

Present : Shri A. Chakravarty, M.A., LL.M, A.J.S.  
Sessions Judge  
Kamrup (M), Guwahati

**IN THE COURT OF THE SESSIONS JUDGE, KAMRUP (M), GUWAHATI**

**SESSIONS CASE NO. 69 OF 2018**

**ORDER**

**03.08.2019**

1. The convicts Govind Singhal, Smt. Kamala Devi Singhal and Smt. Bhabani Singhal are produced from judicial custody.
2. The learned counsel for the convicts are absent without steps.
3. The learned Special Public Prosecutor is also present.
4. I have already heard the arguments advanced by the learned counsel for the convicts and the learned Special Public Prosecutor on the question of sentence on 01.08.2019 and the order dated 01.08.2019 is reproduced below:-

*"01.08.2019*

*The convicts, namely 1. Govind Singhal, 2. Smt. Kamala Devi Singhal and 3. Smt. Bhabani Singhal are produced from judicial custody.*

*The learned counsels for the convicts are present.*

*Learned Special Public Prosecutor is also present.*

*Heard the arguments advanced by the learned counsel for the convicts and the learned Special Public Prosecutor on the question of sentence.*

*The learned counsel for the convicts have submitted that considering the age of the convicts Govind Singhal, who is 23 years old and Smt. Bhabani Singhal, who is 25 years old and Smt. Kamala Devi Singhal, who is 50 years old and has been suffering from various ailments, they may be punished leniently.*

*On the other hand, the Learned Special Public Prosecutor has submitted that considering the manner in which the convicts have committed the murder of the deceased Sweta Agarwal, maximum punishment prescribed by the law may be imposed upon the convicts.*

*Fixing 03.01.2019 for order on sentence.”*

**5.** The deceased Sweta Agarwal was an exceptionally brilliant student, who was brutally murdered by the convicts in their house inflicting injuries by blunt object, injuries by sharp cutting instrument, strangulating and thereafter, to conceal the act of murder, setting the body on fire by pouring kerosene oil while she was still alive. Therefore, the medical officers who had performed the post-mortem examination on the body of the deceased Sweta Agarwal (the PW-9, PW-10 and PW-11), found injuries caused by blunt force impact, injuries caused by sharp cutting instrument, ligature mark over the neck and ante-mortem and post-mortem burn injuries covering 40 to 50 per cent of the body surface area. But no explanation was given by the accused about the same. Further, PW-9, PW-10 and PW-11 have deposed that the death was due to hemorrhage and shock following incised injury sustained over the neck which was caused by sharp cutting weapon and was homicidal in nature. As PW-9 Dr. Raktim Pratim Tamuli has deposed that the injuries, especially the incised injury on the neck, the ligature mark over the neck and the burn injuries can also cause death even if proper treatment is provided, the same shows how brutally the convicts had murdered the deceased Sweta Agarwal. The murder was committed in an extremely brutal, grotesque, diabolical, revolting and dastardly manner that has aroused intense and extreme indignation amongst the people of Assam. The deceased Sweta Agarwal was assaulted by means of blunt object, assaulted by means of sharp cutting weapon, strangulated and set ablaze pouring kerosene oil while she was still alive, to bring about her death. The act of murder of Sweta Agarwal once again proves that there is no end to the bestiality of men. Therefore, the instant case must be held to be a rarest of rare case.

**6.** The murder of the deceased Sweta Agarwal was extensively covered by the electronic and print media of the State and the country of which, any

court of Assam can take judicial notice. As has already been mentioned in the Judgment, PW-16 Utpal Medhi has deposed that on 07.12.2017, about fifteen/twenty persons, including eight/nine Police personnel and media persons, entered into the room. Therefore, even after three days' of the incident, the media was pursuing the investigation of the case. Defence did not challenge the PW-16 in the cross-examination that the media persons were not present on that date or that they did not enter into the room of the accused persons. Therefore, the testimony of the PW-16 must be accepted to be true and he has proved that the media was extensively covering the case.

**7.** Further, as has been discussed in the judgment, PW-20 Shri Sudip Choudhury, the investigating officer of the case has deposed that, "as the people were about to lynch the accused Gobind Singhal, he did not wait for further order and sent the accused and the dead body of the deceased Sweta Agarwal and the accused to the Bharalumukh Police Station. Defence did not challenge the PW-20 in the cross-examination that the people were not trying to lynch the accused Gobind Singhal and that he has deposed falsely. Therefore, his testimony must be accepted to be true.

