Reportable

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION

Review Petition (Crl.) Nos. 159-160 of 2013
IN
Criminal Appeal Nos. 300-301 of 2011

Sundar @ Sundarrajan … Petitioner

versus

State by Inspector of Police … Respondent

J U D G M E N T

Dr Dhananjaya Y Chandrachud, CJI

This judgment consists of the following sections:

1. The applicant is a convict on death row. He has moved this court for a fresh look at his petition seeking a review of his conviction for the offence of murder and the award of the sentence of death. He does so on the basis of the decision of the Constitution Bench in ***Mohd. Arif alias Ashfaq*** v ***Registrar, Supreme Court of India***[1]. In ***Mohd. Arif***, this Court has held that review petitions arising from conviction and the imposition of the sentence of death must be heard in open court and cannot be disposed of by circulation. The Constitution Bench allowed a period of a month from the date of judgment to petitioners whose applications seeking review of the judgment of this Court confirming the award of the sentence of death were rejected by circulation, where the sentence was yet to be executed.

A. Prologue – The impact of Mohd. Arif

2. In ***Mohd. Arif,*** this Court took note of the irreversible nature of the death penalty and of the possibility of two judicial minds reaching differing conclusions on the question of a case being appropriate for the award of the death penalty. The judgment of the majority allowed the right to oral hearing in review for cases involving death penalty:

> 29. […] death sentence cases are a distinct category of cases altogether. Quite apart from Article 134 of the Constitution granting an automatic right of appeal to the Supreme Court in all death sentence cases, and apart from death sentence being granted only in the rarest of rare cases, two factors have impressed us. **The first is the irreversibility of a death penalty. And the second is the fact that different judicially trained minds can arrive at conclusions which, on the same facts, can be diametrically opposed to each other. Adverting first to the second factor mentioned above, it is well known**

[1] 2014 (9) SCC 737

> **that the basic principle behind returning the verdict of death sentence is that it has to be awarded in the rarest of rare cases. There may be aggravating as well as mitigating circumstances which are to be examined by the Court. At the same time, it is not possible to lay down the principles to determine as to which case would fall in the category of rarest of rare cases, justifying the death sentence.** It is not even easy to mention precisely the parameters or aggravating/ mitigating circumstances which should be kept in mind while arriving at such a question. Though attempts are made by Judges in various cases to state such circumstances, they remain illustrative only.
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> 30. […] A sentence is a compound of many factors, including the nature of the offence as well as the circumstances extenuating or aggravating the offence. A large number of aggravating circumstances and mitigating circumstances have been pointed out in *Bachan Singh* v. *State of Punjab*, SCC at pp. 749-50, paras 202 & 206, that a Judge should take into account when awarding the death sentence. **Again, as pointed out above, apart from the fact that these lists are only illustrative, as clarified in *Bachan Singh* itself, different judicially trained minds can apply different aggravating and mitigating circumstances to ultimately arrive at a conclusion, on considering all relevant factors that the death penalty may or may not be awarded in any given case. Experience based on judicial decisions touching upon this aspect amply demonstrate such a divergent approach being taken. Though, it is not necessary to dwell upon this aspect elaborately, at the same time, it needs to be emphasised that when on the same set of facts, one judicial mind can come to the conclusion that the circumstances do not warrant the death penalty, whereas another may feel it to be a fit case fully justifying the death penalty, we feel that when a convict who has suffered the sentence of death and files a review petition, the necessity of oral hearing in such a review petition becomes an integral part of "reasonable procedure".**
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> **(emphasis supplied)**

3. A recent study by Project 39A examined all the judgments involving a sentence of death delivered by the Supreme Court between 2007 and 2021 as part of which it analysed the exercise of the review jurisdiction in capital

cases.[2] It noted that, during the period covered by the study, before the decision in ***Mohd. Arif***, 14 review petitions were dismissed by circulation and the capital punishment was confirmed in all of them. Out of these, 13 were re-opened in view of the judgment which resulted in only 4 re-confirmations of the death penalty. On the other hand, 7 judgments resulted in commutation of death sentences, 1 in acquittal and 1 case being abated due to the death of the prisoner. In view of the above data, the impact of the oral hearing of review petitions, due to the judgment in ***Mohd. Arif*** leading to a change in the outcome of a death penalty confirmation is evident.

4. The Court in ***Mohd. Arif***, however, was not persuaded by the argument of involving two additional judges beyond the judges who had heard the original appeal during the hearing of the review petition. It also held that a review must be ordinarily heard by the same bench which originally heard the criminal appeal. It had noted that:

> 39. Henceforth, in all cases in which death sentence has been awarded by the High Court in appeals pending before the Supreme Court, only a bench of three Hon'ble Judges will hear the same. This is for the reason that at least three judicially trained minds need to apply their minds at the final stage of the journey of a convict on death row, given the vagaries of the sentencing procedure outlined above. **At present, we are not persuaded to have a minimum of 5 learned Judges hear all death sentence cases. Further, […] a review is ordinarily to be heard only by the same bench which originally heard the criminal appeal. This is obviously for the reason that in order that a review succeeds, errors apparent on the record have to be found. It is axiomatic that the same learned Judges alleged to have committed the error be called upon now to rectify such error. We, therefore, turn**

[2] *Exercise of Review Jurisdiction in Capital Cases* in DEATH PENALTY AND THE INDIAN SUPREME COURT (2007-2021), Project 39A, National Law University Delhi (2022).

down [the…] plea that two additional Judges be added at the review stage in death sentence cases.

(emphasis supplied)

5. The data analysed by Project 39A indicates that it is not merely the oral hearing of review petitions that has changed the outcomes. There may also be a correlation between the ultimate outcome changing and different judges being involved as part of the review process instead of the same judges who had originally decided the appeal. Post ***Mohd. Arif***, this happens when the judges who were members of the original bench have demitted office by the time the open court review comes for hearing. The data involves the 13 review cases re-opened and re-decided post ***Mohd. Arif*** after an oral hearing as well as 10 fresh review cases which were decided post ***Mohd. Arif***. Out of 13 post ***Mohd. Arif*** cases which were re-opened, we have already noted that only 4 led to re-confirmation of the award of the death penalty, while in 7 cases the sentence was commuted to life imprisonment, 1 resulted in an acquittal and 1 stood abated. Out of the 10 fresh review cases, in 7 the death sentence was confirmed while in 3 the sentence was commuted.

6. In the cases where the sentence of death was commuted to life imprisonment, i.e. 7 cases from the first lot of 13 re-opened review cases and 3 cases from the second lot of 10 fresh review cases, all of the benches in review were of a different composition from the bench that decided the appeal. The 1 case which resulted in acquittal also had a different bench in review from the one in appeal. On the other hand, in the 11 cases which re-confirmed the death sentence, 7 benches had a composition of one or all the judges being the same as the bench that decided the appeal. The report notes that:

> **The stage of review is rendered almost superfluous for the purpose envisaged by the majority, i.e., a further reconsideration of a death sentence, when the same bench (as in criminal appeal) is called upon to decide the review petition. This is in fact demonstrated by the data.** As predicted by Justice Chelameswar, when heard by the same bench as the appeal, review petitions resulted in the death sentence being maintained. **4 out of 11 confirmation judgments rendered at the stage of review had the same bench. While the remaining 7 confirmation judgments in review were rendered by benches of different composition, it is relevant to note that in 1 of these judgments one judge was common to both the benches that decided the review and the appeal, and in yet another, two judges were common to both benches. On the other hand, all of the 10 judgments that resulted in commutation at the review stage, were rendered by benches having a different composition from the bench that decided the appeal**. Therefore, the data suggests that a review petition filed within 30 days of the judgment rendered in appeal, decided by the same bench, will not demonstrate considerable differences in approaches or outcome, unlike those decided by a different bench.
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> **(emphasis supplied)**

7. While the above data is not conclusive and the correlation may not necessarily equate to causation, we find it appropriate to mention as the present case is also one of those being re-opened and re-heard as a result of the decision in ***Mohd. Arif***. We clarify by way of abundant caution that being both a smaller bench and having not been called upon to consider the impact of different judges sitting in the review of an appeal confirming the death sentence, we are not deciding on the merits of the proposition.

B. Background

8. In view of the judgment in ***Mohd. Arif***, the order dated 20 March 2013 in the present case dismissing the review petition through circulation was recalled and this review petition was heard in open court.

