



IN THE HIGH COURT OF ORISSA AT CUTTACK

DSREF No. 3 of 2024
CNR No. ODHC01-057527-2024
&
JCRLA No. 141 of 2024
CNR No. ODHC01-062122-2024

(From the judgment and order dated 30.07.2024 passed by learned 2nd Additional Sessions Judge, Bhubaneswar in C.T. Case No.322 of 2022)

AFR

DSREF No. 3 of 2024

State of Odisha

.....

Appellant

-Versus-

Sanjeet Dash @ Banku

.....

Condemned Prisoner/
Accused

Advocates appeared though hybrid mode

For Appellant

: Mr. Partha Sarathi Nayak,
Addl. Government Advocate

For Condemned
Prisoner/Accused

: Mr. Soura Chandra Mohapatra,
Sr. Advocate (Amicus Curiae)
with Mr. S. Mohapatra, Advocate

JCRLA No. 141 of 2024

Sanjeet Dash @ Banku

....

Appellant

- Versus -

State of Odisha

....

Respondent



Advocates appeared though hybrid mode

For Appellant : Mr. Soura Chandra Mohapatra,
Sr. Advocate (Amicus Curiae)
with Mr. S. Mohapatra, Advocate

For Respondent : Mr. Partha Sarathi Nayak,
Addl. Government Advocate

CORAM

THE HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

Date of Hearing :07.07.2026 :: Date of Judgment: 25.08.2026

SASHIKANTA MISHRA, J.

The trial Court, after convicting the accused for the offence of murder and sentencing him to death, has submitted the case record for confirmation by this Court under Section 366 of Cr.P.C., which is registered as DSREF No.3 of 2024. The condemned prisoner has independently preferred appeal against the order of conviction and sentence, registered as JCRLA No. 141 of 2024.

2. The condemned prisoner was charged under Section 302/307/324/326 of IPC by learned Second Additional



Sessions Judge, Bhubaneswar in CT Case No. 322 of 2022 for committing the murder of his wife, Saraswati @ Tikili, for attempting to commit murder of his daughter, Shree @ Pari, for causing hurt by means of dangerous weapon and for causing grievous hurt to her. By judgment passed on 30.07.2024, the condemned prisoner was held guilty of all the charges and was convicted accordingly. By order passed on 01.08.2024, he was sentenced to death for the offence under Section 302 IPC, imprisonment for life for the offence under Section 307 IPC, imprisonment for life for the offence under Section 326 IPC and rigorous imprisonment for three years for the offence under Section 324 IPC. All the aforementioned sentences were directed to run concurrently.

3. Since the death reference and appeal arise out of the same judgment of conviction dated 30.07.2024 and order of sentence dated 01.08.2024, both matters were heard together. As the issues involved in both the cases are common, they are being disposed of by this common judgment.



PROSECUTION CASE

4. The condemned prisoner had married the deceased Saraswati Dash as per Vedic rites about six years prior to the occurrence, i.e., 09.06.2022. He used to frequently quarrel with his wife for money. On the date of occurrence, the condemned prisoner killed his wife by assaulting her with a knife and slit the throat of his six year old daughter and thereafter absconded. Upon hearing of the above incident, one Sashikanta Dash, brother of the deceased rushed to the spot and found his sister lying dead inside her house. He further came to know that his niece, Pari had been taken to the hospital by the other family members of the condemned prisoner in a critical condition. He then went to Bharatpur Police Station and lodged a written report. Said report was registered as Bharatpur P.S. Case No. 237 under Sections 302/307/324/326 of IPC. The IIC of the Police Station directed the Sub-Inspector, B.K. Das to take up the investigation.

Investigation commenced immediately thereafter with the I.O. and other police officers visiting the spot. The



scientific team also visited the spot. Inquest was held over the dead body, photographs were taken, fingerprints were lifted, weapon of offence was recovered and the dead body was sent for postmortem examination. Later that evening, the condemned prisoner while roaming in Vipul Gardens area was apprehended and taken to custody. While in custody, during interrogation he confessed his guilt by stating that he had picked up the knife from the kitchen and stabbed his wife on different parts of her body and had also assaulted his daughter, Shree. The complicity of the condemned prisoner was otherwise established during investigation from the statement of witnesses examined by the I.O.. The report of fingerprint experts as well as the forensic report also pointed at him. Accordingly, charge-sheet was submitted against him on 07.10.2022 under Sections 302/307/324/326 of IPC.

DEFENCE PLEA

5. Defence plea is of complete denial, though it was admitted during examination of the condemned prisoner under Section 313 of Cr.P.C. that he along with his wife and



children were staying in the first floor of the house at the relevant time.

EVIDENCE

6. To prove its case, prosecution examined 15 witnesses, the particulars of whom shall be discussed later in this judgment. Besides, prosecution proved 18 documents and 8 material objects. Defence did not adduce any evidence, either oral or documentary.

TRIAL

7. The condemned prisoner was represented by a lawyer of his choice for most part of the trial. However, towards the end, said counsel submitted memo of no-instruction, for which the trial Court appointed a State Defence Counsel (SDC). The SDC conducted the case thereafter by recalling several witnesses for further cross-examination. By our elaborate order passed on 19.02.2026, we have recorded our satisfaction that the trial was conducted in a fair and proper manner and that no prejudice whatsoever was caused to the condemned prisoner at any stage.



TRIAL COURT'S FINDINGS

8. The first point for consideration for the trial Court on the basis of evidence adduced was the nature of death. By relying upon the evidence of the Autopsy Surgeon, PW-12, the postmortem report, inquest report, the weapon of offence and the doctors' opinion with regard to the possibility of injuries being caused by it, the trial Court held that the death of the deceased was homicidal in nature. The trial Court thereafter listed the following circumstances as relied on by the prosecution to prove the guilt of the condemned prisoner;

I. The accused was together with the deceased and the victim child in the occurrence room just before the occurrence.

II. The mother of the accused saw him coming downstairs immediately after the incident.

III. The extra judicial confession of the accused before his mother and his sister-in-law.

IV. His abscondence from the spot immediately after the occurrence.

V. Collection of physical clues including the weapon of offence by the scientific officer from the spot showing the involvement of the accused

VI. The matching of the chance fingerprint on the weapon of offence with that of the 10-digit fingerprint of the accused.

VII. Presence of the blood group of the deceased in the wearing apparel as well as the hand of the accused.

VIII. Motive”



9. The first two circumstances were considered together for determination and held that both were adequately proved. Circumstance No.III was also fully proved. Insofar as Circumstance No.IV is concerned, the trial Court held that mere absconding of the condemned prisoner from the spot immediately after the occurrence by itself cannot establish his guilt but it can constitute a relevant piece of evidence along with other circumstances. Circumstance Nos. V, VI & VII were also held to be established. As regards Circumstance No.VIII, the trial Court held that the same also pointed at the guilt of the condemned prisoner as charged. The condemned prisoner was thus held guilty of the charges and convicted for the same.

10. Be it noted that we have not expressed any opinion as regards the findings of the trial Court reflected in the impugned judgment but shall do so only after we have ourselves independently scrutinised and analysed the evidence. Since it is a death reference, law is well settled that High Court is required to appreciate the evidence and arrive at its own conclusion independent of the Sessions Court.



Reference may be had in this regard to the judgment of the Supreme Court in the Case of **Jumman v. State of Punjab**¹.

The Supreme Court held as follows:

“It is clear from a perusal of these provisions that in such circumstances the entire case is before the High Court and in fact it is a continuation of the trial of the accused on the same evidence and any additional evidence and that is why the High Court is given power to take fresh evidence if it so desires. In an appeal under Order 41 of the Civil Procedure Code an appellate court has to find whether the decision arrived at by the court of first instance is correct or not on facts and law; but there is a difference when a reference is made under Section 374CrPC and when disposing of an appeal under Section 423CrPC and that is that the High Court has to satisfy itself as to whether a case beyond reasonable doubt has been made out against the accused persons for the infliction of the penalty of death. In fact the proceedings before the High Court are a reappraisal and the reassessment of the entire facts and law in order that the High Court should be satisfied on the materials about the guilt or innocence of the accused persons. Such being the case, it is the duty of the High Court to consider the proceedings in all their aspects and come to an independent conclusion on the materials, apart from the view expressed by the Sessions Judge. In so doing, the High Court will be assisted by the opinion expressed by the Sessions Judge, but under the provisions of the law abovementioned it is for the High Court to come to an independent conclusion of its own.”

[Emphasis added]

This has also been reiterated in the case of **Balak Ram vs State of U.P.**².

¹(1956) 2 SCC 554

² (1975) 3 SCC 219



ANALYSIS OF EVIDENCE

11. We make it clear that we shall only note the evidence on record leaving the analysis thereof in light of the arguments raised by both sides to a later stage.