**8.** In the case of **Mukesh Vs. State (NCT of delhi ), reported in (2017) 6 SCC 1**, the Hon'ble Supreme Court held that,

*"205. The aforesaid submission can be singularly rejected without much discussion on the foundation that a question to that effect was not put to the doctors in their respective cross-examinations.."*

**9.** This suggests that if the defence wants the court to reject the testimony of a witness, then it has to challenge the witness in the cross-examination that he was not telling the truth or has deposed falsely. Unchallenged testimony of a witness must be accepted to be true. Therefore, the testimony of the PW-20 must be accepted to be true. This shows how the people were revolting against the murder of the deceased Sweta Agarwal and had the police not intervened, the people would have murdered the murderer then and there.

**10.** Further, as has been discussed in the Judgment, the murder of Sweta Agarwal aroused extreme indignation of the society and the same can be seen from the extensive coverage of the Judgment by the electronic and print media, of which any court in Assam can take judicial notice.

**11.** The brutal, grotesque, diabolical, revolting and dastardly murder of the deceased Sweta Agarwal evoked indignation of the people of the State and the people have been clamouring for capital punishment to the convicts. But, I am not going to award the sentence based on the public outcry and will award the sentence based on the law laid down by the Hon'ble Supreme Court in this regard.

**12.** According to Jeremy Bentham, in a democratic country, public opinion is one of source of legislation. Public opinion in a democracy compels the ruling party to enact legislation for the greatest happiness of the greatest number people. As for example, succumbing to the public opinion, in the aftermath of the "NIRBHAYA" case, the Government of India re-enacted the Juvenile Justice (Care and Protection of Children) Act, 2000, as the Juvenile Justice (Care and Protection of Children) Act, 2015 by which, for commission of "heinous offences", the upper age of the Juvenile is reduced to 16 years from 18 years.

**13.** In the case of **Bachan Singh vs. State of Punjab, (2080) 2 SCC 684**, before a Constitution Bench of the Hon'ble Supreme Court, the validity of the provision for death penalty was challenged on the ground that the same is violative of the Articles 19 and 21 of the Constitution and while rejecting the contention, the Hon'ble Supreme Court laid down the scope of exercise of power to award death sentence and the meaning of the expression "rarest of the rare" so as to justify extreme penalty of death and considered that the Article 6 Clauses (1) and (2) of the International Covenant on Civil and Political Rights to which India is a signatory, do not abolish or prohibit the imposition of death penalty in all circumstances. All that they required is that, firstly, death penalty shall not be arbitrarily inflicted; secondly, it shall be imposed only for most serious crimes in accordance with a law, which shall not be an ex post facto legislation. The Penal Code prescribes death penalty as an alternative punishment only for heinous crimes which are not more than seven

in number. Section 354 (3) of the Criminal Procedure Code, 1973 in keeping with the spirit of the International Covenant, has further restricted the area of death penalty. Now according to this changed legislative policy, which is patent on the face of Section 354 (3), the normal punishment for murder and six other capital offences under the Penal Code, is imprisonment for life (or imprisonment for a term of years) and death penalty is an exception.

**14.** In the case of **Bachan Singh (supra)**, the Hon'ble Supreme Court held as follows:-

*"194. This takes us to the question of indicating the broad criteria which should guide the Courts in the matter of sentencing a person convicted of murder u/s 302, Penal Code. Before we embark on this task, it will be proper to remind ourselves, again that "while we have an obligation to ensure that the constitutional bounds are not over-reached, we may not act as judges as we might as legislatures." [Per Stewart. J. in Greg v. Georgia]*

*195. In Jagmohan, this Court had held that this sentencing discretion is to be exercised judicially on well-recognised principles, after balancing all the aggravating and mitigating circumstances of the crime. By "well-recognised principles" the Court obviously meant the principles crystallised by judicial decisions illustrating as to what were regarded as aggravating or mitigating circumstances in those cases. The legislative changes since Jagmohan - as we have discussed already - do not have the effect of abrogating or nullifying those principles. The only effect is that the application of those principles is now to be guided by the paramount beacons of legislative policy discernible from Sections 354(3) and 235(2), namely: (1) The extreme penalty can be inflicted only in gravest cases of extreme culpability: (2) In making choice of the sentence, in addition to the circumstances of the offence, due regard must be paid to the circumstances of the offender also.*

