PETITIONER:
BACHAN SINGH S/O SAUDAGAR SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT04/05/1979

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
KRISHNAIYER, V.R.

CITATION:
1980 AIR 267 1980 SCR (1) 645
1980 SCC (1) 754

ACT:
Penal Code-Death penalty-When can be imposed-Judges-If have power to reduce sentence of death to one of life imprisonment-Rajendra Prasad's case-If a valid precedent.

HEADNOTE:
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HELD: (Per Sarkaria, J.)
The records of this case be submitted to the Hon'ble Chief Justice for C constituting a larger Bench which would resolve the doubts, difficulties and inconsistencies pointed out by Kailasam J. in his order, particularly in its last paragraph.
(Per Kailasam, J.)
1. Before the amendment of Section 367(5) of the Code of Criminal Procedure by the Criminal Procedure Code (Amendment) Act 1955 (Act 26 of 1955) was introduced, the normal sentence for an offence of murder was death and the lesser sentence was the exception. After the introduction of the amendment it was not obligatory for the court to state the reasons as to why the sentence of death was not passed. By the amendment the discretion of the court in deciding whether to impose a sentence of death or imprisonment for life became wider. The court was bound to exercise its judicial discretion in awarding one or the other of the sentences. By the introduction of Section 354(3) of the Code of Criminal Procedure 1973, the normal sentence is the lesser sentence of imprisonment for life and if the sentence of death is to be awarded, special reasons will have to be recorded. In other words, the court, before imposing a sentence of death, should be satisfied that the offence is of such a nature that the extreme penalty is called for. [1203A-C]
2. In a number of decisions, this court has reiterated the position that under section 354(3) of the 1973 Code, the court is required to state the reasons for the sentence awarded and in the case of sentence of death special reasons are required to be stated. [1203D]
Balwant Singh v. State of Punjab [1976] 2-S.C.R. 684; Ambaram v. The State of Madhya Pradesh [1976] 4 S.C.C. 298; and Sarveshwar Prasad Sharma v. Slate of Madhya Pradesh [1978] I S.C.R. 560 referred to.

In Jagmohan Singh v. State of U.P. [1973] 2 S.C.R. 541 in which the constitutional validity of imposition of death sentence was challenged, this Court held that the deprivation of life is constitutionally permissible if that is done according to the procedure established by law and that it cannot be held that capital sentence is per se unreasonable and not in the public interest. It was also held that the Judges are invested with very wide discretion in the matter of fixing the degree of punishment and that discretion in the matter of sentence is liable
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to be corrected by superior courts, that exercise of judicial discretion on well recognised principles is, in the final analysis, the safest possible safeguard for the accused. [1204C-D]

4. Section 367(5) of the Criminal Procedure Code which came into force on April 1, 1974, after the judgment in Jagmohan Singh's case, provides that the judgment shall state the special reasons where a sentence of death is award ed for an offence punishable with death or in the alternative with imprisonments life or imprisonment for a term of years. The requirement that courts should state the special reasons for awarding the death sentence would indicate that the normal sentence for an offence punishable either with death or with imprisonment for life is imprisonment for life and that if the court considered that sentence of death is appropriate on the particular facts of the case it should give special reasons. [1204 G-H]

5. But in Rajendra Prasad v. State of U.P. A.I.R. 1979 S.C. 916, the majority of a Division Bench of this Court held that "special reasons" necessary for imposing the death penalty must relate not to the crime as such but to the criminal. The death sentence can be awarded only in certain restricted categories where a crime holds out a durable And continuing threat to social security in the setting of a developing country and poses a grave peril to society's survival and when an economic offender intentionally mixes poison in drugs and knowingly and intentionally causes death for the sake of private profit and so on. The decision is in many respects contrary to the law laid down by the Constitution Bench of this Court in Jagmohan Singh's case. The court in this case has proceeded to make law as regards the conditions that are necessary for imposition of a sentence of death under section 302 I.P.C. and to canalisation of sentencing discretion and has embarked on evolving working rules on punishment bearing in mind the enlightened flexibility of social sensibility. In doing so the Court has exceeded its power conferred on it by law. Courts have no power to legislate and to frame rules to guide the infliction of death penalty. [1205C-F]

6. So far as the enacted law is concerned, the duty of the court is to interpret and construe the provisions of the enactment. Courts must take it absolutely for granted that the Legislature has said what it meant and meant what it has said. Judges are not at liberty to add or to take from or modify the letter of the law simply because they have reason to believe the true sentence legis is not completely or correctly expressed by it. Though the courts are free to interpret, they are not free to overlook or disregard the constitution and the laws.. [1207B-D]

7. It is for the court to administer the law as it stands. In awarding sentence or death, the court has to take into consideration the various aspects regarding a crime and the reason for committing the crime and pass the appropriate

sentence, and if it is death sentence, to give reasons as required by the Code of Criminal Procedure. If in deciding a case on particular facts a principle is stated, it would be binding as a precedent. If courts resort to rule making, it will not be binding as a precedent. If the courts are to embark on rule-making the question arises whether the responsibility can be undertaken by a bench of three Judges with majority of 2: 1. There is no machinery by which the court could ascertain the views of the various cross-sections of the society, which is a pre-requisite before any law-making is resorted to. In.
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Rajendra Prasad's ease the court embarked on framing rules prescribing conditions for the imposition of death sentence. The view of the majority that in awarding a sentence the criminal is more important than the crime is not warranted by the law as it stands today. The general principles laid down in Rajendra Prasad's case are not the ratio decidendi of the case. The enunciation of the reasons or the principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi ascertained on a consideration of the judgment in relation to the subject matter of the decision which alone bas the force of law and which, when it is clear what It was, is binding. Statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that is unnecessary for the purpose in hand have no binding authority on another court, though they may have merely persuasive efficacy. Decisions upon matters of facts are not binding on any other court [1207G-H; 1202D-F]

Tribhuvandas v. Ratilal A.I.R. 1968 S.C. 372 = 70 Bom. L. R. 73; Amritsar Municipality v. Hazara Singh - A.I.R. 1975 S.C. 1087; and Quinn v. Leatham-1901 A.C. 495 at p. 506; referred to.

