A SUSHIL KUMAR

v.

STATE OF PUNJAB

(Criminal Appeal No.670 of 2009)

SEPTEMBER 1, 2009

B

[V.S. SIRPURKAR AND DEEPAK VERMA, JJ.]

Penal Code, 1860: s.302 – Murder – Accused allegedly murdered his wife and children and thereafter got himself C *admitted in hospital – Evidence of prosecution witnesses in conformity with each other – No doubt about the credibility of witnesses – Prosecution witnesses having cordial relations with the accused hence case of false implication not made out – Plea of alibi taken by accused not found to be truthful –* D *Prosecution able to establish case against him – Death sentence awarded by courts below however altered to life imprisonment as accused was not a habitual offender – Sentence/Sentencing.*

E **Prosecution case was that on the fateful day, PW-2 brother of deceased received call from appellant at 6 a.m. The appellant informed PW-2 that he was admitted in hospital and asked PW-2 to visit his house to see well being of his family. Thereafter appellant disconnected the phone. When PW-2 reached house of appellant, he found** F **wife and children of appellant dead. PW-2 again received call from appellant at 6.45 a.m. PW-2 enquired from him about the incident but appellant again snapped the phone. PW-2 later came to know that appellant had consumed 'sulphas tablets' and got himself admitted in** G **hospital. During interrogation, appellant made a disclosure memo. Pursuant thereto, a blood stained knife allegedly used for commission of offence was recovered at his instance. The trial court rejected the plea of alibi raised by appellant on account of serious contradiction**

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in his statement and convicted him u/s.302 IPC and passed death sentence, which was affirmed by High Court. Hence the present appeal. A

Partly allowing the appeal, the Court

HELD: 1. Microscopic examination of the evidence of PW-5, the mother of deceased and that of PW-2 would show that they were in conformity with each other. The evidence of PW-2 was in line with F.I.R. and his statement given to the police. Apart from minor discrepancies which are bound to appear in a natural course of conduct of a normal human being, there were no serious material discrepancies in the evidence in order to completely discard their evidence. There is no reason to doubt the credibility of all these witnesses. There is no reason why they would falsely try to implicate the appellant. Nothing was shown on record that these witnesses were having strained relations with the appellant. On the other hand, it was clearly made out from the evidence that they were having cordial relations and were visiting each other quite often. [Paras 27 and 29] [1094-B-E] B C D E

2. It is manifest from the evidence that the appellant had got himself admitted in Civil Hospital on 4.3.2005 and was under treatment. According to the doctor PW-10, the appellant was admitted on 4.2.2005 at about 6.30 a.m. and was discharged on 7.3.2005. The doctor was not able to conclusively say that any Sulphas tablet was taken by the appellant or not. He deposed that after taking tablets, it is difficult to survive for a long period. Appellant did not offer any explanation as to where was he before his admission in the hospital on the fateful day. Plea of alibi taken by him was not found to be truthful as the same stood falsified from the evidence of PW-4 who had seen him coming out of his own house at 5.00 a.m. This was only indicative of the fact that after commission of the F G H

A alleged crime, he got himself admitted in the Civil Hospital. It is certain that he had committed the crime sometime in night and then got himself admitted in the hospital at 6.30 a.m. Looking to the totality of the facts and features of the case and keeping in view the evidence B available on record, there is no doubt that the offence was committed by the appellant only. [Paras 30-32 and 36] [1094-F-H; 1095-A-B; 1096-D-E]

Bachan Singh v. State of Punjab and others (1980) 2 SCC 684; *Machhi Singh & Ors. v. State of Punjab* (1983) 3 C SCC 470; *Om Prakash v. State of Haryana* (1999) 3 SCC 19; *Bablu @ Mubaraik Hussain v. State of Rajasthan* (2006) 13 SCC 116; *State of Uttar Pradesh v. Sattan alias Satyendra & Ors.* (2009) 4 SCC 736 ; *Santosh Kumar Satish Bhushan Boriyar etc. v. State of Maharashtra etc.* (2009) 6 SCC 498, D referred to.