*196. We will first notice some of the aggravating circumstances which. In the absence of any mitigating circumstances, have been regarded as an indication for imposition of the extreme penalty.*

*197. Pre-planned, calculated, cold blooded murder has always been regarded as one of an aggravated kind. In Jagmohan, it was reiterated by this Court that*

*if a murder is "diabolically conceived and cruelly executed", it would justify the imposition of the death penalty on the murderer. The same principle was substantially reiterated by V.R. Krishna Iyer, J., speaking for the Bench, in Ediga Anamma, in these terms:*

*The weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim, and the like, steel the heart of the law for a sterner sentence.*

*198. It may be noted that this indicator for imposing the death sentence was crystallised in that case after paying due regard to the shift in legislative policy embodied in Section 354(3) of the CrPC, 1973, although on the date of that decision (February 11, 1974), this provision had not come into force. In Paras Ham's case, also, to which a reference has been made earlier, it was emphatically stated that a person who in a fit of anti-social piety commits "bloodcurdling butchery" of his child, fully deserves to be punished with death. In Rajendra Prasad, however, the majority (of 2:1) has completely reversed the view that had been taken in Ediga Anamma regarding the application of Section 354(3) on this point. According to it, after the enactment of Section 354(3), 'murder most foul' is not the test. The shocking nature of the crime or the number of murders committed is also not the criterion. It was said that the focus has now completely shifted from the crime to the criminal. "Special reasons" necessary for imposing death penalty "must relate not to the crime as such but to the criminal".*

*199. With great respect, we find ourselves unable to agree to this enunciation. As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the Court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because 'style is the 'man'. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character*

*of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate water-tight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist.*

*200. Drawing upon the penal statutes of the States in U.S.A. framed after Furman v, Georgia, in general, and Clauses 2(a), (b), (c), and (d) of the Indian Penal Code (Amendment) Bill passed in 1978 by the Rajya Sabha, in particular, Dr. Chitale has suggested these "aggravating circumstances":*

*Aggravating circumstances: A Court may, however, in the following cases impose the penalty of death in its discretion:*

*(a) if the murder has been committed after previous planning and involves extreme brutality; or*

*(b) if the murder involves exceptional depravity; or*

*(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed -*

*(i) while such member or public servant was on duty; or*

*(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or*

*(d) if the murder is of a person who had acted in the lawful discharge of his duty u/s 43 of the CrPC, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance u/s 37 and Section 129 of the said Code.*

*201. Stated broadly, there can be no objection to the acceptance of these indicators but as we have indicated already, we would prefer not to fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other,*

202. In **Rajendra Prasad**, the majority said: "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 Article 19(2) to (6)." Our objection is only to the word "only". While it may be conceded that a murder which directly threatens, or has an extreme potentiality to harm or endanger the security of State and society, public order and the interests of the general public, may provide "special reasons" to justify the imposition of the extreme penalty on the person convicted of such a heinous murder, it is not possible to agree that imposition of death penalty on murderers who do not fall within this narrow category is constitutionally impermissible. We have discussed and held above that the impugned provisions in Section 302, Penal Code, being reasonable and in the general public interest, do not offend Article 19, or its 'ethos'; nor do they in any manner violate Articles 21 and 14. All the reasons given by us for upholding the validity of Section 302, Penal Code, fully apply to the case of Section 354(3), CrPC, also. The same criticism applies to the view taken in *Bishnu Deo Shaw Vs. State of West Bengal*, , which follows the dictum in *Rajendra Prasad (ibid)*.

203. In several countries which have retained death penalty, pre-planned murder for monetary gain, or by an assassin hired for monetary reward is, also, considered a capital offence of the first degree which, in the absence of any ameliorating circumstances, is punishable with death. Such rigid categorisation would dangerously overlap the domain of legislative policy. It may necessitate, as it were, a redefinition of 'murder' or its further classification. Then, in some decisions, murder by fire-arm, or an automatic projectile or bomb, or like weapon, the use of which creates a high simultaneous risk of death or injury to more than one person, has also been treated as an aggravated type of offence. No exhaustive enumeration of aggravating circumstances is possible. But this much can be said that in order to qualify for inclusion in the category of "aggravating circumstances" which may form the basis of 'special reasons' in Section 354(3), circumstance found on the facts of a particular case, must evidence aggravation of an abnormal or special degree.