8. In Rajendra Prasad's case the conclusion of the majority was that as nothing on record suggested that the accused was beyond redemption and since the record did not hint that such an attempt was made inside the prison there was no special reason to award death sentence. The utmost to which this case can be considered as an authority is that if in similar circumstances when a person stabs two persons several times it would not furnish special reasons for inflicting the death penalty. In the second case (Kunjukunju) the majority was of the view that the test should be whether the accused was a social security risk altogether beyond salvage by therapeutic life sentence was neither in accordance with the requirements of the Code of Criminal Procedure nor law laid down by the Constitution Bench. Therefore, it cannot be followed as a precedent. Similarly, in the third case (Dubey's case) also the majority view that it would be illegal to award capital punishment without considering the correctional possibilities inside the prison and that the accused being young and of malleable age and other circumstances bearing on the offender called for the lesser sentence is not in conformity with the decisions of this Court or the requirements of the law. [1213H; 1214A-H]

9. In the instant case the appellant was released after undergoing a term of imprisonment for the murder of his wife. After release he lived with his cousin. When his cousin's son and wife objected to his stay with the family he inflicted a fatal injury on the son and two daughters of his cousin when they were asleep and caused grievous injury on another daughter The courts below came to the conclusion

that the appellant acted in a very cruel manner. They have rightly characterised the offence as heinous and held that the only appropriate sentence was the extreme penalty of death. The trial court and the High Court were right in their conclusions. [1215 C-E]

[Rajendra Prasad's case cannot be treated as a binding precedent yet as it is a decision of a division bench of this Court. The papers were directed to be placed before the Hon'ble the Chief Justice for constituting a larger bench to decide the case.]

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 273 of 1979.

Appeal by Special Leave from the Judgment and Order dated 14-8-1978 of the Punjab and Haryana High Court in Crl. A. No. 234/78 and Murder Reference No. 3/78.

H. K. Puri, Amicus Curiae for the Appellant.

R. S. Sodhi and Hardev Singh for the Respondent.

The following Judgments were delivered:

SARKARIA, J.-While reserving my own opinion on the various question raised in this case including the one with regard to the scope, amplification and application of Section 354(3) of the Code of Criminal Procedure, 1973, I would, in agreement with my learned brother, direct that the records of this case be submitted to the Hon'ble the Chief Justice, for constituting a larger Bench which would resolve the doubts, difficulties and inconsistencies pointed out by my learned brother in his order, particularly, in its last paragraph.

KAILASAM, J.-This special leave petition is filed by Bachan Singh son of Saudagar Singh from jail against the conviction and sentence imposed on him by the High Court of Punjab and Haryana. This Court ordered notice to the State and heard the counsel for the petitioner and the State and granted special leave.

The appellant was tried by the Sessions Judge, Ferozepur, on three charges of causing the death of three persons Desa Singh the son and Durga Bai and Veeran Bai daughter of Hukam Singh and causing grievous injuries to Vidya Bai, another daughter of Hukam Singh, at about 12 midnight between the 4th and 5th July, 1977, in the courtyard of the house of Hukam Singh. The learned Judge found the appellant guilty of the three charges under s. 302, I.P.C. and sentenced him to death on each count. He also found him guilty under s. 326, I.P.C., for causing grievous hurt with a sharp cutting weapon to Vidya Bai and sentenced him to three years' rigorous imprisonment and a fine of Rs. 500/-. Against the convictions and sentences passed the appellant preferred Criminal Appeal No. 234 of 1978 to the High Court. The appeal along with the Reference No. 3 of 1978 made by the trial Judge for confirmation of sentence of death were heard together by the High Court. The High Court rejected the appeal and confirmed the convictions and sentences passed on the appellant.

The case for the prosecution briefly is that the appellant Bachan Singh was convicted under s. 302 I.P.C. for the murder of his wife

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and sentenced to imprisonment for life. After undergoing the term of imprisonment he was released. After the release he lived with his cousin(?) Hukam Singh P. VV. 5 for about six

months. Hukam Singh's wife and son objected to the appellant living in their house. A few days prior to the occurrence Hukam Singh and his wife went to Nainital in connection with the marriage of their son Desa Singh. On the night of the occurrence 4th July, 1977 Desa Singh son of Hukam Singh, Durga Bai, Veeran Bai and Vidya Bai the daughters of Hukam Singh were in the house. After taking their meals the, three daughters slept in the inner courtyard, Durgabai in one cot and Veeran Bai and Vidya Bai in another cot near each other. Desa Singh, the son of Hukam Singh, and the appellant slept in the outer courtyard on two separate cots near each other. At about midnight Vidya Bai P.W. 2 was awakened by the alarm and saw the appellant inflicting Kulhari (axe) blow on the face of her sister Veeran Bai. When Vidya Bai tried to get up the appellant gave Kulhari blow on her face and ear. She was unable to speak and fell unconscious. Diwan Singh P.W. 12 who was sleeping at a distance of 3/4 Karms from the cots of Desa Singh and the appellant also woke up on hearing a shriek. He saw the appellant striking Desa Singh with a Kulhari. He raised an alarm and Gulab Singh P.W. 3 who was sleeping at a distance of SO feet from the cot of Desa Singh woke up and saw the appellant hitting Desa Singh on the neck with a Kulhari. On an alarm being raised by the witnesses the appellant threw the Kulhari in the courtyard and ran, away. Gulab Singh and Diwan Singh P.Ws. 3 and 12 gave a chase to the appellant but could not apprehend him. Soon after Kanshi Singh P.W. 4 and others arrived at the place of occurrence and heard from the witnesses the detail, of the occurrence.

A tractor was brought in which Durga Bai, Veeran Bai and Vidya were taken to the hospital at Fazilka. The Doctor who examined the dead bodies and the injured person gave the necessary certificates. He also sent information to the A.S.I. P.W. 13 who went to, the hospital and recorded the statement from P.W. 12 on the basis of which the F.I.R. was recorded at the police station at 4-20 a.m. On 5th July, 1977. The police officer conducted the inquest and preceded with his investigation. The courts below found that the medical evidence fully corroborated the testimony of the injured eye-witness P.W. 2 and two other eye-witnesses P.Ws. 3 and 12 and found that the prosecution had established its case beyond reasonable doubt.

