

*Before Uma Nath Singh and A. N. Jindal, JJ.*

**STATE OF PUNJAB,—Prosecutor**

*versus*

**SUSHIL KUMAR @ LUCKY,—Respondent**

Murder Reference No. 3 of 2007

30th May, 2008

*Indian Penal Code, 1860—S. 302—Murder of wife and two children in a diabolical manner—Accused suspecting infidelity on part of his wife—Accused committing offence in a pre-planned and premeditated manner without giving a wind of it—Accused trying to create alibi by getting himself admitted in hospital on a false statement before Doctor regarding suspected poisoning by consuming sulphas tablets—Rarest of rare category case—Death reference accepted and death sentence confirmed.*

*Held*, that we notice the following special reasons to held that this case has acquired enormity of that kind which brings it in the rarest of rare category and for those reasons, we accept death reference and confirm death sentence :—

- (1) Enormity of offence is punctuated by killing of three helpless victims being none else than wife and two children of the accused naemly Pooja, son Jatin and daughter Sofia, in a gruesome diabolical and dastardly maner in dead of night when they were asleep. Accused used a large size knife having blade of 8-½ inches with handle of 3½ inches. He used the knife with brutality of butcher. He selected only vital parts of body like breasts of his wife and daughter and chest of his son.
- (2) Accused was suspecting infidelity on the part of his wife and for that reason he committed this offence in a pre-planned and premeditated manner without giving a wind of it during its commission.
- (3) Instead of showing any remorse, the accused tried to create alibi by getting himself admitted in hospital on a false

statement before Doctor regarding suspected poisoning by consuming sulphas tablets.

- (4) This is not a case of sentimental killing as the accused having called up his brother-in-law complainant with a sense of accomplishment, asked him to go and see in his house and after the complainant had seen three dead bodies lying on bed, he called him up again and asked him in Punjabi Kiddan which means 'how has it been'.
- (5) Even after committing offence of triple murder, the accused appeared least disturbed and was in full command of his senses when he called up his brother-in-law, the complainant twice. Moreover every time he avoided to face pointed questions from the complainant and abruptly disconnected the phone connection. This appears to be an unfortunate case of killing where the accused was feeling relieved with a sense of achievement irrespective of killing of his wife and two children in a diabolical manner.
- (6) One day prior to occurrence, the accused had told his mother-in-law to take her daughter along, or else he will kill her. Accused, thereafter, carried the threat to its logical conclusion in a cold blooded way.

(Para 45)

Ms. Gurveen H. Singh, Additional Advocate General, *for the State of Punjab.*

N. K. Banka, Advocate, *for the accused-appellant.*

**UMA NATH SINGH, J.**

(1) This judgment shall also dispose of connected Criminal Appeal No. 447-DB of 2007 as both these matters arise out of impugned judgment dated 13th/17th April, 2007 passed by Learned Additional Sessions Judge, Jalandhar, in Sessions Case No. 70 of 2006 holding accused-appellant Sushil Kumar @ Lucky, guilty of offence under Section 302 IPC on three counts for committing murder of his wife

Pooja, son Jatin (6 years), and daughter Sofia (4 years), and sentencing him to death while recording acquittal of charge under Section 309 IPC which was found not proved.