ORAL EVIDENCE

12. As already stated, prosecution examined 15 witnesses. P.W.-1, Tapan Dash is the cousin of the condemned prisoner. He is a post-occurrence witness, who stated that he was informed of the incident by his paternal uncle over phone, hearing which he immediately rushed to the house and found the deceased lying in a pool of blood with her intestine having come out. He also noticed injuries on her cheek, thigh and hand. At that time, the injured Pari (minor daughter of the condemned prisoner and deceased) had been shifted to SUM Hospital and police was informed. He was present during inquest and proved the inquest report and signature thereon. In cross-examination, he denied the suggestion that he had not stated before the I.O. of being informed by his paternal uncle over phone that Sanjit Dash



had murdered his wife and tried to slit the throat of his daughter Shree Dash @ Pari etc., which he denied.

PW-2 – Dinesh Biswal is a constable attached to Bharatpur Police Station. He was a witness to the seizure of three plastic vials containing hair, nail and blood-soaked gauge of the condemned prisoner. He proved the seizure list marked Ext.P-2.

PW-3- Manmath Kumar is another cousin of the deceased, who stated that he got information about the death of Saraswati Dash (deceased) at about 11.30 a.m. and that the condemned prisoner had caused her death by stabbing. He went to the spot. He stated that the right side first room of the first floor was the bedroom of the condemned prisoner into which he entered and found the deceased lying in a pool of blood wearing only a panty with injury all over her body. He further stated to have found stab injury on her belly, multiple stab injuries on her back, left side thigh, right side thigh, right side lower leg. He was also a witness to the inquest report and proved his signature on the said report. He further stated to have found Shree Dash @ Pari lying alive



in another room on a bed with cut injuries on her neck. He described the other two brothers of the condemned prisoner and specifically stated that the condemned prisoner was staying in the first floor of the same building. He further stated that he did not work and that the deceased was working at SUM Hospital as Senior Nurse. He had two daughters with the younger one being born three days prior to the incident. He also stated that condemned prisoner used to beat the deceased for money.

PW-4- Kanaklata Dash is the mother of the condemned prisoner. According to her, on 09.06.2022 at about 11.30 a.m. as meal was ready, she told Sujata, her younger daughter-in-law to call the condemned prisoner over phone to take meal. When Sujata called, nobody answered. Sujata also went to the house of the condemned prisoner and knocked but no one answered. She gave details of her other sons and identified the condemned prisoner as her son in Court. She referred to the two daughters of the condemned prisoner and stated that the younger one was three days' old at the time of incident. She stated that as the deceased had



given birth to her younger daughter three days earlier, she was not able to cook food for which her younger daughter-in-law cooked and provided to them. She also stated that the condemned prisoner does nothing and that the deceased was working as Head Nurse in SUM Hospital. PW-4 further stated that when she was going upstairs, she found the condemned prisoner getting down. Seeing him on the staircase, she informed that lunch was ready and that he should take the food to his house. Hearing this, the condemned prisoner told her that he has killed Saraswati @ Tikili (deceased) and also slit the neck of his elder daughter Pari, who is alive and requested her to call police. Accordingly, PW-4 requested her younger daughter-in-law to inform her elder daughter-in-law, Rashmi, who in turn informed her elder son. Her elder son called police. Her nephew- Likuna and niece- Tina took Shree to SUM Hospital. She was suggested in cross-examination that the condemned prisoner was getting down and that she requested Sujata to give a phone call to Rashmi, which she denied. She admitted however, that they are quite solvent and their family is one of the richest in the locality.



PW-5- Sujata Dash is the wife of the younger brother of the condemned prisoner. She stated that the deceased had given birth to a girl child three days prior to the incident for which she was providing them food from her house. She corroborated the statement of PW-4 regarding making phone call to the deceased, who did not respond. She reported the same to her mother-in-law, who directed her to go upstairs and call them. Accordingly, she went upstairs and knocked on the door but no one responded. She again informed her mother-in-law to go upstairs. While going upstairs, her mother-in-law found the condemned prisoner coming down on the staircase and informed that he had killed his wife and slit the neck of her elder daughter-Pari and at that time PW-5 was standing near PW-4. The condemned prisoner thereafter went to the spot and PW-4 went to the house of her uncle-in-law and informed the matter. PW-5 also informed the matter to her husband. Her uncle-in-law came to the spot and his son took Pari to the Hospital, who had sustained cut injury on her neck, end of the eye and on the palm. PW-5 further stated that the deceased was working as staff nurse at SUM



Hospital, while the condemned prisoner did nothing. There was frequent quarrel between the condemned prisoner and the deceased on financial issues and her mother-in-law (PW-4) used to pacify the matter. In cross-examination, she admitted that she had not seen the condemned prisoner committing the murder nor of entering into the first floor of the house where the murder had been committed after knowing about it. She admitted to have been examined by police regarding the occurrence and denied the suggestion that there was no quarrel between the condemned prisoner and the deceased, there was good relation between them and he was earning a handsome amount to run his family. She denied the defence suggestion that she had not stated before police that she had made phone call to the deceased at 11 a.m., to which she did not respond and that the condemned prisoner informed her mother-in-law that he had killed his wife and slit the neck of his elder daughter-Pari and that at that time she was standing near PW-4.

PW-6- Sashikanta Dash is the informant and brother of the deceased. He stated that the marriage between



Saraswati and the condemned prisoner was performed in December, 2015. He stated about receiving a phone call from Ranjit Dash at about 12 noon regarding the incident. Hearing this, he went to the spot and found the deceased lying on the floor in a pool of blood with injuries all over her body. He also found cut injury on the throat and chin of Pari, who was already shifted to SUM Hospital, Bhubaneswar. He also stated that the second daughter of the deceased was born about four days before the incident and that his sister was working as nurse in SUM Hospital but the condemned prisoner was unemployed. The condemned prisoner killed Saraswati due to scarcity of money and birth of second daughter. He stated to have lodged FIR and proved the same. He also stated to have been present during the inquest and proved his signature thereon. In cross-examination, he could not say the mobile number of Ranjit Dash and stated that Ranjit had informed his wife over phone. He stated that he had entered into the house. He admitted not to have noticed any blood stain on the four walls. He further stated in cross-examination that the deceased had informed him several



times that the condemned prisoner is demanding money by consuming intoxicating substances but admitted that he cannot say the dates. He admitted not to have gone through the inquest report before putting his signature.

PW-7- Sarbeswar Das is a constable attached to the Bharatpur Police Station. He was a witness to seizure of nail clippings, scalp hair, blood-soaked gauge and black colour torn panty of the deceased at Bharatpur P.S.

PW-8- Shree Dash @ Pari is the elder daughter of the condemned prisoner of the deceased. She deposed after being found capable of giving rational answers to questions put by the trial Court. She stated that she is otherwise known as Pari. Her mother was working as Nurse in SUM Hospital. She categorically stated that her father killed her mother with knife and also slit her throat. She sustained injury also on the right-side end of her right eye and that Tina aunty and Likuna uncle had taken her to the Hospital for treatment. In cross-examination, she stated that her mother usually went to the SUM Hospital at about 9 am and returned at about 5 pm. She stayed in the house along with her father and



mother in the first floor. Her elder father and his family reside in the second floor while in the ground floor, her uncle Manjit, his wife and her grandmother reside. She denied the defence suggestion that she was in the ground floor at the time of the incident, and reiterated that she was in the middle floor. She further admitted that she goes to School at 6 am and returns at 11 am. She also admitted that her father loves her.

PW-9, Sushree Sabinaya is the Scientific Officer attached to the DFSL, Bhubaneswar. She stated that on receiving telephonic requisition from the IIC of Bharatpur Police Station, she along with her team proceeded to the spot. She described the spot house and stated that she found the dead body of the deceased in the north west bed room of the house in a pool of blood. She described all other articles found inside the house and the blood stains at different places. She also stated about the blood-stained knife kept in the wash basin and two blood-stained towels, blood-stained mattresses and other articles. She described the dead body which was lying in a supine condition with head towards



north-east direction. The upper part of the body i.e. from head to hip was on the floor beneath the single set of sofa while the rest part was on the mattress. She also found multiple numbers of stab wounds and cut wounds on different parts of the body appearing to be inflicted by some sharp-edged weapon. The deceased was wearing only one black panty containing menstrual pad. The spot was digitally photographed, blood samples were collected and the blood-stained knife was collected etc.. She also stated that two chance fingerprints were found on the blood-stained knife, which were photographed. After obtaining signatures from the I.O. and witnesses, she prepared the spot map, body outline etc. In cross-examination, she further described the presence of the blood in different areas of the house and articles.

PW-10, Dr. Akash Ranjan Barik was the Medical Officer at SUM Hospital at Bhubaneswar, who had examined Shree Dash at 12.15 PM on the date of occurrence. He proved the injury report, marked Ext. P-7 and stated that he found the following injuries



“i. Multiple linear laceration at chin of size 3 to 4 c.m. with bleeding.

ii. An incised injury on throat of size 8 to 9 CM larynx was exposed.”

He opined that injury No.ii was grievous in nature and might have been caused by sharp cutting weapon. The time of injury was within six hours from the examination. In cross-examination, he admitted that he does not remember who accompanied the injured to the hospital and that the M.L.C. number put on the injury report does not bear the date and time. He denied the defence suggestion that the kind of injury on the throat is not possible, if someone falls on a piece of glass and is being rubbed against it.

