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appellant. The Principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.”

(9) In view of the settled law, we have no hesitation in holding that the entire action of the respondents is arbitrary, being violative of rules of natural justice, and therefore, contrary to Article 14 of the Constitution of India. The petitioner has joined the respondent-department on 28th October, 1971. We find it a little difficult to accept that wrongful fixation of the pay could not be discovered for a period of almost 40 years. We are also satisfied that the petitioner cannot be held responsible for having made any misrepresentation to the respondents which resulted in the wrong fixation of his pay. Now the petitioner has retired. It would be wholly unjust to permit the respondents to recover the amount allegedly over-paid to the petitioner. In our opinion, the matter is squarely covered by the observations made by the Supreme Court in the case of **Sahib Ram** (*supra*).

(10) Consequently, the writ petition is allowed. Orders (Annexures P-3, P-4 and P-6) are quashed. No costs.

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**R.N.R.**

*Before Mehtab S. Gill and Surya Kant, JJ.*

KULWINDER SINGH,—*Appellant*

*versus*

STATE OF PUNJAB,—*Respondent*

*Crl. Appeal No. 110-DB of 2005 &  
Murder Reference 2 of 2005*

5th July, 2005

*Indian Penal Code, 1860—S. 302—Gruesome murders by the accused of his own maternal grand-mother and maternal sister, in a most brutal, cold-blooded and barbaric manner without any provocation—Motive of the accused to rape his own maternal sister—Accused ravishing a pious and sacred relationship, betraying trust and impairing social values—Death sentence—Only in such cases where something uncommon about the crime for which imprisonment for life will be an inadequate sentence—Murder of two unarmed hapless/helpless women—Act of accused committing murders diabolic*

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*of the most superlative degree—Accused well educated and fully aware of the consequences of the sinister designs which he planned—Though it was the first crime against the accused but it contains all ingredients to conclude that he possesses a perfect criminal bent of mind—Possibility of reforming the accused, a cunning person with a sharp brain full of criminal instincts, is a great risk which can hardly be afforded by a civilised society—Crime falls within the exception of rarest of the rare cases—Death sentence awarded to the accused confirmed.*

*Held*, that the accused attempted to rape one of the victims and having not succeeded on account of the strong resistance put up by the young girl, brutally murdered her. He also did not spare the old woman, the second victim, to whom he inflicted as many as 16 injuries. It stands established that there was no provocation, whatsoever, by either of the victims, rather the accused went inside the room in the Bara in a pre-planned manner to commit forcible sexual intercourse with Hardip Kaur. The injuries found on the person of the accused on his medico-legal examination coupled with the other circumstantial evidence on record, there can be no doubt but to conclude that the brave girl, before losing her life, fought for her dignity and self respect which is fundamentally guaranteed in a civilised society. Tragically, the young girl lost her life at the hands of a person from whom she must have expected brotherly love, affection and protection from evils in society. The accused, firstly, betrayed the trust which the young girl must have reposed in him, while she allowed him to enter the room without any hue and cry, and then he attempted to rape her. It appears that the accused had not only gone in a pre-planned way of commit rape, he had also planned the fallout thereof. In a rebuilding manner, he wanted the young girl either to become a wolf's prey or to face the jaws of death, she for the sake of self-respect, dignity, social values and ethics, chose the latter—fought and lost. The courage, morality, strong will-power and the bravery exhibited by Hardip Kaur cannot go unnoticed like an unsung hero. It must get its due rewards.

(Para 40)

*Further held*, that the old, hapless and helpless Joginder Kaur—second victim had done nothing wrong to meet such a fate. Having seen that the accused had released monestrous attack upon her grand-

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daughter, she came to her rescue not knowing that lust had turned the accused blind eyed and like a hungry wild animal, he would not spare her also. Sixteen injuries on her person, each one telling how much she must have wailed for life when blow after blow was being inflicted, speaks loudly enough that the accused has absolutely no sentiments what to talk of any respect for humanity, human dignity, social values or the society itself.

(Para 41)

*Further held*, that it is true that the case in hand is the first reported crime against the accused but it contains all ingredients to conclude that he possesses a perfect criminal bent of mind. After committing the gruesome and barbaric murder of two women, the accused had no remorse on his face, rather he immediately planned as how to go scot-free. The accused appears to be a cunning person with a sharp brain full of criminal instincts. The possibility of reforming such a person is a great risk which can hardly be afforded by a civilized society.

(Paras 42 & 43)

*Further held*, that we are aghast and disappointed to see the manner in which the lady Municipal Councillor despite knowing it well that the accused had already been held guilty of committing attempt to rape a girl who happened to be his sister in relation as well as her murder along with that of her grand-mother, did not hesitate in deposing that the accused "bears good moral character and never he did any wrong and shameful act". We hope and trust that the public representatives in addition to concentrating on their vote banks, will also be more considerate of their duties towards the society. We, accordingly, discard the statement of the lady Municipal Councillor which does not inspire any confidence. There is no other evidence on record to suggest any repentance or remorse by the accused for committing such a ghastly and sinful crime.

(Para 44)

*Further held*, that the case in hand is not a simpliciter case of murder of two unarmed, hapless and/or helpless women or of an attempt to rape upon one of them. It is a case where a pious and sacred relationship has been ravished, trust has been betrayed and social

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values have been impaired. The society survives on social values and commitment by social beings to conform to such values. This strengthens the social bonds which at times are stronger than the laws of the land. The accused has, however, belligerently defied the social order. Any leniency shown towards the accused, therefore, is likely to send wrong signals to the society apart from an adverse psycho-fear in the female folk.

(Para 45)

*Further held*, that the crime against women is rising with extra-ordinary abnormality. The time is ripe when the Courts will have to alarm themselves with the fact that too liberal attitude leading to disproportionately lesser punishments viz the nature of crime, has encouraged the incorrigible anti-social elements. The bonanza of paroles, remissions, furloughs and/or en-block release of convicts on the over of certain historical days by the Executive, has failed to serve any good rather has led the hard-core criminals to believe as if the "life imprisonment" is just a temporary stay for a few years.