(2) It appears from prosecution case that on 4th March, 2005, Councillor of Basti Danishmandan, namely Ram Lal, gave telephonic information to police about this occurrence. Pursuant thereto, Sub Inspector Onkar Singh with other police personnel reached the scene of occurrence, where complainant Sukhdev Kumar (PW2), brother of deceased Pooja, gave a statement to the effect that he is working in a football making factory. His younger sister Pooja @ Ashma was married to accused Sushil Kumar about seven years ago. She blessed with two children: a son, namely Jatin @ Babu, aged six years, and a daughter, named Sofia, of four years. Deceased Pooja had been residing in New Rasila Nagar in a rented accommodation of one Pawan Kumar, with her husband Sushil Kumar and children. Accused Sushil Kmar was earlier working in shop of one Babbu of Kishanpura, but for the last about 7-8 months, he was staying unemployed. He used to borrow money from others to meet his daily needs. Two days prior to this incident on 2nd March, 2005 at about 1.30 p.m., the complainant had come to see his sister, when he had notice a minor scuffle between his sister and brother-in-law, which, however, had been settled with his intervention, and he had also advised them to live amicably. On 4th March, 2005 at 6.30 a.m., the complainant received a telephone call from his brother-in-law, accused Sushil Kumar, informing him that he is admitted in a hospital and the complainant should go to his house to see his sister Pooja and her children who were alone in the house and he should enter the house by climbing its wall. When the complainant enquired as to whether there was any unpleasantness between husband and wife, then he was told to see after entering the house. Complainant Sukhdev Kumar rushed to the house of his sister and saw that his sister Pooja, her son Jatin, and daughter Sofia were lying dead on bed and they had been strangulated to death with a plastic rope, which was also lying there on bed. Both the hands of son Jatin were tied and there were incised wounds on left hand of Pooja. At about 6.45 a.m., the complainant received another telephone call from the accused and when he asked the accused as to what has he done and also told him

to return home, the accused immediately disconnected the phone. Later on, the complainant came to know that the accused had consumed 'Sulphas tablets' and then got himself admitted in Civil Hospital. Complainant Sukhdev Kumar was confident in his statement that his brother-in-law (sister's husband), the accused, killed his wife Pooja, son Jatin, and daughter Sofia by strangulating their necks and then he himself consumed sulphas tablets due to hardships of poverty.

(3) Police Sub Inspector Onkar Singh made his endorsement (Ex.PD/1) on the statement (Ex.PD) and sent it to Police Station, on the basis of which, a formal First Information Report (Ex.PD/2) was recorded. He conducted inquest proceedings of dead bodies and, thereafter, removed them to Civil Hospital, Jalandhar, for post mortem examination.

(4) Dr. S. K. Sharma (PW1) conducted post mortem on dead body of Pooja, wife of accused Sushil Kumar, and noticed the following injuries (as reproduced from Doctor's evidence) :

- “1. Incised wound 2 cm x 0.75 cm at the level of left interior auxiliary line, and line was joining to left nipple going deep into the chest cavity. Clotted blood was present.
2. Incised wound 2 cm x 0.5 cm lateral to left nipple, obliquely placed, going deep in the chest cavity.
3. Incised wound 2 cm x 0.5 cm on left side of chest, 4 cm away from injury No. 2, and below from it, going deep into the chest cavity. Clotted blood was present.
4. Incised wound 3 cm x 1 cm on the wrist in its lateral part, bone deep, underlying structure and vessels were found cut. Clotted blood was present.
5. Incised wound 3 cm x 1 cm on the back of left hand in the middle, bone deep. Clotted blood was present.
6. Multiple abrasions of different sizes and shapes on the right side of the neck.

7. An abrasion 1.1/2 x 1/2 cm on the dorsal aspect, index finger, right hand.

On dissection and exploration, it was found that chest cavity was full of blood, great vessels and left lung showed cut. Rest of the organs were found healthy. In my opinion, the cause of death in this case was due to shock and haemorrhage due to the injuries described above, which were sufficient to cause death in an ordinary course of nature. All the injuries were ante-mortem in nature. Ex.PA is the carbon copy of the original which I brought today in the Court and it bears my signatures.....”

(5) On the same day i.e. 4th March, 2005, Dr. S. K. Sharma (PW1) also conducted post mortem on dead body of Jatin @ Babbu, son of the accused, and noticed the length of the body was 109 cm. Rigor mortis and post mortem staining were present. Clotted blood from nostrils was present. Injuries and noticed by Dr. Sharma on dead body are reproduced from his evidence as :

“An incised wound 2 cm x 0.75 cm on the chest, 2 cm medial to the left nipple going deep into the chest cavity. On dissection and further exploration it would found that underlying structure was out. Chest cavity was full of blood. Left lung was cut. Pleura and heart were found cut. All other organs were healthy. In my opinion, the cause of death in this case is shock and haemorrhage due to injuries described, which were sufficient to cause death in an ordinary course of nature. All injuries were ante-mortem in nature. Ex.PB is the carbon copy of the postmortem report....”