PW-11, Kodandadhar Samal is a Constable attached to the Bharatpur P.S., who had taken the condemned prisoner for medical examination on 10.06.2022. He is also a witness to seizure of scalp hair, nail clipping and blood sample of the condemned prisoner. He was also a witness to seizure of wearing apparel of the condemned prisoner. In cross-examination, he admitted to have forgotten the name of the doctor to whom he had taken the condemned prisoner for examination and denied the suggestion that he was not



present when the doctor collected biological samples of the condemned prisoner.

PW-12, Dr. Laxmikanta Behera is the autopsy surgeon, who conducted autopsy over the dead body of the deceased. He described his findings as follows:

“External examination

- I. Stab wound of size 3 cm x 2 cm x muscle deep on right thigh anterior aspect.*
- II. Stab wound of size 3 cm x 2 cm x muscle deep on right thigh lateral aspect.*
- III. Stab wound of size 3 cm x 2 cm x muscle deep over right thigh just above the knee joint on anterior aspect.*
- IV. Stab wound of size 5 cm x 2 cm x muscle deep over right knee joint on medial aspect.*
- V. Cut wound of size 5 cm x 2 cm x joint deep over right knee.*
- VI. Cut wound of size 4 cm x 2 cm x muscle deep over right knee lateral aspect.*
- VII. Cut wound of size 3 cm x 2 cm x muscle deep over right thigh medial aspect.*
- VIII. Cut wound of size 6 cm x 3 cm x bone deep on right forearm flexor aspect.*
- IX. Stab wound of size 3 cm x 2 cm x muscle deep over right forearm lateral aspect.*
- X. Stab wound of size 3 cm x 2 cm x muscle deep over right elbow joint.*
- XI. Stab wound of size 3 cm x 2 cm x muscle deep over right shoulder.*
- XII. Stab wound of size 3 cm x 2 cm x muscle deep over right hand extensor aspect.*
- XIII. Stab wound of size 3 cm x 2 cm x muscle deep over right thigh on lateral aspect.*
- XIV. Stab wound of size 3 cm x 2 cm x muscle deep over right wrist extensor aspect.*
- XV. Stab wound of size 3 cm x 2 cm x muscle deep over right forearm just below tip of elbow joint.*
- XVI. Stab wound of size 3 cm x 2 cm x muscle deep over right arm on lateral aspect.*



XVII. 4 Nos. of Stab wounds of size 3 cm x 2 cm x abdominal cavity over front of lower abdomen in an area of 12 cm x 12 cm.

XVIII. 2 Nos. of stab wounds of size 3 cm x 2 cm x abdominal cavity over front of upper abdomen in an area of 8 cm x 8 cm.

XIX. 2 Nos. of stab wounds of size 3 cm x 2 cm x sternum deep over front of chest in an area of 5 cm x 5 cm.

XX. 3 Nos. of stab wounds of size 3 cm x 2 cm x muscle deep over left forearm on extensor aspect in an area of 10 cm x 10 cm.

XXI. 4 Nos. of stab wounds of size 3 cm x 2 cm x muscle deep over left elbow joint on lateral aspect in an area of 10 cm X 10 cm.

XXII. 3 Nos. of stab wounds of size 3 cm x 2 cm x abdominal cavity deep over left side lower abdominal wall in an area of 12 cm x 12 cm.

XXIII. 3 Nos. of stab wounds of size 3 cm x 2 cm x thoracic cavity deep over front of left side chest wall in an area of 12 cm x 8 cm.

XXIV. Stab wounds of size 3 cm x 2 cm x muscle deep over left thigh interior aspect.

XXV. Stab wounds of size 3 cm x 2 cm x muscle deep over left thigh lateral aspect.

XXVI. Stab wounds of size 3 cm x 2 cm x muscle deep over right side lower back.

XXVII. Stab wounds of size 3 cm x 2 cm x muscle deep over lower back.

XXVIII. Stab wounds of size 3 cm x 2 cm x muscle deep over right gluteal area.

XXIX. Stab wounds of size 3 cm x 2 cm x muscle deep over left thigh on medial aspect.

XXX. Stab wounds of size 3 cm x 2 cm x thoracic cavity deep over left breast.

XXXI. Stab wounds of size 3 cm x 2 cm x muscle deep over right thigh on posterior aspect.

XXXII. 3 Nos. of stab wounds of size 3 cm x 2 cm x muscle deep over right side lower back in an area of 8 cm x 9 cm.

XXXIII. Stab wounds of size 3 cm x 2 cm x muscle deep over mid back”

According to him, all the injuries were antemortem in nature and were caused by sharp cutting weapon like knife. The injuries are homicidal in nature. Death of the deceased was



due to haemorrhage and shock, as a result of the above-mentioned injuries. He admitted to have received a query from the I.O. regarding the weapon of the offence which he verified. He described it as a metallic knife with black plastic handle. The total length of the knife was 32 cm. The length of the metallic part was 21 cm and the maximum breadth of the metallic part was 4 cm. The metallic part had a pointed edge and one cutting edge. He answered the query of the I.O. stating that the injuries inflicted on the body of the deceased can be possible by the said knife and such injuries were sufficient to cause death in ordinary course. In cross-examination, he admitted that he was the only doctor to conduct the post-mortem and that when he received the dead body, he did not find any injuries bleeding. He also admitted that the query report does not bear the fact as to who produced the requisition before him and at what time. He found blood stain on the knife on its both sides. He collected the blood of the deceased and handed over the same to the police.



PW.13- Rakesh Kumar Sethi stated that he knows the condemned prisoner, the deceased and the injured. On the date of occurrence at about 3 p.m., he heard that someone had committed murder of his wife. He went to the spot, i.e., the house of the condemned prisoner, where police were present along with some other people. He saw a lady lying dead in a pool of blood. He heard that the daughter of the deceased was also injured and had been shifted to the hospital. He was a witness to seizure of certain articles such as, a red napkin, a violet napkin, a white Turkish towel and black, yellow and red cloth. His cross-examination was dispensed with in terms of Section 309 of Cr.P.C. on the refusal of the defence counsel to cross-examine.

PW-14, Bijay Kumar Das is the I.O.. He proved the formal FIR and stated about all the steps taken by him during investigation of the case. He stated that he had gone to SUM Hospital and tried to examine the daughter of the deceased but could not do so as her condition was critical and the doctor did not allow him to communicate with the child. He further stated about receiving information of the



condemned prisoner roaming near Vipul Garden Road and of apprehending him. The condemned prisoner was taken to the Police Station, his fingerprint was taken by an expert and he was arrested. He then stated about further steps taken by him including seizure of different articles made by him and of forwarding the condemned prisoner to the Court. He stated about examination of several witnesses. He was cross-examined extensively by defence and denied the defence suggestion of dictating the contents of inquest report to the witness. He also admitted to have sent the exhibits to SFSL three months after the occurrence by explaining that he was busy in investigation of many other cases. He admitted that no Magistrate was present while the fingerprints of the condemned prisoner were taken. He admitted that Tapan Dash (PW-1) had not stated before him that his uncle had informed him over phone and that the intestine of the deceased had come out. He also admitted that PW-4 had not stated before him of requesting Sujata to make a phone call to Rashmi and that he had gone to the first floor after hearing about the murder. He also admitted that Sujata Dash had not



stated that she made a phone call to the deceased and that she was standing near her mother-in-law and that the condemned prisoner left the spot immediately thereafter.

PW-15, Jyoti Prakash Dash @ Likuna is the cousin of the condemned prisoner. He stated that at about 11 to 11.30 a.m. on 09.06.2022, PW-4 came running to their house, which is opposite to their house and informed his father that the condemned prisoner had committed murder of his wife and slit the throat of his daughter, Pari. Hearing this, they immediately rushed to the spot. They went inside the room and saw the dead body lying there. Pari was lying in the nearby room being injured. He and Tina Didi immediately took the victim, Pari to SUM Hospital as her condition was serious. In cross-examination, he admitted that Police asked him about the incident at the hospital on the same day and again 2 to 3 days thereafter. He stated that Pari was in the SUM Hospital for about 2 to 3 months.

DOCUMENTARY EVIDENCE

13. As already stated, prosecution proved 18 documents; of them, Exhibits P-2, P-4, P-6, P-8, P-11 are



seizure lists depicting seizures of different articles made in course of investigation. Ext. P-3 is the FIR, which we have already discussed. Ext. P-1 is the inquest report, which was proved by PW-1. It describes the dead body and the position in which it was found. It also contains a brief description of the injuries seen on the body and the opinion of the witnesses as to the cause of death. PW-3 endorsed his opinion to the effect that his younger sister- Saraswati Dash (deceased) was killed by her husband by assaulting her with a knife on different parts of her body. PW-1 also endorsed similar opinion. Ext.P-5 is the spot visit report of the Scientific Officer and her team, which contains description of the spot house and the rooms including the room in which the dead body was found. The report notes the physical evidence such as blood, knife etc. It mentions about retrieval of two numbers of visible blood-stained fingerprints detected on the blade of knife. The report was accompanied by a rough body outline showing the location of the injuries. It is also accompanied by a rough spot map showing blood stains/droplets and the position of the dead body as well as



rough diagram of the knife. Ext.P-7 is the medical examination report of the injured, Shree Dash issued by the doctor on police requisition. Ext.P-9 is the post-mortem report. It was proved by the autopsy surgeon, PW-12 and contains the description of the injuries and his opinion regarding cause of death. Ext.P-10 is the query submitted by the I.O. to the doctor and the opinion of the doctor regarding the seized knife. Ext.P-13 is the spot map prepared by the I.O. Ext.P-15 is the report of the State Fingerprint Bureau regarding the chance fingerprints detected on the seized knife. Ext.P-18 is the chemical examination report submitted by the State Forensic Science Laboratory, Rasulgarh.

