RAJASTHAN HIGH COURT
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**HIGH COURT OF JUDICATURE FOR RAJASTHAN**
**BENCH AT JAIPUR**

D.B. Criminal Death Reference No. 1/2026
CNR: RJHC020096892026 | URN: CRLDR / 1U / 2026

Rajasthan High Court
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State of Rajasthan Through P.P.

----Petitioner

Versus

intu Dagar Son of Shri Laddulal, Aged About 40 Years, Resident f Harijan Basti, Bhatapada Rampura Thana Kotwali Kota City, Rajasthan

----Respondent

Connected With

D.B. Criminal Appeal (DB) No. 304/2026
CNR: RJHC020648132026 | URN: CRLAD / 525U / 2026

Pintu Dagar Son of Shri Laddulal, Aged About 40 Years, Resident of Harijan Basti, Bhatapada Rampura, Thana Kotwali, Kota City, Rajasthan (At Present Confined In Central Jail, Jaipur).

----Accused/Appellant

Versus

State of Rajasthan Through Public Prosecutor.

----Respondent

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| | | |
|---|---|---|
| For Petitioner(s) | : | Mr. Amit Kumar Punia, PP with<br>Mr. Anirudh Singh<br>Mr. Sandeep Singh Shekhawat with<br>Mr. Anirudh |
| For Respondent(s) | : | Mr. S.S. Hasan, Sr. Adv. assisted by<br>Mr. Ajay Sharma,<br>Mr. Arun Singh Shekhawat,<br>Mr. Fahad Hasan,<br>Mr. Aquif Khan,<br>Mr. Ishan Raj Khan and<br>Mr. Anas Khan<br>Mr. Ashvin Garg, Amicus Curiae with<br>Mr. Mohit Goyal |

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**HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL**
**HON'BLE MR. JUSTICE PRAVEER BHATNAGAR**

**Judgment**

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**Date of Conclusion of Arguments : : 16/09/2026**
**Judgment Reserved On : : 16/09/2026**
**Whether the full judgment or**
**only the operative part is pronounced : : Full Judgment**
**Judgment Pronounced On : : 03/10/2026**

Rajasthan High Court
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**Per Hon'ble Mahendar Kumar Goyal, J.**

Vide impugned judgement dated 22.01.2026 and the order dated 23.01.2026, the learned Additional Sessions Judge No.2, Kota (for short-`the learned trial court') has, in Sessions Case No.387/2021 (CNR No.RJKT010062052021), convicted and sentenced the accused Pintu Dagar as under:

> "**Under Section 302 IPC:** Death Sentence and fine of Rs.50,000/-; in default whereof, six months' additional rigorous imprisonment."

The death reference No.1/2026 has been submitted by the learned trial court under Section 366 of the Code of Criminal Procedure for confirmation of the death penalty by this Court.

The criminal appeal no.304/2026 has been preferred by the accused-appellant (for brevity-`the appellant') under Section 374 Cr.P.C./415 BNSS, 2023 against the judgement of conviction and order of sentence.

Since both the death reference and the criminal appeal arise out of the same judgement of conviction and order of sentence, the same have been heard together and are being disposed of vide this common judgement.

**Factual Matrix:**

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The skeleton facts, essential for disposal of the controversy involved in the matter, are that the complainant Pradeep Kumar (PW1) submitted a written report (Ex.P1) with SHO Police Station Rampura Kotwali, Kota City on 01.06.2021 at about 10.12 PM wherein, it was stated that his elder sister Seema was married to the appellant about 15 years ago. On that day, i.e., 01.06.2021, his sister had gone with the appellant from the house of his maternal uncle Rajesh at about 5 pm. He received telephonic information from Samrat Patona at about 7.30 pm that his sister Seema had been assaulted by the appellant with an axe whereupon, he and his maternal uncle Rajesh reached Bhatapada and upon reaching there, he came to know that Seema had been taken by the police to MBS Hospital. It was stated that when they reached the hospital, the doctors had declared Seema dead. It was alleged that the appellant used to quarrel and beat her regularly. It was also alleged that the appellant killed his sister Seema by inflicting axe blows on her head. Based thereupon, an FIR No.0071 dated 01.06.2021 (Ex. P2) was registered at the Police Station Kotwali, Kota City under Section 302 IPC. On the very next day i.e. 02.06.2021, Shri Pradeep Kumar submitted yet another written report (Ex.P3) at Police Station Kotwali, Kota City at about 8.00 am wherein, it was averred that at the time of submission of report on 01.06.2021 with regard to murder of his sister Seema, he was unaware that during the same episode of assault, the appellant had also inflicted axe blows on his nephew Avinash @ Rajvir in order to kill him resulting in injuries on his chest below the right hand as also on the anterior thoracic region.

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It was further stated that upon learning of the injuries suffered by Avinash, the injured was admitted to J.K. Lone Hospital and was undergoing treatment in the Emergency Ward. During the course of investigation, Avinash also expired.

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After investigation, the appellant was charge-sheeted under Section 302 IPC. The case was committed, being sessions trial, to the Court of the learned Sessions Judge, Kota.

Initially, a charge under Section 302 IPC was framed against the appellant with regard to murder of his wife Smt. Seema. However, the same was amended by the learned trial court vide order dated 19.01.2026 whereby, the charge of murder of his son Avinash @ Rajvir was also added.

During the course of trial, the prosecution examined 23 witnesses and exhibited 85 documents to drive home the charge. The appellant was examined under Section 313 Cr.P.C.. No evidence in defence was led.

After trial, the appellant has been convicted and sentenced by the learned trial court, vide its judgement dated 22.01.2026 and the order dated 23.01.2026 respectively, as stated hereinabove.

**Findings of the learned trial court:**

The perusal of the judgement impugned dated 22.01.2026 reflects that, while recording conviction of the appellant, the learned trial court has relied upon S/Shri Vijay Dagar (PW8), Vijay Kumar Bhoomliya (PW10) and Amit Singor (PW11) as the eyewitnesses who have stated that they saw the appellant, carrying an axe in his hand, dragging his wife Seema to the shop

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of Shri Vijay Kumar Bhoomliya and attempted to assault her there with the axe but, on an alarm raised by Shri Vijay Kumar Bhoomliya, he fled towards Rampura bazar leaving his wife behind. The learned trial court further considered their statement that Smt. Seema was covered in blood and the entire incident was captured in the CCTV camera installed at the shop. The learned trial court also relied upon the testimony of Shri Pradeep (PW1) wherein, he has stated that on 01.06.2021, the appellant and the deceased had visited his house at machis factory Dadwada and had gone back at about 4.00 pm. He further stated that at about 7-7.30 pm, he received a telephonic call from a boy named Virat, who informed that the appellant had struck his sister on head with an axe and was dragging her by the hair from their home to the road. It was held by the learned trial court that the aforesaid allegation of dragging by hair carrying an axe in one hand, also stood corroborated from the CCTV footage and the photographs of the place of incident.

While recording conviction of the appellant, the learned trial court has also appreciated the Forensic Science Laboratory report (Ex.P74) wherein, female DNA profile obtained from the blouse, stole and petticoat of the deceased matched with the DNA profile obtained from shirt and pant of the appellant as also from the axe recovered at his instance.

**Submissions on behalf of the appellant:**

It may be worthy to mention here that pursuant to direction of the Hon'ble Supreme Court of India in the case of **Aman Singh and another vs. State of Bihar-2026 SCC Online SC 720**, the

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Rajasthan State Legal Services Committee has appointed a legal team comprising Shri Syed Shahid Hasan-learned Senior Counsel assisted by S/Shri Ajay Sharma and Arun Singh Shekhawat, vide order dated 19.08.2026.

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In the death reference, when none appeared for the appellant despite service of notice, this Court appointed Shri Ashvin Garg-learned counsel as Amicus Curiae to assist it.

The appeal on behalf of the appellant has been filed by Shri Sandeep Singh Shekhawat-learned counsel.

Heard all the learned counsels.