(6) Besides dead bodies of wife and son, Dr. Sharma (PW1) also conducted postmortem on dead body of Sofia daughter of the accused, that he found to be moderately built. Rigor mortis and post mortem staining were present. Dr. Sharma (PW1) stated in his evidence about the injuries as noticed by him on dead body of Sofia which are reproduced hereunder :

- “1. An incised wound 2 cm x 0.75 cm below the left clavicle area in the middle clavicular lines going deep into the chest cavity.

2. An incised wound 2 cm x 0.75 cm and 3 cm, below the injury No. 1.
3. Incised wound 2 cm x 0.75 cm and 3 cm below and medial to the injury No. 2 going deep into the chest cavity.
4. Incised wound 2 cm x 0.75 2½ cm from the mid-line below the nipple going deep into the chest cavity.
5. Incised wound 2 cm x 0.75 cm and 3 cm below and lateral to the injury No. 4 going deep into the chest cavity.
6. Incised wound 1 cm x 0.5 cm and 4 cm lateral to the injury No. 5 going deep into the chest cavity.

On dissection and exploration, chest cavity was full of blood, cuts were present on the heart, left lung, pleura and great vessels. Rest of the organs were healthy. In my opinion, the cause of death in this case was due to shock and hemorrhage, due to injuries described above, which were sufficient to cause death in an ordinary course of nature. All injuries were ante mortem. The probable time elapsed between injury and death within few minutes and between death and postmortem within 24 hours..... Ex.PC is the carbon copy of the original which I brought today in the Court and it is of my hand and bears my signatures.....”

(7) Investigating Officer SI Onkar Singh took into possession blood stained bed sheet and pillows,—*vide* recovery memo (Ex.PH) after reducing them into a parcel and sealing them with his seal bearing impression of letters ‘OS’. Plastic rope used for strangulation of the deceased was also taken into possession by the police,—*vide* separate recovery memo (Ex.PV). During course of investigation, statements of witnesses were recorded, a rough site plan of scene of occurrence with correct marginal notes prepared, and the accused was arrested on 7th March, 2005. During interrogation, the accused suffered a disclosure statement (Ex.PE) and pursuant thereto, a blood stained knife (chhura)

(Ex.P5) used in committing offence was taken into possession,—*vide* a separate recovery memo (Ex.PF).

(8) On completion of investigation, a challan was laid against the accused. Trial Court, accordingly, framed charges under Section 302 IPC against the accused for murder of his wife Smt. Pooja, son master Jatin, and daughter Sofia, and also under Section 309 IPC for attempt to commit suicide. However, charge under Section 302 IPC on one count for three murder was later amended to three separate charges under Section 302 IPC,—*vide* dated 8th March, 2007. When charges were read over to the accused, he pleaded not guilty and claimed trial.

(9) Heard learned counsel for parties and perused rival evidence on record.

(10) Learned counsel for the appellant submitted that looking to contradictions appearing in statements of Raj Kumar (PW3) and SI Onkar Singh, Investigating Officer, (PW11) as to who had given information about occurrence to police, and also as to time of inquest, credibility of prosecution case becomes doubtful. Learned counsel for the appellant also submitted that prosecution case does not inspire confidence in absence of link evidence to suggest that a phone call was made by the accused on mobile number mentioned by complainant in his evidence. According to learned counsel for the appellant, in statement under Section 161 Cr.P.C., the complainant stated that he received a phone call on his mobile, whereas, his mother Pushpa (PW5) has said that said call was received on mobile number of Kamlesh Baba of dera known as 'Darbar', where they were residing. Learned counsel for the appellant also submitted that in cross-examinations, witness Satpal (PW4) has resiled from his statement in examination-in-chief and also from statement before police. Learned counsel for the appellant emphasized that investigation of this case is defective, inasmuch as, from cross-examinations of Investigation Officer Onkar Singh (PW11), it is obvious that he did not make any enquiry about continuance of employment of the accused with Babbu Electronics till date of incident. PW11 also did not make any investigation into the fact that the accused had been visiting Amritsar in connection with his employment. This is also a submission of learned counsel for the appellant that it was