3. In the case in hand, weighing the mitigating circumstances the following facts were manifest: (i) appellant was unemployed for last 7 to 8 months (ii) he E used to borrow money from others to meet his daily needs; (iii) he himself consumed 'sulphas tablets' to commit suicide even though not medically established; (iv) he therefore, was keen that his whole family should be finished and no one should be alive to suffer the pain F and agony alone; (v) he was fed up with his life and was seen in a perplexed condition by PW-4; (vi) in any case, he cannot be a threat to the society and there are fairly good chances of his reformation as he has learnt sufficient lesson from it. Extreme poverty drove the appellant to commit the gruesome murder of three of his G very near and dear family members. There is nothing on record to show that appellant is a habitual offender. He appears to be a peace loving, law abiding citizen but as he was poverty stricken, he thought in his wisdom to completely eliminate his family so that all problems would H

come to an end. Precisely, this appeared to be the reason for him to consume some poisonous substances, after committing the offence of murder. No witness complained about his bad or intolerable behaviour in the past. Many people visited his house after the incident is indicative of the fact that he had cordial relations with all. He is now about 35 years of age and there appear to be fairly good chances of the appellant getting reformed and becoming a good citizen. Thus, looking to the matter from all angles and after giving serious consideration to the whole matter that it is not a fit case where it would fall within the category of "rarest of rare case" and therefore death sentence as awarded to him by trial Judge and confirmed by High Court is quashed and he is awarded life imprisonment. [Paras 43 and 46] [1099-D-H; 1100-A-F]

Case Law Reference:

(1980) 2 SCC 684	**referred to**	**Para 39**
(1983) 3 SCC 470	**referred to**	**Para 40**
(1999) 3 SCC 19	**referred to**	**Para 40**
(2006) 13 SCC 116	**referred to**	**Para 41**
(2009) 4 SCC 736	**referred to**	**Para 41**
(2009) 6 SCC 498	**referred to**	**Para 42**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 670 of 2009.

From the Judgment & Order dated 30.5.2008 of the High Court of Punjab and Harayana at Chandigarh in Murder Reference No. 3 of 2007.

Rishi Malhotra for the Appellant.

Kuldip Singh, R.K. Pandey and T.P. Mishra for the

A Respondent.

The Judgment of the Court was delivered by

DEEPAK VERMA, J. 1. Life or death is the question involved in this appeal. Sole appellant Sushil Kumar alias Lucky
B has been awarded death sentence in Sessions Case No. 70 of 2006, by Additional Sessions Judge, Jalandhar vide judgment and order dated 13/17.4.2007 holding him guilty of commission of offence under Section 302 of Indian Penal Code (for short 'I.P.C.') on three counts, i.e., for committing murder
C of his wife Pooja, son Jatin (6 years) and daughter Sofia (4 years). However, he was acquitted of the offence punishable under Section 309, IPC. Feeling aggrieved thereof, appellant preferred Criminal Appeal No. 447-DB of 2007 in the High Court of Punjab and Haryana at Chandigarh and as required
D under law, Death Reference under Section 366 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was sent for confirmation to the High Court by the learned Additional Sessions Judge vide Murder Reference No. 3 of 2007.

E 2. Vide impugned judgment and order pronounced on 30.5.2008 by Division Bench of the High Court, Murder Reference No. 3 of 2007 has been answered against the appellant and capital punishment awarded to the appellant stands affirmed, as a necessary consequence thereof, Criminal
F Appeal No. 447-DB of 2007 filed by appellant stands dismissed. Hence, this appeal, but only against Murder Reference and not against the dismissal of his Criminal Appeal on merits. In other words, he is challenging only the capital punishment awarded to him and not the conviction under Section 302 IPC.