The trial court and the High Court on a consideration of the evidence found that P.W. 2 Vidya Bai the daughter of Hukam Singh

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who was sleeping along with her sisters in the house and suffered serious injuries, saw the attack by the appellant when she woke up. There is evidence that it was a moonlit night and there was sufficient light by which the assailant would have been identified. The trial court accepted the evidence of P.W. 2. The High Court also found that the evidence of P.W. 2 is trustworthy. Both the courts below also relied on the testimony of the other two eye-witnesses P.Ws. 3 and 12. P.W. 3 Gulab Singh was sleeping at a distance of 50 Karmas and got up after hearing the alarm and rushed to the scene. P.W. 12 was sleeping at a distance of 15 feet of Desa Singh. The trial court as well as the High Court accepted the testimony of the two eye-witnesses S P.Ws. 3 and 12. On a consideration of the evidence of the eye-witnesses the High Court observed that the "evidence provided by the eye-witnesses is of very high order in the case and was rightly accepted by the learned trial Judge." We have no hesitation in agreeing with the concurrent findings of the courts below and holding that the

prosecution has proved beyond all reasonable doubt that the appellant caused the death of the three deceased Desa Singh, Durga Bai and Veeran Bai and grievous hurt to Vidya Bai P.W. 2.

Regarding the sentence, the High Court observed "The objection by Desa Singh, his mother and other family members was of a triffing nature on which the appellant acted in a very cruel manner. The victims had no cause to suspect' the intentions of the appellant and went to sleep. Taking advantages of the situation, when the victims could not defend, the appellant killed three and seriously wounded the fourth. It was by sheer luck that Vidya Bai survived. The manner in which the appellant perpetrated these crimes by killing these persons in their sleep is heinous. Under these circumstances, the case of the appellant for reduction of the sentence cannot be considered and in our view the sentence awarded by the learned trial Judge was the only appropriate sentence."

The crime is diabolic and very cruel. Hukam Singh, a cousin, accommodated the appellant in spite of the protests of his wife and son. While enjoying the hospitality at the dead of night when nobody had any suspicion the appellant committed in the most dastardly manner the crime. Desa Singh was sleeping in a cot by the side of the appellant. The appellant at the dead of night while the others were sleeping unsuspectedly hacked three persons to death. It is only providential that the third daughter Vidya Bai escaped. The crime in our view is one of the foulest that could be imagined and we are in entire agreement with the courts below about their assessment of the gravity of the crime-the only question for consideration is whether
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the facts found would be special reasons for awarding the death sentence as required under sec. 354(3) of the Code of Criminal Procedure 1973.

Section 302 I.P.C. and sub-sec. (3) of section 354 of the Cr. P.G 1973 deal with the imposition of death sentence. Section 302 I.P.C. provides:-

> "Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine."

Sub-sec. (3) of sec. 354 of the Code of Cr. Procedure, 1973, enacts.

> "When the conviction is for an offence punishable With death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the Judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence."

Before the amendment of sec. 367(S) Cr. P.C. by the Criminal Procedure Code (Amendment) Act, 1955 (Act XXVI of 1955) which came into force on 1st January, 1965, on a conviction for an offence punishable with death if the Court sentenced the accused to any punishment other than death, the reason why sentence of death was not passed had to be stated in the judgment. Section 367(5) of the Code of Criminal Procedure before its amendment by Act 26 of 1955 provided that "if the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall, in its judgment state the reasons why sentence of death was not passed." This sub-section was construed before the Amendment Act, Act 26 of 1955 as meaning that the extreme sentence is the normal sentence and the mitigated sentence is the exception. In Dalip Singh v. State of Punjab,(1) it was held that in a case of murder,

the death sentence should ordinarily be imposed unless the trying Judge for reasons which should normally be recorded considers it proper to award the lesser penalty. In Vadivelu Thevar v. The State of Madras,(2) this Court expressed its view that the question of sentence has to be determined, not with reference to the volume or character of the evidence adduced by the prosecution in support of the prosecution case, but with reference to the fact whether there are any extenuating circumstances which can be said to mitigate

(1) A.I.R.1953 S.C.364
(2) A.I.R.1957 S.C.6I4.

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the enormity of the crime. If the Court is satisfied that there are such mitigating, circumstances, only then, it would be justified in imposing the lesser of the two sentences provided by law. These two cases were rendered in relation to offences which were committed before the Criminal Procedure Code Amendment Act 26 of 1955 was enacted. The law therefore prior to the amendment was that unless there are extenuating circumstances the punishment for murder should be death and not imprisonment for life.

By the Amendment Act 26 of 1955 a new sub-section, sub-section (5), was substituted for the former sub-section (S) by Act 26 of 1955 which does not contain the provision making it incumbent for a Judge to record his reasons for imposing a lesser penalty. After the amendment which omitted the provision requiring the recording of reasons for imposing the lesser penalty, the Court is not under a statutory duty to record the reasons. Still as the Courts have to impose one of the two penalties, namely death or imprisonment for life, the Courts will have to exercise their judicial discretion in deciding which of the two penalties should be imposed. The result is that after the amendment though the Court is not required to record the reasons for imposing the lesser penalty it was bound to exercise its discretion judicially. To show that the discretion has been judicially exercised, reasons are given for imposing the particular sentence. This makes it necessary for the court to give its reasons for imposing the particular sentence though by the Amending Act the court was not required to‘ give reasons for not imposing any punishment other than death. The effect of the amendment has been stated by this Court in Raghubir Singh v. State of U.P.,(’) that after the amendment of section 367(S), Criminal Procedure Code, by Act 26 of 1955 the discretion of the court in deciding whether to impose the sentence of death or of imprisonment for life has become wider.

By the Code of Criminal Procedure, 1973 (Act 2 of 1974) subsection (3) to section 354 was introduced regarding the contents of the judgment relating to imposition of a sentence of death or imprisonment for life or imprisonment for a term of years.