9. The petitioner was accused of kidnapping and murdering a 7-year-old child. The petitioner is alleged to have picked up the victim while he was returning from school in the school van on 27 July 2009. Prosecution witnesses testified to the petitioner having picked up the victim on his motorbike.

10. Due to the victim's absence, his mother attempted to find his whereabouts and was informed of the above sequence of events by one of the witnesses. Accordingly, she proceeded to register a complaint at Police Station, Kammapuram on the same date. On the same night, she also received a call on her mobile phone from the petitioner, demanding a ransom of Rs. 5 lakhs for the release of the victim. Further, another ransom call was made on the succeeding day from a telephone booth. One of the witnesses is the individual who runs the booth and has testified that the petitioner made a call enquiring regarding the payment of money.

11. On 30 July 2009 the police raided the house of the petitioner and arrested him along with a co-accused who was later acquitted. The petitioner made confessional statements on the basis of which three mobile phone sets, two of which had SIM cards, were recovered. The petitioner confessed to strangling the deceased, putting his dead body in a gunny bag and throwing it in the Meerankulam tank. The body of the deceased was recovered from the tank on the basis of the confessional statement.

12. On the basis of the investigation, the petitioner was charged under Sections 364A, 302 and 201 of the Indian Penal Code.[3] The trial was committed to the Court of the Sessions Judge on 30 July 2010. The Sessions Judge convicted the petitioner for the offences with which he was charged and sentenced him to (i) death with a fine of Rs.1000 for the offence under section 364A IPC, (ii) death with a fine of Rs.1000 for the offence under section 302 IPC; and (ii) rigorous imprisonment for seven years and a fine of Rs.1000 for the offence under section 201 IPC. The co-accused was acquitted of all the offences.

13. The petitioner's appeal was dismissed by the High Court of Judicature at Madras by a judgment dated 30 September 2010. The High Court confirmed both the conviction and the award of the death sentence.

14. This Court dismissed the appeal of the petitioner and confirmed the judgment of the Madras High Court on 5 February 2013. Both the High Court and this Court entered into a detailed appreciation of facts before confirming the conviction.

C. Scope of Review Jurisdiction

15. Article 137 of the Constitution states that the Supreme Court has the power to review any judgment pronounced by it subject to provisions of law made by the Parliament or any rules under Article 145. The Supreme Court Rules 2013[4] have been framed under Article 145 of the Constitution. Order XLVII Rule 1 of the 2013 Rules provides that the Court may review its own judgment

[3] "IPC"
[4] "2013 Rules"

16. or order but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order XLVII Rule 1 of the Code of Civil Procedure 1908, and in a criminal proceeding except on the ground of an error apparent on the face of the record.

17. In ***Mofil Khan*** v ***State of Jharkhand***[5], a three judge Bench of this Court while discussing the scope of the power of review held that:

> 2. […] Review is not rehearing of the appeal all over again and to maintain a review petition, it has to be shown that there has been a miscarriage of justice (See: *Suthendraraja* v. *State*). An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review (See: *Kamlesh Verma* v. *Mayavati*). An applicant cannot be allowed to reargue the appeal in an application for review on the grounds that were urged at the time of hearing of the appeal. Even if the applicant succeeds in establishing that there may be another view possible on the conviction or sentence of the accused that is not a sufficient ground for review. This Court shall exercise its jurisdiction to review only when a glaring omission or patent mistake has crept in the earlier decision due to judicial fallibility. There has to be an error apparent on the face of the record leading to miscarriage of justice.

D. Error Apparent on the Face of the Record?

D.1 Submissions of Counsel

18. We have heard the counsel for the petitioner and for the State of Tamil Nadu. The counsel for the petitioner has submitted that the following errors are apparent on the face of the record and call for a review of the judgment dismissing the appeal:

[5] 2021 SCC OnLineSC 1136

a. There is no proof that the phone number through which the ransom calls were allegedly made by the petitioner i.e. the number ending with XXX5961, belongs to the petitioner;

b. That the call detail records show that the above-mentioned number is registered with one individual with residence in Alathur, Palakkad whom the petitioner has no connection with;

c. That the 15-digit IMEI number for the cell phone, allegedly belonging to the petitioner containing the SIM with mobile number ending with XXX5961, mentioned in the seizure memo differs from the IMEI number mentioned in the call detail record;

d. There is no evidence that the number on which the ransom call was allegedly made to PW1 (mother of the deceased), i.e. the number ending with XXX847, belongs to PW1;

e. PW1 has not stated that calls were made to her on 28 July 2009 and the testimony of PW16, the operator of the phone booth through which the call was made, cannot be relied upon; and

f. The certificate under Section 65B of the Indian Evidence Act 1872[6] for the call detail records was not furnished.

19. The counsel for the State of Tamil Nadu strongly resisted the submissions which were urged by the Petitioner. The counsel submitted that the above grounds do not amount to errors apparent on the face of the record and do not meet the standard for re-appreciating evidence by this Court in review

[6] "IEA"

jurisdiction in the face of concurrent findings of the Trial Court, the High Court and this Court. The counsel also took us through the relevant exhibits and statements of prosecution witnesses to counter the grounds raised by the petitioner on merits.

D.2. Analysis

20. We are in agreement with the counsel for the State of Tamil Nadu. The grounds which have been raised by the petitioner have already been dealt with by the courts which have arrived at concurrent findings recording the guilt of the petitioner. Further, the case of the prosecution is not founded only on the alleged calls for ransom but on consistent interlinked evidence as both the High Court and Supreme Court found in their judgments.

21. Regardless, we consider it appropriate to deal with the contentions of the petitioner.

22. The petitioner has alleged that the number through which the ransom call was allegedly made did not belong to him. However, on the basis of his statement of 30 July 2009, the cell phone with the SIM for the mobile number ending with XXX5961 was seized from the petitioner along with 2 other cell phones, the motorbike on which he had kidnapped the victim as well as the victim's school bag.

23. Similarly, the contention based on the difference in the IMEI number recorded in the seizure memo and the call detail records does not affect the prosecution's case for the following reason. The difference in the IMEI number recorded in the seizure memo and the call detail record pertains to the last

digit of the 15-digit IMEI number. Every device has a unique IMEI number identifying the brand owner in the model. The first 8 digits are the Type Allocation Code (TAC) digits of which the initial 2 digits identify the reporting body and the next 6 identify the brand owner and device model allocated by the reporting body. The next 6 digits are the unique serial number assigned to individual devices by the manufacturer.[7]

24. These 14 digits in the petitioner's case match in both the seizure memo and the call detail record. The last digit in the IMEI number is the 'Luhn check digit' based on a function of the other digits using an algorithm. Technically, the last digit, which is the only digit that is different in the seizure memo and the call detail record, can be calculated through the algorithm on the basis of the first 14 digits which are the same in both the documents. As the last digit of an IMEI number is a function of the first 14 digits, as long as the first 14 digits are a match, it can only lead to one unique device. Accordingly, it can be conclusively said that a difference in only the last digit of the IMEI number cannot imply that it represents the IMEI number of a separate device. Therefore, the difference in the last digit of the IMEI number can reasonably be assumed to be a typographical error and does not raise a doubt in the prosecution's case.

25. The arguments regarding non-verification of PW1's number, non-confirmation with PW1 regarding a call received on the subsequent day as claimed by PW16 have been raised at a belated stage.

[7] GSMA TAC Allocation and IMEI Programming Rules for Device Brand Owners and Manufacturers, Training Guide (February 2018 v1.0).

26. PW8 has stated in her testimony that the petitioner called her to enquire regarding the phone number of PW1 and she told him to cut the phone and call again so she can retrieve the number and provide the same, as she did on the second call. PW1 has also testified that she received the call for ransom at about 9:30PM. It was upon the petitioner, at the stage of cross-examination of PW1 to raise questions regarding the number ending with XXX847 belonging to her or regarding the call alleged to have been made by the petitioner on 28 July 2009 mentioned by PW16.

27. Finally, the petitioner has argued that the CDRs cannot be relied upon due to the lack of production of the Section 65B certificate. The call detail records were verified in the testimony of the Legal Officer of Vodafone, PW11, who himself produced the documents from the computer. He has in his cross-examination specifically corroborated the details of the calls made between the petitioner and PW1 and PW8 (from whom the number of PW1 was received after enquiring about it during the call by petitioner). The call detail records of the mobile number ending with XXX5961 confirm that two calls were made to PW8 at 9:22PM and 9:25PM on 27 July 2009. Immediately after this he called on the number ending with XXX847 at 9:39PM. However, admittedly the certificate mentioned under Section 65B of the IEA was not produced.