The main thrust of their submissions is that it is a case based on circumstantial evidence as none has seen the appellant inflicting injuries on the deceased Smt. Seema or Avinash; but the prosecution failed to lead evidence to establish a complete chain of circumstances leading to the only hypothesis of his guilt. They submitted that prosecution case is that the appellant assaulted both the deceased persons in his room, dragged Seema to a place in front of the shop of Shri Vijay Kumar Bhoomliya (PW10) and as per testimony of the eyewitnesses present there, Seema was blood drenched. Inviting the attention of this Court towards the site plan of the scene of crime (Ex.P17), they contended that as per it, Seema was dragged from place `X' inside room of the appellant to place `X-2' in front of shop of the PW10 at a distance which measured 47 meters but, conspicuously, neither any blood trail was noticed along the way nor, body of the deceased Seema reflected any drag marks as is apparent from the postmortem report of her body (Ex.P33).

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They contended that had the body been dragged for a distance of about 47 meters on a road/public way, the postmortem report must have reflected corresponding dragging marks on it. They canvassed that not only were drag marks absent in the postmortem report but, the clothes of the deceased, removed by the doctors at the time of conducting the autopsy, were also not found to be torn.

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Learned counsel submitted that while, in the written report (Ex.P1), the complainant had averred that the telephonic message was given to him by Samrat Patona but, as PW1, he stated that a boy named Virat had informed him telephonically about the incident. They argued that while, Samrat Patona had turned hostile as PW9, Virat was not examined by the prosecution and thus, the prosecution story as to the source of information of the crime remained unsubstantiated.

Learned counsel contended that the learned trial court erred in connecting him with the crime with the aid of the alleged recovery of the axe at his instance without appreciating that the recovery was from an open place which was accessible to all and sundry, as is apparent from the statement of Shri Sher Singh (PW17)- a motbir witness to the seizure memo and Shri Hansraj (PW23)-the Investigating Officer. Learned counsel argued that the seizure of the axe could not have been relied upon by the learned trial court in absence of association of independent witnesses to its seizure. They submitted that PW17 has conceded that the axe recovered was a common household article. They asserted that none of the so-called eye witnesses, i.e., PW8, and PW10 and

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PW11 had claimed to have seen the axe to be blood stained nor, did its seizure memo (Ex.P27) reflect that it was blood stained; however, strangely, it was found to be so when subjected to FSL examination.

Learned counsel asserted that in absence of any evidence that the accused and the deceased were seen last together in the room-the scene of crime-where the deceased was allegedly assaulted, Section 106 of the Indian Evidence Act, 1872 (for brevity `the Act of 1872') could not have been employed by the learned trial court.

They submitted that the prosecution had miserably failed to establish that the appellant had murdered the child Avinash. Inviting the attention of this Court towards the postmortem report of his body (Ex.P46), they contended that it reflected a stitched wound of 2 cm length present at right axilla and on removing the stitches, the maximum width of the wound was found to be 0.5 cm with muscle deep depth. Angles of the wounds were acute. Second stitched wound of 1 cm length was found on the right upper chest with two stitches and on removing the same, the width of the wound was found to be 0.25 cm and subcutaneous in depth. Third injury was in the nature of an abrasion present medial to the injury no.2 and horizontally placed. They asserted that in view of the nature of the weapon of offence used i.e. an axe, that too with a blade edge of 7 cm, the injuries found to be present on the body were not possible. Referring to and relying upon the statement of S/Shri Akash (PW5) and Vikas (PW7), they contended that they both had attributed the injuries on Avinash's

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chest to a knife. They asserted that the deceased Avinash could not have been in the lap of the deceased Seema as, had it been so, on receiving the stab wounds, the blood emanating from his wounds must have stained her clothes. However, no DNA profile of child Avinash was found on her clothes. They submitted that further, no DNA profile of Avinash was detected on the clothes of the appellant indicating that he did not assault the deceased.

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Learned counsel submitted that the learned trial court gravely erred in relying upon the CCTV footage and the still photographs placed on record as Ex.P49 to Ex.P67. With regard to CCTV footage recorded in the Pen Drive, they contended that neither could the manner in which it was retrieved in the Pen Drive be proved nor, it was established by the prosecution that the Pen Drive was blank and did not contain extraneous material. They canvassed that indisputably, the same was not subjected to FSL examination to rule out any tampering with the footage stored therein. Furthermore, they asserted that PW10 denied during his cross-examination, having prepared the certificate under Section 65B(4) of the Act of 1872, i.e., the Ex.P22 rendering the CCTV footage inadmissible in evidence. They canvassed that since, the still photographs placed on record by the prosecution were obtained from the Pen Drive, it required the Section 65B(4) of the Act of 1872 certificate to render it admissible; however, no such certificate was submitted.

Learned counsel argued that no reliance could have been placed on the FSL report. Inviting the attention of this Court towards the cross-examination of Shri Hansraj (PW23)-the

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Investigating Officer, the learned counsel contended that he had admitted therein that Ex.P31-the forwarding letter issued by the S.P. to the Director, FSL, Jaipur sent along with the samples, did not contain the name of its carrier. They also submitted that there was a delay of 9 days in sending the samples to the FSL.

Lastly, they argued that although the case is based on circumstantial evidence but, the prosecution has offered no motive at all for commission of murder either of appellant's wife or of his son aged about six months, in the absence whereof, the prosecution testimony could not have been relied upon.

They, in the backdrop of the aforesaid factual context, prayed that while death reference may be answered in negative, the judgement of conviction and the order of sentence be quashed and set aside and he may be acquitted of the charge framed against him. In the alternative, it was canvassed by the learned counsel that the instant case does not fall in the category "rarest of the rare cases". It was asserted that the appellant belongs to a socio-economically disadvantaged class with a very poor financial background and has elderly parents as also a surviving minor son. Thus, it was prayed that the capital punishment may be commuted to the sentence of life imprisonment. They, in support of their submissions, relied upon the following judgements:

(1) Mohinder Singh vs. State of Punjab-AIR 2013 SC 3622;
(2) Kalu Khan vs. State of Rajasthan-(2015) 16 SCC 492;
(3) Ashok Kumar Pandey vs. State of Delhi-AIR 2002 SC 1468.

**Submissions on behalf of State:**

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E-converso, learned Public Prosecutor Shri Amit Punia, supporting the findings recorded by the learned trial court contended that the prosecution was able to establish a complete and unbroken chain of events leading to a conclusion only of guilt of the appellant. Shri Punia argued that from the testimony of PW8, PW10 and PW11, it was proved that the appellant had dragged the blood drenched body of Seema-his wife, carrying an axe in his hand, from his home to the shop of the PW10 and there also, he attempted to assault her but, on raising a hue and cry by the PW10, he fled from the scene carrying the axe. He submitted that not only the blood stained clothes worn by the accused at the time of commission of the crime were recovered but, the weapon of offence i.e. the axe was also recovered on the disclosure statement made by him and in view of the FSL report, it was proved beyond a shadow of doubt that it was used by him in commission of the offence. He, therefore, prayed that the reference be accepted/capital punishment be confirmed and the appeal be dismissed. With regard to sentence part, learned Public Prosecutor contended that the instant case can be categorised as "rarest of the rare cases" inasmuch as the appellant has hacked to death his helpless wife and their six month old child. He also submitted that the appellant has criminal antecedents and as many as five criminal cases were registered against him besides the instant case and in the case no.516/2003, he was sentenced by the learned Special Judge, (Women Atrocities Cases), Kota vide its judgement dated 06.08.2004 for 7 years rigorous

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imprisonment with fine of Rs.2500 for an offence under Section 376(2)(d) IPC.

**Analysis and findings:**

As per the prosecution case, the deceased Seema and the deceased Avinash @ Rajvir-wife and son of the appellant respectively, were hacked to death by him in the evening of 01.6.2021.