Sub-sec. (3) which deals with the conviction for an offence punishable with death or in the alternative with imprisonment for life or for a term of years in sentencing a person on conviction for such an offence the judgment is required to state the reasons for the sentence awarded and in the case of sentence of death the special reasons for such sentence. When the court in its discretion imposes either a sentence

(1) [1972] 3 S.C.C.79

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of death or imprisonment for life or for imprisonment for a term of years, the Court is required to record reasons for imposing one or the other sentence which it can legally

impose. As the Court has a discretion to award a sentence of death or imprisonment for life or imprisonment for a term of years and as the discretion is very wide the law requires that reasons shall be stated for awarding one or other of the sentences. In the case of an offence under sec. 132, I.P.C., the punishment provided for is death or imprisonment for life or imprisonment for 10 years and fine. There are other offences like the one under s. 131 I.P.C. which is punishable with imprisonment for life or imprisonment for 10 years and fine. Sections 121(a), 122, 125, 128, 130, 131 IPC and other sections provide for the punishment of imprisonment for life or imprisonment for a term of years. In such cases under s. 354(3) the Court is required to state reasons why one or other of the sentences is imposed. In the case of offences punishable with death the sub-section requires that special reasons for imposing such sentence, should be given. This requirement makes it clear that where the punishment provided for is death or imprisonment for life the sentence that should be imposed as of rule should be one cf imprisonment for life. But if the offence is of such a grave nature that the court thinks the higher of the penalties, namely the death sentence, should be imposed special reasons should be given. Thus while the legislature retained the imposition of death sentence it laid down that if the court awarded the death sentence it should Furnish special reasons. In Chapter 27 which relates to 'Judgments' there are other sections which require that reasons should be given for imposing or not imposing a particular sentence. Sub-section (4) to s. 354 requires that when the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence. Such reasons need not be recorded if the sentence is one of imprisonment till the rising of the court or unless the case was tried summarily under the provision of Cr. P.C. Section 361 requires that when the court could have dealt with (a) an accused person under s. 360 or under the provisions of the Probation of offenders Act, 1958, or (b) a youthful offender under the Children Act, 1960. Or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so. This section also requires special reasons to be given if the court has not dealt 1 with the accused under the provisions mentioned The object of requiring the reasons to be given regarding the sentence could be
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found in the Law Commission's Report and the Report of the Joint Parliamentary Committee. The Law Commission in Vol. I, 35th Report on the Capital Punishment expressed that a considerable body of opinion is in favour of a provision requiring tile Court to state its reasons for imposing the punishment either of death or imprisonment for life. The Commission was of the view that this would be a safeguard to ensure that the lower courts examine the case as elaborately from the point of view of sentence as from the point of view of guilt and that it would provide good material at the time when a recommendation for mercy is to be made by the court or a petition for mercy is considered and that it would increase the confidence of the people in courts by showing that the discretion is judicially exercised. It would also facilitate the task of High Court in appeal or in proceedings for confirmation in respect of the sentence (where the sentence awarded is that of death), or in

proceedings in revision for enhancement of the sentence (where the sentence awarded is one of imprisonment for life). In its 41st Report on the Cr. P.C. the Law Commission recommending the amendment also observed that there were certain offences for which the Penal Code prescribes the punishment as death or in the alternative life imprisonment or imprisonment for a term of years and therefore the amendment recommended should cover these cases also. The Joint Committee of Parliament added that a sentence of death is the extreme penalty of law and it is but fair that when a court awards, that sentence in a case where the alternative sentence of imprisonment for life is also available, it should give special reasons in support of the sentence. For giving effect to the recommendation of the Law Commission and the Joint Committee of Parliament sub-section (3) to section 354 was amended in the present form. The object the amendment therefore is to insist on the lower courts to examine the case as elaborately from the point of view of sentence as from the point cf view of guilt and state its reasons for imposing the sentence which would help the High Court in discharging its functions particularly in confirming a sentence of death or enhancing a sentence of imprisonment for life to death. This object is further sought to be achieved by the introduction of sub-section 2 to s. 235 which provides an opportunity of hearing the accused on the question of sentence. The provision requiring special reasons for awarding death sentence makes it also clear that the normal sentence when punishment of death or imprisonment for life could be awarded is only imprisonment for life and if the court imposes death sentence it should give special reasons.

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The development of law regarding the imposition of death sentence call be summarised as follows. While before the Amending Act 26 of 1955 was introduced the normal sentence for an offence of murder was death and that the lesser sentence is the exception, after the introduction of sub-s.. (5) to s. 367 by Act 26 of 1955 it was not obligatory for the Court to state the reasons as to why the sentence of death was not passed. By the amendment the discretion of the Court in deciding whether to impose a sentence of death or imprisonment for life became wider. The court was bound to exercise its judicial discretion in awarding one or the other of the sentences. By the introduction of s. 354(3) the normal sentence is the lesser sentence of imprisonment for life and if the sentence of death is to be awarded special reasons will have to be recorded. In other words, the court before imposing a sentence of death should be satisfied that the offence is of such a nature that the extreme penalty is called for. The decisions rendered by this Court after the introduction of the amendment to S.354(3) by Act 2 of 1974 have reiterated this position. In Balwant Singh v. State of Punjab(1) this Court summing up the position observed that under s. 354(3) of the Cr. P.C., 1973, the Court is required to state the reasons for the sentence awarded and in the case of sentence of death special reasons are required to be stated. It would thus be noticed that awarding of the sentence other than the sentence of death is the general rule now and only special reasons, that is to say, special facts and circumstances in a given case, will warrant the passing of the death sentence. This view was reiterated by this Court in Ambaram v. The State of Madhya Pradesh.(2) In Sarveshwar Prasad Sharma v. State of Madhya Pradesh(3) it was observed that this Court has in several cases indicated guidelines in this

problem area of life and death as a result of judicial verdict but none of these guidelines can be cut and dry nor exhaustive and each case will depend upon the totality of the facts and circumstances and other matters revealed.