MATERIAL OBJECTS

14. As already stated, the prosecution also proved 8 material objects including the seized knife (MO-1) and other articles.

15. Having noted the evidence adduced by the prosecution we shall now refer to the arguments advanced by the parties.

APPEARANCE



16. Heard Mr. Soura Chandra Mohapatra, learned Senior Counsel as Amicus Curiae assisted by Mr. S. Mohapatra, learned counsel for the condemned prisoner and Mr. P.S. Nayak, learned Addl. Government Advocate for the State.

17. Be it noted that we interacted with the condemned prisoner through video conference and informed him of the appointment of Mr. S.C. Mohapatra, Sr. Advocate to represent him, to which he expressed his consent. We have recorded such fact in our order dated 12.03.2026.

SUBMISSIONS ON BEHALF OF CONDEMNED PRISONER

18. We shall only refer to the submissions raised with regard to the order of conviction and not the sentence imposed, which we shall do only if we uphold the order of conviction.

19. Learned Senior Counsel, Mr. Mohapatra has assailed the order of conviction and sentence raising the following grounds:



(i) **The trial Court has not discussed whether the homicidal death of the deceased amounted to murder or not but proceeded on presumption.**

Mr. Mohapatra refers to the post mortem report as well as the evidence of autopsy surgeon (PW-12) to urge that out of 49 injuries found on the body of the deceased, all except 4 or 5 were on the limbs which, individually cannot be treated as fatal in nature. Further, the length of the blade of the knife was 21 cm and breadth was 4 cm but the injuries found measure 2cm x 2 cm x muscle depth. This, according to Mr. Mohapatra, implies that only a small portion, i.e., tip of the knife was inserted. It can therefore, be safely concluded that the condemned prisoner may have had an intention to cause injuries but certainly not death. He further submits that the occurrence most probably was preceded by a quarrel/altercation between the deceased and the condemned prisoner during which, he lost control over himself due to extreme anger and assaulted the deceased without thinking of the consequences. So, it would not be case of he wanting



definitely to kill his wife but must be treated as an act committed in blind rage to cause hurt.

(ii) **Prosecution has failed to prove a motive for the crime.**

Mr. Mohapatra argues that only 2 witnesses, namely, PWs-5 and 6 have referred to the purported quarrel between husband and wife on financial issues, which the trial Court accepted but it was never considered that if the deceased was the only earning member of the family why would the condemned prisoner want to kill her. As regards the unhappiness of the condemned prisoner due to birth of the second girl child, there is nothing on record to substantiate such allegation. The version of PW-6 is only an opinion without any supporting evidence. As against the above, it was elicited from the mouth of the child witness (PW-8) that her father loves her.

(iii) **The trial Court did not properly test the competence of the child witness to give rational answers to the questions before accepting its evidence.**



Mr. Mohapatra argues that PW-8 was aged about 6 years at the time of occurrence and around 7 years while testifying before the Court. Law acknowledges that a child under 7 years of age is not mature enough. Mr. Mohapatra refers to the provision of Section 82 IPC in this context. He further submits that it must be clearly proved that the child was capable of understanding the questions and of giving rational answers to them. The trial Court put three ordinary questions and recorded its satisfaction as regards the competence of the witness. While the witness herself stated that she was not examined by police, her statement was found to have been recorded two months after the occurrence.

(iv) **The conviction regarding assault on the minor daughter cannot be sustained as the condemned prisoner was charged thrice for the same offence.**

Mr. Mohapatra submits that once the condemned prisoner is charged under Section 307 IPC, which is the graver offence, he could not have been charged and convicted for the very same act under Sections 324 and 326 IPC also.



Even otherwise, there being no conclusive evidence to substantiate the allegation that that injury was capable of causing death, conviction under Section 307 is bad in law.

(v) **As regards the 8 circumstances listed by the trial Court appearing in the evidence against the condemned prisoner, Mr. Mohapatra does not dispute the findings in respect of circumstances at Serial Nos.(I) and (II).**

In so far as circumstance No.(III) is concerned, Mr. Mohapatra would argue that the trial Court has heavily relied upon the evidence of PW-4 as proving the so-called extra-judicial confession made by the condemned prisoner without ascertaining whether it was voluntary or not.

In respect of circumstance No.(IV), Mr, Mohapatra submits that the occurrence took place between 11 to 11.30 a.m. and the condemned prisoner was arrested on the same day at about 7.40 pm at a place not very far from the spot. So, by no stretch of



imagination he can be said to have absconded after committing the crime.

As regards the circumstance Nos.(V), (VI) and (VII), Mr. Mohapatra would argue that there is no evidence as to who retrieved the fingerprint of the condemned prisoner. Said person was never examined. Fingerprint supposedly retrieved was never confronted to the condemned prisoner. So far as the finding regarding presence of blood of the deceased on the wearing apparel of the condemned prisoner is concerned, the trial Court ignored the fact that the blood group of both the condemned prisoner and deceased was 'A'.

As regards the circumstance No.(VII), i.e. motive, Mr. Mohapatra's argument has already been noted before.

(vi) The trial Court has taken judicial notice of the envelope containing photographs and fingerprints without any legal basis.

Mr. Mohapatra submits that though the provision under Section 57 of the Indian Evidence Act lists facts of



which the Court can take judicial notice, none of the said facts are to be found in relation to the case. Under such circumstances, reliance placed on the photographs can only have a non-legal and moral influence on the mind of the trial Court.

ON BEHALF OF THE STATE

20. Mr. P.S. Nayak, learned Addl. Government Advocate advances his arguments by submitting that this is a case of brutal murder of a helpless lady committed by her husband only three days after she had given birth to a child. The brutality is further established by the fact that the condemned prisoner stabbed his wife as many as 49 times with a knife. He did not stop at that and went on to slit the throat of his elder daughter, who was a child of six years only. He was therefore, rightly convicted and sentenced to death by the trial Court. Mr. Nayak further argues that the prosecution proved the guilt of the condemned prisoner beyond all reasonable doubts through a complete chain of circumstances coupled with direct evidence. In support of his contentions, Mr. Nayak cites the following grounds:



(i) PW-8 being the minor daughter of the condemned prisoner and an injured eye-witness clearly testified that her father assaulted her mother with a knife and thereafter slit her throat. She being an injured witness, her testimony assumes great significance. It was otherwise not shaken in cross-examination.

(ii) The condemned prisoner made an extra-judicial confession before his mother, PW-4 that he had killed the deceased and assaulted PW-8. The evidence in this regard is entirely trustworthy and corroborated by other evidence including medical evidence, recovery of weapon and conduct of the condemned prisoner.

(iii) The medical evidence is clear, credible and conclusive. The nature, number and manner of injuries clearly reveal the intention of the assailant to cause death. The case therefore, falls under clause 'Thirdly' of Section 300 IPC.

(iv) There is unassailable evidence that the condemned prisoner after killing his wife, slit the throat of his 6 year old



daughter with a knife which is fully corroborated by medical evidence. The doctor opined that the injury was grievous and capable of causing death. Thus, both intention and knowledge in this regard are present, for which the condemned prisoner was rightly convicted for attempting to commit the murder of his daughter.

(v) There is no law that a particular number of questions are to be put to a child witness to test her competence to testify. In the instant case, the trial Court put three general questions and was satisfied. Even otherwise, the fact that the witness stood the rigors of cross-examination without flinching only fortifies the satisfaction of the Court regarding her competence. As regards the scientific evidence, Mr. Nayak would argue that as per the settled position of law, examination of the fingerprint expert is not mandatory, particularly when the condemned prisoner does not seek the same.

(vi) As regards the so-called defect in the charges, Mr. Nayak argues that framing of different charges for the same offence is permitted by different provisions of Cr.P.C.



beginning from Section 218 to 223. The act may be one but there could be multiple offences in law.

ANALYSIS AND FINDINGS

21. As already noted, the condemned prisoner faced trial for committing the murder of his wife and attempting to commit murder of his young daughter. We shall deal with the murder part first.

22. In a case of murder, three questions are essentially required to be answered, (i) whether the death of the deceased was homicidal in nature; (ii) who was the author of the crime; (iii) whether the act amounts to murder within the meaning of Section 300 IPC.