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3. The genesis of the prosecution story was set at motion on the strength of telephonic information given to Police Station, Division No.5, Jalandhar on 4.3.2005 by Mr. Ram Lal, Councillor of Basti Danishmandan about the incident, which
H triggered off the police in action. S.I. Onkar Singh (PW-11),

Investigating Officer, reached the place of occurrence alongwith other police personnel, where he found Sukhdev Kumar (PW-2), brother of deceased Pooja, who gave details of the unfortunate incident. The information, as narrated by him, to PW-11, I.O. is mentioned hereinbelow: A

4. (i) His younger sister Pooja @ Ashma was married to appellant Sushil Kumar about seven years back. They were blessed with two children: a son, Jatin @ Babu, aged six years and a daughter, Sofia, aged four years. They had been residing in a rented accommodation of Pawan Kumar. B C

(ii) Earlier, appellant Sushil Kumar was working in a shop of Babbu of Kishanpura but for the last about 7-8 months he was unemployed and was thus passing through great financial difficulties. He was borrowing money from others to meet his daily needs. D

(iii) Just two days prior to the incident, i.e. on 2.3.2005, at about 1.30 p.m. PW-2 Sukhdev had visited their house to enquire about their welfare and at that time had noticed a minor scuffle between his sister and her husband, the present appellant. He tried to intervene and advised them to live peacefully and amicably. E

(iv) On 4.3.2005 at about 6.30 in the morning PW-2 Sukhdev received a telephonic call from appellant informing him that he has been admitted in the hospital and he requested Sukhdev to visit his house to enquire about the welfare of his wife and children, who were alone at home. He further asked him to enter the house by climbing its wall. When Sukhdev enquired from the appellant if there had been any unpleasantness between the two, he was told to first visit his house, then to inform him and abruptly snapped the phone. F G

(v) Sensing foul-play, Sukhdev rushed to the house of his sister and entered through the gate. He *then saw the dead* bodies of his sister Pooja, her son Jatin and daughter Sofia H

A lying on bed. It appeared that they were strangulated to death with the aid of plastic rope which was lying on the bed. Both hands of son Jatin were tied and all of them had also sustained incised wounds.

B (vi) While Sukhdev was still hovering under a great shock and agony, he received yet another phone call from appellant at about 6.45 a.m. Sukhdev enquired from the appellant as to what he has done and also requested him to reach home at the earliest but appellant once again snapped the phone.

C (vii) Later on Sukhdev came to know that appellant had also consumed 'Sulphas tablets' and got himself admitted in Civil Hospital at Jalandhar. Sukhdev appeared to be confident that appellant has done away with his wife Pooja, son Jatin and daughter Sofia by strangulating their necks and by inflicting D injuries on their persons and thereafter allegedly consumed 'Sulphas tablets' as he was poverty stricken.

5. On the strength of the aforesaid statement having been recorded by P.W-11, Onkar Singh (I.O.) marked as Exh. PD/1, endorsement was made by him, which was sent to the Police E Station for recording formal First Information Report, marked Exh. PD/2. He thereafter conducted inquest proceedings of dead bodies and removed them to Civil Hospital, Jalandhar, for post-mortem examination.

F 6. Dr. S.K. Sharma (PW-1) conducted post-mortem on all the three dead bodies. As is clear from the impugned judgment, Pooja had sustained as many as seven injuries including incised wounds and multiple abrasions on her body, Jatin @ Babbu had sustained single incised injury on his chest and G Sofia had sustained six incised wounds on her body. The cause of death of all the three persons according to Dr. Sharma was shock and haemorrhage.

7. It is pertinent to mention here that doctor had specifically mentioned in all the post-mortem reports that probable time H

elapsed between injury and death within few minutes and between death and postmortem within 24 hours. A

8. It has neither been disputed before us nor it was disputed in the High Court that they all had met with homicidal deaths. Thus, the question that arises before us is, whether the same has been committed by the appellant and if yes, what sentence would be just and appropriate to be awarded to him, keeping in mind the enormity and dastardly manner in which they were murdered. B

9. The Investigating Officer (PW-11) took possession of blood stained bed sheet and pillows vide recovery memo (Ex. PH. Plastic rope allegedly used for strangulation of the deceased was also taken into possession by a separate recovery memo. During the course of investigation, statements of witnesses were recorded and a rough site plan of scene of occurrence with correct marginal notes was prepared. C D

10. Accused was arrested on 7.3.2005. During interrogation, appellant made a disclosure Memo (Ex.PE) and pursuant thereto, a blood-stained knife (Chhura) (Ex.P/5) allegedly used for commission of the offence was recovered from the place shown by him i.e. under some clothes in the same room where dead bodies were found. E