(Para 45)

*Further held*, that the abnormal increase in crime against women is one of the root cause in creating chaotic and fearful social conditions, especially for the down-trodden and middle class families who find themselves totally exposed to the lecherous eyes of the criminals. It is high time that deterrent punitive measures are taken failing which we will land ourselves in a situation of no return. It is in this context and backdrop that we find the accused not only guilty of committing ruthless crime against the two victims but equally guilty of committing a crime against the society.

(Para 45)

*K. S. Ahluwalia & Ms. Anju Sharma, Advocates, for the appellant.*

S.S. Randhawa, Senior Deputy Advocate General, Punjab, for the respondent assisted by Harsh Aggarwal, Advocate, for the complainant.

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JUDGMENT

SURYA KANT, J.

Hovering between life and death, Kulwinder Singh (hereinafter referred to as the accused) has put us in a piquant dilemma on the quantum of punishment especially when the 'sin' protruding out of the crime for which he has been found guilty, protests against any mercy.

(2) On the fateful day, i.e., 4th August, 2002 at about 2.30 P.M. Sarabjit Singh, s/o Avtar Singh heard noise of his grand-mother Joginder Kaur emanating from inside the room built in the *Bara* (courtyard). He rushed to the *Bara* and after opening the door of the room saw that the accused was attacking with a *gandasi* on the neck of his grand-mother Joginder Kaur who was the **maternal grand-mother in relation** to the accused as well. On seeing Sarabjit Singh the accused fled away along with his *gandasi*. When Sarabjit Singh went inside the room, he was horrified to see that his sister, Hardip Kaur, aged 17 years, was also lying near the heap of wheat husk smeared with blood and was crying for help. When he rushed to help Hardip Kaur, she told him that the accused had entered the room in with a sinister design to commit rape upon her and since she resisted, the accused firstly put her *chunni* around her neck and tried to strangle. Meanwhile, her grand-mother Joginder Kaur reached there and she too fell a prey at the hands of the accused who gave *gandasi* blows on the neck of Joginder Kaur. Hardip Kaur also told her brother Sarabjit Singh that she was also caused multiple injuries on her head and chin with a *danda* by the accused. After a few seconds only, both Hardip Kaur and Joginder Kaur succumbed to their respective injuries. The complainant—Sarabjit Singh also found a silver locket in a black thread in the right fist of his sister Hardip Kaur upon which "Kulwinder Singh" was inscribed in English.

(3) On the statement of Sarabjit Singh, FIR Ex. PE was registered and the accused was arrested and put to trial, during the course of which he moved an application dated 4th February, 2003 that "he being of unsound mind, is unable to understand the proceedings of the court and as such further proceedings be postponed in view of Section 329 Cr. P.C." The accused was accordingly referred for medical check-up before the Civil Surgeon, Hoshiarpur where

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upon the Psychiatrist of the Civil Hospital, Jalandhar, submitted a report that the accused's thorough examination "does not reveal any disorder at present." The learned Sessions Judge accordingly held that the accused was sane and fit to face the trial. When trial proceeded further and prosecution evidence was concluded, the accused came out with the plea of alibi that on 4th August, 2002, i.e., the day of occurrence, he was in fact got admitted in Jaskaran Hospital at Nawanshahar at about 2 P.M. by none else than Avtar Singh, father of the complainant (Sarabjit Singh) as well as of the deceased victim (Hardip Kaur). He produced Dr. Inder Mohan Singh (DW 1) in that regard as also his brother Surjit Singh (DW 2) who in addition to supporting the plea of alibi, further deposed that the accused was falsely implicated due to property dispute with the complainant party and that the deceased Hardip Kaur was sister of the accused in relation and another deceased Joginder Kaur was his maternal grandmother.

(4) Dr. Gurpal Singh (PW 5) who conducted post-mortem on the dead body of Hardip Kaur, d/o Avtar Singh, found following injuries on her body :—

1. An incised wound 5×1 cm present on the forehead, 4 cm above the bridge of nose, was present vertically in midline and bone deep.
2. An incised wound 5.5 cm × 0.5 cm present on the left side head, 2 cm left to the injury No. 1 and 3.
3. An incised wound 7cm × 1 cm present on the left side of head, 5.5 cm above the left eye-brow near the hair line.
4. An incised wound 4.5 cm × 1.5 cm present on the left side of forehead, 1 cm from the midline and 4.5 cm above the bridge of nose was present, downwards and upwards.
5. An incised wound 6 cm × 1.5 cm present on the left side of forehead, started from the middle of left eye-brow, upward and downward.
6. An incised wound present on the left side of head, 1 cm away from injury No. 2, started back to the left.
7. Lacerated wound 3 cm × 1 cm present on the right side of head, 4 cm from the back of right pinna ear. It started downwards and backwards. Underline bone was cut.

8. Incised wound 2 cm × 1.5 cm present on the right side of head, 3 cm above and 3 cm from the right pinna ear.
9. Lacerated wound 4.5 cm × 1 cm present on the right of head 1 cm from mid-line and 10 cm above the pinna of right ear.
10. Incised wound 3.5 cm × 0.6 cm present on the right eye lid on the outer half.
11. Incised wound 1 cm × 0.3 cm present on the bridge of nose, underline bone was fractured.
12. Incised wound 5.5 cm × 0.8 cm present on the chin started from midline towards the pinna of left ear.
13. Incised wound 3.5 cm × 0.5 cm present on the chin, 1 cm below the injury No. 12.
14. Incised wound 2 cm × 0.2 cm present on the left eye brow.

According to the doctor, all the injuries were ante-mortem in nature and cause of death was asphyxia as a result of strangulation and multiple head injuries which were sufficient to cause death in an ordinary course of nature. He further deposed that “probable time between injuries and death was within a few minutes”. In his cross-examination, he admitted that during the post-mortem examination, he did not find that she was subjected to sexual intercourse before her death and no semen was found on the swab of Hardip Kaur by the Chemical Examiner.