As per the postmortem report of the body of the deceased Seema (Ex. P33), she had sustained six injuries comprising an injury of 6.5 X 1.5 cm, bone deep, on the right side of back of neck which extended up to lower part of the skull. Its edges were clean cut and the injury was situated 1 cm away from the right earlobule**,** a bone deep wound 3.5 X 0.5 cm of "T" shape on the anteromedial region of skull, a wound 2.5 X 1 cm, bone deep, on the medial part of skull which was 1.5 cm away from the injury No. 2, bruises of different sizes on left elbow, left forearm and left arm, two bruises on the left forearm and a bruise on right forearm. Corresponding to injuries No. 2 and 3, on dissection, hematoma was found in subscalp area of frontal region of skull with fractures of right temporal and occipital bone and damage to blood vessels with deposit of blood in the skull. A 1.5 cm of bone fracture was found in the foramen magnum. Corresponding to injury No. 1, there was fracture of ear canal bone, fracture of cervical C-1 bone with damage to the blood vessels. As per the opinion of the Medical Board, all the injuries were ante mortem in nature and cause of death was shock due to head and neck injuries. On cross-examination, Dr. Kamal Pareta (PW19), a

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Member of the Medical Board which conducted the autopsy, stated that the death occurred on account of injuries No. 1, 2 and 3. Deposition of PW-19 was corroborated by Dr. Devendra Ajmera (PW20)-another Member of the Medical Board.

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As per the postmortem report of the body of deceased Avinash @ Rajvir (Ex. P46), he had sustained three injuries consisting of a stitched wound of 2 cm in length on right axilla with four stitches. After removal of the stitches, width of the wound was found to be 0.5 cm and was muscle deep. Both angles of the wound were found to be acute with clean cut margins. Another stitched injury of 1 cm length was found on the right side of chest with two stitches. Upon removal of the stitches, its width was found to be 0.25 cm and it was skin deep with irregular margins. The third injury was in the nature of an abrasion of 4.5 cm X 1.5 cm present medical to the injury No.1 and it was placed horizontally. On dissection, corresponding to injuries No. 1 and 2, hematoma was found in the muscles inside the thoracic region and both the lungs were found to be white. Liver had a tissue deep tear measuring 4 X 2 cm on his right lobe with blood oozing. Other tissues of the liver were white. Injury to liver was found to be sufficient in the ordinary course of nature to cause death which was due to excessive hemorrhage. Postmortem report was proved by Dr. Sachin Meena (PW21) who conducted the autopsy.

From the aforesaid postmortem reports, it is apparent that death of Smt. Seema and of Master Avinash was unnatural and amounted to culpable homicide. This proposition is not disputed even by the learned counsel for the appellant.

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Now the question before this Court is as to whether the prosecution has been able to connect the appellant with the aforesaid culpable homicide and whether the same amounted to murder.

Indisputably, none has seen the appellant assaulting either of the deceased and in the absence of direct evidence, the prosecution case rests on circumstantial evidence.

Their Lordships have, in the much celebrated judgement in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra: (1984) 4 Supreme Court Cases 116,** authoritatively laid down following golden principles for appreciation of the evidence governing the cases based on circumstantial evidence.

> **"153.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> > (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra MANU/SC/0167/1973: 1973 CriLJ 1783 where the following observations were made:
>
> > Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must

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> be' is long and divides vague conjectures from sure conclusions.
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
> (3) the circumstances should be of a conclusive nature and tendency.
> (4) they should exclude every possible hypothesis except the one to be proved, and
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

**154.** These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

If the prosecution evidence in the instant case is examined on the anvil of the aforesaid principles, the following circumstances/situations emerge:

**Last Seen Together:**

Admittedly, the appellant and the deceased were husband and wife respectively. As per the written report (Ex.P1) lodged by Shri Pradeep-brother of the deceased, they were married about 15 years ago. He, however, as PW1 has given period of solemnisation of marriage to be 20-25 years ago. Be that as it may, as already observed, it is an admitted position that they were husband and wife and the period of the marriage is not of much relevance for the controversy sought to be resolved.

As per Ex.P1, the appellant and the deceased Seema had left the house of complainant's maternal uncle Rajesh on 01.06.2021 at about 5.00 pm and at about 7.30 pm, the complainant received a telephonic message that his sister was struck by the appellant

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with an axe. The complainant-Pradeep had, as PW1, reiterated the aforesaid averments which were further corroborated by Shri Rajesh-PW2, the maternal uncle as also by Shri Bunty (PW12), cousin of the deceased Seema and son of Shri Rajesh. The PW12 had also stated that their younger son Avinash was with them as well. None of them was confronted, during their cross-examination, on the aspect that the appellant, the deceased and their son neither visited house of Rajesh nor, left it on 01.06.2021 at about 4-5 pm for their home. Rather, the PW12 was suggested, during his cross-examination, that when they left for their home, they were happy.

Thereafter, the appellant was seen around 7 pm by the prosecution witnesses namely, Vijay Dagar (PW8), Vijay Kumar Bhoomliya (PW10) and Amit Singor (PW11) dragging his wife covered in blood by hair carrying an axe in his hand in front of shop of Vijay Kumar Bhoomliya and also attempted to assault her there with the axe but, on PW10 raising an alarm, he fled from the scene carrying the axe. While, the PW8 and the PW10 were not confronted during their cross examination on the aspect that they did not see the appellant dragging his wife carrying an axe in one of his hands or that he did not attempt to assault her there or that he did not flee upon raising the alarm by the PW-10, Shri Amit Singor (PW11) had denied the suggestion that he was on duty on the day of incident and his statement was based on hearsay.

In view of the aforesaid prosecution evidence, it is found to be proved beyond a shadow of doubt that the deceased, the appellant and their son Avinash had left the house of Rajesh on 01.06.2021 at about 4-5 pm for their home and thereafter, the

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appellant was seen at about 7 pm dragging his blood drenched wife by her hair with an axe in his hand in front of shop of PW10 where also, he attempted to assault her with the axe, but on raising an alarm by the PW10, he fled from the scene carrying the axe.

At the cost of repetition, we may observe here that indisputably, none had seen the appellant attacking the deceased but, as per the site plan (Ex.P17), at spot `A', their room, the appellant had inflicted multiple axe blows on the deceased. The site plan was prepared in presence of S/Shri Vijay Dagar (PW8) and Sher Singh (PW17) who have proved it. Vide Ex.P14, the seizure memo, blood sample from the scene of crime was collected on a gauze patti and was sealed in packet-A. The seizure memo was prepared in presence of the motbir witnesses namely; S/Shri Vijay Kumar Bhoomliya (PW10) and Vijay Dagar (PW8). They, during their cross- examination, were not confronted by the defence with any suggestion that the blood sample was not so collected from the scene of crime. Further, Shri Hansraj, the Investigating Officer, was also not confronted with this aspect when he appeared in the witness box as PW23. As per the State Forensic Science Laboratory report dated 22.01.2024 (Ex.P74), the blood on the gauze collected from the crime scene contained in packet-A was found to contain human blood. However, since, no DNA profile could be obtained from it, its matching with the DNA profile obtained from other samples could not be carried out. But, in any case, the human blood was detected on it.

In the conspectus of the aforesaid analysis, we find it to be well proved that after leaving the house of Shri Rajesh on

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01.06.2021 at about 4-5 pm for their home, the appellant, the deceased Seema and their son Avinash had come to their room where human blood was found and thereafter, at about 7 pm, the appellant was seen dragging his blood drenched wife Seema by hair carrying an axe in his hand and therefrom, he fled with the axe when an alarm was raised by Shri Vijay Kumar Bhoomliya-the shop owner in front of whose shop he dropped his wife. Similarly, their six month old child, who had come with them at about 4-5 pm, was found severely injured with incise wounds in the fateful night and succumbed to injuries on the very next day. Therefore, we have no hesitation in recording a finding that the deceased Seema and Avinash were seen last in the company of the appellant and the appellant did not offer any explanation as to how they received the multiple incise wounds on their body which proved to be fatal.

**Recovery of incriminating material:**

As mentioned in the autopsy report of the deceased Smt. Seema (Ex.P33), the Members of the Medical Board collected her blood sample on a gauze for FSL examination, which was kept in a sealed envelope marked `A' and also collected her clothes in a sealed cloth bag. Similarly, as per the postmortem report of the body of the deceased Avinash @ Rajvir (Ex.P46), his blood sample was also collected on a gauze, which was kept in a sealed envelope marked `A'.

The Members of the Medical Board viz., Dr. Kamal Pareta (PW19), Dr. Devendra Ajmera (PW20) and Dr. Sachin Meena (PW21), when appeared in the witness box, categorically stated that they collected the blood sample of the deceased on a gauze

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and it was sent to FSL for examination. Dr. Sachin Meena (PW21) has further stated that clothes of the deceased were sealed and handed over to the police personnel for FSL examination. They were not subjected to cross-examination at all on the aforesaid aspects.