*204. Dr. Chitale 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 circumstances 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 unpaired his capacity to appreciate the criminality of his conduct.*

*205. 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 States of India, there are 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 imprisonment for life for murder, nor dealt with according to the same criminal procedure as an adult. The special Acts provide for a reformatory procedure for such juvenile offenders or children.*

*208. For all the foregoing reasons, we reject the challenge to the constitutionality of the impugned provisions contained in Sections 302 Penal Code and 354 (3) of the Cr.P.C., 1973."*

**15.** In the case of **Machhi Singh vs. State of Punjab, AIR 1983 SC 957, 1983 (3) SCC 470**, following the decision in **Bachan Singh (supra)**, the Hon'ble Supreme Court observed that in rarest of rare cases when collective conscience of the community is so shocked, it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty.

**16.** In the case of **Machhi Singh (supra)**, the Hon'ble Supreme Court has observed as follows:

*"The reasons why the community as a whole does not endorse the humanistic approach reflected in "death sentence-in-no-case" doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of "reverence for life" principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by 'Killing' a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so (in rarest of rare cases) when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entrain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of*

*the crime, or the anti-social or abhorrent nature of the crime, such as for instance:*

*I Manner of Commission of Murder When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,*

*(i) When the house of the victim is set aflame with the end in view to roast him alive in the house.*

*(ii) When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.*

*(iii) When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.*

*II Motive for Commission of murder When the murder is committed for a motive which evince total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (2) a cold blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust. (c) a murder is committed in the course for betrayal of the motherland.*

*III Anti Social or socially abhorrent nature of the crime*

*(a) When murder of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them with a view to reverse past injustices and in order to restore the social balance.*

*(b) In cases of 'bride burning' and what are known as 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once*

*again or to marry another woman on account of infatuation. IV Magnitude of Crime When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed. V Personality of Victim of murder When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder. (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-a vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.*

*In this background the guidelines indicated in Bachan Singh's case (supra) will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentences arises. The following propositions emerge from Bachan Singh's case:*

*(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;*

*(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration alongwith the circumstances of the 'crime'.*

*(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.*

*(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.*

*In order to apply these guidelines inter-alia the following questions may be asked and answered:*

*(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?*

*(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender ?*

*If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed here in above, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."*

**17.** If we look into the instant case from the above parameters, the manner of commission of murder of the deceased Sweta Agarwal was extremely brutal, grotesque, diabolical, revolting and was perpetrated in dastardly manner, which has aroused intense and extreme indignation of the people of the State, which is covered by the circumstances mentioned in the Serial No. I (ii) in the case of **Machhi Singh (supra)** and hence, death penalty must be awarded to the convicts.

**18.** In the case of **SHABNAM AND OTHERS Vs. STATE OF UTTAR PRADESH, reported in (2015) 6 SCC 632**, another three-Judge Bench of the Hon'ble Supreme Court observed as follows:-

*"23. We would not lumber the discussion by tracing the entire death penalty jurisprudence as it has evolved in India, but only limit the exercise to cull out the determinants which would weigh large in our mind to award appropriate sentence while balancing the mitigating and aggravating circumstances. We are be mindful of the principles laid down by this Court in Jagmohan Singh Vs. The State of U.P., AIR 1973 SC 947 : (1973) CriLJ 370 : (1973) 1 SCC 20 : (1973) 2 SCR 541 , Bachan Singh Vs. State of Punjab, AIR 1980 SC 898 : (1980) CriLJ 636 : (1982) 1 SCALE 713 : (1980) 2 SCC 684 : (1980) SCC(Cri) 174 : (1983) 1 SCR 145 and Machhi Singh and Others Vs. State of Punjab, AIR 1983 SC 957 : (1983) CriLJ 1457 : (1983) 2 Crimes 268 :*