The validity of imposition of death sentence was challenged in the ground that the sentence puts an end to all Fundamental Rights guaranteed by clauses (a) to (g) of sub-clause (1) of Art. 19 of the Constitution and therefore the law with regard to capital sentence is unreasonable and not in the interest of the general public. It was further contended that the discretion invested in the Judges to impose capital punishment is not based on any standard or policy required by the Legislature for imposing capital punishment in preference to

(1) [1976]2 S.C.R. 684
(2) [1976]4 S.C.C. 298
(3) [1978]1 S.C.R. 560

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imprisonment for life. Further it was submitted that the uncontrolled and unguided discretion in the Judges to impose capital punishment or imprisonment for life is hit by Art. 14 of the Constitution. Lastly, it was contended that the provisions of the law do not provide a procedure for trial of factors and circumstances crucial for making the choice between the capital penalty and imprisonment for life and therefore Art. 21 is violated. A Constitution Bench of this Court in Jagmohan Singh v. The State of U.P.(') rejected all these contentions. It was held that the deprivation of life is constitutionally permissible if that is done according to procedure established by law and that it cannot be held that capital sentence is per se unreasonable or not in the public interest. It was further held that the impossibility of laying down standards is at the very core of the criminal law as administered in India which invests the Judges with a very wide discretion in the matter of fixing the degree of punishment. That discretion in the matter cf sentence is liable to be corrected by superior Courts. The exercise of judicial discretion on well-recognised principles is, in the final: analysis, the safest possible safeguard for the accused. The challenge under Art. 14 was also negatived on the ground that the facts and circumstances of a crime are widely different, and, since a decision of the court as regards punishment is dependent upon a consideration of all the facts and circumstances, there is hardly any ground for a challenge under Art. 14. The Court also negatived the plea that the provisions of law do not provide a procedure for trial of factors which are crucial for making the choice between the capital penalty and imprisonment for life. The Court rejected all the challenges against the award of death sentence on the ground of violation of the provisions of the Constitution. It also upheld the investment of wide discretion in the matter of fixing the degree of punishment on the Judges as the exercise of judicial discretion on well-recognised principles is the safest possible safeguard for the accused. The Constitution Bench delivered its judgment on the 3rd October, 1972. Subsequently amendment to the Code of Criminal Procedure, 1973, (Act 2 of 1974) came into force on 1st April, 1974. The only change by the new Act is the introduction of s. 367 (S) of the Criminal Procedure Code which provides that the judgement shall state the special reasons where a sentence of death is awarded for an offence punishable with death or in the alternative with imprisonment for life or imprisonment for a term of years. The requirement that the courts should state the special reasons for awarding the death sentence would indicate that

the normal sentence for an offence punishable either with death or with imprisonment for life is imprisonment for life and that if the court considered

(1) [1973] 2 S C. R. 541

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that sentence of death is appropriate on the particular facts of the case It should give special reasons. Apart from the emphasis that the normal sentence is imprisonment for life and that special reasons should be given for awarding the death sentence there is no further alteration in the law relating to awarding of the death penalty. As already noticed the effect of the amendment was considered by this Court in [1976] 2 S.C.R.: 684, [1976] 4 S.C.C. 298 and [1978] 1 S.C.R. 560 (supra) and it was held that the awarding of sentence other than the sentence of death is the general rule now only special reasons, that is to say, special facts and circumstances in a given case will warrant the passing of the death sentence.

A recent decision of this Court Rajendra Prasad's case in Cr. As. Nos. 512, 511 and 513 of 1978 was delivered on 9th February, 1979.(1) The decision by the majority was delivered by Krishna Iyer J. held that "special reasons" necessary for imposing the death penalty must relate not to the crime as such but to the criminal. It further held that death sentence can be awarded only in certain restricted categories The tests that are prescribed are to find out whether the murderer holds out a terrible and continuing threat to social security in the setting of a developing country and poses a grave peril to society's survival. The other circumstances which would justify imposition of death sentence are when an economic offender intentionally mixes poison in drugs, professionally or wilfully adulterates intoxicating substances injuriously, and knowingly or intentionally causes death for the sake of private profit or when a murderous band of armed dacoits intentionally derail a train and large number of people die in consequence or when the style of violence and systematic corruption and deliberately planned economic offences by corporate top echelons are often a terrible technology of knowingly causing death. Likewise when a murderer is so hardened and so blood-thirsty that within the prison and without, he makes no bones about killing others or carries on a prosperous business in cadavers, then he becomes a candidate for death sentence.

I have read through the judgment of the Court with utmost care. The decision is in many respects contrary to the law laid down by the Constitution Bench of this Court in Jagmohan Singh's case. The Court has proceeded to make law as regards the conditions that are necessary for imposition of a sentence of death under s. 302 I.P.C. It has proceeded to canalisation of sentencing discretion and has embarked on evolving working rules on punishment bearing in mind the enlightened flexibility of social sensibility. In doing so I feel the court has exceeded its powers conferred on it by law.

(1) [1979] 3 S.C.R 78

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To substantiate my statement, I proceed to give a few extracts from the judgment. At the outset of the judgment it is stated that the precise issue before it was "the canalisation of the sentencing discretion in a competing situation.. ...Therefore this jurisprudential exploration, within the framework of s. 302 I.P.C., has become necessitous, both because the awesome 'either/or' of the Section spells out no specific indicators and law in this

fatal area cannot afford to be conjectural".. "The flame of life cannot flicker uncertain; and so s. 302 I.P.C. must be invested with pragmatic concreteness that inhibits ad hominem responses of individual judges and is in penal conformance with constitutional norms and world conscience." "Within the dichotomous frame-work of s. 302 I.P.C., upheld in Jagmohan Singh, we have to evolve working rules of punishment bearing the markings of enlightened flexibility and societal sensibility."..... "Therefore, it is no heresay to imbibe and inject the social philosophy of the Constitution into the Penal Code to resolve the tension between the Past and the Present."..... "That is the essay we undertake here". "But if legislative undertaking is not in sight judges who have to implement the code cannot fold up their professional hands but must make the provision viable by evolution of supplementary principles, even if it may appear to possess the flavour of law-making".. . "This Court's tryst with the Constitution obligates it to lay down general rules, not a complete directory, which will lend predictability to the law vis-a-vis the community and guide the judiciary in such a grim verdict as choice between life and death."..... "Therefore, until Parliament speaks, the court cannot be silent."..... "This Court must extricate, until Parliament legislates, the death sentence sector from judicial subjectivism and consequent uncertainty."..... "Having stated the area and object of investigation we address ourselves to this grave penological issue purely as judges deciding a legal problem, putting aside vie vs, philosophical or criminological, one holds. But law, in this area, cannot go it alone; and cross-fertilisation from sociology, history, cultural anthropology and current national perils and developmental goals and, above all constitutional currents, cannot be eschewed."

The above are few of the passages in the "prolix and diffuse" judgment as the learned Judge has chosen to call it. The passages clearly indicate that the Court in the absence of legislative undertaking has embarked on law making as in its view the Judges cannot fold up their professional hands but must make the provision viable by evolution of supplementary principles, even if it may appear to possess the flavour of law-making, and that until Parliament speaks the Court
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cannot be silent. With utmost respect I feel that the courts have no such power to legislate and to frame rules to guide the infliction of death penalty.