11. On completion of the investigation, challan was filed against the appellant. Learned Addl. Sessions Judge framed charges against the appellant under Section 302 IPC for murder of his wife, son and daughter and also under Section 309 of the IPC for his attempted suicide. Subsequently, charges were amended to three separate charges on account of three murders having been committed by the appellant in one incident. Appellant pleaded not guilty and prayed to be tried. F G

12. To bring home the charges against the appellant, evidence of Sukhdev (PW-2) brother of deceased and complainant, Raj Kumar (PW-3), who had received information H

about murder of wife and children of the accused from his landlord, Satpal (PW-4) appellant's neighbour, who had seen him last at 5.00 a.m. coming out from his house and Pushpa (PW-5) mother of deceased Pooja, was recorded at the instance of prosecution, which we would scan deeply later. Apart from the aforesaid witnesses, prosecution had examined Dr. S.K. Sharma (PW-1), who had performed the post-mortem on the bodies of deceased, (P.W-10) Dr. Kamaljit Singh Bawa, Medical Specialist, Civil Hospital, Jalandhar, Onkar Singh, Investigating Officer (PW-11) and other formal witnesses to prove the seizure memos, disclosure memos etc.

13. The appellant had taken a plea of *alibi* that on the fateful day, he was not in Jalandhar and had gone to Amritsar to complete the work of his employer. Since he was delayed at Amritsar, he decided to stay back with his maternal uncle. To prove the plea of *alibi*, he examined Dharam Pal (DW-1) as a defence witness. However, learned Trial Judge as also High Court have not found the plea of *alibi* established, on account of serious contradictions in the statement of appellant recorded under Section 313 of Cr.P.C and that of his defence witness DW-1.

14. In the light of the aforesaid backdrop of the factual aspect as has been unfolded, we have to see whether it is a fit case for confirming the death sentence on the appellant or to award him some other punishment.

15. At the cost of repetition we reiterate that this appeal has been preferred only against Murder Reference No. 3 of 2007 as is manifest from the memo of appeal. Thus, initially finding it difficult to challenge the conviction and sentence under Section 302 IPC awarded to appellant, learned counsel for appellant advanced arguments only on the question of quantum of sentence but later on prayed for leave of this Court to permit him to argue both on the question of conviction and sentence. With an intention to do complete justice between the parties, we granted him permission.

16. Accordingly, we have heard Mr. Rishi Malhotra, learned counsel appearing for appellant and Mr. Kuldip Singh, learned counsel appearing for the respondent-State at great length and have perused the record. A

17. Learned counsel for the appellant has seriously and sincerely attempted to convince us that in the light of several serious discrepancies appearing in the evidence of Sukhdev (PW-2) brother of deceased Pooja, Raj Kumar (PW-3) and Satpal (PW-4), who had last seen the accused coming out of his house in the morning at 5.00 a.m. and Pushpa (PW-5)-mother of the deceased, it was a case for acquittal or in the light of said discrepancies at least benefit of doubt should be extended to the appellant. It was also contended by him that substantial part of evidence of Rajkumar (PW-3) was hit by Section 25 of the Indian Evidence Act, 1872. B C D

18. On the other hand, learned counsel for the respondent-State Mr. Kuldip Singh, vehemently urged before us that it is a fool-proof case and prosecution has proved beyond shadow of doubt that it was the appellant alone who committed the crime. Thus, it calls for no interference. He also contended that looking to the brutality and dastardly commission of crime by appellant, he does not deserve to be dealt with leniently. It was also contended by him that to send a proper signal to the society and as a matter deterrence, capital punishment alone as awarded by learned Trial Judge and confirmed by High Court, would meet the ends of justice. E F

19. Even though in this appeal, we are not legally obliged to look into or to critically re-appreciate the evidence available on record but with the intention to examine if justice has been meted out to him or not, we have gone through the entire evidence. G

20. Now, we shall deal with material evidence which is necessary to be considered in this appeal. First, in this line is the evidence of Sukhdev (PW-2)complainant and brother of the H

A deceased. He has deposed that the deceased was his younger sister, having married to appellant about seven years back. They were blessed with two children, Jatin aged six years and daughter Sofia aged four years. Earlier, they were living in Amritsar but had shifted to Jalandhar some time back. In B Jalandhar, earlier they were living in a rented house of Badri but then shifted to Basti Danishmandan close to the residence of this witness, who was living along with his mother (PW-5) Smt. Pushpa. Earlier the appellant was working in a shop but about seven to eight months back he lost his job, thus was C rendered jobless.