(5) On the same day at about 3.25 PM, Dr. Gurpal Singh also conducted post-mortem on the dead body of Joginder Kaur widow of late Gurmit Singh and found following injuries on her body :—

1. Incised wound 4 cm × 0.5 cm present on the right side of forehead 1 cm from midline 1 cm above the base of nose, vertically placed.
2. Incised wound 4.2 cm × 0.5 cm present on the right side of forehead, vertically placed, two cms towards right from the injury No. 1, 1 cm above the right eye-brow.
3. Incised wound 4.8 cm × 1 cm present in the midline of the head from hairline starts 3.5 cm from injury No. 1.

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4. Lacerated wound 8.4 cm × 2.2 cm present on the left side of the forehead extends upwards from the outer side of left eye-brow.
  5. Incised wound 6 cm × 2 cm present on the left side of head, just lateral to injury No. 4 and 5cm above the pinna of left ear.
  6. Incised wound 5.5cm × 1.5cm present on the left side of head, 2.5 cm from pinna of left ear.
  7. Incised wound 4.2 cm × 2 cm present on the left side of head, 1 cm above the injury No. 5 and 5 cm above the pinna of left ear.
  8. Irregular lacerated wound 9.5 cm × 5 cm present on the left side of head on the temporal parietal region, 3.5 cm above the pinna of left ear. Underlying bone was fractured and infiltration of blood was present.
  9. Lacerated wound present over the left pinna of ear and back of temporal region, 6 cm × 1 cm.
  10. Incised wound 15 cm × 2 cm present on the front of neck from left to right, underlying tissue including trachea was cut.
  11. Incised wound 5 cm × 2 cm present on the right side of neck, 5 cm below the pinna right ear.
  12. Incised wound 8 cm × 0.4 cm present on right side lower jaw, 4 cm from the centre of chin.
  13. Incised wound 4.8 cm × 1.5 cm back of right hand, 3 cm below the right wrist joint.
  14. Incised wound 3 cm × 0.5 cm present on the right wrist joint on the outer side.
  15. Incised wound 3.5 cm × 0.5 cm present on the front of index finger, left hand at the base of the 2nd phalynx with fracture of 3rd phalynx.
  16. Reddish blue bruise present on the back of right thigh, 24 cm below the anterior superior iliac supine.



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All the injuries were found to be ante-mortem in nature and the cause of death was asphyxia as a result of throat injury and injury to brain which were sufficient to cause death in an ordinary course of nature.

(6) It is equally material to mention here that Dr. Gurpal Singh also held medical examination of the accused on 10th August, 2002 and found following injuries on his person :—

- “1. Multiple scabbed abrasions four in number  $5 \times 0.2$ ,  $4 \times 0.2$  cm,  $3.5 \times 0.3$  cm,  $2 \times 0.2$  cm present on the right side of the chest in the supra clevicular area and the scab were falling off.
2. Multiple scabbed abrasions in an area  $8 \text{ cm} \times 5 \text{ cm}$  present on the front of the neck, 5 cm below the larynx vertically places. Scab were falling off at places.”

(7) On an appreciation of the entire evidence on record, the learned Sessions Judge, Hoshiarpur,—*vide* his judgment, dated 21st October, 2003, in relation to the prosecution's case that the accused firstly made an attempt to rape Hardip Kaur, returned the following finding of fact :—

- “23. As is being depicted by the photographs Ex. P8 to Ex. P14 of the deceased—Hardip Kaur, her private part is naked and her Salwar is lying a little bit below her private part and the string of her salwar appears to have fallen on her private part, which gives rise to the presumption that motive behind the occurrence was rape upon the deceased Hardip Kaur.....”

The Learned Sessions Judge held that Sarabjit Singh (PW 6) had witnessed the occurrence to the extent that he saw the accused giving gandasani blow to his grand-mother Joginder Kaur and thereafter fleeing away alongwith the weapon and that deceased Hardip Kaur was in a position to disclose to the said witness that the accused had attempted to rape her and that on resistance she was attacked. In addition, the Learned Sessions Judge, on the assumption that even if the occurrence was not witnessed by Sarabjit Singh (PW6), yet the accused was guilty of committing the murder of Hardip Kaur and Joginder Kaur as established by the circumstantial evidence, the

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events of which were summarised in paragraph 42 of the judgment. Thus, the Learned Session Judge having been satisfied that the motive of the accused was to rape Hardip Kaur and in that process he committed the murder of Hardip Kaur and her grand-mother Joginder Kaur in a most brutal and barbaric manner, concluded as follows :—

“47. .... Adverting to the facts of the current case, the motive was rape. The convict just to satiate his sexual hunger knowing no bounds either social or legal, resorted to butcher the deceased Hardip Kaur. Their sensitive and vital parts above body trunk were assaulted in a brutal and barbarous manner. He also went to the extent to strangulate the prey of her sexual satiation i.e., Hardip Kaur. He appears to have acted as a ‘Yamraj’ on the prowl. Such horrendous, heinous act, in my considered opinion, improbablises that he would not commit criminal acts of violence as would constitute a continuing threat to the society. If he is not guillotined or kept off the gallows....”

The accused, was, thus, sentenced to death.

(8) On reference, a Division Bench of this Court,—*vide* its elaborate judgment dated 20th September, 2004, held that Sarabjit Singh (PW6) had witnessed the occurrence and concluded that “we are of the opinion that there can be no doubt that Hardip Kaur was capable of making her dying declaration”. The Division Bench further held that :—

“.... We also find that the eye-witness account is clearly supported by the other evidence. The accused was arrested on 9th August, 2002 and was subjected to a medical examination by Dr. Gurpal Singh. The doctor found multiple abrasions four in number  $5 \times 0.2$  cm,  $4 \times 0.2$  cm,  $3.5 \times 0.3$  cm and  $2 \times 0.2$  cm on his person with the duration of the injuries being within seven days. In cross examination, the doctor clarified that these abrasions could also be within 4 to 7 days, which would bring them within the time as per the prosecution story. Mr. Virk is, therefore, right in pointing out that the situs of the injuries clearly shows that they had been suffered by Kulwinder Singh when the deceased had attempted to defend themselves.”