28. Section 65B was inserted in the IEA along with various other amendments by the Information Technology Act 2000[8] which took into account digital evidence. Section 65B provides for the admissibility of electronic records.

[8] "IT Act"

29. Section 65B of the IEA is reproduced below:

> "**65-B. Admissibility of electronic records**.—(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as "the computer output") shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.
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> (2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely—
> (*a*) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
> (*b*) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
> *c*) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
> (*d*) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.
>
> (3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (*a*) of sub-section (2) was regularly performed by computers, whether—
> (*a*) by a combination of computers operating over that period; or
> (*b*) by different computers operating in succession over that period; or
> (*c*) by different combinations of computers operating in succession over that period; or

(*d*) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,
all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say—
(*a*) identifying the electronic record containing the statement and describing the manner in which it was produced;
(*b*) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
(*c*) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,
and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section—
(*a*) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
(*b*) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
(*c*) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.
Explanation — For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process."

30. The petitioner has relied upon the judgment of this court in ***Arjun Panditrao Khotkar*** v ***Kailash Kushanrao Gorantyal***[9] which reiterated the dictum in the decision in ***Anvar P.V.*** v ***P.K. Basheer***[10] requiring mandatory compliance with Section 65B of the IEA.

31. One of the earliest decisions on the provision was of a two judge bench of this Court in ***State (NCT of Delhi)*** v ***Navjot Sandhu***[11] where the Court held that Section 65B was only one of the provisions through which secondary evidence by way of electronic record could be admitted and that there was no bar on admitting evidence through other provisions. The Court noted that:

> 150. According to Section 63, "secondary evidence" means and includes, among other things, 'copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies'. Section 65 enables secondary evidence of the contents of a document to be adduced if the original is of such a nature as not to be easily movable. It is not in dispute that the information contained in the call records is stored in huge servers which cannot be easily moved and produced in the court. That is what the High Court has also observed at para 276. Hence, printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. **Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details in sub-section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be**

[9] 2020 (7) SCC 1
[10] 2014 (10) SCC 473
[11] 2005 (11) SCC 600

> **given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65.**
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> **(emphasis supplied)**

32. The principle which was enunciated in ***Navjot Sandhu*** was overruled by a three judge bench of this Court in ***Anvar P.V.*** where it was held that:

> 22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. *Generalia specialibus non derogant*, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65-A dealing with the admissibility of electronic record. **Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in *Navjot Sandhu case*, does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied.** Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.
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> **(emphasis supplied)**

33. Accordingly, in terms of the decision in ***Anvar P.V.*** for admitting any electronic evidence by way of secondary evidence, such as CDRs, the requirements of Section 65B would necessarily need to be satisfied and no other route under the IEA may be adopted for the admission of such evidence.

34. However, a three judge bench in ***Tomaso Bruno*** v ***State of Uttar Pradesh***[12] took a different approach and observed that secondary evidence of the

[12] 2015 (7) SCC 178

contents of a document can also be led under Section 65 of the Evidence Act without referring to the decision in ***Anvar P.V.*** It held that:

> 24. With the advancement of information technology, scientific temper in the individual and at the institutional level is to pervade the methods of investigation. With the increasing impact of technology in everyday life and as a result, the production of electronic evidence in cases has become relevant to establish the guilt of the Accused or the liability of the Defendant. Electronic documents stricto sensu are admitted as material evidence. With the amendment to the Evidence Act in 2000, Sections 65-A and 65-B were introduced into Chapter V relating to documentary evidence. Section 65-A provides that contents of electronic records may be admitted as evidence if the criteria provided in Section 65-B is complied with. The computer generated electronic records in evidence are admissible at a trial if proved in the manner specified by Section 65-B of the Evidence Act. Sub-section (1) of Section 65-B makes admissible as a document, paper printout of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfilment of the conditions specified in Sub-section (2) of Section 65-B. **Secondary evidence of contents of document can also be led Under Section 65 of the Evidence Act.** PW 13 stated that he saw the full video recording of the fateful night in the CCTV camera, but he has not recorded the same in the case diary as nothing substantial to be adduced as evidence was present in it.
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> **(emphasis supplied)**

35. A two judge bench in ***Shafi Mohammed*** v ***State of Himachal Pradesh***[13] strayed even farther away from ***Anvar P.V.*** and held that the Sections 65A and 65B cannot be held to be a complete code on the subject. It held that:

> 24. We may, however, also refer to the judgment of this Court in *Anvar P.V.* v. *P.K. Basheer*, delivered by a three-Judge Bench. In the said judgment in para 24 it was observed that electronic evidence by way of primary evidence was covered by Section 62 of the Evidence Act to which procedure of Section 65-B of the Evidence Act was not admissible. However, for the secondary evidence, procedure of Section 65-B of the Evidence Act was required to be followed and a contrary view taken in *Navjot*

[13] 2018 (2) SCC 801

> *Sandhu* that secondary evidence of electronic record could be covered under Sections 63 and 65 of the Evidence Act, was not correct. There are, however, observations in para 14 to the effect that electronic record can be proved only as per Section 65-B of the Evidence Act.
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> *25*. Though in view of the three-Judge Bench judgments in *Tomaso Bruno* and *Ram Singh*, **it can be safely held that electronic evidence is admissible and provisions under Sections 65-A and 65-B of the Evidence Act are by way of a clarification and are procedural provisions. If the electronic evidence is authentic and relevant the same can certainly be admitted subject to the court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate under Section 65-B(4).**
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> *26*. **Sections 65-A and 65-B of the Evidence Act, 1872 cannot be held to be a complete code on the subject.** In *Anvar P.V.*, this Court in para 24 clarified that primary evidence of electronic record was not covered under Sections 65-A and 65-B of the Evidence Act. Primary evidence is the document produced before the court and the expression "document" is defined in Section 3 of the Evidence Act to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.
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> **(emphasis supplied)**

36. The Court in ***Shafi Mohammed*** even diluted the requirement of the Section 65B certificate. This led to contradictory positions in these cases vis-à-vis the law laid down by ***Anvar P.V.*** which was settled by a reference to a three judge bench of this Court in ***Arjun Panditrao Khotkar.*** The Court reiterated ***Anvar P.V.*** and held ***Tomaso Bruno*** per incuriam and overruled ***Shafi Mohammed***. It held that:

> 73. The reference is thus answered by stating that:

> 73.1. ***Anvar P.V.*, as clarified by us hereinabove, is the law declared by this Court on Section 65-B of the Evidence Act. The judgment in *Tomaso Bruno*, being per incuriam, does not lay down the law correctly. Also, the judgment in *Shafhi Mohammad* and the judgment dated 3-4-2018 reported as *Shafhi Mohd.* v. *State of H.P.*, do not lay down the law correctly and are therefore overruled.**
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> 73.2. The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. **In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4).** The last sentence in para 24 in *Anvar P.V.* which reads as "… *if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act* …" is thus clarified; it is to be read without the words "*under Section 62 of the Evidence Act*,…". With this clarification, the law stated in para 24 of *Anvar P.V.* does not need to be revisited.
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> **(emphasis supplied)**

37. Therefore, the law is now settled: a Section 65B certificate is mandatory in terms of this Court's judgment in ***Anvar P.V.*** as confirmed in ***Arjun Panditrao Khotkar***.

38. However, ***Anvar P.V.*** was decided on 18 September 2014. Till then, the interpretation of law in ***Navjot Sandhu***, which was decided on 4 August 2005 prevailed. In the instant case, the Trial Court pronounced its judgment on 30 July 2010. Two months later, on 30 September 2010, the High Court affirmed the decision of the Trial Court to award the death sentence. This Court

dismissed the appeal and confirmed the death sentence on 5 February 2013. Even the review petition was dismissed in chambers on 20 March 2013 before being re-opened in the instant proceeding in view of the Constitution Bench's judgment in ***Mohd. Arif alias Ashfaq***.

39. Accordingly, none of the courts had the benefit of the law laid down vis-à-vis the mandatory requirement of the Section 65B certificate in ***Anvar P.V.***. The courts as well as the investigative agency proceeded in accordance with the law that was then prevailing.