23. In the present case, the defence has not questioned the prosecution case or the finding of the trial Court that the death of the deceased was homicidal in nature. Nevertheless, in order to satisfy ourselves we have thought it proper to analyse the evidence independently. From the ocular evidence, we find that the dead body of the deceased was lying in a supine position in the first bedroom of the house in a naked condition save for a panty containing multiple



injuries all over. That apart, blood stains and droplets were found in other rooms as well. We have already discussed the medical evidence. The postmortem report marked Ext.P-9, proved by autopsy surgeon PW-12, lists the injuries found on the dead body of the deceased, which we have quoted earlier. The injuries total 49 though listed from Sl. Nos. I to XXXIII. PW-12 opined that the injuries were homicidal in nature and were caused by sharp cutting weapon like knife. A blood-stained knife being MO-1 was seized from the wash basin of the kitchen. There is nothing in the evidence to even remotely suggest that the injuries were self-inflicted. Taking all these into account there can only be one conclusion that death was caused because of the injuries inflicted by another person, which makes it homicidal in nature.

24. As regards authorship of the crime, prosecution claims that it was the condemned prisoner, who committed the same. Prosecution has projected the child witness (PW-8) as its star witness. She clearly testified before the Court that her father killed her mother with a knife and also slit her throat. It was argued by the defence counsel in the Court



below that the evidence of the child witness should not be considered as she had not stated anything against her father before the I.O. The trial Court while finding that PW-8 had not stated that her father had killed her mother before the I.O. brushed aside such objection on the ground that the statement of P.W.-8 before police was never confronted to her in the Court for the purposes of contradiction. We have also perused the statement of PW-8 recorded by the I.O. under Section 161 of Cr.P.C. and find that the same is recorded in a question-answer form. The I.O. inter alia, asked her generally as to what had happened on the date of occurrence, in response to which she only stated about the assault on her by her father. She did not say anything about her mother's death or of her father's hand in it. But it cannot be said with certainty that she had no knowledge about the death of her mother. Had a direct question been put by the I.O., maybe she would have given a definite answer. So, only for her omission to say about her mother's death and its cause, it cannot be said that she was lying before the Court. It was suggested that she was tutored by others. We are unable to



agree for the reason that tutoring of a child witness implies a motive to state falsehood in the Court to entangle a person not involved in the occurrence. But as we shall be discussing later, there is ample evidence otherwise to show the presence of the condemned prisoner in the same house at the relevant time and most importantly of slitting the throat of his daughter (PW-8) with a knife. So, regardless of the omission, we do not find any justified reason to doubt the veracity of the testimony of PW-8.

25. The next important piece of evidence is the extra-judicial confession made by the condemned prisoner before his mother (PW-4). According to PW-4, when she asked her daughter-in-law (PW-5) to inform the condemned prisoner to come for meal, the latter called over telephone but there was no response. She (PW-5) then knocked on the door but there was no response. As such, PW-4 went herself to the house of the condemned prisoner. She met him while he was coming down the stairs. Seeing his mother, the condemned prisoner himself informed that he had killed his wife and cut the throat of his daughter and requested his mother, PW-4 to call



police. This part of the evidence has not been shaken in cross-examination at all. Moreover, PW-5 fully corroborates the version of PW-4 in this regard and even to the extent of stating that she was present when the condemned prisoner made the confession before her mother-in-law (PW-4). Two things are proved from the above – the condemned prisoner was present at home with his family (including the deceased) at least around noon of the date of occurrence and secondly, he left home thereafter and was not seen by anyone till his arrest at about 7 p.m. on the same day. Law relating to acceptance of extra judicial confession is fairly well settled to the effect that it must be proved that such confession was made voluntarily and in free state of mind. In the case of **Mohd. Azad @ Samin v. State of W.B.**³, the Supreme Court observed as follows:

xx xx xx

19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a

³ (2008) 15 SCC 449; 2009 AIR SCW 752



weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.”

26. What is important to note here is, the person before whom the confession was made is none other than the mother of the condemned prisoner. It would therefore, be too much to expect a mother to speak blatant falsehood against her own son in the Court. Secondly, the confession was made voluntarily by the condemned prisoner seeing his mother who had only asked him to come for meal. It was argued before us that the condemned prisoner requested his mother to inform the police, which shows that his intention was to protect himself. It is not possible for us to know what weighed upon the mind of the condemned prisoner at that time. The fact that he confessed of his crime is only relevant and we accept



the same. It was also argued that the condemned prisoner was arrested from a place nor very far from the spot and therefore, it cannot be said that he had absconded. We do not agree for the reason that if the condemned prisoner was aware of the death of his wife and serious injury of his daughter and had also confessed of committing the crime before his mother, the fact that he was not seen thereafter only goes to show his guilty mind. Under normal circumstances and had the crime been committed by someone else, the reaction would certainly have been different. We therefore, accept the evidence relating to extra-judicial confession and also hold that the condemned prisoner had absconded from the spot. We therefore, accept the prosecution case that the condemned prisoner had confessed to his crime before PW-4. We also accept the prosecution case that he absconded immediately thereafter.

27. Another important aspect that has surfaced from the evidence is the recovery of the blood-stained knife from the wash basin inside the house containing fingerprints of the condemned prisoner. The scientific officer (PW-9) testified



to have collected the blood-stained knife and that two chance fingerprints were found thereon, which were photographed after obtaining signatures from the I.O. and witnesses. In cross-examination, she reiterated that she had taken the photographs as well as the fingerprints from the spot. It was argued that the fingerprint expert was never examined but the so-called report, marked Ext-P-16 was accepted by the trial Court erroneously. The fingerprint report was proved by the I.O., PW-14. He stated that he collected the envelope containing fingerprint report from SFSL, Rasulgarh and produced the same before the SDJM, Bhubaneswar on 05.08.2023. The I.O. was cross-examined at length. It was only elicited from his mouth by defence counsel that no magistrate was present while the fingerprints were taken. That apart it was not suggested that the report was in any manner unacceptable. No prayer was made by the defence to have the fingerprint expert examined. Under such circumstances and particularly having regard to the fact that the fingerprint report was prepared by an expert of a government laboratory, we find no reason to discard it. In the



case of **Shri Fulkumar. Vs. Delhi Administration**⁴, the Supreme Court held that expert evidence relating to fingerprint can be relied upon and examination of expert is not mandatory when the accused does not seek such examination. It is significant to note that during his examination under Section 313 of Cr.P.C., the condemned prisoner admitted that his fingerprints were taken when confronted with the evidence of I.O., PW-14 to such effect.

28. We have already commented on the conduct of the condemned prisoner in absconding from the spot house after the occurrence. What is more significant to note is the complete absence of any explanation whatsoever offered by him for such a horrific incident involving his own wife and minor child in his own house. In his examination under Section 313 Cr.P.C., the condemned prisoner preferred to remain mum when he was asked to explain the evidence of the witnesses deposing against him. Needless to mention, if the accused of a crime does not offer a plausible explanation of the facts which are specially within his knowledge, it

⁴ 1975 (1) SCC 797



becomes an additional link in the chain of circumstances against him. Reference in this regard may be had to the judgment of the Supreme Court in the case of **Debojit Pankika Charaideo Sonari v. State of Assam**⁵. The Supreme Court held as follows:

“17. Admittedly, the mother of the accused left her house for medical treatment leaving the child in the house with the accused person. The child was missing for a long time i.e. 22 days and as such it was expected of the accused to offer some justifiable explanation about missing child but the accused utterly failed to provide any such explanation. It would have been natural conduct of the accused to report to the Police if the child was missing for a long period or to inform some of the relatives but the accused made no such attempt.”

29. The condemned prisoner had admitted that his blood group is ‘A’ and also that of his deceased wife in his examination under Section 313 Cr.P.C. It is otherwise proved that the wearing apparel of the condemned prisoner seized by the I.O. contained blood stains of group ‘A’. The chemical examination report marked, Ext. P-18 proved the same. It is nobody’s case that the condemned prisoner had any injury on any part of his body to justify the blood stains on his wearing apparel. Therefore, the only explanation can be that the blood

⁵ 2026 SCC OnLine SC 1336 : 2026 LiveLaw (SC) 691



so found was that of the deceased that may have spurted from the site of injury onto the wearing apparel immediately after inflicting the injuries.

30. As regards motive of the condemned prisoner in committing the heinous offence, it is borne out from the evidence of several witnesses that there was frequent quarrel between husband and wife over financial matters. We may refer to the evidence of PWs. 5 & 6 in this regard. It has also been suggested by PWs. 5 and 6 that the condemned prisoner was not happy with the birth of second girl child. According to Mr. Mohapatra, the motive suggested is unacceptable for the reason that if the deceased was the only earning member why should the condemned prisoner want to kill her. Secondly, the version of PW-6 regarding unhappiness of the condemned prisoner regarding over birth of his younger girl child is only an opinion and cannot be treated as statement of fact. Mr. Mohapatra further refers to the admission of the child witness (PW-8) who deposed that her father loved her which also implies that he did not discriminate a girl child. Mr. Nayak, on the other hand, would submit that on the face



of clear direct evidence, motive is not relevant and even without proof of motive an order of conviction would lie.