The Bench thereafter concluded that the conviction of the accused had been rightly recorded.

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(9) The Division Bench, however, was of the view that the learned Sessions Judge ought to have afforded opportunity to the accused to bring mitigating circumstances on record before the final order imposing the death sentence had been announced. The Bench, therefore, while maintaining the conviction, set aside the award of death sentence and remanded the matter to the Sessions Judge, Hoshiarpur to grant an opportunity to the accused to produce such evidence/documents that he may feel necessary on the aforesaid question and thereafter to reconsider the quantum of sentence.

(10) In terms of the opportunity granted by this Court referred to above, the accused produced a character certificate (Ex. DW3/A) issued by the Doaba Arya Senior Secondary School, Nawanshahar in the year 1992-93 and the Certificates Ex. DW6/A to DW6/I pertaining to his academic qualifications of matriculation, graduation, sports certificate of participation in Football competition in the year 1995-96 and that regarding diploma in Systems Management completed in the year 1997-98 from a Computer Research Centre at Nawanshahar. He also produced DW3 Harbans Lal Taneja, a retired Principal of Doaba Arya Senior Secondary School, Nawanshahar who regarding the Character Certificate Ex. DW3/A issued in the year 1992-93 deposed that "in routine, we issue character certificates to the students who studied in our school as per school record." DW4 - Jinderjit Kaur, a Municipal Councillor from Ward No. 5 of Nawanshahar appeared and deposed that the accused and his family were known to her being residents of the Ward she was representing and that there was interaction between her and the accused and his family members and that the accused bears good moral character and "never he did any wrong and shameful act". Ramesh Chand (DW 5), who deposed on 19th January, 2005, was the landlord of the house in which the accused and his family members remained tenants for about 15 years. According to him though the accused and his family members had vacated the tenanted premises about five years back but he could vouch-safe about the good conduct and behaviour of the accused. The brother of the accused Surjit Singh against appeared as DW 6 and tendered the certificates Ex. DW 6/A to DW 6/I in evidence. Prof. Santokh Singh Aujla (DW 7) a Lecturer in Sikh National College, Banga deposed that the accused had been his student in B.A.-I and B.A.-II and was very obedient and also a football player. In his cross-examination, Professor Santokh Singh Aujla admitted that he had taught the accused in the year 1994-95. The accused himself did not

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come in the witness box and the evidence on the quantum of sentence was closed on his statement.

(11) The learned Sessions Judge on scanning of the aforesaid evidence and after weighing the same vis-a-vis the aggravating circumstances,—*vide* his judgment and order dated 22nd January, 2005, has again held that the case in hand falls within the exception of “rarest of the rare cases” and the accused deserves to be hanged by the neck till his death.

(12) We have heard Shri K.S. Ahluwalia, learned counsel for the accused as well as Shri S.S. Randhawa, learned Senior Deputy Advocate General, Punjab assisted by Shri Harsh Aggarwal-II, Advocate for the complainant at length on the quantum of sentence and have minutely gone through the entire record especially the evidence produced by the accused in support of the mitigating circumstances, a detailed reference to which has been made in the later part of this judgment.

(13) Highlighting the mitigating circumstances which should find favour with us to commute the death sentence into imprisonment for life, Shri Ahluwalia, learned counsel for the accused also relied upon the following judgments of the Apex Court in which the accused were found guilty of committing multiple murders along with sexual offence, and the Apex Court for the reasons mentioned in each of such case, commuted the death sentence into life imprisonment :—

- (i) **Rony @ Ronald James *versus* State of Maharashtra (1),**
- (ii) **Mohammad Chaman *versus* State (NCT of Delhi) (2).**

Shri Ahluwalia also relied upon the Constitution Bench judgment in **Bachan Singh *versus* State of Punjab (3)**, and the one in **Machhi Singh *versus* State of Punjab (4)**, to contend that the case in hand does not fall amongst the ‘rarest of rare cases’ especially when the motive of the accused was not to commit the murders but to rape one of the victims, namely, Hardip Kaur. He also relied upon a Division Bench judgment dated 23rd September, 2004

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- (1) AIR 1998 S.C. 1251
  - (2) 2001 S.C.C. (CrI.) 278
  - (3) AIR 1980 S.C. 898
  - (4) 1983 (3) S.C.C. 470

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of this Court in Criminal Appeal No. 214-DB of 2004 (**Ratan Singh versus State of Haryana**) in which the accused was found guilty of sodomising and thereafter killing a child of about six years but this Court while declining the reference, commuted the death sentence to life imprisonment. Reliance has also been placed upon another Division Bench judgment dated 30th November, 2004 passed in Murder Reference No. 4 of 2004 (**State of Punjab versus Gagan Kanojia and another**) wherein two minor children, who were brother and sister, were kidnapped for ransom and were done to death in a most brutal manner but the Bench commuted their death sentence to life imprisonment.

(14) On the other hand, Shri S.S. Randhawa, learned Senior Deputy Advocate General, Punjab vehemently contended that the aggravating circumstances if compared vis-a-vis the mitigating circumstances, the present case falls within the four-corners of "the rarest of rare cases" warranting the extreme penalty of death sentence. According to Shri Randhawa, the accused is guilty of (i) attempting rape upon a young girl of about 17 years who was none else than his sister in relation; (ii) he was not too young who could not have controlled his sexual urges; (iii) the manner in which the accused assaulted Hardip Kaur is a horrifying tale and the brutality exhibited by him in the course of his monstrous attack upon both the victims completely washes away the mitigating circumstances, if any. He has placed reliance upon the recent judgments of the Apex Court in the case of (i) **State of U.P. versus Satish** (5), (ii) **Holiram Bordoloi versus State of Assam** (6), (iii) **Simon versus State of Karnatka** (7), (iv) **Sushil Murmu versus State of Jharkhand**, (8), (v) **Parveen Kumar versus State of Karnatka** (9), (vi) **State of Rajasthan versus Kheraj Ram** (10), (vii) **Dayanidhi Bisoi versus State of Orissa** (11), and (viii) **Gurdev Singh and another versus State of Punjab** (12).