40. In ***Sonu alias Amar*** v ***State of Haryana***[14] this court considered the impact of the retrospective application of ***Anvar P.V.*** upon trials that had already been held during the period when ***Navjot Sandhu*** held the field and observed that:

> 37. The interpretation of Section 65-B(4) by this Court by a judgment dated 4-8-2005 in *Navjot Sandhu* held the field till it was overruled on 18-9-2014 in *Anvar case*. All the criminal courts in this country are bound to follow the law as interpreted by this Court. Because of the interpretation of Section 65-B in *Navjot Sandhu*, there was no necessity of a certificate for proving electronic records. A large number of trials have been held during the period between 4-8-2005 and 18-9-2014. Electronic records without a certificate might have been adduced in evidence. There is no doubt that the judgment of this Court in *Anvar case* has to be retrospective in operation unless the judicial tool of "prospective overruling" is applied. However, retrospective application of the judgment is not in the interest of administration of justice as it would necessitate the reopening of a large number of criminal cases. Criminal cases decided on the basis of electronic records adduced in evidence without certification have to be revisited as and when objections are taken by the accused at the appellate stage. Attempts will be made to reopen cases which have become final.

[14] 2017 (8) SCC 570

41. However, it did not decide upon this issue being a two judge bench and kept the question of law open for it to be decided in an appropriate case. In ***Arjun Panditrao Khotkar*** this court did not consider the question raised in ***Sonu***.

42. On the other hand, ***Sonu*** did deal with the question of whether, at the appellate stage, the reliance upon CDRs can be reconsidered if the objection was not raised during the trial. As the counsel for the State of Tamil Nadu has argued, the defense as well did not raise the plea of the CDRs being inadmissible in the absence of a Section 65B certificate at the trial or at the appellate stage. On this issue, this Court in ***Sonu*** noted that:

> 32. It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the trial court without a certificate as required by Section 65-B(4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. **The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies.** The learned Senior Counsel for the State referred to statements under Section 161 CrPC, 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. **We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section**

> **65-B(4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof.**
>
> **(emphasis supplied)**

43. While the Court in ***Arjun Panditrao Khotkar*** did not directly deal with the issue of allowing objections against CDRs, due to a violation of the procedure under Section 65B, being raised at a belated stage, it kept it open for trial courts, in exceptional cases, to allow the prosecution to provide such certificate at a later stage. It held that:

> 54. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an Accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the Accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution Under Sections 91 or 311 of the Code of Criminal Procedure or Section 165 of the Evidence Act. **Depending on the facts of each case, and the Court exercising discretion after seeing that the Accused is not prejudiced by want of a fair trial, the Court may in appropriate cases allow the prosecution to produce such certificate at a later point in time.** If it is the Accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case-discretion to be exercised by the Court in accordance with law.
>
> **(emphasis supplied)**

44. Therefore, we are inclined to agree with the ratio in ***Sonu*** by not allowing the objection which is raised at a belated stage that the CDRs are inadmissible in the absence of a Section 65B certificate, especially in cases, where the trial has been completed before 18 September 2014, i.e. before the pronouncement of the decision in ***Anvar P.V.***. However, we are also mindful

of the fact that the instant matter involves the death sentence having been awarded.

45. Most recently, in ***Mohd. Arif*** v ***State (NCT of Delhi)***[15], a three judge Bench of this Court while deciding a review petition in a case involving the review of a death penalty faced a similar fact situation where the decisions of the trial court and appellate courts were rendered during the period when ***Navjot Sandhu*** was the prevailing law. In that case as well, the Court took note of it being a matter involving a death sentence and held that:

> "24. *Navjot Sandhu* was decided on 4.8.2005 *i.e.,* before the judgment was rendered by the Trial Court in the instant matter. The subsequent judgments of the High Court and this Court were passed on 13.9.2007 and 10.8.2011 respectively affirming the award of death sentence. These two judgments were delivered prior to the decision of this Court in *Anvar P.V.* which was given on 18.9.2014. The judgments by the trial Court, High Court and this Court were thus well before the decision in *Anvar P.V.* and were essentially in the backdrop of law laid down in *Navjot Sandhu*. **If we go by the principle accepted in paragraph 32 of the decision in *Sonu alias Amar*, the matter may stand on a completely different footing. It is for this reason that reliance has been placed on certain decisions of this Court to submit that the matter need not be reopened on issues which were dealt with in accordance with the law then prevailing. However, since the instant matter pertains to award of death sentence, this review petition must be considered in light of the decisions made by this Court in *Anvar P.V.* and *Arjun Panditrao*.**
>
> 25. **Consequently, we must eschew, for the present purposes, the electronic evidence in the form of CDRs which was without any appropriate certificate under Section 65-B(4) of the Evidence Act."**
>
> **(emphasis supplied)**

[15] 2022 SCC OnLineSC 1509

46. Accordingly, we too deem it appropriate to consider this review petition by eschewing the electronic evidence in the form of CDRs as they are without the appropriate certificate under Section 65B even if the law, as it was during the time the trial in the present case was conducted, allowed for such electronic evidence to be admitted.

47. Accordingly, we analyse the evidence considered by the High Court and this Court in appeal without relying upon the CDRs. The High Court took note of the following evidence in its judgment before arriving at the conclusion of the guilt of the petitioner and confirming his conviction:

> 18. According to P.W.1 the mother of the deceased child Suresh, the child used to leave for School every day at about 8.00 A.M. and come back at about 4.30 P.M., and on the date of occurrence, i.e., 27.7.2009, the child as usual went to the school. From the evidence of P.W.6, the Correspondent of Sakthi Matriculation School, Vridhachalam, and also the attendance register, Ex.P3, it would be quite evident that the child attended the school that day and was returning from the school in the van meant for that purpose. According to P.W.2, she is also studying along with the deceased Suresh, and on the day, both were returning from the school in the van and got down at Karkudal, and at that time A-1 who was standing under a Neem tree along with the motorbike, came to them and told the child Suresh that both his mother and grandmother were not doing well and on that false reason, took the child from the place. The evidence of P.W.2 was much commented by the learned Counsel for the appellant. But, those contentions cannot be agreed. The learned trial Judge has categorically pointed out before recording the evidence that the maturity of the mind of the child, P.W.2, to give evidence was actually tested and found satisfactory, and then he recorded the evidence. The child at the time of occurrence, was 10 years old, and at the time of giving evidence, it was aged 11.
>
> […]
>
> 19. It would quite clear that if the evidence of a child witness is cogent and convincing, the Court can accept that evidence. In the instant case, the evidence of P.W.2

is narrated above. According to P.W.1, immediately when the child did not return by 4.30 P.M., she entertained suspicion and went in search of her son, and she immediately met P.W.2, the other child. P.W.2 informed P.W.1 that the child Suresh was taken by a person in a motorbike telling the above reasons. Now, at this juncture, in order to accept the evidence of P.W.2, the earliest version as found in Ex. P1, in the considered opinion of the Court, would suffice. A perusal of Ex. P1, the complaint, would clearly indicate that after the child did not return, P.W.1 met P.W.2 Kamali, the other child, and she was informed by P.W.2 that the child was taken by a person in a motorbike with the above false reasons. Thus the earliest version found therein, would clearly indicate that P.W.2 has come with a true version. That apart, the child was able to identify the motorbike, marked as M.O.5, before the Court. Despite cross-examination in full, the evidence of P.W.2 the child remained unshaken. Following the ratio laid down in the above decision by the Apex Court, this Court is of the considered opinion that the evidence of P.W.2 has got to be accepted.

20. Added further, P.W.2 at the time of the identification parade, was able to identify A-1 properly as could be seen from the identification parade proceedings Ex. P4. Apart from that, the evidence of P.W.2 stood fully corroborated by the evidence of P.W.3. P.W.3 was a native of the same village, and all these persons were already known to him. P.W.3 was sufficiently matured and aged 41. According to him, he was actually coming on the way, and when the school van was stopped, P.W.2 and the deceased Suresh got down, and the child was called by A-1, and on some reason, the child was taken in the bike which was noticed by him. P.W.3 also took part in the identification parade and has also identified A-1 properly. Now, the comment made by the learned Counsel for the appellant that as regards the identification parade, there were infirmities noticed cannot be countenanced in law. As far as the comment made that there was no requisition made by the Investigating Officer for the test identification parade or the signature of A-1 was not obtained is concerned, the same cannot be accepted for the reason that insofar as the identification parade conducted by P.W.10, it was pursuant to the orders of the Chief Judicial Magistrate only on the requisition made by the Investigating Officer; otherwise, it could not have taken place at all. The conduct of the identification parade in order to identify A-1 in which P.Ws. 2 and 3 have participated, was never denied by the appellant before the trial Court. Under the circumstances, this Court is of the considered opinion that the test

> identification parade was properly done, and the trial Judge was perfectly correct in accepting the evidence adduced by the prosecution in that regard.
>
> 21. Apart from the above, it is pertinent to point out the legal position in respect of the identification parade. It is settled proposition of law that the identification parade is only a corroborative piece of evidence and the identification done in the Court, is a substantive piece of evidence. The Court must look into whether at the time when the witnesses saw the accused in the company of the deceased, such a thing would have caused a dent in their memory. In the instant case, the child was only 7 years old, and both the child and P.W.2 Kamali who was coming along with the child, got down together, and the appellant/A-1 came there and took the child on the flimsy reason. In such a situation, naturally the same would have caused a dent in the memory of P.W.2, and and it would not fail ordinarily, and equally so the memory of P.W.3, a man aged about 41. No doubt, it would have caused a dent in their memory. Therefore, the trial Judge was perfectly correct in accepting the evidence of P.Ws.2 and 3.