The duty of the court so far as enacted law is concerned, is to interpret and construe the provisions of the enactment. By interpretation or construction is meant the process by which the courts seek to ascertain the meaning of the legislature through the medium of the authoritative forms in which it is expressed. The courts must take it absolutely for granted that the legislature has said what is meant alld meant what it has said. Judges are not at liberty to add or to take FRS or modify the letter of the law simply because they have Cr reason to believe the true sentence legis is not completely or correctly expressed by it. (Salmod on Jurisprudence, 11th Ed. by Glanville Williams, p. 153). The Constitution and the laws bind every court in India and that though the courts are free to interpret they are not free to overlook or disregard the Constitution and the laws. As held in Young v. Bristol Aeroplane Co. Ltd.(l) the Court is not entitled to disregard the statutory provisions and to follow a decision of its own when that provision was not present in its mind.

It is equally beyond the functions of a Court to evolve working rules for imposition of death sentence bearing the markings of enlightened flexibility and social sensibility or to make law by cross fertilisation from sociology, history, cultural anthropology and current national perils and developmental goals and, above all, constitutional currents. I am of the view that it is the function of the Parliament to frame laws consistent with the needs of the society. If the grounds for award of a sentence of death has to be more specifically stated than that it is found in the Indian Penal Code and the Cr. P.C., it is for the Parliament to do so. Various legislative measures were introduced but were withdrawn from time to time. At present there is a Bill before the Parliament. It is for the Parliament to clarify the circumstances under which a sentence of death could be awarded. It is for the court to administer the law as it stands. In awarding sentence of death, the Court has to take into consideration the various aspects regarding the crime and the person that committed the crime and pass an appropriate sentence and if it is death sentence to give special reasons as required by the Cr. P.C. If in deciding a case on particular facts a principle is stated it may be binding as a precedent. If the Courts resort to rule making it will not be binding as precedent. If the Courts are to embark on rule making the question arises whether

[1] [1947] 1 K.B.718,

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the responsibility can be undertaken by a bench of 3 Judges with a majority of 2 to 1. Is it permissible for another bench to proceed to make laws and prescribe an entirely different sets of rules ? There is no machinery by which the Court could ascertain the views of the various cross sections of the society which is a prerequisite before any law making is resorted to.

The Court has embarked on framing rules prescribing conditions for imposition of death sentence taking into account "cross-fertilisation from sociology, history, cultural anthropology and current national perils and developmental goals, and above all, constitutional currents". So far as constitutional currents are concerned the Constitution Bench has upheld the validity of awarding of the death sentence. The Court has proceeded on the basis that the earlier decisions of this Court have taken into account only the crime and not the criminal. The emphasis according to the judgment should be on the criminal and not on the crime. The mode of sentencing as envisaged in the Penal Code and the Cr. P.C. requires that every fact that is relevant to the determination of the sentence including the crime, the criminal and other environmental circumstances will have to be taken into account. The view of the learned Judge that in awarding a sentence the criminal is more important than the crime is not warranted by the law as it stands today.

I will now refer to various points dealt with in the judgment which are contrary to the decision of the constitutional Bench.

Justice Krishna Iyer says: "The main focus of our judgment is on this poignant gap in 'human rights jurisprudence' within the limits of the Penal Code, impregnated by the Constitution. To put it pithily, a world order voicing the worth of the human person, a cultural legacy charged with compassion, an interpretative liberation from colonial callousness lo life and liberty, a concern for social justice as setting the sights of individual justice, interest with the inherited text of the Penal Code to yield

the goals desiderated by the Preamble and Articles 14, 19 and 21." The challenge to the award of the death sentence as violative of Articles 19, 14 and 21 was repelled by the Constitution Bench by holding that the death sentence is a permissible punishment and that deprivation of life is constitutionally permissible if that is according to procedure established by law. Regarding laying down standards in imposing the punishment the Court observed that the impossibility of laying down standards is at the very core of criminal law as administered in India which invests the Judges with a very wide diseretion in the matter of fixing the degree of punishment and that

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this discretion in the matter of sentence is liable to be corrected by superior Courts. It was held that the exercise of judicial discretion on well recognised principles is in the final analysis, the safest possible safeguard for the accused. Justice Krishna Iyer would comment on the observations of the Constitution Bench above quoted as follows: "The acceptance of the invulnerability of discretionary power does not end the' journey: it inaugurates the search for those 'well-recognised principles' Palekar, J. speaks of in the Jagmohan case. Incidental observations without concentration on the sentencing criteria are not the ratio of the decision. Judgments are not Bible for every line to be venerated," with respect I am unable to agree with the characterization of Palekar J's judgment as "incidental observations without concentration on the sentencing criteria". At p. 559 of the Reports Palekar J. Observes: In India this onerous duty is cast upon Judges and for more than a century the judges are carrying out this duty under the Indian Penal Code. The impossibility of laying down standards is at the very core of the criminal law as administered in India which invests the Judges with a very wide discretion in the matter of fixing the degree of punishment. That discretion m the matter of sentence is, as already pointed out, liable to be corrected by superior courts. Laying down of standards to the limited extent possible as was done in the Model Judicial Code would not serve the purpose." After disapproving laying down of standards the learned Judge proceeded "The exercise of judicial discretion on well-recognised, principles is, in the final analysis, the safest possible safeguard for the accused." (Emphasis supplied) The learned Judge quoted with approval the view of this Court in Budhan Chowdhary v. State of Bihar(1) which is as follows:-

> "The judicial decision must of necessity depend on the facts and circumstances of each particular case and what may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection unless there is shown to be present in it an element of intentional and purposeful discrimination.-Further, the discretion of judicial officers is not arbitrary and the law pro vides for revision by superior courts of orders passed by the subordinate courts. In such circumstances, there is hardly any ground for apprehending any capricious discrimination by judicial tribunals."