31. We have already found that the evidence on record strongly suggests that it was the condemned prisoner alone who committed the offence. This is established by direct eyewitness account of PW-8 and other supporting evidence which we have discussed in detail including evidence relating to extra-judicial confession by the condemned prisoner. It is well settled that motive is not very relevant in a case resting on direct evidence but assumes importance in case of circumstantial evidence. That apart, motive is a mental condition known only to the offender and cannot always be proved by the prosecution with certainty. Reference in this regard may be had to the judgment of the Supreme Court in the case of **Amitava Banerjee v. State of W.B.**⁶. The Supreme Court held as follows:

“41. Motive for the commission of an offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of the offence is available. And yet failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. All that the absence of motive for the commission of the offence

⁶ (2011) 12 SCC 554



results in is that the court shall have to be more careful and circumspect in scrutinising the evidence to ensure that suspicion does not take the place of proof while finding the accused guilty.

42. Absence of motive in a case depending entirely on circumstantial evidence is a factor that shall no doubt weigh in favour of the accused, but what the courts need to remember is that motive is a matter which is primarily known to the accused and which the prosecution may at times find difficult to explain or establish by substantive evidence.

43. Human nature being what it is, it is often difficult to fathom the real motivation behind the commission of a crime. And yet experience about human nature, human conduct and the frailties of human mind has shown that inducements to crime have veered around to what Wills has in his book Circumstantial Evidence said:

“The common inducements to crime are, the desire of revenging some real or fancied wrong; of getting rid of a rival or an obnoxious connection; of escaping from the pressure of pecuniary or other obligation or burden; of obtaining plunder or other coveted object; of preserving reputation, either that of general character or the conventional reputation of profession or sex; or of gratifying some other selfish or malignant passion.”

44. The legal position as to the significance of motive and effect of its absence in a given case is fairly well settled by the decisions of this Court to which we need not refer in detail to avoid burdening this judgment unnecessarily. (See Dhananjay Chatterjee v. State of W.B. [(1994) 2 SCC 220 : 1994 SCC (Cri) 358] , Surinder Pal Jain v. Delhi Admn. [1993 Supp (3) SCC 681 : 1993 SCC (Cri) 1096] , Tarseem Kumar v. Delhi Admn. [1994 Supp (3) SCC 367 : 1994 SCC (Cri) 1735] , Jagdish v. State of M.P. [(2009) 9 SCC 495 : (2010) 1 SCC (Cri) 21] and Mulakh Raj v. Satish Kumar [(1992) 3 SCC 43 : 1992 SCC (Cri) 482] .”

We have already seen that the condemned prisoner offered no explanation whatsoever for the incident and preferred to remain silent. What exactly weighed upon his mind that led him to commit the act is only known to him. It is possible



that there might have been quarrel or dissension between husband and wife leading to heated arguments. But we would not venture into such possibility or read much into it, given the overwhelming evidence of the act itself that followed. It is enough to hold him guilty. We agree with the contention of learned State Counsel that on the face of direct evidence, proof of motive is not *sine qua non* for holding the condemned prisoner guilty.

32. Thus, from a conspectus of the analysis of all the above circumstances surfacing from the evidence we are left with no doubt that it was the condemned prisoner who was the author of the crime.

33. Having held so, we shall now proceed to decide whether the act of the condemned prisoner in doing away with the life of the deceased falls within the definition of 'murder' within the meaning of Section 300 IPC.

34. Before delving into the rival contentions, we would pause to take note of the fact that the trial Court has not really analyzed this aspect and appears to have taken for



granted that the act of the condemned prisoner amounts to murder. According to us, this is not the correct approach as the trial Court ought to have focused its attention to ascertain as to if the act amounts to murder or culpable homicide not amounting to murder. Proceeding to answer this question we would first take note of the statutory provision i.e., Section 300 of IPC, which is reproduced below.

“300. Murder.—

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly)— If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly)— If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly)— If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1. — When culpable homicide is not murder. — *Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos: —*



(First)— That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

(Secondly)— That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

(Thirdly)— That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.— Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2.— Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3.— Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.— Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.— It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.— Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”



35. According to Mr. Mohapatra, though as many as 49 stab wounds were found on the body of the deceased, yet most of them were not on vital parts of the body. Moreover, the wounds were not very deep as the weapon had not penetrated to greater depth of the body. The doctor simply opined that the cause of death was due to hemorrhage and shock as a result of the injuries but he did not clarify as to if any of the individual injuries was fatal. The doctor also did not clarify whether death was due to the effect of hemorrhage or shock, as both are not same thing. Mr. Mohapatra further argues that having regard to the marital relationship between the condemned prisoner and the deceased and the absence of any motive, it can be reasonably inferred that some dissension arose between them leading to provocation which promoted the condemned prisoner to repeatedly assault his wife most probably out of anger. It cannot be said that such act was preceded by premeditation, planning or preparation. According to Mr. Mohapata, this is a case that falls within the exceptions of Section 300 IPC and is therefore, an act of



culpable homicide not amounting to murder punishable under Section 304 Part I IPC.

36. Per contra, Mr. Nayak would argue that according to the doctor (PW-12), the injuries resulted in extensive damage to lungs, chest cavity and intestine. The nature, number and manner of injuries clearly demonstrate the intention to cause death. Referring to the judgment of the Supreme Court in **Virsa Singh v. State of Punjab**⁷, Mr. Nayak submits that all the four requirements, namely, (i) presence of bodily injuries (ii) objective proof of injury (iii) sufficiency of the injury to cause death in ordinary course of nature; and (iv) infliction of injuries intentionally are fully satisfied. Mr. Nayak further submits that this is not a case of mere likelihood of death but an act so brutal that death was the inevitable consequence.

37. Undisputedly, the deceased sustained as many as 49 stab wounds. While most of the injuries were not on vital parts of the body quite a lot of them were. We have reproduced earlier each of the injuries found on the dead

⁷ 1958 SCC OnLine SC 37 : AIR 1958 SC 465



body. According to the doctor, death of the deceased was due to hemorrhage and shock as a result of all the injuries. We do not agree with the argument of Mr. Mohapatra that the doctor should have specified as to which injury was fatal in nature. In a case of such nature where the body contained as many as 49 stab injuries and the doctor certifies that hemorrhage and shock was a result of all the injuries, there is no necessity of segregating the injuries individually. Of course, had the injuries being inflicted on non-vital parts, one could have entertained such an argument but when the injuries are found all over the body, the irresistible conclusion would be that they were inflicted in a murderous spree without aiming at any particular part of the body. For the same reason, the depth of the each of the injuries is not a relevant consideration. All the injuries cumulatively resulted in death. It is otherwise borne out from the evidence on record that blood stains were found not just at the spot where the dead body was ultimately discovered but almost in all of the other rooms. In all human probability, the deceased tried to save herself by running to different parts of the house as the



condemned prisoner followed her and continued to assault. There can be no other explanation for the presence of blood stains at other places.

38. As regards the argument that the act was actuated because of her provocation resulting from a quarrel between the husband and wife, we do not accept it for the reason firstly because, there is no evidence of any quarrel having actually taken place prior to the occurrence and secondly, the condemned prisoner himself has not said so in his examination under Section 313 Cr.P.C.. No suggestion was given in this regard to the prosecution witness also. Even accepting the defence argument that the incident had arisen out of a quarrel and the condemned prisoner was blinded by rage the very fact that the number of injuries is so large being 49 in all, the only conclusion that can be drawn is that they were inflicted with the intention of causing death of the deceased. What distinguishes an act of culpable homicide and murder was examined by the Supreme Court in the case



of **Rajwant Singh v. State of Kerala**⁸. The following observations of the Supreme Court are noteworthy.:

“8. The argument requires close examination. Two offences involve the killing of a person. They are the offence of culpable homicide and the more heinous offence of murder. What distinguishes these two offences is the presence of a special mens rea which consists of four mental attitudes in the presence of any of which the lesser offence becomes greater. These four mental attitudes are stated in Section 300 IPC as distinguishing murder from culpable homicide. Unless the offence can be said to involve at least one such mental attitude it cannot be murder. We shall consider the acts of the appellants in relation to each of the clauses of Section 300.”

As held in **Virsa Singh** (supra), all the four conditions are, according to us, fully satisfied in the case at hand. We have already seen that none of the exceptions provided in Section 300 IPC are attracted to the case at hand. On the contrary, we are convinced that the condemned prisoner acted in an extremely cruel manner and took undue advantage of his wife, who had given birth to a child three to four days ago, only with the intention to kill her. We have therefore, no hesitation in holding that the act of the condemned prisoner is nothing but murder within the meaning of Section 300 IPC.

⁸ 1966 SCC OnLine SC 50 : AIR 1966 SC 1874



39. We are therefore, persuaded to uphold the order of conviction passed by the trial Court.

40. We shall now deal with the other charges. As already stated, the condemned prisoner was charged and convicted under Sections 307/326/324 IPC. Mr. Mohapatra has submitted that the act being the same, three different charges could not have been framed nor the offender convicted of all the three offences. Since the offence under Section 307 IPC is the graver offence, it automatically covers the offence under Section 324 and 326 IPC. Mr. Mohapatra further submits that even otherwise, unless the injury comes within the meaning of 'grievous hurt' as per Section 320 IPC, the conviction under Sections 324 and 326 IPC are not tenable. Having held the person guilty of the offence under Section 307 IPC for the same act, the trial Court could not have convicted him for the other two offences as it amounts to double jeopardy. Per contra, Mr. Nayak would argue that charge under different heads is permissible, if the acts are of similar nature. He refers to the provisions under Sections 218 to 223 IPC in this regard.