21. He has then deposed that on 4.3.2005 at about 6.30 a.m. he had received a telephonic call from accused Sushil Kumar asking him to go to his house to see Pooja and her children, after climbing the wall. He further informed him that he D is talking to him from Civil Hospital, where he has been admitted. Sukhdev (PW-2) made enquiries if there had been any differences with Pooja the previous night, to which he answered that he should first go and see wife and children thereafter to talk to him. He then abruptly snapped the phone. E He has further deposed that he immediately rushed to his sister's house and found the door open. He entered their bed room and was shocked to see dead bodies of his sister, nephew and niece lying on the bed. Hands of Jatin were tied behind his back and they had also sustained bodily injuries. A F plastic rope was also lying on the bed, which gave an indication that the same might have been used for strangulating them.

22. At about 6.45 a.m. he received another call from the accused, who once again enquired about his wife and children. He informed him about dead bodies lying on the bed and G enquired as to what he has done, to which he once again abruptly snapped the phone.

23. This witness thereafter gave details of the incident to SI. Onkar Singh (PW-11), who as mentioned hereinabove, after H recording it sent it to the Police Station for formal registration

of the FIR. Even though he was cross-examined at length but nothing came in the same to discard his evidence. A

24. Rajkumar (PW-3) has also deposed that on receiving the information about the murders having taken place, he visited the house of the appellant who is known to him and found three dead bodies. He also gave information to the police, which reached the spot shortly. He has deposed that accused was not present in the house. The clothes of dead bodies were blood-stained. He was also a witness to disclosure statement of the accused. The other evidence given by him would neither be relevant nor can be considered, in the light of the provisions contained in Section 25 of the Indian Evidence Act. B C

25. The other material witness is Satpal (PW-4), who stays close to the house of the appellant and is well acquainted with him. He has deposed that on 4.3.2005 at 5.00 a.m while he was going for morning walk and when he crossed the house of appellant, he saw him coming out from his house. He was called from behind, he stopped for a while but was in a perplexed condition and after stopping for a while the accused moved ahead. Thereafter at about 6.45 a.m. he came to know about the murder of the wife and two children of the accused. Recovery of rope, bed sheet, pillows stained with blood was completed in his presence. He is a witness to the memo Ex.PH. Thus, this witness is important as he had last seen the appellant coming out from his house, to which no explanation has been offered by the appellant. D E F

26. The last material evidence to connect the appellant with the commission of crime is of Pushpa (PW-5)-mother-in-law of the appellant. She has also deposed in great details with regard to the strained relations between appellant and his wife on account of financial problems. She has further deposed as to how the phone call was received on 4.3.2005 at 6.30 a.m. by her son Sukhdev from the accused. She has further deposed that on 2.3.2005 on receiving a phone from Pooja, she had sent her son to their house, who later on informed that they were F H

A fighting, obviously on account of financial difficulties and on his intervention, the dispute was settled.

27. Microscopic examination of the evidence of Pushpa (PW-5) and that of Sukhdev (PW-2) would show that they are B in conformity with each other. Minor discrepancies are bound to be there otherwise they would be termed as tutored witnesses. It is also pertinent to mention here that evidence of (PW-2) is in line with F.I.R. and his statement given to the police.

C 28. Even though we have critically gone through the evidence of all these witnesses and have thoroughly scanned the same but apart from minor discrepancies which are bound to appear in a natural course of conduct of a normal human being, there are no serious material discrepancies in the D evidence warranting us to completely discard their evidence.