Palekar, J. continued "Crime as crime may appear to be superficially the same but the facts and circumstances of a crime are widely

(1) [1955] S. C. R. 1045

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different and since a decision of the court as regards

punishment is dependent upon a consideration of all the facts, and circumstances, there is hardly any ground for challenge under Article 14." At page 560 of the reports, Palekar, J, explains the procedure that is followed by the Courts which enables to bring into focus all the circumstances that are relevant to be taken into account in awarding the sentence. On a reading of the judgment of the Constitution Bench I regard my inability to share the view of Krishna Iyer J. that Palekar J's observations are incidental and without concentration. It may be noted that the laying down of the standards which was deprecated is being attempted in this decision.

Krishna Iyer J. would state "It is constitutionally permissible to swing a criminal out of corporeal existence only if the security of State and society, public order and the interests of the general public compel that course as provided in Art. 19(2) to (6)". This view again is inconsistent with the law laid down by the Constitution Bench which has held that deprivation of life is constitutionally permissible if that is done according to procedure established by law. Krishna Iyer J. has observed that "no Code can rise higher than the Constitution and the Penal Code can survive only if it pays homage to the suprema lex. The only correct approach is to read into s. 302 I.P.C. and s. 354(3) Cr. P.C., the human rights and human trends in the Constitution. So examined, the right to life and to fundamental freedoms is deprived when he is hanged to death, his dignity is defiled when his neck is noosed and strangled," the only change after the Constitution Bench delivered its judgment is the introduction of s. 354(3) which requires special reasons to be given if the court is to award the death sentence. If without the restriction of stating sufficient reasons death sentence could be constitutionally awarded under the I.P.C. and Cr. P.C. as it stood before the amendment, it is difficult to perceive how by requiring special reasons to be given the amended section would be unconstitutional unless the "sentencing sector is made most restrictive and least vagarious". Krishna lyer J. has held that "such extra ordinary grounds alone constitutionally qualify as 'special reasons' as leave no option to the court but to execute the offender if State and society are to survive. One stroke of murder hardly qualifies for this drastic requirement, however gruesome the killing or pathetic the situation, unless the inherent testimony oozing from that act is irresistible that the murderous appetite of the convict is too chronic arid deadly that ordered life in a given locality or society or in prison itself would be gone if this man were now or later to be at large. If he is an irredeemable murderer, like a blood-thirsty tiger, he has to quit his terrestrial tenancy." The Constitution Bench dealing with the
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award of death sentence observed. "But some at least are diabolical in conception and cruel in execution. In some others where the victim is a person of high standing in the country, society is liable to be rocked to its very foundation. Such murders cannot be simply wished away by finding alibis in the social mal-adjustment of the murderer. Prevalence of such crimes speaks, in the opinion of many, for the inevitability of death penalty not only by way of deterrence but as a token of emphatic disapproval by the society." After referring to the Law Commission's Report the Court observed: "A very responsible body has come to the conclusion after considering all the relevant factors. On the conclusions thus offered to us, it will be difficult to

hold that capital punishment as such is unreasonable or not required in the public interest." I find it difficult to reconcile the law stated by the Constitution Bench with the view expressed by Krishna Iyer J.

The judgment delivered by Krishna Iyer J. for the Court and the minority judgment of Justice A. P. Sen have dealt at considerable length with various aspects and desirability or otherwise of imposing a sentence of death. Tile controversy over capital punishment is not new. For several centuries the debate is going on. I am conscious that it is a highly controversial subject on which much can be said on both sides. Fortunately, for the Judges it is neither necessary nor desirable to subscribe to one of the two views. All that the Judges are expected to do is to administer the law as it stands. In fact, if I am strong believer of abolition of death sentence or supporter of 'life fol. life' and 'tooth for tooth' doctrine I would have excused myself from deciding a case involving confirmation of death sentence.

Justice Krishna Iyer has not concealed his abhorrence at the infliction of death sentence. He pleads that death sentence should be abolished. He has expressed his view in unmistakable terms: "Every sombre dawn a human being is hanged by the legal process, the flag of human justice shall be hung half-mast". Again "The right to life and to fundamental freedoms is deprived when he is hanged to death, his dignity is defiled when his neck is noosed and strangled". ...."The Indian cultural current also counts and so does our spiritual chemistry, based on divinity in everyone, catalysed by the Budha-Gandhi compassion".. "This axiom is a vote against 'death' and hope in 'life'." I have great respect for the views of the learned Judge. He is strongly espousing a cause but I feel embarrassed when I am required to follow his views for I consider it is my solemn duty to administer the law of the land as it stands. According to my conception my duty is to administer the law as it stands. It is not for me lo say what the law should be. If I am satisfied that the trial Judge and the
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High Court have given special reasons as required under the law it is my duty to confirm the sentence of death. Vide observations of this Court in Ram Narain and ors. v. State of U.P.(1) quoted with approval in Jagmohan's case.

I do not feel it necessary to refer to the various points dealt With by Krishna Iyer J. in his long and learned 'essay'. I have quoted in extenso from his judgment and also from the judgment of the Constitution Bench in order to show that the two views are irreconcilable and that I am bound to follow the law laid down by the Constitution Bench. With respect I find myself in complete agreement with the views expressed by the Constitution Bench. I am therefore unable to follow the decision of the Bench.

I have discussed the general principles laid down in Rajendra Prasad's case regarding the circumstances that are necessary for the imposition of the death sentence. Apart from being unable to agree with the guidelines prescribed, I am of the view that the general principles laid down are not the ratio decidendi of the case. The courts are not bound to follow them. Halsbury's Laws of England (3rd Ed. Vol. 22 at p. 796) explains what ratio decidendi is. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and

which, when it is clear what it was, is binding. Statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that is unnecessary for the purpose in hand have no binding authority on another court, though they may have some merely persuasive efficacy. Decisions upon matters of fact are not binding on any other court. This Court has held that precedents which enunciate rules of law form the foundation of administration of justice under our system. (Tribhuvandas v. Ratilal).(2) It has also been held in Amritsar Municipality v. Hazara Singh(3) that the decisions of even the highest court on questions of fact cannot be cited as precedents. Lord Halsbury in Quinn v. Leathem(4) said that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in

(1) A. I. R. 1971 S. C. 757.
(2) A.I.R. 1968 S. C. 372=70 Bom. L. R. 73.
(3) A. 1. R. 1975 S. C. 1087
(4) 1901 A. . 495. at p. 506