The appellant was arrested on 02.06.2021 at about 8.00 pm vide arrest memo (Ex.P25) and as per it, the clothes worn by him were found to be blood stained. The same were seized on the same day at about 8.15 pm vide seizure memo (Ex.P26) and were sealed in the packet-D. On his disclosure statement, an axe was recovered on 03.06.2021 at about 3.45 pm vide Ex.P27 and its site plan is Ex.P70. Their motbir witnesses namely; S/Shri Sher Singh (PW17) and Narayan Lal (PW22) have proved it. Both the witnesses have, during the course of their cross examination, admitted that the place of recovery of the axe was an open place and was accessible to all and sundry. However, we do not find any merit in the submission of learned counsel for the appellant that it tainted the recovery inasmuch as, from its recovery memo as also from the deposition of motbir witnesses, it is apparent that the axe was lying concealed in small bushes and the witnesses were not confronted with any such suggestion that it was visible even in the concealed condition.

Shri Sher Singh (PW17), the malkhana in-charge had stated that the sealed packets marked A, B, C and D as also envelopes marked A were deposited in the malkhana on 02.06.2021 and sealed packet marked E given by the doctors, was deposited on 03.06.2021. The corresponding entries in the malkhana register (Ex.P29) were proved. He had further stated that he had handed

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over all the sealed articles, in all seven in number, on 10.06.2021, along with a forwarding letter of the S.P., to Shri Ram Hari, a Constable for taking the same to the FSL, Jaipur who brought back the receipt No.9990/DNA dated 11.06.2021 which was entered in the malkhana register on 13.06.2021. The carrier Shri Ram Hari (PW18) had corroborated the statement of Shri Sher Singh which further stands corroborated from the entries in the malkhana register (Ex.P29). As per FSL report (Ex.P74), all the seven packets were received in properly sealed condition bearing seal impression matching the specimen sealed samples forwarded. Thus, in our considered opinion, the prosecution has been able to establish the complete chain of custody and proved that the sealed samples remained in safe custody until they reached the FSL, Jaipur in properly sealed condition. On that premise, we find no substance in the submission of the learned counsel for the appellant that since the forwarding letter omitted the name of its carrier, the FSL report (Ex.P74) lost its probative value.

Furthermore, as per the FSL report (Ex.P74), human blood was detected on all the samples and as per the DNA interpretation and conclusion, female DNA obtained from exhibit no.2 (Blood on gauze of deceased Seema), no.8 (Blouse of deceased Seema), no.9 (Stole of deceased Seema), no.10 (Petticoat of deceased Seema) and no.11 (Sari of deceased Seema) matched with the DNA profile obtained from exhibit no.5 (Shirt of accused Pintu), no.6 (Pant of accused Pintu) and no.7 (Kulhari of accused Pintu).

From the aforesaid analysis, the following circumstances are found to be established:

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1) The appellant, his wife and their son Avinash had left the house of Shri Rajesh, the maternal uncle of the deceased Seema, for their home at about 4-5 pm on 01.06.2021.

2) At about 7 pm on that very day, the appellant was seen by S/Shri Vijay Dagar (PW8), Vijay Kumar Bhoomliya (PW10) and Amit Singor (PW11) dragging his blood drenched wife by her hair in front of the shop of Shri Vijay Kumar Bhoomliya carrying an axe in his one hand, also attempted to assault her there with the axe but, on raising an alarm by the PW10, he fled from the scene carrying the axe.

3) From the time they left house of Shri Rajesh and till the deceased and the appellant were seen together in front of shop of Shri Vijay Kumar Bhoomliya, they were together along with their younger son Avinash.

4) The blood collected from the room of the deceased was found to be human blood.

5) As per the postmortem report and the medical opinion, the death of Smt. Seema and Avinash was on account of incise wounds suffered by them.

6) The appellant failed to offer any explanation much less a plausible one as to how both the deceased suffered injuries despite having special knowledge of it which invites applicability of the provisions of Section 106 of the Act of 1872.

7) The weapon of offence, the axe, was recovered on the disclosure statement of the appellant, concealed in small bushes.

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8) The DNA profile obtained from the clothes of the deceased Seema matched with the DNA profile obtained from the clothes of the appellant as also the recovered axe.

In the backdrop of the aforesaid circumstances, we concur with the finding recorded by the learned trial court of his guilt of murder of his wife Seema.

Insofar as death of Avinash is concerned, as already observed, based on his postmortem report (Ex.P46) and the testimony of Dr. Shri Sachin Meena (PW21), it was found to be a case of culpable homicide. Although, after the deceased Seema, the appellant and the deceased Avinash had left the home of Rajesh at about 4-5 pm for their home, none had seen the appellant inflicting injuries to the deceased Avinash and he was found in the wounded condition by the family members of the appellant. As per the postmortem report, the deceased had suffered a muscle deep incised wound of 0.5 cm width on right axilla and another incised skin deep wound of 0.25 cm width on right anterior thoracic region. Third external injury was in the shape of a bruise. Death was on account of injury to liver and excessive hemorrhage. Since, both angles of the injury no.1 were noted to be acute with regular margins, in view of the fact that the weapon of offence was an axe with its edge measuring 7 cm and its impact was not straight, taking recourse to the provisions contained under Section 114 of the Act of 1872, we can safely presume that being a six month old child, he must have been in the lap of his mother when she was attacked upon by the appellant with an axe and he also received injuries during the episode of assault on his mother, succumbing to the same.

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Our aforesaid view gets fortified from the observation of the Hon'ble Supreme Court of India in the case of **Tulsiram Sahadu Suryawanshi & Anr. vs. State of Maharashtra-(2012) 10 SCC 373** wherein, it was held that it is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the Courts shall have regard to the common course of natural events, human conduct etc in addition to the facts of the case.

Section 301 of IPC, which reads as under, has the answer as to whether the appellant can be held guilty of the murder of his son assuming that he did not intend it:

> **"301. Culpable homicide by causing death of person other than person whose death was intended—**
>
> If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause."

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Their Lordship have, in the case of **State of Andhra Pradesh vs. Rayavarapu Punnayya and Anr.-AIR 1977 SC 45**, interpreting the provisions of Section 301 IPC, held as under:

> "21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder,' on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Section 299 is applicable. If this question is found in the positive, but the case comes, within any of the Exceptions enumerated in s. 300, the offence would still be 'culpable homicide not amounting to murder' punishable under the First Part of Section 304, Penal Code."

Further, Their Lordship, in the case of **Ashok Saxena vs. The State of Uttarakhand Etc.- 2025 LiveLaw (SC) 163,** have held as under:

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"34. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in holding the appellant herein guilty of the offence of murder.

35. We have no difficulty in answering the first submission of Mr. Hooda that the offence is not one of murder or even culpable homicide not amounting to murder as the appellant herein had no intention worth the name to cause any harm to the deceased.

37. From the perusal of the provision of Section 301 of the IPC, it becomes manifest that Section 301 embodies what the English authors describe as the doctrine of transfer of malice or the transmigration of motive. Under the Section, if A intends to kill B, but kills C whose death he neither intends nor knows himself to be likely to cause, the intention to kill C is by law attributed to him. If A aims his shot at B, but it misses B either because B moves out of the range of the shot or because the shot misses the mark and hits some other person C, whether within sight or out of sight, under Section 301, A is deemed to have hit C with the intention to kill him. What is to be noticed is that to invoke Section 301 of the IPC, A shall not have any intention to cause the death or the knowledge that he is likely to cause the death of C. This Section lays down that culpable homicide may be committed by causing death of a person whom the offender neither intended nor knew himself to be likely to kill. If the killing takes place in the course of doing an act which a person intends or knows to be likely to cause death, it must be treated as if the real intention of the killer had been actually carried out.

38. Having noticed salutary principles on which Section 301 of the IPC is based, it would be instructive to refer to law on the point as laid down by this Court. In Gyanendra

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Kumar vs. State of U.P., reported in AIR 1972 SC 502 the accused was deliberately trying to shoot at a fleeing man who had criticized his father in a School Committee Meeting, but unfortunately, his own maternal uncle came in between him and the intended victim and thus got killed. This Court has held that the act of the accused was nothing but murder under Section 302 read with Section 301 of the IPC.