necessary for a fair investigation of the case to have an enquiry as to whether in the night of occurrence, the accused had visited Amritsar and brought any article for the employer's business. He further submitted that there is no evidence to connect weapon of offence with the accused and recovery of weapon is not duly proved. This, rather, appears to be a case of planting of weapon and according to him, when IO visited the scene of occurrence, he should have searched that bed where dead bodies were lying, as its size was only 6 x 6 feet. He contended that during investigation, no finger prints were lifted from scene of occurrence to connect the accused with offence. He further submitted that witness Raj Kumar (PW3) is a stamped witness, hence, his testimony does not inspire confidence. Raj Kumar (PW3) has stated that landlord (not examined) of premises of the accused, which is scene of occurrence, had since informed this witness and other villagers also, it was quite probable that out of them, somebody would have carried the accused to hospital, where he opened his eyes and till then he was unconscious. Learned counsel for the appellant submitted that in a case of circumstantial evidence, motive becomes relevant but in instant case, prosecution has done nothing to establish motive behind occurrence by leading credible evidence. Though prosecution has tried to set up two theories of motive behind this occurrence namely (a) illicit relationship of deceased Pooja with son of earlier landlord Badri, and (b) hardships of poverty, but no such evidence was adduced to prove either. In respect of circumstantial evidence, learned counsel for the appellant placed reliance on a judgment of Hon'ble the Apex Court in **State of Madhy Pradesh versus Sanjay Rai (1)**. In that judgment, Hon'ble the Apex Court has accepted the State appeal against acquittal.

(11) On the other hand, learned Additional Advocate General appearing for the respondent-State of Punjab while answering first contention that there are contradictions in statements of Raj Kumar (PW3) and SI Onkar Singh (PW11) submitted that prosecution evidence does not suffer from any such infirmity, inasmuch as in cross-examinations of Raj Kumar (PW3) in last paragraph, it is clearly mentioned that landlord of the house of accused, being scene of occurrence, gave information about incident to him after visiting his house. Landlord also

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(1) 2004(2) Apex Court Judgments 442 (S.C.)



gave this information to other residents of locality including one Ram Lal, Councillor of that area, who though did not appear in witness box, but as per testimony of SI Onkar Singh (PW11), informed him about this incident. SI Onkar Singh has clearly stated in his evidence that he visited scene of occurrence of receiving a phone call from said Ram Lal informing him about the occurrence. In inquest report, time of discovery of dead bodies is mentioned as 7.00 O'clock and time of admission of the accused in hospital was mentioned 6.55 a.m. Thus, presence of accused on scene of occurrence was quite probable and police lost no time in reaching the spot of incident, having learnt about the occurrence. Learned State counsel in reply to second contention as to on whose mobile number, phone calls of the accused were received, referred to answers given by the complainant (PW2) in his cross-examination as : ".....I received phone **on mobile of Mandirwala**, but I do not have my own mobile. The number of said mobile was 9872561620. I have not got recorded the said mobile number in my statement made to the police. I do not know as to whether the accused made a call from the landline or mobile....." Thus, there is no ambiguity that the complainant had received telephone call on mobile number of one Mandirwala (owner of some temple). Regarding change of stand by witness Satpal (PW4) in his cross-examinations, learned State counsel referred to first cross-examinations of this witness where he has supported the prosecution case in toto, and it is only when this witness was recalled on an application made on behalf of the appellant that he tried to resile from his earlier statement, in further cross-examinations on 2nd April, 2007 conducted after a gap of one year and seven months. Still, in examinations by Public Prosecutor with permission of Court, he has supported the prosecution case. As regards argument that the police failed to investigate as to whether the accused was unemployed having quit his employment in one electronic shop known as 'Babbu Electronics', learned State counsel submitted that no such investigation was necessary for it had already come to notice of I.O.,— *vide* statement of complainant Sukhdev Kumar (PW2) that the accused was unemployed for the last 7-8 months. Moreover, owner of Babbu Electronics was cited as a defence witness but was given up later by the accused. Concerning recovery of weapon of offence, learned counsel for the State submitted that weapon of offence, chhura, was not lying