48. From the above, it is clear that two witnesses, PW2 and PW3, saw the petitioner taking away the victim on his motorbike after he got down from the school bus while returning. PW2 and PW3 also identified the petitioner upon his arrest at the time of the test identification parade which was found to have been properly conducted. Furthermore, both of the witnesses also provided unimpeachable evidence in their respective cross-examinations before the trial court. The trial court also followed the proper procedure in taking the testimony of PW2, a child witness, by recording the maturity of the mind of the child, who even identified the motorbike before the Court.

49. The aforementioned evidence shows that the victim was last seen with the petitioner. In the appeal before this Court, the petitioner's counsel seems to have acknowledged that there was enough evidence to establish kidnapping, in view of the following observations:

> 21. We have considered the first contention advanced by the learned counsel for the appellant, on the basis of the contention noticed in the foregoing paragraph. **In the veiled submission advanced in the hands of the learned counsel for the appellant, we find an implied acknowledgement, namely, that learned counsel acknowledges, that the prosecution had placed sufficient material on the record of the case to substantiate the factum of kidnapping of the deceased Suresh, at the hands of the accused-appellant.** Be that as it may, without drawing any such inference, we would still endeavour to determine, whether the prosecution had been successful in establishing the factum of kidnapping of the deceased Suresh, at the hands of the accused-appellant.
>
> **(emphasis supplied)**

50. This Court in the course of the decision in appeal took note of the evidence discussed above and held that there was sufficient evidence to hold the petitioner guilty of murder as well:

> "27. Since in the facts and circumstances of this case, it has been duly established, that Suresh had been kidnapped by the accused-appellant; the accused-appellant has not been able to produce any material on the record of this case to show the release of Suresh from his custody. Section 106 of the Indian Evidence Act, 1872 places the onus on him. In the absence of any such material produced by the accused-appellant, it has to be accepted, that the custody of Suresh had remained with the accused-appellant, till he was murdered. The motive/reason for the accused-appellant, for taking the extreme step was, that ransom as demanded by him, had not been paid. We are therefore, satisfied, that in the facts and circumstances of the present case, there is sufficient evidence on the record of this case, on the basis whereof even the factum of murder of Suresh at the hands of the accused appellant stands established.

51. Furthermore, as this Court noted, material objects were recovered on the basis of the petitioner's statement:

> 28. We may now refer to some further material on the record of the case, to substantiate our aforesaid conclusion. In this behalf, it would be relevant to mention, that when the accused-appellant was detained on

> 30.7.2009, he had made a confessional statement in the presence of Kasinathan (PW13) stating, that he had strangulated Suresh to death, whereupon his body was put into a gunny bag and thrown into the Meerankulam tank. It was thereafter, on the pointing out of the accused-appellant, that the body of Suresh was recovered from the Meerankulam tank. It was found in a gunny bag, as stated by the accused-appellant. Dr. Kathirvel (PW12) concluded after holding the post mortem examination of the dead body of Suresh, that Suresh had died on account of suffocation, prior to his having been drowned. The instant evidence clearly nails the accused-appellant as the perpetrator of the murder of Suresh. Moreover, the statement of Kasinathan (PW13) further reveals that the school bag, books and slate of Suresh were recovered from the residence of the accused-appellant. These articles were confirmed by Maheshwari (PW1) as belonging to Suresh. In view of the factual and legal position dealt with hereinabove, we have no doubt in our mind, that the prosecution had produced sufficient material to establish not only the kidnapping of Suresh, but also his murder at the hands of the accused-appellant.

52. The evidence in the form of CDRs was merely to corroborate the evidence that had been given through the depositions of PW1 and PW8. Both of their testimonies stand corroborated not only through the CDRs but also through the recovery of the mobile phone on the basis of the confessional statement of the petitioner. The High Court discussed this evidence in the following para:

> […] At this juncture, P.W.13 has categorically spoken to the fact that at the time of arrest, A-1 came forward to give a confessional statement voluntarily, and the same was recorded by the Investigator. The admissible part is marked as Ex.P9 pursuant to which he produced three cell phones out of which it was one which contained the number through which he made two phone calls to P.W.8 at about 9.22 P.M. and 9.25 P.M. respectively on 27.7.2010, and also at about 9.39 P.M. to P.W.1 making a demand for ransom. At this juncture, the contentions put forth by the learned Counsel as to whether one Shankar who made the calls at 9.22 and 9.25 P.M., was alive or a fictitious person, and the cellphone recovered from A-1, did not belong to him even as per the documentary evidence have got to be rejected since they do not carry merit. The cellphone from which all the three calls were made namely two calls to P.W.8 at about 9.22 and 9.25

> P.M. in the name of Shankar and one call at 9.39 P.M. by A-1 to P.W.1, has been recovered, and the particulars of those calls have been recorded in the cellphone, and it was actually kept by P.W.8 during the relevant time and also A-1 during the relevant time. Thus the prosecution has brought to the notice of the Court that in Ex.P5, the calls were actually found for 71 seconds at 9.22 P.M. and 43 seconds at 9.25 P.M. are found in Ex.P5, and another call which was made is also found therein which was from M.O.4 cellphone which was recovered from the appellant/A-1. Out of these three cell phones one cell phone was with the SIM card and the other two cell phones without SIM card. Now the documentary evidence produced by the prosecution would go to show that three calls were made namely two calls to P.W.8 at 9.22 and 9.25 P.M. respectively and after ascertaining the number of P.W.1, the third call was made to P.W.1. All the documentary evidence were placed before the trial Court. Thus it would be quite clear that the evidence of P.W.8 that the appellant/A-1 wanted to know the number of P.W.1, and then he made a call to P.W.8 and came to know about the number, and thereafter, he made a call at about 9.39 P.M. to P.W.1 as could be found in the evidence of P.W.1.

Even if Ex. P5, being the CDR, is not relied upon by this Court in the above paragraph, the case of the prosecution is not weakened as it merely corroborates the documentary evidence and witness testimonies that remain unblemished regardless. From the above discussion, it is clear that there is no reason to doubt the guilt of the petitioner.

53. Therefore, even though none of the grounds raised by the petitioner amount to errors apparent on the face of the record, in view of the above analysis, it can also be conclusively said that all the grounds on merits fail to raise any reasonable doubt in the prosecution's case.

54. Accordingly, we see no reason in the review jurisdiction to interfere with the concurrent findings of the Trial Court, High Court and this Court vis-à-vis the guilt of the petitioner for kidnapping and murdering the victim.

55. The counsel for the petitioner has also pressed upon this Court to reconsider the quantum of the sentence in terms of the capital punishment which has been ordered by the Trial Court and confirmed in appeal in judgment of the High Court and this Court.

E. Sentencing & Mitigation

56. The counsel for the petitioner argued at length that the death sentence was passed without a proper mitigation exercise regarding the circumstances of the petitioner.

E.1. Lingering Doubt Theory

57. The counsel for the petitioner submitted that the sentence of death cannot be imposed in such cases where the conviction is based on circumstantial evidence as a 'lingering doubt' regarding the guilt of the accused persists.