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which such expressions arc to be found. The learned Judge proceeds To observe "....a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. The courts are not bound by the observations in decisions beyond the point actually decided. The courts can say "We cannot know that the House of Lords would carry this determination further than they have carried it". (per Best C.J. in Fletcher v. Lord Sondes.(l)

Applying the principles above quoted, I will now proceed to find out what are the points decided in the case and to what extent it will be binding on courts. In Rajendra Prasad's case the three appeals in which death sentences were imposed came up before the Court for consideration of the question whether the death sentence awarded should be confirmed or not. After appreciation of the facts of the case the Court came to the unanimous conclusion that the concerned accused have been found guilty of the offence of murder and confirmed the conviction. Regarding the imposition of the death sentence the majority was of the view that there were no sufficient reasons for imposing the extreme penalty while the minority differed from that conclusion. The principle that can be derived in the case is that on the facts and circumstances established in the case there are not 'sufficient reasons' for imposing the death sentence. Only to this limited extent if at all is the decision binding on the courts. It is common knowledge that the facts are rarely similar in two cases. The root of the doctrine of precedent is that alike cases must be decided alike. Only then it is possible to ensure that the court bound by a previous case decides the new case in the same way as the other court would have decided it. It is all a question of probabilities, but the probability that a court will decide a new case in the same way as would the court which decided one of the cases cited becomes less and less as the differences between the facts of the two cases increase.

As every judgment will have to be read as applicable to the particular facts proved will refer to the facts found in Rajendra Prasad's case. The accused in Rajendra Prasad's case a youngman after some years served in prison, was released on Gandhi Jayanti Day. Some minor incident ignited

his latent feud and he stabbed Ram Bharosey and his friend Mansukh several times and the latter succumbed. He was sentenced to death by the Sessions Court which was confirmed by the High Court. This Court applying the canons which it had laid down came to the conclusion that as nothing on record suggested that Rajendra Prasad was beyond redemption and the record does not

(1) [1826] 3 Bing. 501 at p. 560

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hint that such an attempt was made inside the prison they did not see any special reason to hang him out of corporeal existence. As pointed out earlier I am unable to subscribe to the canons laid down in the case. The utmost to which this case can be considered as an authority is that if in similar circumstances when a person's latent feud gets ignited and stabs two persons several times it would not furnish special reasons for inflicting the extreme penalty. In the second case relating to Kunjukunju the accused cut to death the innocent wife and the immaculate kids in the secrecy of night. The trial court as well as the High Court found it was a deliberate and cold blooded act performed with considerable brutality. The majority expressed its opinion that if the crime alone was the criterion the sentence was proper but if the criminal was the target it was not proper. The Cr. P.C. requires the courts to take into account the circumstances in which the crime was committed, the particulars about the criminal and all relevant circumstances relating to the commission of the crime by the criminal. The trial court is required to give reasons and they are to be scrutinised by the High Court on a reference to it for confirmation of the death sentence. The High Court also has to satisfy itself that there arc special reasons for inflicting the extreme penalty. The view of the majority that the test should be whether Janardanan is a social security risk, altogether beyond salvage by therapeutic life sentence is neither in accordance with the requirements of the Cr.P.C. nor law laid down by this Court. The decisions of this Court insist not only on a consideration of the criminal but also the nature of the crime and all other relevant circumstances. As the view expressed in the case is not in conformity with the decisions of this court it cannot be followed as a precedent. At the most the decision may be taken as authority that in similar circumstances the cutting to death of the innocent wife and the immaculate kids in the secrecy of the night may not amount to special reasons as required under the Cr.P.C. In the third appeal the appellant flung the vessels over the division of which the wrangle arose, went inside the house, emerged armed, picked up all altercation eventuating the young man (whose age was around 18 or 20) stabbing to death three members of the other branch of the family. He chased and killed, excited by the perverted sense of injustice at the partition. The majority was of the view that it is illegal to award capital punishment without considering the correctional possibilities inside the prison. The court was of the view that although the crime was attended with extraordinary cruelty, the accused being young and malleable are and their reasonable prospect of reformation and absence of any conclusive circumstance that the assailant is a habitual

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murderer or given to chronic violence-these catena of circumstances bearing on the offender call for the lesser sentence. Here again it is difficult to agree with the test applied for it is not in conformity with the decisions of

this Court or the requirements of the law. If at all it may be an authority only for the proposition that under identical circumstances the stabbing of three persons by a young man in an altercation when he was excited by a perverted sense of injustice would not be special reasons for awarding the extreme penalty.

In the case before us the facts are not identical with any of the cases in the appeals. The appellant was released after undergoing a term of imprisonment for the murder of his wife. After release he lived with his cousin Hukam Singh for about six months. The wife and son objected. On the night of the occurrence when he was sleeping with Desa Singh son of Hukam Singh in the outer courtyard and three daughters of Hukam Singh in the inner courtyard at about midnight the petitioner got up, inflicted fatal injuries on the son Desa Singh and the two daughters Durga Bai and Veeran Bai and caused grievous injuries to Vidya Bai while they were sleeping. 'the trial court as well as the High Court on a consideration of the entire facts regarding the crime and the criminal came to the conclusion that the appellant acted in a very cruel manner. The victims had no cause to suspect the intentions of the petitioner and went to sleep. Taking advantage of the situation, when the victims could not defend, the appellant killed three and seriously wounded the fourth. The courts below rightly characterised the offence as heinous and in the circumstances of the case they were of the view that the only appropriate sentence is the extreme penalty. I have no hesitation in agreeing with that conclusion. The facts of the case may have some resemblance to Kunjukunju case in that the accused in that case cut his innocent wife and the kids under the secrecy of the night. But the other circumstances namely his cold calculated and deliberate murder of innocent children of Hukam Singh who had given shelter to him when they were sleeping discloses that the crime is an extremely brutal and heinous one calling for imposition of death-sentence I agree with the trial Court and the High Court and find 'special reasons' required for imposition of death has been clearly made out.

In the result I find myself unable to agree with the reasoning or conclusion arrived at by this Court in Rajendra Prasad's case mainly on the ground that it is not in conformity with the decision of the

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Constitutional Bench of this Court in Jagmohan's case and that the propositions laid down are not within the competence of the Court. Though the decision cannot be treated as a binding precedent yet as it is a decision of a bench of this Court I direct the matter be placed before Hon'ble the Chief Justice for constituting a larger bench to decide the case

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