naked and as per disclosure statement (Ex.PE), it was found underneath some clothes lying in back side of bed, which was not readily accessible to other people and, obviously, it could not have attracted the attention of I.O. Accused had taken the house on rent and he alone could have knowledge about places where he had various articles including weapon of offence. This is also her submission that technical defects, like the ones highlighted by learned counsel for the appellant, cannot be a ground to reject quality evidence placed on record by the prosecution.

(12) In regard to absence of evidence of finger prints, learned counsel for the State argued that as FSL report (Ex.PW) on record shows that on all incriminating articles including chhura which were sent to laboratory for chemical examination, human blood was found present, therefore, recovery of weapon of offence cannot be discarded only for that reason. Learned counsel for the State contended that defence plea on behalf of the appellant that he was carried to hospital by some body while he was unconscious has also not been proved by leading any evidence in support. Even erstwhile employer of the accused was given up by him later during trial for reason better known to him. Learned State counsel argued that all the circumstances, thus, stand individually and conclusively proved by prosecution in terms of evidence on record and they also form a complete chain of proved circumstances. Moreover, if the accused was to set up a plea of *alibi* that he was away to Amritsar on fateful night, he should have led evidence in that direction. Learned State counsel placed reliance on three judgments of Hon'ble the Apex Court namely : (i) **Sukhram versus State of Maharashtra (2)** to derive support in regard to her argument that the circumstances set out herein-above in her submissions form a complete chain of circumstantial evidence; (ii) **Amarsingh Munnasingh Suryawanshi versus State of Maharashtra (3)** apropos her submission regarding criminal liability of a husband to explain as to how his wife died inside his house when he was present, and (iii) **Kulesh Modhal versus State of West Bengal (4)** regarding distinction between material discrepancies and normal discrepancies. According to learned State counsel, prosecution case does not suffer from any material discrepancies.

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(2) 2007(4) R.C.R. (Crl.) 45

(3) 2007(4) R.C.R. (Crl.) 967

(4) 2007(4) R.C.R. (Crl.) 129

(13) On due consideration of rival submissions and evidence on record led by both parties, we are of the considered view that impugned judgment recroding conviction of the accused for committing murder of his wife Pooja, son Jatin, and daughter Sofia, does not call for interference.

(14) So far as testimonics of witnesses are concerned, we notice that prosecution has examined as many as eleven witnesses during trial of this case. They are: Dr. S. K. Sharma (PW1), complainant Sukhdev Kumar (PW2), Raj Kumar (PW3), Sat Pal (PW4), Mrs. Pushpa (PW5), Dalip Singh, Draftsman (PW6), Mohrrir Head Constable Jasbir Singh (PW7), Constable Resham Lal (PW8), Constable Amarjit Kumar (PW9), Dr. Kamaljit Singh Bawa, Medical Specialist (PW10) and Investigating Officer, Sub Inspector Onkar Singh (PW11). But defence has produced only one namely Dharam Pal (DW1), maternal uncle of the accused.

(15) We have dealt with medical evidence threadbare herein above, hence, it need not be discussed again. Regarding complainant Sukhdev Kumar (PW2), brother of deceased Pooja, he is the star prosecution witness. He has stated in his testimony that on 4th March, 2005 at about 6.30 a.m., he received a telephone call from accused Sushil Kumar asking him to go to his house to see his sister Pooja and her children, who were alone, and also told him to enter his house by climbing its wall. Accused Sushil Kumar informed the complainant that he was calling from civil hospital, and when the complainant asked him as to whether he had any differences at home, then he snapped the connection. Thereafter, Sukhdev Kumar visited his sister's house where he saw that its door was open and three dead bodies of his sister, nephew and niece were lying on bed. Hands of his nephew Jatin were **tied behind his back** and there was an injury mark on left wrist of his sister Pooja. A rope of size 2 <sup>1</sup>/<sub>4</sub> /3 feet in **shape of Fansi Ka Fanda** (tie with circle) was lying there. He again received a call from the accused at 6.45 a.m., after a gap of 15 minutes, who made certain enquiries from him. When the complainant told him that three dead bodies were lying on bed, the accused again snapped the phone connection. In his cross-examinations, this witness has stated that he had received phone call on mobile No. 9872561620 of one Mandirwala.