58. However, in ***Shatrughna Baban Meshram*** v ***State of Maharashtra***[16], a three judge Bench of this Court has ruled out the theory of 'lingering doubt'/ 'residual doubt'. The Court held:

> 77. When it comes to cases based on circumstantial evidence in our jurisprudence, the standard that is adopted in terms of law laid down by this Court as noticed in *Sharad Birdhichand Sarda* and subsequent decisions is that the circumstances must not only be individually proved or established, but they must form a consistent chain, so conclusive as to rule out the possibility of any other hypothesis except the guilt of the accused. On the strength of these principles, the burden in such cases is already of a greater magnitude. Once that burden is discharged, it is implicit that any other hypothesis or the innocence of the accused, already stands ruled out when the matter is taken up at the stage of sentence after returning the finding of

[16] 2021 (1) SCC 596

> guilt. **So, theoretically the concept or theory of "residual doubt" does not have any place in a case based on circumstantial evidence.** As a matter of fact, the theory of residual doubt was never accepted by the US Supreme Court as discussed earlier.
>
> 78. However, as summed up in *Kalu Khan*, while dealing with cases based on circumstantial evidence, for imposition of a death sentence, higher or stricter standard must be insisted upon. The approach to be adopted in matters concerning capital punishment, therefore ought to be in conformity with the principles culled out in para 50 hereinabove and the instant matter must therefore be considered in the light of those principles.
>
> **(emphasis supplied)**

59. Accordingly, the argument of residual or lingering doubt does not come to the rescue of the petitioner. Rather, in the course of the appellate decision in the instant case, the standard laid out in ***Sharad Birdhichand Sarda*** and subsequent cases was brought to the notice of this Court and it was after analysing the facts in reference to these principles that the Court upheld the guilt of the petitioner. This court noted that:

> 24. Based on the evidence noticed in the three preceding paragraphs, there can be no doubt whatsoever, that the accused appellant had been identified through cogent evidence as the person who had taken away Suresh when he disembarked from school van on 27.7.2009. The. factum of kidnapping of Suresh by the accused-appellant, therefore, stands duly established.
>
> […]
>
> 27. […] We are therefore, satisfied, that in the facts and circumstances of the present case, there is sufficient evidence on the record of this case, on the basis whereof even the factum of murder of Suresh at the hands of the accused-appellant stands established.

60. This Court has already applied the relevant standard to confirm the guilt of the petitioner in the appeal in a case which is based on circumstantial

evidence and it will not be appropriate for this Court to once again venture into an assessment of the evidence in the review jurisdiction in view of its limited scope.

E.2. Sentencing & Mitigation in the Trial Court and the Appellate Courts

61. Counsel for the petitioner argued that even if the petitioner's guilt was affirmed, the trial court and appellate courts failed to appropriately consider relevant aggravating and mitigating circumstances including the possibility of reformation of the petitioner while deciding upon the sentence. Counsel urged that the petitioner should not have been awarded the death sentence and it ought to be commuted in view of the failure of the courts to conduct an appropriate mitigation exercise.

62. In a line of precedent of this Court, there has been a discussion on whether a separate hearing on the issue of sentence is mandatory after recording the conviction of an accused for an offence punishable by death. Section 235 of the Code of Criminal Procedure 1973[17] states thus:

> **235. Judgment of acquittal or conviction.—**
>
> (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.
>
> (2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.

63. In ***Santa Singh*** v ***State of Punjab***[18], a two judge Bench of this Court highlighted the requirement of having a separate sentencing hearing in view

[17] "CrPC"
[18] 1976 (4) SCC 190

of Section 235(2) of the CrPC and noted that the stage of sentencing was as important a stage in the process of administering criminal justice as the adjudication of guilt.

64. The judgment of the majority in the Constitution Bench decision in ***Bachan Singh*** v ***State of Punjab***[19] reiterated the importance of a sentencing hearing. The Court noted that:

> 151. Section 354(3) of the CrPC, 1973, marks a significant shift in the legislative policy underlying the Code of 1898, as in force immediately before April 1, 1974, according to which both the alternative sentences of death or imprisonment for life provided for murder and for certain other capital offences under the Penal Code, were normal sentences. Now according to this changed legislative policy which is patent on the face of Section 354(3), the normal punishment for murder and six other capital offences under the Penal Code, is imprisonment for life (or imprisonment for a term of years) and death penalty is an exception.
>
> […]
>
> 152. In the context, we may also notice Section 235(2) of the Code of 1973, because it makes not only explicit, what according to the decision in Jagmohan's case was implicit in the scheme of the Code, **but also bifurcates the trial by providing for two hearings, one at the pre-conviction stage and another at the pre-sentence stage.**
>
> […]
>
> 163. […] **Now, Section 235(2) provides for a bifurcated trial and specifically gives the accused person a right of pre-sentence hearing, at which stage, he can bring on record material or evidence, which may not be strictly relevant to or connected with the particular crime under inquiry, but nevertheless, have, consistently with the policy underlined** in Section 354(3) a bearing on the choice of sentence. The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or

[19] 1980 (2) SCC 684

> making the choice of sentence for various offences, including one under Section 302, Penal Code, **the Court should not confine its consideration "principally" or merely to the circumstances connected with particular crime, but also give due consideration to the circumstances of the criminal.**
>
> **(emphasis supplied)**

65. This requirement of a separate hearing was reiterated in ***Muniappan*** v ***State of Tamil Nadu***[20] where the Court noted the importance of complying with the provision for a separate hearing on sentencing not merely as a formality but in spirit and substance by making a genuine effort to enquire into information that may have a bearing on the question of sentence.

66. In ***Allauddin Mian*** v ***State of Bihar***[21], a two judge Bench of this Court held that a sentencing hearing is required to satisfy the rules of natural justice; that it is mandatory and is not a mere formality. The Court noted:

> 10. …**The requirement of hearing the accused is intended to satisfy the rule of natural justice.** It is a fundamental requirement of fair play that the accused who was hitherto concentrating on the prosecution evidence on the question of guilt should, on being found guilty, be asked if he has anything to say or any evidence to tender on the question of sentence. **This is all the more necessary since the courts are generally required to make the choice from a wide range of discretion in the matter of sentencing. To assist the court in determining the correct sentence to be imposed the legislature introduced sub-section (2) to Section 235. The said provision therefore satisfies a dual purpose; it satisfies the rule of natural justice by according to the accused an opportunity of being heard on the question of sentence and at the same time helps the court to choose the sentence to be awarded. Since the provision is intended to give the accused an opportunity to place before the court all the relevant material having a bearing on the question of sentence there can be no doubt that the provision is salutary**

[20] 1981 (3) SCC 11
[21] 1989 (3) SCC 5

> **and must be strictly followed. It is clearly mandatory and should not be treated as a mere formality.**
>
> […]
>
> In a case of life or death as stated earlier, the presiding officer must show a high degree of concern for the statutory right of the accused and should not treat it as a mere formality to be crossed before making the choice of sentence. If the choice is made, as in this case, without giving the accused an effective and real opportunity to place his antecedents, social and economic background, mitigating and extenuating circumstances, etc., before the court, the court's decision on the sentence would be vulnerable. **We need hardly mention that in many cases a sentencing decision has far more serious consequences on the offender and his family members than in the case of a purely administrative decision; a fortiori, therefore, the principle of fair play must apply with greater vigour in the case of the former than the latter. An administrative decision having civil consequences, if taken without giving a hearing is generally struck down as violative of the rule of natural justice. Likewise a sentencing decision taken without following the requirements of subsection (2) of Section 235 of the Code in letter and spirit would also meet a similar fate and may have to be replaced by an appropriate order.** The sentencing court must approach the question seriously and must endeavour to see that all the relevant facts and circumstances bearing on the question of sentence are brought on record. Only after giving due weight to the mitigating as well as the aggravating circumstances placed before it, it must pronounce the sentence. **We think as a general rule the trial courts should after recording the conviction adjourn the matter to a future date and call upon both the prosecution as well as the defence to place the relevant material bearing on the question of sentence before it and thereafter pronounce the sentence to be imposed on the offender.**
>
> **(emphasis supplied)**

67. The importance of a separate sentencing hearing being afforded to the accused after recording a conviction was reiterated in ***Anguswamy*** v ***State***

of Tamil Nadu[22], ***Malkiat Singh*** v ***State of Punjab***[23] and ***Dattaraya*** v ***State of Maharashtra***[24].