29. There is no reason to doubt the credibility of all these witnesses. Apart from the above, there is no reason why they would falsely try to implicate the appellant, more so, when they E had already lost Pooja and her children. Nothing has come on record that these witnesses were having strained relations with the appellant. On the other hand, it is clearly made out from the evidence that they were having cordial relations and were visiting each other quite often.

F 30. It is manifest from the evidence mentioned hereinabove that the appellant had got himself admitted in Civil Hospital, Jalandhar on 4.3.2005 and was under treatment of Dr. Kamaljit Singh Bawa (PW-10), Medical Specialist of the Civil Hospital. According to Dr. Kamaljit Singh Bawa (PW-10), the appellant G was admitted on 4.2.2005 at about 6.30 a.m. and was discharged on 7.3.2005. Dr. Kamaljit Singh Bawa has not been able to conclusively say that any Sulphas tablet was taken by the appellant or not. He has deposed that after taking tablets, it is difficult to survive for a long period.

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31. Appellant has not offered any explanation as to where was he before his admission in the hospital on the fateful day. Plea of *alibi* taken by him has not been found to be truthful and in our opinion rightly so as the same stands falsified from the evidence of Satpal (PW-4) who had seen him coming out of his own house at 5.00 a.m. This is only indicative of the fact that after commission of the alleged crime, he got himself admitted in the Civil Hospital. It is certain that he had committed the crime sometime in night and then got himself admitted in the hospital at 6.30 a.m.

32. For all these reasons, as far as plea of *alibi* is concerned, we concur with the findings recorded by learned trial Judge as also High Court.

33. In the light of the aforesaid evidence, learned counsel for appellant submitted that the only evidence against the appellant is, recovery of one rope and knife but in view of medical evidence it was not a case that they had died on account of strangulation, which is manifest from the post-mortem reports prepared by Dr. S.K. Sharma (PW-1), thus recovery of rope was of no consequence. As far as knife was concerned, same did not have any blood stains much less human blood, which would leave only with the evidence of Satpal (PW-4) who had last seen the appellant coming out from his own house. It was therefore, contended that doctrine of last seen, is a weak type of evidence and it is not enough to hold the appellant guilty.

34. On the other hand, learned counsel for respondent strongly contended before us that in any case it is not a case of acquittal for the following reasons:

35. (i) Dead bodies were found from the house of appellant where he was also living with them and has not explained about the incident;

(ii) Blood stained bed sheets, clothes, pillows were

A recovered from the bed room, where the dead bodies were found which was shared by the appellant too;

(iii) Recovery of knife and rope from the same place;

(iv) appellant was last seen by (PW-4) at 5.00 a.m., while
B he was coming out from his house in a perplexed condition;

(v) Sukhdev (PW-2) had no occasion to visit the house of the appellant at 6.30 a.m. on the fateful day unless he was informed about the incident by the appellant;

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(vi) couple was having strained relations and was passing through bad financial conditions; and

(vii) taking of false plea of *alibi* is also one of the strong circumstances against the appellant to connect him with the
D commission of crime.

36. Thus, looking to the totality of the facts and features of the case and keeping in view the evidence available on record, we have no doubt in our mind that the offence was committed
E by the appellant and appellant only.

37. While holding that he alone is guilty of commission of the murder of his wife and two children, now the question that arises for consideration is what should be just and proper sentence to be awarded.

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38. On this question also we have heard learned counsel for the parties at length and given our anxious consideration. Learned counsel for the appellant contended that looking to the mitigating circumstances available on record, no case for
G awarding death sentence has been made out and he deserves to be acquitted whereas learned counsel for respondent submitted that it is a sure-shot case for awarding of death sentence to the appellant.

39. To press the respective contentions in this regard they

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have cited the most celebrated leading case on this point, viz., *Bachan Singh v. State of Punjab and others* reported in (1980) 2 SCC 684. This is a Constitution Bench Judgment of this Court. In para 206 of the said judgment, mitigating circumstances have been described which can be taken into consideration while awarding death sentence. Paras 206 and 207 dealing in this regard are reproduced hereinbelow which read as thus :

"206. Dr. Chatale has suggested these mitigating factors:

Mitigating circumstances:- In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:-

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused, if the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated.