He has further stated in his cross-examinations that he was living in a place known as 'Guga Peer Mandir' and from there, house of his sister was just 8–10 minutes walk. In his cross-examinations, he has also stated that the accused was not working with Babbu Electronics for the past about 7-8 months prior to occurrence. This witness deposed that he also learnt on the day of incident at about 7/7.15 a.m. that the accused having consumed sulphas was admitted in civil hospital. But, he was unaware of reasons for such conduct of the accused. Thus, from testimony of this witness, it appears that he had received a phone call from the accused at 6.30 a.m. on 4th March, 2005. During course of conversation with the accused, when he asked some pointed questions, the accused avoided to answer and disconnected the phone. Accused Sushil Kumar was fully conscious and in complete control of senses at that time, and instead of himself rushing to his house, he asked this witness to go inside his house to see his sister Pooja, and her children, who were alone in the house. After about 15 minutes, the accused again called up on mobile and talked to this witness to ask as to what he had seen. When the complainant (PW2) said that three dead bodies were lying, the accused immediately snapped the phone connection. This witness has categorically mentioned that he was staying in a temple with his mother just at a distance of 10–15 minutes walk from the house of accused. Thus, his presence on spot when the police had reached and recorded his statement was not improbable. He also clarified that he received phone calls of the accused on mobile set of owner of temple. His statement appears to be truthful and his presence on spot absolutely natural.

(16) Raj Kumar (PW3) received information about murder of wife and two children of the accused from his landlord. He had known the accused from before. He has stated to have gone to scene of occurrence and given information to the police. Within half an hour, SI Karamjit Singh with a police party reached there. Accused Sushil Kumar was not present at the scene of occurrence. Three dead bodies were seen lying in bed room of premises in possession of the accused. Dead bodies of Jatin and Sofia, son and daughter of the accused, were noticed lying with dead body of Pooja, wife of the accused. Clothes of dead bodies were stained with blood. Nothing was recovered in his

presence on that day. Thereafter, on 8th March, 2005, he went to police station at about 5.00 p.m. Accused was interrogated in his presence by SI Onkar Singh. Accused Sushil Kumar stated before police that he was living in poverty and could barely meet his family's both ends. He was fed with life and wanted to kill himself and his wife, but thinking about plight of his children after their death, he made up his mind to kill himself, his wife and children too, on 4th March, 2005 at about 2.30 a.m. He caused chhura blows to his wife and then strangulated her after putting a circle of rope with knot in her neck. When his son Jatin got up, he tied his hands on back with a rope and then caused chhura blows to him in his chest. In the same manner, he also killed his daughter. He made disclosure statement about concealment of weapon of offence in the back rest of bed. This witness has proved his signatures on disclosure statement (Ex.PE). In his presence, weapon of offence was recovered from specified place as indicated in the disclosure statement,— *vide* recovery memo (Ex.PF), A sketch of chhura (large size knife) was prepared,— *vide* Ex.PG. Statement of PW3 under Section 161 Cr.P.C. was also recorded by IO. Landlord of rented premises of the accused having visited house of this witness at 6.00 a.m. gave informations about the incident. Landlord of accused also informed other people of his area including local Councillor Ram Lal, Rakesh Kashyap and Harish Kumar etc. about this incident. Sat Pal (PW4) who had seen the accused while coming out of his residence in early morning hours, stated that on 4th March, 2005 at about 5.00 a.m., as a regular morning walker, when he crossed the front portion of house of the accused, he saw the accused coming out of his house. When he called the accused from behind, he stopped for a while and then moved ahead. The accused appeared to be in perplexed condition. At about 6.45 a.m., he received informations about murder of wife and children of the accused. This witness came to know that financial condition of the accused was bad for he had been staking money in lottery and due to financial hardships, there used to be quarrels in his house. Statement of this witness was recorded by police, and in his presence, incriminating articles like: one rope of 2-1/2/3 feet, two pillows, and bed sheet stained with blood were recovered,— *vide* Ex.PH. In his cross-examinations, he has clearly mentioned about the road he would take while going on morning walk, and the distance of house of the accused from the road, he would cross.