68. On the other hand, there have also been judgments of this Court where it was held that while the court *may* adjourn for a separate hearing, same-day sentencing did not violate the provisions of Section 235(2) of the CrPC and did not in itself vitiate the sentence. This reasoning was adopted in the judgments of this Court in ***Dagdu*** v ***State of Maharashtra***[25], ***Tarlok Singh*** v ***State of Punjab***[26] and ***Ramdeo Chauhan*** v ***State of Assam***[27]

69. In Suo Motu W.P. (Crl.) No. 1/2022 titled ***In re: Framing Guidelines Regarding Potential Mitigating Circumstances to be Considered while Imposing Death Sentences***, this Court took note of the difference in approach in the interpretation of Section 235(2) of CrPC and referred the question for consideration of a larger bench. While it took note of the conflict on what amounted to 'sufficient time' at the trial court stage to allow for a separate and effective sentencing hearing, it noted that all the decisions also had the following common ground:

> 27. The common thread that runs through all these decisions is the express acknowledgment that *meaningful, real* and *effective* hearing must be afforded to the accused, with the opportunity to adduce material relevant for the question of sentencing.

[22] 1989 (3) SCC 33
[23] 1991 (4) SCC 341
[24] 2020 (14) SCC 290
[25] 1977 (3) SCC 68
[26] 1977 (3) SCC 218
[27] 2001 (5) SCC 714

70. In the present case, the judgment of the Trial Court dealing with sentencing indicates that a meaningful, real and effective hearing was not afforded to the petitioner.

71. The Trial Court did not conduct any separate hearing on sentencing and did not take into account any mitigating circumstances pertaining to the petitioner before awarding the death penalty. In the course of its judgment, the trial court merely noted the following, before awarding the death penalty:

> In present day circumstances it has become common of kidnapping of children and elders for ransom and kidnapped being murdered if expected ransom is not received. In this situation unless the kidnappers for ransom are punished with extreme penalty, in future kidnapping of children and elders for ransom would get increased and the danger of society getting totally spoiled, would have to faced is of no doubt. Hence having regard to all these it is decided that it would be in the interests of justice to award to the 1st accused the extreme penalty. Not only that the court saw the mother of the deceased boy profusely crying and weeping in court over the death of her son in court and the scene of onlookers in court having wept also cannot be forgotten by anyone. Hence it is decided that such offenders have to be punished with extreme penalty; in the interests of justice.

72. The High Court took into account the gruesome and merciless nature of the act. It reiterated the precedents stating that the death penalty is to be awarded only in the rarest of rare cases. However, it did not specifically look at any mitigating circumstances bearing on the petitioner. It merely held that:

> 28. In a given case like this, it is an inhuman and a merciless act of gruesome murder which would shock the conscience of the society. Under the circumstance, showing mercy or leniency to such accused would be misplacing the mercy. That apart, showing leniency would be mockery on the criminal system. Therefore, the death penalty imposed by the trial Judge, has got to be affirmed, and accordingly, it is affirmed.

73. This Court examined the aggravating circumstances of the crime in detail. However, as regards the mitigating circumstances, it noted that:

> 31. As against the aforesaid aggravating circumstances, learned counsel for the accused-appellant could not point to us even a single mitigating circumstance. Thus viewed, even on the parameters laid down by this Court, in the decisions relied upon by the learned counsel for the accused-appellant, we have no choice, but to affirm the death penalty imposed upon the accused appellant by the High Court. In fact, we have to record the aforesaid conclusion in view of the judgment rendered by this Court in Vikram Singh & Ors. Vs. State of Punjab, (2010) 3 SCC 56, wherein in the like circumstances (certainly, the circumstances herein are much graver than the ones in the said case), this Court had upheld the death penalty awarded by the High Court.

74. The above sequence indicates that no mitigating circumstances of the petitioner were taken into account at any stage of the trial or the appellate process even though the petitioner was sentenced to capital punishment.

75. In terms of the aggravating circumstances that were taken note of by this Court in appeal, our attention has been drawn to the following circumstance:

> 30. […]
>
> (vii) The choice of kidnapping the particular child for ransom, was well planned and consciously motivated. The parents of the deceased had four children – three daughters and one son. Kidnapping the only male child was to induce maximum fear in the mind of his parents. Purposefully killing the sole male child, has grave repercussions for the parents of the deceased. Agony for parents for the loss of their only male child, who would have carried further the family lineage, and is expected to see them through their old age, is unfathomable. Extreme misery caused to the aggrieved party, certainly adds to the aggravating circumstances.

We wish to note that the sex of the child cannot be in itself considered as an aggravating circumstance by a constitutional court. The murder of a young

child is unquestionably a grievous crime and the young age of such a victim as well as the trauma that it causes for the entire family is in itself, undoubtedly, an aggravating circumstance. In such a circumstance, it does not and should not matter for a constitutional court whether the young child was a male child or a female child. The murder remains equally tragic. Courts should also not indulge in furthering the notion that only a male child furthers family lineage or is able to assist the parents in old age. Such remarks involuntarily further patriarchal value judgements that courts should avoid regardless of the context.

76. In ***Rajendra Pralhadrao Wasnik*** v ***State of Maharashtra***[28], a three judge bench of this Court took note of the line of cases of this Court which underline the importance of considering the probability of reform and rehabilitation of the convicted accused before sentencing him to death. The court observed:

> 43. At this stage, we must hark back to *Bachan Singh* and differentiate between possibility, probability and impossibility of reform and rehabilitation. *Bachan Singh* requires us to consider the probability of reform and rehabilitation and not its possibility or its impossibility.
>
> […]
>
> 45. The law laid down by various decisions of this Court clearly and unequivocally mandates that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. This is one of the mandates of the "special reasons" requirement of Section 354(3) CrPC and ought not to be taken lightly since it involves snuffing out the life of a person. **To effectuate this mandate, it is the obligation on the prosecution to prove to the court, through evidence, that the probability is that the convict cannot be reformed or**

[28] 2019 (12) SCC 460

rehabilitated. This can be achieved by bringing on record, inter alia, material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the convict can produce evidence on these issues as well.

46. If an inquiry of this nature is to be conducted, as is mandated by the decisions of this Court, it is quite obvious that the period between the date of conviction and the date of awarding sentence would be quite prolonged to enable the parties to gather and lead evidence which could assist the trial court in taking an informed decision on the sentence. But, there is no hurry in this regard, since in any case the convict will be in custody for a fairly long time serving out at least a life sentence.

47. **Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be overemphasised. Until *Bachan Singh*, the emphasis given by the courts was primarily on the nature of the crime, its brutality and severity. *Bachan Singh* placed the sentencing process into perspective and introduced the necessity of considering the reformation or rehabilitation of the convict.** Despite the view expressed by the Constitution Bench, there have been several instances, some of which have been pointed out in *Bariyar* and in *Sangeet* v. *State of Haryana* where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in *Sangeet* "In the sentencing process, both the crime and the criminal are equally important." **Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and analyse this information is certainly not an easy task but must nevertheless be undertaken.** The process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social reintegration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible.

(emphasis supplied)

77. The law laid down in ***Bachan Singh*** requires meeting the standard of 'rarest of rare' for award of the death penalty which requires the Courts to conclude that the convict is not fit for any kind of reformatory and rehabilitation scheme. As noted in ***Santosh Kumar Satishbhushan Bariyar*** v ***State of Maharashtra***[29], this requires looking beyond the crime at the criminal as well:

> 66. The rarest of rare dictum, as discussed above, hints at this difference between death punishment and the alternative punishment of life imprisonment. The relevant question here would be to determine whether life imprisonment as a punishment will be pointless and completely devoid of reason in the facts and circumstances of the case? **As discussed above, life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second exception to the rarest of rare doctrine, the court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigour when the court focuses on the circumstances relating to the criminal, along with other circumstances.** This is not an easy conclusion to be deciphered, but *Bachan Singh* sets the bar very high by introduction of the rarest of rare doctrine.
>
> **(emphasis supplied)**

78. A similar point was underlined by this Court in ***Anil*** v ***State of Maharashtra***[30] where the Court noted that:

> 33. In *Bachan Singh* this Court has categorically stated, 'the probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to the society', is a relevant circumstance, that must be given great weight in the determination of sentence. This was further expressed in *Santosh Kumar Satishbhushan Bariyar*. **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**

[29] 2009 (6) SCC 498
[30] 2014 (4) SCC 69

> **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)**

79. No such inquiry has been conducted for enabling a consideration of the factors mentioned above in case of the petitioner. Neither the trial court, nor the appellate courts have looked into any factors to conclusively state that the petitioner cannot be reformed or rehabilitated. In the present case, the Courts have reiterated the gruesome nature of crime to award the death penalty. In appeal, this Court merely noted that the counsel for the petitioner could not point towards mitigating circumstances and upheld the death penalty. The state must equally place all material and circumstances on the record bearing on the probability of reform. Many such materials and aspects are within the knowledge of the state which has had custody of the accused both before and after the conviction. Moreover, the court cannot be an indifferent by-stander in the process. The process and powers of the court may be utilised to ensure that such material is made available to it to form a just sentencing decision bearing on the probability of reform.