39. In Hari Shankar Sharma vs. State of Mysore reported in 1979 UJ 659 (SC), the intention of the accused was to kill prosecution witness No. 15 by firing a shot at him, but the accused shot the fire and killed the deceased. A plea was raised before this Court that the appellant would be guilty of offence under Section 304-A or 307 of the IPC. While negativing the said plea, this Court has held as under:

> "This appeal under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act is directed against the judgment of the Mysore High Court convicting the appellant under Section 302 and sentencing him to imprisonment for life. Detailed facts of the case have been narrated in the judgment of the High Court and it is not necessary for us to reproduce the same here. The main allegation against the appellant was that he had shot the deceased Nazirunnissa and Killadher. So far as the facts are concerned both the Sessions Judge and the High Court have concurrently found that the case was fully proved. The Sessions Judge was of the opinion that the first appellant wanted to kill PW. 15, but as PW. 15 was not available at that time, Nazirunnissa come in between and she was shot, therefore the appellant could be guilty of an offence under Section 304(A) or under Section 307 IPC. This view of the learned Sessions Judge was

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legally erroneous as rightly pointed out by the High Court. Section 301 furnishes a complete answer to the view taken by the Sessions Judge. It is obvious that the appellant has the intention to kill PW.15 and if with this intention, he kills somebody also, he is undoubtedly guilty of committing murder. There is evidence of PWs. 13, 14 and 15 to show that A.1 fired that shot and killed the deceased. There is no escape from conclusion that the appellant committed an offence under Section 302 of the IPC. In these circumstances, the High Court was right in correcting the error of law committed by the Learned Sessions (Judge) Mr. Udayarathnam, tried to bring the case of the appellant within the ambit of Section 304 (a) or Section 307 but on the fact so found, it is not possible for us to accede to her contention. For the reasons given above, there is no merit in the appeal, which is accordingly, dismissed."

> 42. In view of the principles laid down by this Court in above quoted decisions, it is evident that even if it is held for the sake of argument that the appellant had no intention to cause death of the deceased, it will have to be held that doctrine of transfer of malice, as contemplated under Section 301, is applicable to the facts of the present case and that the appellant would be guilty under Section 302 of the IPC."

Thus, in the aforesaid authoritative pronouncements, it was held succinctly that even if the accused-appellant did not intend the death of the deceased; but, of someone else, applying the doctrine of transfer of malice, as envisaged under Section 301 IPC, the accused-appellant would be held guilty of the offence under Section 302 IPC.

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In the backdrop of the aforesaid statutory provisions contained under Section 301 IPC, the precedential law laid down by the Hon'ble Supreme Court and the factual context disclosed hereinabove, we have no hesitation in agreeing with the findings of the learned trial court that the appellant was also guilty of the murder of his six month old son namely Avinash.

The matter can be examined from another important angle as well. Section 106 of the Evidence Act reads as under:

> "106. Burden of proving fact especially within knowledge— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.
>
> Illustration
>
> (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
>
> (b) A is charged with travelling on a railway without a ticket."

Thus, Section 106 provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The word "especially" has been interpreted by the Hon'ble Supreme Court of India in its various pronouncements such as **Shambu Nath Mehra vs. State of Ajmer-AIR 1956 SC 404, Nagendra Sah vs. State of Bihar-(2021) 10 SCC 725, Tulsiram Sahadu Suryawanshi vs. State of Maharashtra-(2012) 10 SCC 373 and Trimukh Maroti Kirkan vs. State of Maharashtra-(2006) 10 SCC 681** wherein it was held that it means the facts that are pre-eminently or exceptionally within his knowledge and it comes into operation where the prosecution has

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succeeded in establishing foundational facts from which a reasonable inference can be drawn regarding existence of certain other facts which are within the special knowledge of accused and when the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference. While inferring the existence of a fact from other sets of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Act of 1872 which empowers the court to presume the existence of any fact which it thinks likely to have happened having regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. If an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence and the burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

It was also held that in a case based on circumstantial evidence, if the accused fails to offer a reasonable explanation in

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discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances.

In the case of **Shambu Nath Mehra vs. State of Ajmer- AIR 1956 SC 404**, it was held as under:

> "11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience."

In **Trimukh Maroti Kirkan vs. State of Maharashtra- (2006) 10 SCC 681**, it was held as under:

> "14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecution- 1944 AC 315 (HL) - quoted with approval by Arijit Pasayat, J. in State of Punjab vs. Karnail Singh (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such

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character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

`(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him.'

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes placed in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false,

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it is a strong circumstance which indicates that he is responsible for commission of the crime."

Thus, in the aforesaid cases, it was succinctly held that if the crime is committed inside the privacy of a house and if the prosecution is able to discharge its initial burden pointing to complicity of the accused, Section 106 of the Act of 1872, casts a duty upon the accused to explain the circumstances especially within his knowledge failure whereof may entail an adverse inference against him.

As already observed, from the evidence available on record, it is established that the appellant, his wife and their son were together in the room on the fateful day from 5.00 pm till the blood smeared Seema was seen being dragged by the appellant by her hair in front of shop of Vijay Kumar Bhoomliya at about 7:00 pm and their son Avinash was found seriously wounded, failure on the part of the appellant to offer any explanation as to how they were so grievously injured resulting in their death, will lead to an adverse inference against him and furnishes an additional link in the chain of circumstantial evidence against him.

The prosecution has also relied upon the footage obtained from the CCTV camera installed at the shop of Shri Bhoomliya. He, as PW10, had stated that the CCTV footage was retrieved in the pen drive vide seizure memo, Ex.P16. He had further stated, in his examination-in-chief, that he furnished a Section 65B certificate (Ex.P22) bearing his signature at `A' to `B' on it. He had also stated that there was no manipulation with the CCTV camera and

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the police had recorded the original footage in the pen drive. During his cross-examination, he had stated that he could not operate the computer, the pen drive was brought by the police in which he furnished the footage, the pen drive was empty, but he did not ensure as to whether it contained any previous recording or not. He feigned ignorance as to the manner of copying the footage in the pen drive. He stated that the pen drive was not seized by the police before him. He had also admitted that he was unaware if the police had made any change after taking the recording. He had denied having issued any Section 65B certificate to the police and stated that the Ex.P22 was not prepared by him. S/Shri Vijay Dagar (PW8) and Amit Singor (PW11) have corroborated the PW10 to the extent that the incident was captured in the CCTV camera.

Shri Sher Singh (PW17), one of the motbir witnesses to the Ex.P16, had stated that the pen drive contained a 44 seconds recording and except this, it contained no other recording. In his cross-examination, he had categorically stated that before its seizure, though it was not played but it contained no recording. He had further stated that the recording was done by the Investigating Officer, but how, he was unaware.

Shri Hansraj-the Investigating Officer had stated, during his cross-examination as PW-23, that recording in the pen drive was prepared from the original device, i.e., from the computer attached to the CCTV. He, however, admitted that the pen drive was not subjected to FSL examination.

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In the conspectus of the aforesaid evidence, we find that the incident was captured in the CCTV camera installed at the shop of Shri Vijay Kumar Bhoomliya, footage of which was copied in an empty pen drive by the Investigating Officer from the computer attached to the camera. Although, Shri Vijay Kumar Bhoomliya had denied, during his cross-examination as PW10, having issued the Section 65B certificate and had stated that the Ex.P22 was not prepared by him but, we are of the considered opinion that it does not come to the rescue of the defence. He had, in his examination in chief, categorically stated to have issued the certificate (Ex.P22) under Section 65B(4), the Act of 1872, with his signature thereon as "A to B". Even, while denying its issuance in his cross-examination, he has not disputed his signature on it. Furthermore, the Investigating Officer, Shri Hansraj Meena (PW23) was not suggested, during his cross-examination, that either, Shri Vijay Kumar Bhoomliya did not issue the certificate Ex.P22 or, that it did not bear his signature. Be that as it may, the pen drive was never played before the learned trial Court and only the still photographs obtained from it were produced by the prosecution as Ex.P49 to Ex.P67. However, indisputably, not supported by any certificate under Section 65B(4) of the Act of 1872. Since, the contents of the pen drive, i.e., the electronic evidence, were reduced on the paper, i.e., photographs, to render the same admissible in evidence, a Section 65B(4) certificate was mandatorily required in the absence whereof, it could not have been read in evidence. Therefore, in our considered view, the learned trial court erred in relying upon the still photographs, i.e., the Ex.P49 to Ex.P67, to

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connect the appellant with the crime. However, the same does not lend any assistance to the defence inasmuch as, from the other evidence available on record; such as, last seen evidence and recovery of incriminating material, the prosecution was able to establish, beyond reasonable doubt, that the appellant committed murder of his wife as also of his six month old son.