In his cross-examinations, he has reiterated that it was 5.00 O'clock in morning when he saw the accused by face. This witness was again called for further cross-examinations on 2nd April, 2007 after a gap of one year seven months. He stated that he knew the place 'Guga Peer Mandir' and house of the accused was 10-15 minutes walk from that place. He tried to resile from earlier statement in further cross-examinations, therefore, with the permission of Court he was cross-examined by learned Public Prosecutor. In that cross-examinations, he categorically mentioned that his statement was recorded by police on 4th March, 2005 correctly and his statement in Court was recorded on 19th September, 2005. He also stated that on 4th March, 2005, he was going for morning walk at 5.00 a.m. When he crossed the house of accused, he saw him and called, but the accused did not stop and went away. He also reiterated that in his presence, one rope, two pillows, and bed sheet stained with blood were recovered. This witness has emphasised that he deposed correctly before the Court on 19th September, 2005.

(17) Pushpa (PW5), who is mother of deceased Pooja, stated that her daughter Pooja had been married to accused Sushil Kumar for past about 7 years and they had got two children namely Jatin, aged 6 years, and Sofia of 4 years in their wedlock. After her marriage, Pooja had been staying with the accused at Amritsar. Later, the couple shifted to Jalandhar. They stayed for 2-3 months at a place on bye-pass where accused Shshil Kumar was working. Afterwards, they shifted to Basti Danishmandan. For about past 6-7 months, before this occurrence, accused Sushil Kumar had stopped working and been in habit of drinking, gambling and staking money in lotteries. He had also been beating her daughter prior to occurrence. On 4th March, 2005 at about 6.30 a.m., she received a phone call which was attended to by her son Sukhdev Kumar (PW2) when the accused informed her son that he was in hospital having consumed some tablets. Accused Sushil Kumar told her son that he should go inside his house by climbing its wall and see. Thereafter, her son Sukhdev Kumar went to house of Pooja and found its gate and door lay open. He also noticed that three dead bodies were lying inside the house having been brutally murdered. Thereafter, Sukhdev Kumar (PW2) came back and took her along to Pooja's house. She also

saw dead bodies of Pooja and both her children, who had been brutally murdered. In her statement, she recollected to have received a telephone call from her daughter on 2nd March, 2005 and then to have sent her son Sukhdev Kumar to her house. Sukhdev Kumar (PW2) had seen deceased Pooja and accused Sushil Kumar while fighting with each other. Sukhdev Kumar (PW2) had then intervened and pacified them. Again on 3rd March, 2005, she had received a telephone call whereupon she herself had gone to her daughter's house in the evening and seen deceased Pooja and the accused indulging in fight. She had persuaded the accused to do some work and earn money, and expressed her helplessness in fulfilling their demands. Accused committed murder of Pooja and her children only because Pooja used to persuade him to understand the situation. She clarified that when she had visited the house of Pooja, accused Sushil Kumar had threatened her to either take her daughter along or else he would kill her. In her cross-examinations, she denied defence suggestion that she has been tutored by Advocate or the police. She has withstood rigors of a lengthy cross-examinations with no substantial out-come to impeach credibility of her testimony.