*(1983) 2 SCALE 1 : (1983) 3 SCC 470 : (1983) 3 SCR 413 as followed by this Court upto the present. The aforesaid decisions indicate that the most significant aspect of sentencing policy in Indian criminal jurisprudence regarding award of death penalty is that life sentence is a rule and death sentence is an exception only to be awarded in "rarest of rare cases." Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances. The circumstances which should or should not be taken into account, and the circumstances which should be taken into account along with other circumstances, as well as the circumstances which may, by themselves, be sufficient, in the exercise of the discretion regarding sentence cannot be exhaustively enumerated. The guidelines and principles for classification of circumstances and determination of the culpability indicia as laid down by this Court in the aforesaid cases have been succinctly summarized in Ramnaresh and Others Vs. State of Chhattisgarh, AIR 2012 SC 1357 : (2012) CriLJ 1898 : (2012) 2 Crimes 146 : (2012) 3 SCALE 234 : (2012) 4 SCC 257 : (2012) AIRSCW 1917 : (2012) 3 Supreme*

**81.** *The said are extracted as under:*

***Aggravating Circumstances:***

*1. The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.*

*2. The offence was committed while the offender was engaged in the commission of another serious offence.*

*3. The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.*

4. *The offence of murder was committed for ransom or like offences to receive money or monetary benefits.*

5. *Hired killings.*

6. *The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.*

7. *The offence was committed by a person while in lawful custody.*

8. *The murder or the offence was committed, to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty Under Section 43 Code of Criminal Procedure.*

9. *When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.*

10. *When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.*

11. *When murder is committed for a motive which evidences total depravity and meanness.*

12. *When there is a cold blooded murder without provocation.*

13. *The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.*

***Mitigating Circumstances:***

1. *The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.*

2. *The age of the accused is a relevant consideration but not a determinative factor by itself.*

3. *The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.*

4. *The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.*

5. *The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.*

6. *Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a pre-ordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.*

7. *Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused.*

*While determining the questions relatable to sentencing policy, the Court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.*

***Principles:***

1. *The Court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence.*

2. *In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.*

3. *Life imprisonment is the rule and death sentence is an exception.*

4. *The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant circumstances.*

*5. The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.*

*24. It is now settled law that where maximum punishment that could be awarded under a provision is death penalty, the Courts are required to independently consider facts of each case and determine a sentence which is the most appropriate and proportional to the culpability of the accused. It is not sufficient for the Court to decide the quantum of sentence only with reference to one of the classes under any one of the head of circumstances while completely ignoring classes under the other. That is to say, what is required to be considered is not just the circumstances by placing them in separate compartments, but their cumulative effect. The Court ought to be sufficiently cautious and adherent of the same so as to better administer the criminal justice system and provide an effective and meaningful reasoning by the Court as contemplated Under Section 354 (3) of the Code while sentencing.”*

**19.** As can be seen from the Judgment dated 30.07.2019, there was no mitigating circumstance for committing the murder of the deceased Sweta Agarwal by the convicts and there were only aggravating circumstances as described by the Hon'ble Supreme Court and applicable to the instant case, which are quoted from the case of the ***Bachan Singh, Machhi Singh and SHABNAM (supra)*** as follows cases:-

*In the case of **Bachan Singh (supra)**, describing the aggravating circumstances, the Hon'ble Supreme Court has held that a Court may, in the following cases impose the penalty of death in its discretion:*

*(a) If the murder has been committed after previous planning and involves extreme brutality; or*

*(b) If the murder involves exceptional depravity;*

*In the case of **Machhi Singh (supra)**, describing the aggravating circumstances, the Hon'ble Supreme Court has held that a Court may, in the following cases impose the penalty of death in its discretion:*

*(I) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,*

*(ii) When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death. **Machhi Singh (supra)**.*

*In the case of **SHABNAM (supra)**, describing the aggravating circumstances, the Hon'ble Supreme Court has held that a Court may, in the following cases impose the penalty of death in its discretion:*

*"6. The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.*

*10. When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.*

*12. When there is a cold blooded murder without provocation.*

*13. The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society."*

**20.** In view of the above aggravating circumstances, in my considered opinion, in the instant case, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.

**21.** In the case of **Purushottam Dashrath Borate and Anr. v. State of Maharashtra, reported in (2015) 6 SCC 652**, the Hon'ble Supreme Court held that age of the accused or family background of the accused or lack of criminal antecedents cannot be said to be the mitigating circumstance. It cannot also be considered as mitigating circumstance, particularly taking into consideration, the nature of heinous offence and cold and calculated manner in which it was committed by the accused persons.