Insofar as the contention of the learned counsel for the appellant that in the absence of drag marks on the body of the deceased Seema as also in view of the fact that her clothes were not found to be torn despite the prosecution case of her dragging by the appellant for a distance of about 47 meters, is concerned, we find no merit in it. Indisputably, none had seen the appellant dragging the deceased Seema from the subject room to the place where she was left, i.e., in front of the shop of Shri Vijay Kumar Bhoomliya. The site plan, Ex.P17 also does not reflect any blood trail throughout the way, i.e., from the room of the appellant till the place `X2', i.e., the shop of Shri Bhoomliya. On that premise, a possibility cannot be ruled out that the deceased Smt. Seema might have tried to escape from the room when she was attacked by the appellant with the axe and while running along the way, was caught by him and the prosecution witnesses namely; S/Shri Vijay Dagar, Vijay Kumar Bhoomliya and Amit Singor, saw her being dragged by the hair in front of the shop of Shri Bhoomliya which explains the absence of drag marks on her body in the postmortem report as also why her clothes were not found to be torn. Even otherwise, in view of the other overwhelming evidence available on record, as already discussed, suggesting, beyond any

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reasonable doubt, that the appellant was guilty of murder of his wife as also of his son, we do not find failure on the part of the prosecution to explain the absence of drag marks on her body and absence of any explanation as to why her clothes were not found to be torn, to have any adverse impact on its case inasmuch as, in a criminal trial, it is the bounden duty of the prosecution to establish the facts beyond reasonable doubt and must establish the guilt of the accused with clear, cogent, and convincing evidence and the principle does not demand absolute 100% mathematical certainty or precision. A "reasonable doubt" is not a fanciful, imaginary, or conjectural doubt rather, must be based on reason, logic, or evidence, not speculation. In **State of U.P. v. Krishna Gopal, AIR 1988 SC 2154**, the Hon'ble Supreme Court of India clarified that reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. The courts cannot define what constitutes reasonable doubt; however, reasonable doubt can stem directly from conflicting testimony, missing investigative links, or a general lack of convincing evidence presented by the prosecution.

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In a criminal trial, the investigating officer or a witness is not supposed to answer each and every question that has cropped up in the cross-examination. It is not possible that every suggestion needs to be replied to in the way the defendant thought. If a suggestion shatters the prosecution case and even an ordinary prudent person thinks that, in the absence of affirmative answer, the backbone of the prosecution case has gone entirely, then only that doubt may be coined as reasonable doubt. On that premise

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also, we are not able to persuade ourselves to countenance the submission that absence of the drag marks on the body of the deceased Seema as also her clothes being found intact, had caused any dent in the credibility of the prosecution case.

Similarly, for the very aforesaid reasons, we also do not find any force in the submission of the learned defence counsel that while in the written report (Ex.P1) lodged by Shri Pradeep, it was stated that Shri Samrat Patona had informed him of assault on his sister by the appellant but, when Shri Samrat Patona appeared in witness box as PW9, he turned hostile and Shri Pankaj (PW1), had substituted Shri Virat for Shri Samrat Patona in his examination-in-chief who was not examined and therefore, the prosecution was not able to prove the source of information about the commission of crime. The initial information, in whatever form, only triggers the statutory mechanism of investigation and is not a substantive piece of evidence in itself. It is trite law that failure of the prosecution to prove the source of information that initiates the investigation is not fatal to it provided the commission of the crime and guilt of the accused are otherwise established by credible and independent evidence. At the cost of repetition, we may observe here that in the instant case, the prosecution has been able to prove, beyond reasonable doubt, that the appellant was guilty of murder of his wife as well as of his son by leading trustworthy and reliable ocular evidence and recovery of other incriminating material.

In the conspectus of the aforesaid analysis, we are of the considered view that the learned trial court did not err in recording

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a finding of guilt of the appellant of murder of his wife as also of his son and we affirm the same.

**Sentence:**

Learned counsel for the appellant, addressing on the question of sentence, submitted that the instant case does not fall within the category of "rarest of the rare cases" and the capital punishment was not warranted. It was submitted that the appellant is about 46 years of age, his jail conduct has been satisfactory, he has reformative and rehabilitative tendency, has old parents and a minor son but, at present is under care and guardianship of his grandparents. They further submitted that the appellant belongs to a socio-economically disadvantaged category and is with very poor financial background. In the aforesaid factual context, they prayed that the death sentence awarded may be commuted to the life imprisonment either with fixed tenure or without it.

Per contra, learned Public Prosecutor, opposing the submissions, contended that the instant case falls squarely within the category of "rarest of the rare cases". He argued that the appellant has been found guilty of brutally murdering his helpless wife as also his six month old innocent child. Inviting attention of this Court towards his criminal record, learned Public Prosecutor contended that besides the instant case, as many as five criminal cases were registered against him including the case under Section 376(2)(d) IPC wherein, the Court of Special Judge, (Women Atrocities Cases), Kota vide its judgement dated 06.08.2004 convicted him and sentenced for 7 years' rigorous

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imprisonment with fine of Rs. 2,500/-. He, therefore, prayed for confirmation of the death penalty.

Heard. Considered.

A Constitution Bench has, in the case of **Bachan Singh vs. State of Punjab: (1982) 3 SCC 24**, held that a death sentence should not normally be awarded for the offence of murder and it must be confined to the "rarest of the rare cases" when the alternative option is foreclosed. It was held that amongst others, a balance sheet of aggravated and mitigating circumstances has to be drawn up and while doing so, the mitigating circumstances have to be accorded full weightage and a just and equitable balance has to be struck between the aggravating and mitigating circumstances before the option is exercised.

A three-Judges Bench of the Hon'ble Supreme Court has, in the case of **Machhi Singh & Ors. vs. State of Punja**b: **AIR 1983 SC 957**, laid down following criteria to be taken into consideration while awarding the sentence in the cases provided for death penalty as one of the punishment.

**I Manner of Commission of Murder**:

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

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

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

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

**II Motive for Commission of murder**:

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

**III Anti Social or Socially abhorrent nature of the crime**:

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

(b) In cases of 'bride burning' and what are known as 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

**IV Magnitude of Crime**:

When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

**V Personality of Victim of murder**:

When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a

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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.

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Another three-Judges Bench judgement of the Hon'ble Supreme Court, in the case of **Lehna vs. State of Haryana: (2002) 3 SCC 76**, propounded the principle of proportionality between crime and punishment. It was held that the punishment ought always to fit the crime yet, in practice, the quantum of sentence is determined by other considerations. It was observed by Their Lordships that sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence; sometimes the desirability of keeping him out of circulation, and sometimes even the terrific results of his crime.

After considering the ratio of all these judgements, in the case of **Mohinder Singh** (supra), the Supreme Court was pleased to hold that in a way, every murder is brutal and the difference between one from the other may be on account of mitigating or aggravating features surrounding the murder.

Thus, from the conspectus of the aforesaid authoritative pronouncements of the Hon'ble Supreme Court of India, we gather that there is no straitjacket formula for awarding either the death penalty or the life imprisonment with or without fixed tenure and it depends upon multiple factors including aggravating

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and mitigating circumstances surrounding the crime and the culprit.