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- (5) 2005 (3) S.C.C. 114  
(6) 2005 (3) S.C.C. 793  
(7) 2004 (2) S.C.C. 694  
(8) 2004 (2) S.C.C. 338  
(9) 2003 (12) S.C.C. 199  
(10) 2003 S.C.C. (2) (Crl.) 1979  
(11) 2003 (2) S.C.C. (2) (Crl.) 1798  
(12) 2003 S.C.C. (2) (Crl.) 1616

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(15) Firstly, we recapitulate the general principles laid down by the Hon'ble Supreme Court in relation to the proportionality between crime and the punishment.

(16) A Constitution Bench of the Apex Court in **Bachan Singh versus State of Punjab (supra)**, struck a balance between the protagonists of the deterrent punishment on one hand and the humanists crying against death penalty on the other hand, by holding that death sentence should be imposed in 'rarest of the rare cases' and laid down certain parameters/guidelines to be kept in view by the courts while deciding the quantum of punishment.

(17) The guidelines spelt out in **Bachan Singh's case (supra)** were explained by their Lordships of the Supreme Court in **Machhi Singh's case (supra)**, holding that the following questions may be asked and answered as a test to determine the "rarest of rare case" in which death sentence can be inflicted :—

- (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 ?

17-A. The following guidelines need to be applied to the fact of each individual case where the question of imposition of death sentence arises :—

- (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. Death sentence must be imposed only when the life imprisonment appears to be an altogether inadequate

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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 mitigating circumstances before the option is exercised.

(17-B) In rarest of rare cases when collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances:—

- (1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.
- (2) When the murder is committed for a motive which evinces total depravity and meanness; e.g., murder by hired assassin for money or reward or a cold-blooded murder for gains of a persons *vis-a-vis* whom the murderer is in dominating position or in a position of trust, or murder is committed in the course of betrayal of the motherland.
- (3) When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of “bride burning” or “dowry deaths” or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account infatuation.

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- (4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.
- (5) When the victim of murder is an innocent child, or a **helpless woman or an old or infirm person** or a person *vis-a-vis* whom the murderer is in a dominating position or a public figure generally loved and respected by the community.

(18) In **Allaudin Mian versus State of Bihar (13)**, the accused came armed with deadly weapons in order to kill PW6 who escaped to the adjoining room. The accused, however, killed his two innocent daughters. They were awarded death sentence which was confirmed by the High Court also. On an appeal, the Hon'ble Supreme Court held that unless the nature of the crime and the circumstances of the offender reveal that the "criminal is a menace to the society" and "the sentence of life imprisonment would be altogether inadequate" the punishment of death should be reserved for exceptional cases in which the crime is so brutal, diabolical and revolting so as to shock the collective conscience of the community.

(19) It thus, emerges out in unequivocal terms that the death sentence can be awarded only if there is something uncommon about the crime for which imprisonment for life will be an inadequate sentence; 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; the crime is of the gravest and extreme culpability and has shocked the collective conscience of the community. The instances of gravest crime where death sentence can be awarded, as illustrated by the Apex Court, include crime against women especially when the victim is a 'helpless old women' or a person *vis-a-vis* whom the murderer is in a dominating position or in a position of 'trust'.

(20) The avowed object behind appropriate quantum of sentence has been well concised by their Lordships of the Supreme Court in **Kheraj Ram's case** (*supra*) holding that :—

"38. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of



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sentence. The practice of punishment all serious crime with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionately has disappeared from the law only in recent times. Even now a single grave infraction is thought to call for uniformly drastic measures. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.”

(21) In **Rony @ Ronald James’s case** (*supra*), though the appellants were found guilty of committing rape apart from multiple murders in a pre-planned manner, their Lordships of the Supreme Court after observing that it was not possible to predict as to who among the three appellants played which part and it might be that role played by one has been more culpable in degree than that of others and *vice-versa* and in a case like that in which it was not possible to say as to whose case falls within the rarest case and since the possibility of reform and rehabilitation could not be ruled out, therefore, the capital punishment was commuted into life imprisonment.

(22) In **Mohd. Chaman’s case** (*supra*), the appellant was found guilty of committing rape and murder of one and a half years old baby girl. Though it was held by the Apex Court that the nature of the crime revealed a dirty and perverted mind of a human being who had no control over his carnal desires, their Lordships were not persuaded to accept that it was a case of rarest of rare deserving death as the appellant was not held to be such a dangerous person that to spare his life will endanger the community.

23. In **Rattan Singh alias Bhola’s case** (*supra*), a Division Bench of this Court though held that the appellant had betrayed the confidence reposed in him as a neighbour and took the child of about six years with a nefarious design and brutally sodomised and killed him, however, the accused being a young man of 19 years of age, it was observed that he was not discerning enough to visualise clearly the extent and enormity of his crime.

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Similarly, the Bench commuted death penalty into imprisonment for life in **Gagan Kanojia's case** (*supra*), after observing that the accused were 21-22 years of age at the time when the crime was committed.

(24) In **Satish's case** (*supra*), the accused was held guilty of committing rape and murder of a six years old girl child. Though he was convicted by the Sessions Judge but was acquitted by the High Court. Setting aside the acquittal and holding the accused guilty, their Lordship of the Supreme Court held as follows :—

“31. Considering the view expressed by this Court in **Bachan Singh** case and **Machhi Singh** case we have no hesitation in holding that the case at hand falls in the rarest of rare category and death sentence awarded by the trail court was appropriate. The acquittal of the respondent-accused is clearly unsustainable and is set aside. In the ultimate result, the judgment of the High Court is set aside and that of trail court is restored. The appeals are allowed”.

(25) In **Holiram Bordoli's case** (*supra*), the accused were found guilty of committing multiple murders in a most brutal and barbaric manner and the victims included a young boy aged about six years who had initially managed to come out of the burning house but was mercilessly thrown into the fire by the accused. After taking notice of the statement made by the accused under section 235(2) Cr.P.C., the Supreme Court observed that the silence of the appellant in his afore-mentioned statement showed that he had no repentance for the ghastly act he had committed and there being no spark of kindness or compassion and his mind being totally brutal and the entire incident would have certainly shocked the collective conscience of the community, upheld the award of death sentence.

