this Court appears to have been impelled to modify the sentence of life imprisonment in the case of the appellant before it.
Ram Anup Singh v. State of Bihar was pressed into service to suggest that, instead of death penalty the appellant could be sentenced to suffer rigorous imprisonment for life with the condition that he shall not be released before completing an actual term of 20 years including the period already undergone. Our attention was also drawn to Shri Bhagwan v. State of Rajasthan , Dalbir Singh v. State of Punjab and Prakash Dhawal Khairnar (Patil) v. State of Maharashtra in support of this.

It appears to us that the law as such has been crystallized by the judgment of the Constitution Bench in Bachan Singh (supra) and reformulated in Machhi Singh's case (supra). Most of the judgments cited before us are merely instances of application of that law to facts illustrating the judicial response of individual Judges. Even with the same broad guidelines, as indicated in the aforesaid judgments, as to whether the circumstances make it a 'rarest of rare case' is a matter of judicial assessment. A prisoner sentenced to life imprisonment is bound to serve the remainder of his life in prison unless the sentence is commuted or remitted and that such sentence could not be equated with any fixed term . If that be so, there could be no imposition of a second life term on the appellant before us as it would be a meaningless exercise.

In the teeth of section 427(2) of the Code of Criminal Procedure, 1973 it is doubtful whether a person already undergoing sentence of imprisonment for life can be visited with another term of imprisonment for life to run consecutively with the previous one.

In Krishna Mochi v. State of Bihar the law on the subject was restated by this Court in Paragraphs 41 to 44. After application of the said law, the Court upon assessing the facts before it unhesitatingly upheld that the death penalty was the appropriate penalty.

Thus, taking all the circumstances in consideration, we are of the view that the High Court was right in coming to the conclusion that the appellant's case bristles with special circumstances requisite for imposition of the death penalty.

In the result, we see no reason to take a different view of the matter. The High Court judgment is not liable to be faulted on any account. The appeal has no merit and is hereby dismissed.