80. In ***Mofil Khan***, a three judge bench of this Court was also dealing with a review petition which was re-opened in view of the decision in ***Mohd. Arif*** v ***Registrar, Supreme Court of India.*** While commuting the death sentence to

life imprisonment, the Court reiterated the importance of looking at the possibility of reformation and rehabilitation. Notably, it pointed out that it was the Court's duty to look into possible mitigating circumstances even if the accused was silent. The Court held that:

> 9. It would be profitable to refer to a judgment of this Court in *Mohd. Mannan* v. *State of Bihar* in which it was held that before imposing the extreme penalty of death sentence, the Court should satisfy itself that death sentence is imperative, as otherwise the convict would be a threat to the society, and that there is no possibility of reform or rehabilitation of the convict, after giving the convict an effective, meaningful, real opportunity of hearing on the question of sentence, by producing material. **The hearing of sentence should be effective and even if the accused remains silent, the Court would be obliged and duty-bound to elicit relevant factors.**
>
> 10. **It is well-settled law that the possibility of reformation and rehabilitation of the convict is an important factor which has to be taken into account as a mitigating circumstance before sentencing him to death. There is a bounden duty cast on the Courts to elicit information of all the relevant factors and consider those regarding the possibility of reformation, even if the accused remains silent.** A scrutiny of the judgments of the trial court, the High Court and this Court would indicate that the sentence of death is imposed by taking into account the brutality of the crime. There is no reference to the possibility of reformation of the Petitioners, nor has the State procured any evidence to prove that there is no such possibility with respect to the Petitioners. We have examined the socio-economic background of the Petitioners, the absence of any criminal antecedents, affidavits filed by their family and community members with whom they continue to share emotional ties and the certificate issued by the Jail Superintendent on their conduct during their long incarceration of 14 years. Considering all of the above, it cannot be said that there is no possibility of reformation of the Petitioners, foreclosing the alternative option of a lesser sentence and making the imposition of death sentence imperative.
>
> **(emphasis supplied)**

81. The duty of the court to enquire into mitigating circumstances as well as to foreclose the possibility of reformation and rehabilitation before imposing the death penalty has been highlighted in multiple judgments of this Court. Despite this, in the present case, no such enquiry was conducted and the grievous nature of the crime was the only factor that was considered while awarding the death penalty.

82. During the course of the hearing of the review petition, this court had passed an order directing the counsel for the state to get instructions from jail authorities on the following aspects: (i) the conduct of the petitioner in jail; (ii) information on petitioner's involvement in any other case; (iii) details of the petitioner acquiring education in jail; (iv) details of petitioner's medical records; and (v) any other relevant information.

83. Through an affidavit dated 26 September 2021, the Sub-Inspector of Police Kammapuram at Cuddalore District, Tamil Nadu has informed the court that the conduct of petitioner has been satisfactory and he has not been involved in any other case. Furthermore, he is suffering from systemic hypertension and availing medication from the prison hospital. The petitioner has also acquired a diploma in food catering during his time in the prison.

84. Separately, this Court also received a document dated 8 November 2018 from the Superintendent of Prisons, Central Prison, Cuddalore-4 in response to the letter from Assistant Registrar, Supreme Court of India communicating the order seeking instructions from jail authorities. Notably, this document states that the petitioner tried to escape from prison on 6 November 2013. It is

concerning that the Respondent, in the affidavit dated 26 September 2021, has failed to include this information.

85. The non-disclosure of material facts amounts to misleading this Court and to an attempt at interfering with the administration of justice. In the Suo Motu Contempt Petition (Civil) No 3 of 2021 titled ***In Re: Perry Kansagra***, this Court discussed the line of precedent of this Court dealing with tendering of affidavits and undertakings containing false statements or suppressing / concealing material facts amounting to contempt of court:

> 15. It is thus well settled that a person who makes a false statement before the Court and makes an attempt to deceive the Court, interferes with the administration of justice and is guilty of contempt of Court. The extracted portion above clearly shows that in such circumstances, the Court not only has the inherent power but it would be failing in its duty if the alleged contemnor is not dealt with in contempt jurisdiction for abusing the process of the Court.

Accordingly, we deem it appropriate to initiate *suo moto* contempt proceedings against the respondent for withholding material information from this Court.

86. As per the written submissions of the petitioner, he was about 24 years old when the judgment of the Trial Court was rendered on 30 July 2010. He has been in prison since 2009, 13 years. He had no prior antecedents and the jail authorities have stated that he has not been involved in any other case. However, the jail authorities have brought to the notice of this Court, the attempt of petitioner to escape from prison.

87. In the review petition, it has also been submitted that the petitioner could not communicate mitigating circumstances bearing on his sentencing decision to

the lawyer and his relatives, who being poor and uneducated, could not properly contest the case for him. The fact remains that no mitigating circumstances were placed before any of the appellate courts.

88. On the basis of these details, it cannot be said that there is no possibility of reformation even though the petitioner has committed a ghastly crime. We must consider several mitigating factors: the petitioner has no prior antecedents, was 23 years old when he committed the crime and has been in prison since 2009 where his conduct has been satisfactory, except for the attempt to escape prison in 2013. The petitioner is suffering from a case of systemic hypertension and has attempted to acquire some basic education in the form of a diploma in food catering. The acquisition of a vocation in jail has an important bearing on his ability to lead a gainful life.

89. Considering the above factors, we are of the view that even though the crime committed by the petitioner is unquestionably grave and unpardonable, it is not appropriate to affirm the death sentence that was awarded to him. As we have discussed, the 'rarest of rare' doctrine requires that the death sentence not be imposed only by taking into account the grave nature of crime but only if there is no possibility of reformation in a criminal.

90. However, we are also aware that a sentence of life imprisonment is subject to remission. In our opinion, this would not be adequate in view of the gruesome crime committed by the petitioner.

91. This court has been faced with similar situations earlier where it has noticed that the sentence of life imprisonment with remission may be inadequate in

certain cases. For instance, in ***Swamy Shraddananda (2) @ Murali Manohar Mishra*** v ***State of Karnataka***[31] the Court noted that:

> 92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. **But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate.** What then should the Court do? **If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find**
>
> **itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just,**
>
> **reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death.** It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 year's imprisonment would amount to no punishment at all.
>
> **(emphasis supplied)**

92. Accordingly, it is open to this Court to prescribe the length of imprisonment, especially in cases where the capital punishment is replaced by life imprisonment. Considering the facts of the instant case, we are of the

[31] 2008 (13) SCC 767

considered view that the petitioner must undergo life imprisonment for not less than twenty years without remission of sentence.

F. Conclusion

93. For the reasons discussed above, we see no reason to doubt the guilt of the petitioner in kidnapping and murdering the victim. The exercise of the jurisdiction in review to interfere with the conviction is not warranted. However, we do take note of the arguments regarding the sentencing hearing not having been conducted separately in the Trial Court and mitigating circumstances having not been considered in the appellate courts before awarding the capital punishment to the petitioner. While weighing this argument, the gruesome nature of the crime of murder of a young child of merely 7 years of age has also weighed upon us and we do not find that a sentence of life imprisonment, which normally works out to a term of 14 years, would be proportionate in the circumstances.

94. Accordingly, we commute the death sentence imposed upon the petitioner to life imprisonment for not less than twenty years without reprieve or remission.

95. Separately, a notice is required to be issued to the Inspector of Police, Kammapuram Police Station, Cuddalore District, State of Tamil Nadu to offer an explanation as to why action should not be taken for the filing of the affidavit dated 26 September 2021. In this case, *prima facie*, material information regarding the conduct of the petitioner in the prison was concealed from this Court. Accordingly, the Registry is directed to register the matter as a *suo motu* proceeding for contempt of court.

96. We dispose of the review petitions in the above terms.

…….…….....…….....……..…....CJI
[Dr Dhananjaya Y Chandrachud]

…….…….....…….....……..…....J.
[Hima Kohli]

…….…….....…….....……..…....J.
[Pamidighantam Sri Narasimha]

New Delhi;
March 21, 2023.