(26) In **Simon's case** (*supra*), the accused were found guilty of indulging in to an organised crime as members of a gang which with its reign of terror in the area were running their own parallel administration. Their Lordships of the Supreme Court, exercising suo-motu powers, enhanced the sentence from imprisonment for life to death sentence.

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(27) In **Sushil Murmu's case** (*supra*), the accused was held guilty of committing murder of a 9 years old child in a most brutal and diabolic manner in order to sacrifice him. It was held that the accused completely lacked the psyche or mindset which can be amenable for any reformation; he diabolically designed in a most dastardly and revolting manner to sacrifice a very hapless and helpless child of another person for personal gain and to promote his fortunes by pretending to appease the deity.

(28) In **Parveen Kumar's case** (*supra*), the accused was closely related to the victims, being the son of the brother of one of the deceased, who were brutally murdered by him in order to commit robbery. While justifying the extreme penalty of death, the Apex Court observed as follows :—

“...The act in question cannot be construed as an act of revenge or arising out of a situation wherein the appellant was constrained to commit murders. Hardly three years before the incident in question, Appi, the aunt of the appellant had accommodated in her house despite her large family and gave him an opportunity in life to make an honest living as a tailor.....”

(29) In **Kheraj Ram's case** (*supra*), the accused was held guilty of committing brutal murder of his wife, two innocent daughters and his brother-in-law. He was suspecting the fidelity of his wife and on account of a self-serving assumption as if the two innocent daughters were not born from his loins that he committed the ghastly crime. He was convicted and sentenced to death by the Sessions Court but was acquitted by the High Court. Setting aside his acquittal, the Supreme Court held him guilty and after taking note of the fact that it was a deliberately planned and meticulously executed offence for which the accused had no remorse and the victims being two innocent children and a helpless women, found it to be one of the “rarest of rare case” and upheld the death sentence imposed by the trial court.

(30) In **Dayanidhi Bisoi's case** (*supra*), the accused was an **agnatic nephew of the deceased**. In order to commit robbery, the accused committed the murder of his brother in relation, that brother's wife and their three year old daughter. The Apex Court, while upholding the award of death sentence, observed as follows :—

“26. ... The fact that the murders in question were committed in such a deliberate and diabolic manner while the victims were sleeping, without any provocation whatsoever from

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the victims' side, that too having enjoyed the hospitality and kindness of the victims, indicates that cold-blooded and premeditated approach of the appellant to put to death the victims which included a child of three years' age just to gain some monetary benefit. In our opinion, the extenuating circumstances put forth by the learned counsel for the appellant in regard to the age of the appellant, his surviving relatives and the possibility of rehabilitation would not, in our opinion, justify the courts to impose a sentence of life imprisonment on the facts and circumstances of this case. ..."

(31) In **Dhananjay Chatterjee alias Dhana versus State of W.B.**, (14), the appellant was one of the security guards deputed to guard the building — Anand Apartment. He, however, brutally raped and murdered a young school going girl of 18 years of age living in one of the apartments. The trial court as well as the High Court awarded and confirmed the death sentence upon him. After upholding his conviction under section 302, 376 and 380 IPC, their Lordships of the Supreme Court while considering the question of sentence, expressed concern over the rising rate of violent crime against women and noticed that :—

“Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility.”

Their Lordships further observed :—

“In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public view the rights of the criminals but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.”

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(32) Upholding the award of death sentence to the accused in **Dhananjay Chatterjee's case** (supra), the Apex Court held that :—

“16. The sordid episode of the security guard, whose sacred duty was to ensure the protection and welfare of the inhabitants of the flats in the apartment, should have subjected the deceased, a resident of one of the flats, to gratify his lust and murder her in retaliation for his transfer on her complaint, makes the crime even more heinous. Keeping in view the medical evidence and the state in which the body of the deceased was found, it is obvious that a most heinous type of barbaric rape and murder was committed on a helpless and defenceless school-going girl of 18 years. If the security guards behave in this manner who will guard the guards? The faith of the society by such a barbaric act of the guards, gets totally shaken and its cry for justice becomes loud and clear....”  
(emphasis applied)

(33) In **Dharma versus Nirmal Singh alias Bittu and another, (15)**, the accused (Nirmal Singh) was charged for committing an offence of rape and murder. He was unfortunately acquitted by the trial court. The state did not file an appeal but the complainant invoked the revisional jurisdiction of this Court. His revision too was dismissed which led him to file Special Leave to Appeal before the Apex Court. Their Lordships, on re-appreciation of the entire evidence, held him guilty of committing an offence under Section 376/511 and 302 IPC. On the question of sentence, the Supreme Court having regard to the fact that : (i) the accused was aged around 19 years when the crime was committed; (ii) the occurrence had taken place in 1987 whereas he was found guilty in February 1996; (iii) the fact that he had been acquitted by the trial court which was not interfered with by the High Court as well, held it not to be the “rarest of the rare cases” and thus a composite sentence of imprisonment for life was awarded.

(34) In **Molai and another versus State of M.P. (16)**, the two appellants, one of whom was posted as a Guard in the Jail while the other was a convict undergoing sentence in the same jail, were sent by the Assistant Jailor at his residential quarter to do some household works, who taking undue advantage of the fact that 16 years old school-going daughter of the Assistant Jailor was alone in

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(15) (1996) 7 S.C.C. 471

(16) (1999) 9 S.C.C. 581

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the quarter, brutally raped and murdered her. The Apex Court, after observing that the accused not only committed a most shameful act of rape, they strangled the helpless girl and after causing injuries with a sharp edged weapon, exhibited their criminality in throwing the dead body into the septic tank in total disregard of a human dead-body, upheld the award of death sentence.