41. We may first refer to the three different offences namely, Sections 307, 326 and 324 IPC, which are reproduced below:

“307. Attempt to murder.— Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts. — When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

324. Voluntarily causing hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

326. Voluntarily causing grievous hurt by dangerous weapons or means—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to



swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Here the act committed by the condemned prisoner against his daughter PW-8 is that he slit her throat with a knife and also caused some injury on her chin. The doctor examining PW-8 described the injuries, which we have quoted earlier. He specified injury No.ii as grievous in nature. Both the injuries were inflicted as part the same act and cannot be segregated. Further, law is well settled that to justify a conviction under Section 307 IPC it is not essential that bodily injury capable of causing death should have been inflicted. It is sufficient in law if there is present an intent coupled with some overt act in execution thereof. Reference may be had to the judgment in **Sagayam v. State of Karnataka**⁹. As is borne out from the evidence on record, the condemned prisoner after killing his wife, slit the throat of his daughter. PW-8 stated as follows:

“I am otherwise known as Pari. The accused Sanjeet Dash is my father. Saraswati Dash is my mother who is now dead. My mother Saraswati died one year back. My mother was working as Nurse in SUM Hospital. My father killed my mother with knife. My father has also silted my throat. (The witness showed the cut portion of her neck). I had also sustained injury on the right-side

⁹ (2000) 4 SCC 454



end of my right eye. My father had silted my throat with a knife. Tina Anty and Likuna uncle had taken me to hospital for treatment. IO has examined me in this case.”

It was therefore, a part of the same transaction that PW-8 came to be assaulted. The above, coupled with the site of injury i.e., throat and the weapon used can only suggest that having killed his wife, the condemned prisoner also intended to kill his daughter but because of prompt treatment, the child survived. It would therefore, be a clear case of attempt to murder punishable under Section 307 IPC.

42. We however, find force in the argument of Mr. Mohapatra that having found the condemned prisoner guilty of the offence under Section 307 IPC, the trial Court should not have further convicted him for the other two offences that arose out of the same transaction. We say so because the doctor (PW-10) specified injury No.ii only as being grievous. He has said nothing about injury No.i. It cannot be presumed that said injury was also grievous in nature. Be that as it may, the offence under Section 307 IPC, in our view, would take within its ambit the offence under Section 326 IPC as well as Section 324 IPC. Section 71 of IPC would be relevant



for reference at this stage and is reproduced below along with its illustrations.:

“71. Limit of punishment of offence made up of several offences.— Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

Illustrations

(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.”

It is not the prosecution case that two injuries found on PW-8 constituted two separate offences but it is the consistent case that they were part of the same transaction. We therefore, agree with the order of the trial Court convicting the



condemned prisoner under Section 307 IPC and therefore, uphold it. But, we are unable to concur with the order of conviction recorded under Sections 324 and 326 IPC. We may mention that Section 307 IPC being the graver offence, takes within its sweep the other two offences automatically.

43. From the foregoing analysis of evidence on record in light of the contentions raised by the parties, we uphold the conviction of the condemned prisoner under Section 302 IPC as well as Section 307 IPC. We however, set aside the conviction under Section 324 and 326 IPC.

SENTENCE

44. Having upheld the order of conviction, we shall now proceed to determine the correctness of the sentence imposed by the trial Court. The condemned prisoner was sentenced to death for the offence under Section 302 IPC. He was sentenced to imprisonment for life for the offence under Section 307 IPC.

45. We have interacted with the condemned prisoner through video conferencing from jail. We had also called for



reports from the jail authorities regarding his conduct, which we have perused. We shall deal with the death penalty first.

46. It is trite that imposition of appropriate punishment is *sine qua non* being the logical conclusion of a criminal trial. It is well settled that the punishment to be imposed on the condemned prisoner of a crime has to be adequate and appropriate. In the case of **Ravji v. State of Rajasthan**¹⁰, the Supreme Court held as follows:

“xxxxxxx The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should “respond to the society's cry for justice against the criminal” xxxxxxx”

47. According to the trial Court, in the present case, sentence of death is the appropriate punishment. We shall first refer to the submissions made by the parties before us. Mr. P.S. Nayak, learned State Counsel submits that the present case involves:

(a) Murder of wife inside the matrimonial home.

¹⁰ 1996) 2 SCC 175



- (b) 49 stab injuries inflicted with extreme brutality.
- (c) Attempt to murder a helpless minor child by slitting her throat and
- (d) Breach of trust in relationship.

Mr. Nayak has referred to the leading decision of the Supreme Court in the case of **Bachan Singh v. State of Punjab**¹¹, wherein it was held that death penalty can only be imposed in rarest of rare case. The crime test, criminal test and rarest of rare test were further explained in the case of **Shankar Kisanrao Khade v. State of Maharashtra**¹². According to Mr. Nayak, the present case fully satisfies the conditions laid in the aforequoted judgments and therefore, capital punishment is appropriate having regard to the exceptional depravity and brutality exhibited by the condemned prisoner. Mr. Nayak also submits that the aggravating circumstances overwhelmingly outweigh the mitigating circumstances for which, no leniency whatsoever ought to be shown to the condemned prisoner.

¹¹ (1980) 2 SCC 684

¹² (2013) 5 SCC 546



48. Mr. S.C. Mohapatra, learned *Amicus Curiae* argues that the trial Court has not strictly followed the mandate of Section 235 of Cr.P.C. regarding the statutory imperative to hear the convict before passing sentence. The judgment was passed on 30.07.2024 and the accused was heard on the question of sentence on the next day. No opportunity was given to the convict to be heard nor he was allowed to adduce evidence regarding mitigating circumstances. The contentions put forth by the State Defence Counsel were not properly discussed nor analyzed. The trial Court took a moral view to award the death penalty. According to Mr. Mohapatra, the condemned prisoner deserves a lenient consideration having regard to the fact that he has no criminal antecedents prior to the occurrence and his conduct in custody has been exemplary, which denotes a possibility of reformation and rehabilitation. Even though the crime may be depicted as extreme brutal, the same by itself does not justify the death penalty as prosecution could not show that he had criminal tendencies. In support of his arguments, Mr. Mohapatra has relied upon the following judgments of the Supreme Court:



- i. **Chhannu Lal Verma v. State of Chhattisgarh**¹³,
- ii. **Prakash Dhawal Khairnar (Patil) v. State of Maharashtra**¹⁴,
- iii. **Swamy Shraddananda (2) v. State of Karnataka**¹⁵,

Additionally, Mr. Mohapatra has also relied upon the judgment of this Court rendered in the case of **State of Odisha vs. Mohammed Mustak**¹⁶.

Mr. Mohapatra sums up of his argument by submitting that the Court must take into account the possibility that a domestic quarrel had blown out of proportion and the convict had acted in the manner he did in a state of temporary insanity borne out of uncontrolled anger.

49. Having regard to the submissions, we shall first refer to the relevant statutory provisions to see whether the statutory mandate while sentencing the condemned prisoner was properly followed or not. Section 235 Cr.P.C. reads as follows:

“235. Judgment of acquittal or conviction.—(1)
After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

¹³ (2019) 12 SCC 438

¹⁴ (2002) 2 SCC 35

¹⁵ (2008) 13 SCC 767

¹⁶ (2024) 94 OCR 875



(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the questions of sentence, and then pass sentence on him according to law.”

Thus, hearing the convict on the question of sentence is indeed a statutory imperative.

50. After going through the order sheet of the case record as well as the impugned judgment and sentence, we do not agree that the procedure laid down was not followed. On the contrary, we are satisfied that the trial Court followed the due procedure by hearing the condemned prisoner on the question of sentence.

51. This takes us to the question whether the sentence was proper or not. In this regard, we can do no better than to refer to the oft-quoted judgments of the Supreme Court in **Bachan Singh** (supra) and **Machhi Singh v. State of Punjab**¹⁷. The ‘rarest of rare test’ was first propounded in **Bachan Singh** (supra). The following observations are noteworthy.:

“164. Attuned to the legislative policy delineated in Sections 354(3) and 235(2), propositions (iv)(a) and

¹⁷ (1983) 3 SCC 470



(v)(b) in Jagmohan [(1973) 1 SCC 20 : 1973 SCC (Cri) 169 : (1973) 2 SCR 541] shall have to be recast and may be stated as below:

“(a) The normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. The court can depart from that rule and impose the sentence of death only if there are special reasons for doing so. Such reasons must be recorded in writing before imposing the death sentence.

(b) While considering the question of sentence to be imposed for the offence of murder under Section 302 of the Penal Code, the court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence.”

Law was further crystalized in **Machhi Singh** (supra), wherein the Constitution Bench observed as follows:

“32. 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 for 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 entertain 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

33. 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

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) 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, or (c) a



murder is committed in the course for betrayal of the motherland.

III. Anti-social or socially abhorrent nature of the crime

35. (a) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. 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 surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

36. 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

37. 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.