In the case of **Manoj & Ors. Vs. State of Madhya Pradesh: (2023) 2 SCC 353**, it was held that the sentencing hearing contemplated under Section 235(2) is not confined merely to oral hearing but is intended to afford a real opportunity to the prosecution as also to the accused to place on record facts and material relating to various factors on the question of sentence. To do complete justice to the sentencing part, following directions were issued:

> **249.** To do this, the trial court must elicit information from the accused and the state, both. The state, must - for an offence carrying capital punishment - at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in Bachan Singh. Even for the other factors of (3) and (4) - an onus placed squarely on the state – conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison, i.e., to evaluate the progress of the accused towards reformation, achieved during the incarceration period.
>
> **250.** Next, the State, must in a time-bound manner, collect additional information pertaining to the accused. An illustrative, but not exhaustive list is as follows:
>
> a) Age

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b) Early family background (siblings, protection of parents, any history of violence or neglect)

c) Present family background (surviving family members, whether married, has children, etc.)

d) Type and level of education

e) Socio-economic background (including conditions of poverty or deprivation, if any)

f) Criminal antecedents (details of offence and whether convicted, sentence served, if any)

g) Income and the kind of employment (whether none, or temporary or permanent etc);

h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any) etc.

This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.

**251.** Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e., probation and welfare officer, superintendent of jail, etc.). If the appeal is heard after a long hiatus from the trial court's conviction, or High Court's confirmation, as the case may be – a fresh report (rather than the one used by the previous court) from the jail authorities is recommended, for a more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will further evidence the reformative progress, and reveal post-conviction mental illness, if any.

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**252.** It is pertinent to point out that this court, in Anil v. State of Maharashtra-AIR 2006 SC 2018 has in fact directed criminal courts, to call for additional material:

> "33….Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials.

We, therefore, direct that the criminal courts, while dealing with the offences like Section 302 IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case." (emphasis supplied) We hereby fully endorse and direct that this should be implemented uniformly, as further elaborated above, for conviction of offences that carry the possibility of death sentence."

Very recently, in the case of **Aman Singh and Anr. vs. State of Bihar-2026 INSC 424** vide judgement dated 27.04.2026, following directions were issued to ensure effective consideration of mitigating and aggravating circumstances:

> **A.** The report pertaining to aggravating and mitigating circumstances shall, as a matter of course, be called for

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by the trial Court itself once the accused is convicted, prior to the determination of sentence.

**B.** In the event such a report has not been called for or placed on record before the trial Court, the High Court shall mandatorily call for the same at the stage of admission of the death reference.

**C.** The concerned authorities shall ensure that such reports are comprehensive, duly verified, and furnished within a stipulated timeframe so as to avoid any delay in the adjudicatory process, and to aid and enable the Courts to undertake a meaningful, informed, and constitutionally compliant sentencing exercise. Upon receipt of such report, the Court concerned shall afford adequate opportunity to the parties to peruse the same and to advance oral submissions thereon. In cases where the reports procured by the trial Court are found to be ineffective or lacking in proper details, the High Court would be at liberty to call for a fresh report.

Pursuant to the aforesaid directions, vide its status report dated 02.09.2026, the Station House Officer, Police Station Kotwali District Kota City has submitted the mitigating circumstances, the personal and family background of the appellant as also his criminal antecedents. One of the salient features is registration of 5 criminal cases against him, besides the instant one. In one of the criminal cases viz. 516/2003, he has been convicted under Section 376(2)(d) IPC and sentenced to 7 years rigorous imprisonment with fine of Rs.2500.

The Superintendent, Central Jail, Jaipur has furnished the conduct report of the appellant vide letter dated 08.09.2026.

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Initially, a report dated nil of the Medical Board, Psychiatric Centre, Jaipur was submitted but, the same was not found to be compliant with the directions issued by the Hon'ble Supreme Court in the case of Manoj (supra) and Aman Singh (supra). Another report of the psychiatric evaluation of the appellant by the Medical Board dated nil was submitted by the State on 15.09.2026.

A perusal of the order of sentence dated 23.01.2026 passed by the learned trial court reflects that it has considered the following circumstances as the aggravating factors:-

(1) Planned murder
(2) Cold blooded murder
(3) Double murder
(4) Heinous crime
(5) Innocent and helpless victim
(6) Perverted criminal character
(7) Rejection of the family and society
(8) Murder of fiduciary relationship
(9) Criminal background of the appellant.

Following mitigating circumstances were taken into consideration:

(1) Old parents
(2) A surviving son in the family
(3) Appellant being young.

After weighing the aforesaid circumstances, the appellant was sentenced to the death penalty holding the crime to be heinous and barbarous, spreading a sense of fear in the entire society. It was observed that the appellant has ruthlessly and savagely murdered his innocent and helpless wife as also six month old son by inflicting multiple axe blows. It was further held

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that looking to the nature and gravity of crime, no reformative tendency was found and holding that the case fell within the category of "rarest of the rare cases". However, we disagree with some of the findings recorded by the learned trial court qua sentence. We do not find it to be a planned and cold blooded murder. From the testimony of S/Shri Rajesh (PW2), Bunty (PW12), Anil (PW14) and Laddu (PW15), the maternal uncle-in-law, cousin brother-in-law, younger brother and father of the appellant respectively, it is reflected that during their married life spanning to at least 15 years (as per Shri Pradeep-PW1), they never quarreled and were blessed with two sons. As per PW2, they had come to his house on 28.05.2021 and till they left for their home in the evening of 01.06.2021 and during this entire period, they lived there happily. Thereafter, the witnesses have seen the appellant dragging his blood drenched wife by her hair at about 7.00 pm. Since, the prosecution case is completely silent as to reason/motive for commission of the offence, we can only presume that on account of some hot talks in between the appellant and his wife-deceased Seema at their home in between 5.00 pm to 7.00 pm, she was assaulted by the appellant with the axe. From the testimony of the Investigating Officer Shri Hansraj (PW23), it is established that the axe recovered did not have a sharp edge and was an article of common household. Thus, in the conspectus of the aforesaid analysis, we do not find it to be a case of premeditated or a cold blooded murder.

Though, it is found to be an established case of double murder, but while analyzing the evidence with regard to murder of

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Avinash-six month old child, the appellant was found guilty under Section 302 with the aid of Section 301 IPC. We, however, concur with the remaining aggravating circumstances which weighed in the mind of the learned trial court while determining the sentence except that none of his family members had come to his aid till the date of sentence. As already observed hereinabove, many of his family members have deposed that married life of the appellant with the deceased Seema was happy. Besides, Smt. Karma (PW13) has feigned ignorance as to how Seema and the child died. His step mother Smt. Badam Bai (PW16) has turned hostile and has not supported the prosecution case.

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From the record and the reports submitted by the State, we find following mitigating circumstances in the instant case:

(1) Personal and family background- the appellant has studied upto Class-V and during that period, his step mother Smt. Badam Bai expired. Thereafter, his father started drinking heavily and in absence of any family members to take his care, he fell in bad company and started drinking and took to vagaries.

(2) He was happily married for about 15 years and after murder of his wife and younger son, he is survived by his elder son aged about 14 years. Before he was confined to custody, the appellant was a labourer earning Rs.7000-8000 per month. At present, the elder son, a student of Class-VI, is taken care of by his grandparents. The father of the appellant is a retired Sweeper having monthly pension of Rs.10,000. One of the brothers of the appellant Shri

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Chintu Lal is missing since the year 2009 and his another brother Shri Anil Dagar resides separately with his family and is a labourer.

The appellant has been in custody since the date of his arrest and has served the sentence of almost five years three months and one day till 01.09.2026.

As per report dated 08.09.2026 furnished by Superintendent, Central Jail, Jaipur, his jail conduct, his behaviour with other inmates and jail employees, has been found to be satisfactory and peaceful.

As per the report of the Medical Board, Psychiatric Centre, Jaipur dated nil, no gross psychopathology was found to be present. As per the detailed report of Psychiatric and Psychology submitted by the State on 15.09.2026, no gross psychopathology meaning thereby no psychiatric disorder or mental illness was found.

With regard to possibility of reformative/rehabilitation in the society, the Board opined as under:

> "The Board is not able to conclusively predict whether the subject individual will or will not commit further criminal acts if integrated or rehabilitated into society.
>
> This limitation is predictive capacity reflects the current state of psychiatric science and the inherent uncertainty in predicting complex human behaviour. Any assertion of certainty regarding future behavioural recurrence would be inconsistent with established ethical standards in psychiatry."