(35) In **Jai Kumar versus State of M.P. (17)**, the accused was found guilty of committing attempt to rape of his sister-in-law (brother's wife) and having faced strong resistance from the victim, he murdered her in a most gruesome and diabolic manner by severing her neck from rest of the body and also by cutting her fingers. The occurrence was witnessed by 8 year old daughter of the deceased who was none-else than the niece of the accused. In order to wipe out evidence of his previous crime, the accused killed his niece also by causing repeated blows with a *kulhari* on her neck. Having emphasized that "justice is supreme and justice ought to be beneficial for the society so that the society is placed in a better off situation" and that "law courts exist for the society and ought to rise up to the occasion to do the needful in the matter, and as such ought to act in a manner so as to subserve the basic requirement of the society" and while upholding the award of death sentence, the Apex Court held that the accused was guilty of committing gruesome murder of his own sister-in-law along with an innocent child and deserves no sympathy from the society. He was found to be a person of incorrigible character, a man of depravity and criminality who had no regard for the precious life of a young child, therefore, no compassion could be shown to him merely because he was 22 years of age as the savage nature of the crime had shocked judicial conscience of the court.

(36) In order to ponder over with coolest mind on the issue as to what should be the most appropriate sentence to be imposed upon the accused in the case in hand, we have made brief reference to the case law where in somewhat similar or near to similar facts, the aggravating circumstances *vis-a-vis* the mitigating circumstances were weighed and depending upon the outcome, the award of death sentence was upheld or commuted to imprisonment for life.

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37. Guided by these judicial precedents, we now proceed to refer the aggravating circumstances which are apparent on the record of this case :—

- (i) In order to satisfy his carnal urges, the accused entered the Bara (courtyard) where one of the victims — Hardip Kaur, a young girl of about 17 years of age was all alone, and pounced upon her to commit rape;
- (ii) Hardip Kaur, the victim, was none else than the **maternal sister of the accused**. Over-powered by insatiable lust for sex, the accused thought of neither the gravity of sin nor of the crime and wanted to have forcible sexual intercourse in total abhorance of the sacred and pious relationship;
- (iii) The injuries found on the person of the accused coupled with the fact that the locket which he was wearing in a black thread was found in the fist of the deceased (Hardip Kaur) tells tale of the strong resistance put up by the brave girl in order to save her self-respect and dignity ;
- (iv) Hardip Kaur not only refused to succumb under the physical and assaulting pressure mounted upon her by the accused, she did so at the cost of her life ;
- (v) The premeditated intention of the accused to rape Hardip Kaur, whatever be the consequences, is *writ large* by the fact that having failed in his nefarious design, he started assaulting her with a sharp edged weapon and inflicted not one but fourteen blows on the neck and above body parts ;
- (vi) The photographs reveal that the injuries were caused to deceased Hardip Kaur not only to kill her in no uncertain terms but to deface her beautiful and innocent face, exhibiting the hatredness for her in the perverted mind of the accused ;
- (vii) The other victim, namely, Joginder Kaur was none else than the *nani* i.e., **maternal grand-mother in relation** of the accused ;
- (viii) The only fault of the old, hapless and helpless woman was that on hearing the shrieks of deceased Hardip Kaur, she rushed towards the room where the appellant was physically assaulting Hardip Kaur and obviously she (Joginder Kaur) intervened to save her grand-daughter ;

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- (ix) The accused did not spare Joginder Kaur also to whom he caused as many as sixteen injuries, most of which are on the neck and above parts of the body. All these injuries have been caused with the sharp edged weapon, namely, the gandasi. A few injuries are there on the fingers/wrist of the hands to unravel the gory tale of unsuccessful efforts made by the old and crippled hands to save her vital parts from the blows. Nothing could arouse human feelings in the appellant who kept on inflicting one injury after the other out of which injuries No. 10 and 11 had almost separated the neck of the victim from rest of her body ;
- (x) The gruesome murders have been committed without any provocation and in a cold-blooded manner. As per his own evidence (Ex. DW3/A and DW6/A to DW6/C), the accused was borne on 16th April, 1975. He was, thus, more than 27 years of age on the date of occurrence which is sufficient enough to understand the social values, human relationships and enormity of the crime committed by him. He was not an adolescent who could not have overpowered his carnal urges ;
- (xi) The accused is well educated who graduated in the year 1996 and did Diploma in Systems Management in the year 1997-98. It cannot, thus, be believed that he was not aware of the consequences of the sinister designs which he had planned ;
- (xii) The gruesome manner in which murders have been committed, unerringly shows that the act was "diabolic of the most superlative degree" and it not only shocks judicial conscience of the court but the collective conscience of the society also stands trembled.

(38) As against these aggravating circumstances, Shri Ahluwalia, learned counsel for the accused very forcefully but in a humble manner and in order to implore compassion for the accused, has drawn our attention towards the mitigating circumstances, viz. :—

- (i) the accused is not a hard-core professional criminal and has no past history of indulging into even petty crimes;



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- (ii) the onus to prove that the accused cannot be reformed was upon the prosecution which has led no evidence in this regard despite opportunity given by this Court ;
  - (iii) thus there is nothing on record to suggest that the accused cannot be reformed ;
  - (iv) the accused who is an educated young-boy and found guilty of a solitary crime, cannot be termed as a menace to the society ;
  - (v) no offence under Section 376 IPC has been proved ;
  - (vi) the accused's teachers in school, college, the landlord of his family and the Municipal Councillor of the area have come forward and deposed that the accused bears good moral character and if spared, can reform himself to prove a good human being ;
  - (vii) the afore-said mitigating circumstances over-weigh the aggravating circumstances, clearly suggesting it not to be a "rarest of the rare case".

(39) We have given our thoughtful consideration to all the circumstances, aggravating as well as mitigating. We have also gone through the order passed by the learned Sessions Judge who, after the remand of this case, has again held that the case in hand falls in the category of the "rarest of rare cases" justifying the award of death sentence. We ourselves have also gone through the evidence produced by the accused on the quantum of sentence. In addition, we have also apprised ourselves with the pre-conviction evidence on record for the limited purpose of awarding appropriate sentence.