**22.** Again in the case of **Om Prakash v. State of Haryana, reported in (1999) 3 SCC 19**, the Hon'ble Supreme Court held that Court must respond to the cry of the society and to settle what would be a deterrent punishment for what was an apparently abominable crime.

**23.** In the instant case, the only circumstance that the learned counsel for the accused has advanced during hearing on sentence on 01.08.2019 as mitigating circumstance is that the convict Govind Singhal is a 23 years old youth and the convict Smt. Bhabani Singhal is a 25 years old unmarried girl and the convict Smt. Kamala Devi Singhal is a 50 years old woman who has been suffering from various ailments. Therefore, the learned counsel for the accused has submitted that the convicts may be punished leniently. But, as has been discussed in the judgment dated 30.07.2019, the defence has miserably failed to prove the so-called ailments of the convict Smt. Kamala Devi Singhal. Further, as can be seen from the discussion made above, the Hon'ble Supreme Court has held that, "The age of the accused is a relevant consideration but not a determinative factor by itself."

**24.** Therefore, if we look into the case in our hand from the parameters laid down for the rarest of rare case, the case is undoubtedly a rarest of the rare case. In the instant case, there was no mitigating circumstance for the convicts to cause the death of Sweta Agarwal. The only mitigating circumstance according to the learned counsel for the accused is that the convicts Govind Singhal and Smt. Bhabani Singhal are youths and the convict Smt. Kamala Devi Singhal is an old and ailing woman. But, as can be seen from the discussion made above, the age of the accused is a relevant consideration but not a determinative factor by itself. Therefore, as the instant case is a rarest of the rare case, it justifies awarding of death sentence to the convicts Govind Singhal, Smt. Kamala Devi Singhal and Smt. Bhabani Singhal.

**25.** As has been held above, the instant case is a rarest of rare case as per the law laid down by the Hon'ble Supreme Court as discussed above.

**26.** Therefore, the convicts Govind Singhal, Smt. Kamala Devi Singhal and Smt. Bhabani Singhal who had committed murder by intentionally causing the death of Sweta Agarwal under a conspiracy and caused

disappearance of evidence to conceal the act of murder, have to be condemned to death as per the rarest of rare case rule laid down by the Hon'ble Supreme Court as per in the cases referred to above.

**27.** As there was no mitigating circumstance for the convicts to commit the murder of Sweta Agarwal, the case is a rarest of the rare case and it justifies awarding of death sentence to the convicts Govind Singhal, Smt. Kamala Devi Singhal and Smt. Bhabani Singhal.

**28.** In view of the discussion made above and as there was no mitigating circumstance for committing the murder of the deceased Sweta Agarwal, the convicts Govind Singhal, Smt. Kamala Devi Singhal and Smt. Bhabani Singhal deserved to be meted out with the extreme penalty prescribed by the law. The murder of the deceased Sweta Agarwal was committed after previous planning and involves extreme brutality, which has always been regarded as an aggravated form of murder. The deceased Sweta Agarwal was subjected to inhuman acts of torture and cruelty in order to bring about her death. The deceased Sweta Agarwal was completely innocent and was a helpless young girl and had complete trust upon the convict Govind Singhal and paid the ultimate price for the same. The convict Govind Singhal was no match to her by any standard. The deceased Sweta Agarwal stood first in the Higher Secondary Examination (Commerce Stream) and the convict Govind Singhal, as they say, also ran with her. The murder of the deceased Sweta Agarwal was cold-blooded murder, without any provocation. The convicts made every effort to portray the murder as suicide alleging that the deceased Sweta Agarwal was a psychopath and she committed suicide in their house by setting herself on fire pouring kerosene oil. None but hardened criminals can commit the murder of an innocent girl like Sweta Agarwal in that manner and thereafter, level such false and baseless allegations against the deceased victim, who could no longer defend herself. The deceased Sweta Agarwal paid the ultimate price for falling in love, literally, with the criminal Govind Singhal. It is an old adage that, "You will always fall in love, and it will always be like having your throat cut, just that fast. Falling in love is the best way to kill your heart because then it is not yours anymore. It is laid in a coffin, waiting to be cremated. Do not find love, let love find you". Perhaps, the

deceased Sweta Agarwal did not know about this adage and tried to find love instead of letting the love find her and paid the ultimate price for loving the criminal Govind Singhal. If the convict Govind Singhal was not satisfied with an exceptional girl like the deceased Sweta Agarwal, he will not be satisfied with any other girl and if he is allowed to survive, no girl will be safe and he will pounce on his next pray (girl). Therefore, death sentence is his just desserts.