38. In this background the guidelines indicated in Bachan Singh case [(1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636] will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh case [(1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636] :



“(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 along with 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 have 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.

39. 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?

40. 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 hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.”



52. Applying the tests laid down in the above judgments, the following aspects need a careful consideration.:

- (i) Whether the case at hand is a case of extreme culpability.

From the manner and nature of the crime, coupled with the fact that the victim was a helpless and unarmed lady, fresh from delivery of a child, the act has to be designated as grave form of extreme culpability.

- (ii) Whether the circumstances of the offender entitle him to a lesser punishment.

In this regard we have scanned the evidence carefully and find that there is absolutely no justification much less any compelling reason for the condemned prisoner to have acted in the manner he has. The only thing that comes out from the evidence is that he was unemployed and depended on his wife for his sustenance, which resulted in frequent quarrels. Other than the above, there is nothing to treat him with leniency.



(iii) Whether the present case is one in which life imprisonment would be an inadequate punishment.

and,

(iv) Whether the mitigating circumstances, if any, outweigh the aggravating circumstances.

From the facts of this case, we find the following aggravating circumstances.

(a) The crime was committed inside the home with the condemned prisoner taking undue advantage of his wife, who was fresh from delivery of child and therefore, can be reasonably expected to be in a weak physical condition already.

(b) The condemned prisoner appears to have repeatedly stabbed the deceased 49 times affecting both vital and non-vital parts of the body and evidently in quick succession.

(c) The deceased attempted to save herself by running from room to room but the condemned



prisoner followed her and continued to assault her as evidenced by the blood stains and blood droplets appearing everywhere in the house.

(d) The condemned prisoner committed the crime in a murderous spree without even bothering that his daughter was witnessing his act.

(e) He did not hesitate to make an attempt on the life of his 6 year-old daughter also by slitting her throat. Had his daughter died, it would have resulted in a case of double murder.

(f) The condemned prisoner appearing before us though video-conference mode did not express any remorse whatsoever for the act committed by him.

(g) He claimed to be falsely entangled without specifying by whom or for what reason.

Having noted the aggravating circumstances, we shall now list the mitigating circumstances working in favour of the condemned prisoner, which are as follows:



- (a) There is no evidence of any prior assault by the condemned prisoner against his wife or daughter but only quarrel, which is not unnatural in a domestic relationship.
- (b) Most of the knife blows were inflicted on non-vital parts of the body such as, lower and upper limbs.
- (c) Prosecution failed to establish a definite motive for the condemned prisoner to commit the crime.
- (d) The possibility that the quarrel between husband and wife arose leading to heated arguments during which the condemned prisoner was blinded by rage resulting in temporary suspension of his rationality which made him further blind to the consequences of his act, cannot be ruled out entirely.
- (e) The accused did not exhibit any enmity towards his family earlier as evident from the assertion of his daughter that her father loved her.



- (f) The condemned prisoner does not have any criminal antecedents.
- (g) His conduct while in custody has been good as satisfied by the jail authorities.
- (h) The condemned prisoner has been practicing yoga, meditation and engaging himself in productive activities like reading newspaper/magazines and watching television, which suggests the possibility of reformation.

53. Turning to the sentence imposed by the trial Court for a moment we find that it has referred to the principles governing aggravating and mitigating circumstances laid down by the Supreme Court in the case of **Ramnaresh v. State of Chhattisgarh**¹⁸, but has itself not listed or determined such circumstances referring to the evidence and materials on record. The trial Court has only enumerated what the SDC and additional PP referred to as mitigating and aggravating circumstances respectively. The requirement of determining the balance between the two has not really been made, instead, the trial Court has digressed at length into the

¹⁸ (2012) 4 SCC 257



so-called emotional and psychological trauma suffered by the victim of this case. It has also dwelt upon, in great detail, the trauma suffered and to be suffered by the child victims. The trial Court has evidently been actuated by the desire to ensure a measure of justice for the child victim's mother and the children themselves for the wrong done to them. The trial Court has also referred to the community's sense of moral order and the victim's dignity.

54. While much of what has been narrated by the trial Court cannot be disputed or denied from a moral or ethical point of view, yet we are constrained to hold that an emotional or moral approach has no place in law. Law moves on hard facts alone. We are further constrained to opine that apparently in its zeal to paint the case as rarest of rare, the trial Court ignored the legal requirement of balancing aggravating and mitigating circumstances and embarked upon a moral journey laced with highly emotive considerations. We are unable to concur with such approach, which to us, is bereft of legal reasoning.



55. Coming back to the circumstances noted by us, we are one with the trial Court that the offence is extremely barbaric, brutal and depicts a heightened sense of depravity. But the same, in our considered view, would still not satisfy the test of 'rarest of rare'. According to us, the mitigating circumstances noted above outweigh the aggravating ones.

56. Having held as above, the next question that falls for consideration is what then would be the adequate punishment. Ordinarily, a person convicted of murder, if not sentenced to death is to be punished with imprisonment for life. However, according to us, life imprisonment simplicitor would also not be commensurate to the crime. We say so for the reason that in actual practice, life imprisonment can be restricted to only 14 years as the condemned prisoner would thereafter be entitled to be considered for premature release as per Section 433 of Cr.P.C. The occurrence took place in the year 2022. Four years have passed by. So technically, the condemned prisoner would be entitled to remission of his sentence after serving 10 more years of imprisonment. So, while death penalty has been held by us to be not



appropriate, life imprisonment simpliciter would not also be adequate. It is difficult to envisage the condemned prisoner returning home after spending only 10 more years in prison or thereabouts, to his daughters, one of whom he attempted to kill and other had come to the world only three days earlier. In such cases, the Supreme Court has laid down the principle of expanded option of life imprisonment. To amplify, in the case of **Swamy Shraddananda** (supra) the Supreme Court held as follows:

“92. xxxxxxxxxxxx. If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all.”

57. Applying the principle to the present case we take note of the age of the convict at the time of commission of the offence i.e., 46 years. This makes him aged about 50 years at present. Taking into consideration all factors, we are of the considered view that the sentence of imprisonment for



life with cap of 35 years in custody for being entitled for remission, shall adequately meet the ends of justice. In other words, the condemned prisoner shall not be eligible to be considered for remission as per law unless he has served a minimum of thirty-five years in prison in total. The period of imprisonment already undergone shall be set-off against the above period.

58. The Death Reference is answered accordingly.

59. The JCRLA is allowed in part. The impugned judgment of conviction in so far as it relates to the offence under Section 302 IPC and the judgment and sentence in so far as it relates to the offence under Section 307 IPC are confirmed and the judgment and sentence in so far as it relates to the offence under Sections 326 and 324 IPC are set aside. Further, the sentence of death in respect of the offence under Section 302 IPC is modified in terms of paragraph 57 of this judgment.

60. Before parting, we would like to consider the question of compensation to the victims. It is stated at the



Bar that the two minor daughters were granted compensation of Rs.5 lakhs each by the District Legal Services Authority, Khurda at Bhubaneswar under the Victim Compensation Scheme, but the same was refused to be accepted by the paternal grandmother of the victims with whom they are presently residing. Looking at the tender age of the two children, 10 and 4 years, we feel that their future, in the absence of their parents, needs to be secured to the extent possible. While we are conscious that no amount of monetary recompense can possibly assuage their loss and the lingering trauma for the rest of their lives, yet a reasonably adequate sum as compensation would afford protection to them as also help to build their lives as decently as is possible. Therefore, notwithstanding the amount already awarded as compensation by the DLSA, we direct the State to pay a sum of Rs.10 lakhs each to the child victims. Said amounts shall be kept in fixed deposit in any Nationalized Bank, preferably State Bank of India at Bhubaneswar in the names of the victims represented by the Secretary, DLSA, Khurdha till they attain majority. The amounts awarded earlier by the DLSA



shall also be kept in fixed deposit in the names of the victims represented by the Secretary DLSA, Khurdha at Bhubaneswar till they attain majority. The Bank shall render full cooperation in opening of the fixed deposit amounts. We further direct the DLSA, Khurdha to regularly monitor the condition of the victims by sending Para-legal Volunteers (PLVs), preferably lady PLVs to their residence so as to ensure that they are not deprived of any fundamental requirement of life by also interacting with the children themselves. The PLVs so deputed shall submit report to the Chairman, DLSA once in every six-months without fail till the child victims attain the age of majority.

61. We also place on record our deep appreciation for the able assistance rendered by Mr. Soura Chandra Mohapatra, learned Senior Counsel, who was appointed as *Amicus Curiae* to defend the condemned prisoner/appellant. We were greatly benefited by his meticulous analysis and incisive arguments. We assess his professional fee at Rs.50,000/-, to be paid by the Odisha State Legal Services Authority. We also place on record our appreciation for the



assistance rendered by Mr. Partha Sarathi Nayak, learned State Counsel for his fair and effective manner of conducting the case on behalf of the State.

.....
(**Sashikanta Mishra, J**)

Manash Ranjan Pathak, J. I agree.

.....
(**Manash Ranjan Pathak, J**)

Orissa High Court, Cuttack
The 25th August, 2026/A.K. Rana, P.A.