(40) It has already been conclusively established by the trial court as well as by a Division Bench of this Court that the accused attempted to rape one of the victims — Hardip Kaur and having not succeeded on account of the strong resistance put up by the young girl, brutally murdered her. He also did not spare the old woman (Joginder Kaur) to whom he inflicted as many as 16 injuries. It stands established that there was no provocation, whatsoever, by either of the victims, rather the accused went inside the room in the *Bara* in a pre-planned manner to commit forcible sexual intercourse with

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Hardip Kaur. The injuries found on the person of the accused on his medico-legal examination coupled with the other circumstantial evidence on record, there can be no doubt but to conclude that the brave girl, before losing her life, fought for her dignity and self respect which is fundamentally guaranteed in a civilized society. Tragically, the young girl lost her life at the hands of a person from whom she must have expected brotherly love, affection and protection from evils in society. She was 10 years younger in age to the accused and has been wiped away even before she could bloom and realize some of the dreams for future. The manner in which she was butchered with 14 injuries on her neck and above parts of the body excepts this case from normal murderous assault cases. The accused, firstly, betrayed the trust which the young girl must have reposed in him, while she allowed him to entre the room without any hue and cry, and then he attempted to rape her. To us, it appears that the accused had not only gone in a pre-planned way to commit rape, he had also planned the fallout thereof. In a rebalancing manner, he wanted the young girl either to become a wolfs prey or to face the jaws of death, she, for the sake of self-respect, dignity, social values and ethics, chose the latter— fought and lost. The courage, morality, strong will-power and the bravery exhibited by Hardip Kaur cannot go unnoticed like an unsung hero. It must get its due rewards.

(41) The old, hapless and helpless Joginder Kaur — the second victim had done nothing wrong to meet such a fate. Having seen that the accused had released monstrous attack upon her grand-daughter, she came to her rescue not knowing that lust had turned the accused blind eyed and like a hungry wild animal, he would not spare her also. Sixteen injuries on her person, each one telling how much she must have wailed for life when blow after blow was being inflicted, speaks loudly enough that the accused had absolutely no sentiments what to talk of any respect for humanity, human dignity, social values or the society itself.

(42) It is true that the case in hand is the first reported crime against the accused but it contains all ingredients to conclude that he possesses a perfect criminal bent of mind. After committing the gruesome and barbaric murder of two women, the accused had no remorse on his face, rather he immediately planned as how to go scot-free. He persuaded none else than the father and son of the victims,

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namely, Avtar Singh to take him to a private hospital in Nawanshahar where the accused got himself admitted on the pretext of some abdominal pain. In order to strengthen his plea of *alibi* and to cause some dent in the prosecution case, the accused came out with a false plea that he was got admitted in Jaskaran Hospital at Nawanshahar at about 2 P.M. It is a different matter that the prosecution has established that the accused, in fact, got himself admitted in the hospital after 4 P.M. for which he had sufficient time at his disposal to reach Nawanshahar after committing the crime.

(43) With a view to wriggle out of the clutches of law, the accused moved an application on 4th February, 2003 i.e., during the trial that "he was of unsound mind and unable to understand the proceedings of the Court". It was a crude attempt to stall the trial as well as to win sympathy of the court as if the gruesome crime was committed by him in a moment when he was of unsound mind. The medical experts, however, negatived this false plea as well. The accused, thus, appears to be a cunning person with a sharp brain full of criminal instincts. The possibility of reforming such a person is a great risk which can hardly be afforded by a civilized society.

(44) The facts and circumstances established on record also falsify the innocuous version of the witness who have been produced by the accused on the question of quantum of sentence. They are the persons who had seen his conduct and character either in the years 1992-93, 1994-95 or when he along with other family members was living in a rented accommodation vacated by his family five years prior to the occurrence. We are aghast and disappointed to see the manner in which Mrs. Jinderjit Kaur, the lady Municipal Councillor, despite knowing it well that the accused had already been held guilty of committing attempt to rape a girl who happened to be his sister in relation as well as her murder along with that of her grand-mother, did not hesitate in despoising that the accused "bears good moral character and never he did any wrong and shameful act". We hope and trust that the public representatives in addition to concentrating on their vote banks, will also be more considerate of their duties towards the society, We accordingly, discard the statement of Mrs. Jinderjit Kaur which does not inspire any confidence. There is no other evidence on record to suggest any repentance or remorse by the accused for committing such a ghastly and sinful crime.

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(45) It cannot be overlooked that the case in hand is not a simpliciter case of murder of two unarmed, hapless and/or helpless women or of an attempt to rape upon one of them. It is a case where a pious and scared relationship has been ravished, trust has been betrayed and social values have been impaired. The society survives on social values and commitment by social beings to conform to such value. This strengthens the social bonds which at times are stronger than the laws of the land. The accused has, however, beligerantly defied the social order. Any leniency shown towards the accused, therefore, is likely to send wrong signals to the society apart from an adverse psycho-fear in the female folk. The crime against women is rising with extra-ordinary abnormality. The time is ripe when the courts will have to alarm themselves with the fact that too liberal attitude leading to disproportionately lesser punishments viz the nature of crime, has encouraged the incorrigible anti-social elements. The bonanza of paroles, remissions, furloughs and/or en-block release of convicts on the eve of certain historical days by the Executive, has failed to serve any good rather has led the hard-core criminals to believe as if the "life imprisonment" is just a temporary stay for a few years. The abnormal increase in crime against women is one of the root cause in creating chaotic and fearful social condition, especially for the down-trodden middle class families who find themselves totally exposed to the lecherous eyes of the criminals. It is high time that deterrent punitive measures are taken failing which we will land ourselves in a situation of no return. It is in this context and backdrop that we find the accused not only guilty of committing ruthless crime against the two victims but equally guilty of committing a crime against the society.

(46) The cumulative effect of both the crimes carves out an exception in this case to bring it within the four-corners of the "rarest of rare cases" warranting no punishment less than the death sentence. We accordingly answer the reference in affirmative and confirm the death sentence awarded to the accused by the learned Sessions Judge, Hoshiarpur. However, the death sentence will not be executed till the limitation period for Leave to Appeal before the Hon'ble Supreme Court expires.

(47) Appeal is accordingly dismissed.