The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

(5) That in the facts and circumstance of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

A 207. We will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence. Some of these factors like extreme youth can instead be of compelling importance. In several State of India, there are
B in force special enactments, according to which a 'child', that is, a person who at the date of murder was less than 16 years of age', cannot be tried, convicted and sentenced to death or for life for murder, nor dealt with according to the same criminal procedure as an adult. The special Acts
C provide for the reformatory procedure for such juvenile offenders or children."

40. The case of *Bachan Singh* (supra), is of course, the leading case on the said question which was considered by a three Judge Bench of this Court in the case of *Machhi Singh*
D *& Ors. v. State of Punjab* reported in (1983) 3 SCC 470 wherein same principles of law have been reiterated. In the case of *Om Prakash* v. *State of Haryana* reported in (1999) 3 SCC 19, it has been explained as to why death sentence will not be proper and what are the relevant factors to be
E considered and it has further been observed that court must balance the mitigating and aggravating circumstances of the case, mental condition of the accused, the dispute between the families which ultimately resulted in multiple murders. Even though it was a case of murder of seven persons, but Division
F Bench of this Court came to the conclusion that it was not a fit case which would fall within the ambit of "rarest of rare cases".

41. On the other hand, learned counsel for the respondent has placed reliance on the judgments in the case of *Bablu @*
G *Mubaraik Hussain* v. *State of Rajasthan* reported in (2006) 13 SCC 116 and *State of Uttar Pradesh* v. *Sattan alias Satyendra & Ors.* reported in (2009) 4 SCC 736 to strongly contend that in the facts and circumstances of the case, ends of justice would be met only when the appellant is awarded death sentence.

H 42. Learned counsel for the appellant has brought to our

notice yet another recent judgment of this Court in the case of *Santosh Kumar Satish Bhushan Boriyar etc.* v. *State of Maharashtra etc.* reported in (2009) 6 SCC 498. In this judgment, all the previous judgments on the said issue have been considered and analysed. The law on the question of Capital Punishment has been re-stated. Thereafter, guidelines have been formulated to be observed while awarding death sentence. Lastly, it has been held that there have to be very special reasons to record death penalty and if mitigating factors in the case are stronger then it is neither proper nor justified to award death sentence and it would be sufficient to place it out of "rarest of rare category". We have critically gone through the said judgment.

43. In the case in hand, weighing the mitigating circumstances the following facts are manifest:

(i) appellant had been unemployed for last 7 to 8 months

(ii) he used to borrow money from others to meet his daily needs.

(iii) he himself had consumed 'sulphas tablets' to commit suicide even though not medically established.

(iv) he therefore, was keen that his whole family should be finished and no one should be alive to suffer the pain and agony alone.

(v) he was fed up with his life and was seen in a perplexed condition by PW-4.

(vi) in any case, he cannot be a threat to the society and there are fairly good chances of his reformation as he has learnt sufficient lesson from it.

44. Extreme poverty had driven the appellant to commit the gruesome murder of three of his very near and dear family

A members - his wife, minor son and daughter.

45. There is nothing on record to show that appellant is a habitual offender. He appears to be a peace loving, law abiding citizen but as he was poverty stricken, he thought in his wisdom to completely eliminate his family so that all problems would B come to an end. Precisely, this appears to be the reason for him to consume some poisonous substances, after committing the offence of murder. No witness has complained about his bad or intolerable behaviour in the past. Many people had visited his house after the incident is indicative of the fact that C he had cordial relations with all. He is now about 35 years of age and there appear to be fairly good chances of the appellant getting reformed and becoming a good citizen.

46. Thus, looking to the matter from all angles and after D giving our serious consideration to the whole matter, we are of the opinion that it is not a fit case where it would fall within the category of "rarest of rare case" and therefore death sentence as awarded to him by learned trial Judge and confirmed by High Court deserves to be set aside and quashed and is E accordingly done so by us instead he is held guilty of commission of offence under Section 302 of the IPC on three counts and is awarded life imprisonment for the same. The impugned judgment and order stands modified to the aforesaid extent and the appeal accordingly stands disposed of.

F D.G. Appeal partly allowed.