**29.** But, the convict Smt. Kamala Devi Singhal is an aged woman and the convict Smt. Bhabani Singhal is an unmarried girl and they seem to have entered into the conspiracy to cause the death of Sweta Agarwal and caused disappearance of evidence to conceal the act of murder after the convict Govind Singhal initially inflicted the fatal cut wound on the neck of Sweta Agarwal, to save and shield their son and brother.

**30.** In view of the discussion made above and considering the entire facts and circumstances of the case, I sentence the convicts Govind Singhal, Smt. Kamala Devi Singhal and Smt. Bhabani Singhal as follows:-

(a) The convict Govind Singhal is sentenced to death for committing the offence under Section 302 of the Indian Penal Code. Accordingly, the convict is to be hanged by neck till he is dead. Fine of Rs.10,000/- (Rupees ten thousand) only, is also imposed upon the convict Govind Singhal and in default of payment of fine, he shall undergo simple imprisonment for a period of one month;

(b) For committing the offence under Section 120-B of the Indian Penal Code, I award the punishment of life imprisonment to the convict Govind Singhal and fine of Rs.5000/- (Rupees five thousand) only. In default of payment of fine, he shall undergo simple imprisonment for a period of one month;

(c) For committing the offence under Section 201 of the Indian Penal Code, I award the punishment of rigorous imprisonment for three years to the convict Govind Singhal and fine of Rs.5000/- (Rupees five thousand) only. In default of payment of fine, he shall undergo simple imprisonment for a period of one month.

(d) The convicts Smt. Kamala Devi Singhal and Smt. Bhabani Singhal are sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 10,000/- (Rupees ten thousands) only, each in default of payment of fine they shall undergo simple imprisonment for a period of one month each, for committing the offence under Section 302 of the Indian Penal Code;

(e) For committing the offence under Section 120-B of the Indian Penal Code also, the convicts Smt. Kamala Devi Singhal and Smt. Bhabani Singhal are sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 10,000/- (Rupees ten thousands) only, each in default of payment of fine, they shall undergo simple imprisonment for a period of one month each;

(f) For committing the offence under Section 201 of the Indian Penal Code, I award the punishment of rigorous imprisonment for three years to the convicts Smt. Kamala Devi Singhal and Smt. Bhabani Singhal and to pay fine of Rs.5000/- (Rupees five thousand) only, each. In default of payment of fine, they shall undergo simple imprisonment for a period of one month each.

**31.** In the case of **Mohd. Akhtar Hussain Alias vs. Assistant Collector Of Customs, reported in AIR 1988 SC 2143, (1988)4 SCC 183**, the Hon'ble Supreme Court held as follows:-

*"The basic rule of thumb over the years has been the so called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different. In this appeal, the primary challenge to the sentence is based on assumption that the two cases against the appellant, under the Gold (Control) Act, and the Customs Act pertain to the same subject matter. It is alleged that the appellant was prosecuted under the two enactments in respect of seizure of 7,000 tolas of gold. On this basis, reference is also made to Section 428 Cr. P.C. claiming set off in regard to the period of imprisonment already undergone by the appellant."*

**32.** In the instant case, all the offences were committed in one transaction pursuant to one and the same conspiracy. Therefore, as the Hon'ble Supreme Court has held that the sentences for single transaction shall run concurrently, all the sentences will run concurrently. The period of detention already undergone by the convicts during investigation and trial shall be set-off from the sentence of imprisonment.

**33.** Issue warrant of commitment under sentence of death against the convict Gobind Singhal and Jail warrants against the convicts Kamala Devi Singhal and Bhabani Singhal.

**34.** Destroy the seized articles in due course of time.

**35.** Furnish copy of the order to the convicts free of cost, immediately.

**36.** Send a copy of this order to the learned District Magistrate as per the provisions of the Section 365 Cr.P.C.

**37.** Submit the proceeding to the Hon'ble Gauhati High Court for confirmation of the death sentence as per the provisions of Section 366 Cr.P.C.

**38.** Pronounced in the open court, written in separate sheets of paper and is tagged with the record.

(Shri A. Chakravarty)  
Sessions Judge,  
Kamrup (M), Guwahati