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In the facts and circumstances narrated hereinabove, we find that the offence committed by the appellant is undoubtedly, grave and heinous; however, merely these factors by themselves cannot be the sole basis for imposing death penalty. In view of the precedential law laid down by Hon'ble Supreme Court of India in the cases of **Bachan Singh** (supra), **Machhi** (supra) and **Lehna** (supra), this Court is duty bound to assess as to whether the case falls within the category of "rarest of the rare cases" by balancing the aggravating and mitigating circumstances and by examining whether the alternative option of imprisonment for life is unquestionably foreclosed.

If the aggravating and mitigating circumstances are weighed and examined on the anvil of the aforesaid principle, we find that the scale leans in favour of the mitigating circumstances. As already held, we do not find it to be pre-planned or cold blooded murder; rather, as per the prosecution evidence, it is found that the appellant and the deceased Seema were happily married for a period of about 15 years and were blessed with two sons. On the fateful day, after spending about three happy days at his maternal uncle-in-law's house, he, along with his wife and six month old son, returned to his home and the prosecution case is completely silent as to what transpired in between them within two hours resulting in murder not only of his wife but, also of his six month old son. The prosecution has failed to offer any motive for the crime. On that premise, we can, only presume that the husband and the wife might have fought over some issue which resulted into the heinous crime. From the material on record, it is also

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established that the appellant belongs to a socio-economically underprivileged and disadvantage class with very low education who took to vagaries in his early years of his life on account of death of his mother and his father having succumbed to heavy drinking with no one in the family to take his care. His jail conduct, behavior with other inmates as also with jail staff has been found to be satisfactory and peaceful. His participation in the reformative activities is reported to be normal by the Jail Superintendent. Although, he has had a criminal record with conviction in the year 2003 for an offence under Section 376(2)(d) IPC but, the mitigating circumstances and the jail conduct, as analysed hereinabove, in our considered opinion, outweigh the brutality and barbarous of the instant crime and his criminal record.

Their Lordships have, in the case of **Mohinder Singh** (supra) wherein, the appellant was found guilty of murder of his wife and daughter in a gruesome manner by multiple axe blows in the background of inimical relationship between them on account of criminal cases registered against him by his wife for committing rape of his minor daughter for which he was sentenced to rigorous imprisonment for 12 years and for attacking her after release on parole for which a separate FIR was registered against him, after appreciating the findings on the touchstone of the case of **Bachan Singh** (supra) and **Machhi Singh** (supra), did not find the case to be under "rarest of the rare cases" category warranting death penalty. It was further held that it was difficult to hold that the appellant was such a dangerous person that sparing his life will

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endanger the community and were not satisfied that the circumstances of the crime were such that there was no other alternative but to impose death penalty. In view thereof, the death penalty was commuted to the sentence of rigorous imprisonment for life till the end of his life subject to any remission under Section 432 of the Code of Civil Procedure.

In the case of **Ashok Kumar Pandey vs. State of Delhi : AIR 2002 SC 1468**, wherein, the appellant was awarded death sentence holding him guilty of murder of his wife and daughter by infliction of stab injuries on the vital parts of the body, the capital punishment was commuted to rigorous imprisonment for life holding that the case did not fall within the category of "rarest of the rare" one.

We find that the facts in the instant case are almost identical with the case of **Mohinder Singh** (supra); rather, are on a little better footing. In the case of **Mohinder Singh**, the appellant was held guilty for murder of not only his wife but, also of his daughter by infliction of multiple injuries on vital part of the body with axe whereas, in the instant case, we have held the appellant guilty of murder of his six month old son with the aid of Section 301 IPC. Furthermore, in that case, the appellant was found, on an earlier occasion, guilty of raping his daughter and was sentenced to 12 years rigorous imprisonment whereas, in the instant case, although, the appellant was sentenced to 7 years rigorous imprisonment under Section 376 (2)(d) IPC but, who was the victim has not come on record though, certainly was not his daughter.

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In the conspectus of the aforesaid analysis, after weighing the aggravating and mitigating circumstances carefully, the nature of crime, the brutality involved, the family and socio- economic background of the appellant, his jail conduct, psychiatric and psychopathology report, we are not able to persuade ourselves to record a finding that the case falls within the category of 'rarest of the rare cases' and the death penalty was warranted. Therefore, we answer the death reference in the negative.

Now, the question arises as to what should be the period of life imprisonment. As per Section 53 read with Section 45 of the IPC, imprisonment for life means imprisonment for remainder of natural life of the convict. However, it is subject to the statutory provisions of remission and commutation vested in the appropriate government under Sections 432 to 435 of the Cr.P.C. and the Constitutional powers under Articles 72 and 161 of the Constitution of India.

Their Lordships, in the case of **Swamy Shraddananda vs. State of Karnataka-(2008) 13 SCC 767**, evolved a special category of sentence as a measure to bridge the gap between the punishment of death and ordinary life imprisonment. The underlying consideration was that in a case falling short of the "rarest of the rare" threshold for capital punishment, ordinary life imprisonment subject to remission might nevertheless be grossly inadequate and thus, the special category was evolved in exceptional cases where life imprisonment without the possibility of remission was considered necessary. The view of the Hon'ble in the case of **Swamy Shraddananda** (supra) was approved by the

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Constitution Bench in the case of **Union of India vs. Sriharan @ Murugan:(2016) 7 SCC 1**. It was observed by the Constitution Bench that the modified punishment provided for a specific term of incarceration or till the remainder of natural life of the convict as an alternative to the death penalty, can only be exercised by the High Court and the Supreme Court and not by the Sessions Court.

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Their Lordships in the case of **Navas @ Mulanavas vs. State of Kerala: (2024) 14 SCC 82**, were pleased to hold as under:

> "**79**. Illustratively, in the process of arriving at the number of years as the most appropriate for the case at hand, which the convict will have to undergo before which no remission powers could be invoked, some of the relevant factors that the courts bear in mind are:
>
> (a) the number of deceased who are victims of that crime and their age and gender;
>
> (b) the nature of injuries including sexual assault if any;
>
> (c) the motive for which the offence was committed;
>
> (d) whether the offence was committed when the convict was on bail in another case;
>
> (e) the premeditated nature of the offence;
>
> (f) the relationship between the offender and the victim;
>
> (g) the abuse of trust, if any;
>
> (h) the criminal antecedents; and whether the convict, if released, would be a menace to the society.
>
> Some of the positive factors have been:
>
> (1) age of the convict;
>
> (2) the probability of reformation of the convict;
>
> (3) the convict not being a professional killer;
>
> (4) the socio-economic condition of the accused;
>
> (5) the composition of the family of the accused; and

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(6) conduct expressing remorse."

When the facts and circumstances available in the instant case are tested on the touchstone of the relevant factors narrated, though not exhaustively, in the case of **Navas** (supra), we find that although, the appellant has been found guilty of the murder of his wife as also of his six months old son, but qua murder of his son, with the aid of Section 301 IPC. Further, we have found that the offence was neither premeditated nor pre-planned and the prosecution could furnish no motive of the crime. It has also come on record that appellant and his deceased wife were happily married for about 15 years and were blessed with two sons. The elder son, a student of Class-VI, is being taken care of by his aged grandparents who are surviving only on paltry pension of Rs.10,000/- being received by his grandfather. He has been found to be belonging to the socio-economically disadvantaged class with very little education and a poor financial background. Although, he has criminal antecedents with conviction, inter alia, under Section 376(2)(d) IPC vide judgement dated 06.08.2004 with a sentence of 7 years rigorous imprisonment with fine of Rs.2500/- but, his jail conduct has been reported to be normal and good. It is also reported that he has reformative tendencies.

In the conspectus of aforesaid circumstances, we are of the considered view that the ends of justice would be served if the appellant is sentenced to the rigorous imprisonment for life till he attains the age of 75 years without the benefit of any statutory remission.

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Thus, while the death reference is answered in the negative, the appeal preferred by the appellant is partly allowed in terms that while maintaining his conviction, the substantive sentence awarded is modified in the aforesaid terms. The sentence of fine is maintained. The learned trial court be informed accordingly.

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(PRAVEER BHATNAGAR),J (MAHENDAR KUMAR GOYAL),J

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