(18) Dalip Singh (PW6) is a Draftsman. He prepared scaled site plan (Ex.PJ) of scene of occurrence as pointed out by complainant Sukhdev Kumar (PW2) and SI Onkar Singh (PW11). He has deposed that marginal notes on site plan were correct and noted in his handwriting. This witness has specified all the places (Marks A, B and C) where dead bodies of Pooja, Jatin and Sofia were found lying in a room,—*vide* Ex.PJ. He also indicated that place (Mark D) where a rope of pink colour was noticed to be lying, and taken into possession,—*vide* recovery memo (Ex.PV). In his cross-examinations, this witness has clarified that though he prepared the said site plan while sitting at home but certainly not without visiting the spot. He has truthfully admitted that he had not obtained signatures of any witness on the scaled site plan.

(19) MHC Jasbir Singh (PW7) tendered his evidence on an affidavit (Ex.PK). He deposed that on 4th March, 2005, he was posted as MHC and on that day, SI/SHO Onkar Singh (PW11) had deposited one parcel containing incriminating materials in malkhana. He further stated that on 8th March, 2005, SI Onkar Singh (PW11) had deposited

with him another duly sealed parcel that contained the weapon of offence, knife. This witness after obtaining a docket from SSP office, had sent the incriminating articles deposited with him to Director, FSL, Chandigarh, for examination, through Constable Resham Lal,—*vide* road certificate No.88/21, dated 18th March, 2005, who submitted a deposit receipt in respect thereof to this witness.

(20) Constable Resham Lal (PW8), who also tendered his evidence on an affidavit (Ex.PL), has corroborated in material particulars testimony of PW7. Both these witnesses have stated that so long the case property remained in their custody, it was not tampered with by them, nor allowed to be meddled by others either.

(21) Constable Amarjit Kumar (PW9) filed his affidavit (Ex.PM) in evidence like PW7 and PW8, stating that he was handed over special report by MHC of police station to be delivered to concerned Area Magistrate and other higher officers. FIR (Ex.PD.2) shows that special report was received by learned JMIC on the same day at 10.30 a.m.

(22) Dr. K. S. Bawa (PW10) stated that accused Sushil Kumar was admitted in Civil Hospital, Jalandhar, on 4th March, 2005, and remained there for 3 days. It was a case of suspecting poisoning as the accused alleged that he had taken sulphas. Accused Sushil Kumar was discharged from hospital on 7th March, 2005 after three days. This witness, however, clarified that a person cannot survive if he has taken one or even half tablet of sulphas. Doctor was not sure as to whether this was a case of consumption of sulphas, and for that reason, he had put a question mark after writing sulphas in bracket in the column of diagnosis. He proved discharge slips (Ex.PO and Ex.PO/1). In his cross-examinations, he admitted that he could not get blood test of the accused done to determine as to whether he had consumed sulphas or some other substance. He also admitted that if a person consumes sulphas of any quantity, he cannot move alone.

(23) SI Onkar Singh (PW11) had investigated this offence. He stated that on 4th March, 2005, he was posted as SHO of Police Station Division No. 5, Jalandhar. He received telephonic information from one Ram Lal, Councillor, regarding this incident of murder. He along with



other police personnel went to spot where he met Sukhdev Kumar (PW2), who got his statement (Ex.PD) recorded. That statement was read over to Sukhdev Kumar (PW2), who, having found it to be correct, put his signatures. This witness thereafter made his endorsement (Ex.PD/1) on that statement and sent it for registration of a case. Accordingly, a formal FIR (Ex.PD/2) was recorded. Afterwards, the police proceeded to bed room of rented house of accused where dead bodies of Pooja, Jatin and Sofia were lying on bed. He prepared separate inquest reports of dead bodies,—*vide* Ex.PQ, Ex.PR and PS. He sent the dead bodies to civil hospital alongwith police papers for conducting postmortem examinations. He also prepared rough site plan with correct marginal notes (Ex.PU). He took a rope (Ex.P1) lying on the spot into possession,—*vide* memo (Ex.PV). He also took two pillows and one bed sheet stained with blood into possession,—*vide* memo (Ex.PH). He arrested the accused on 7th March, 2005 and produced him before competent Court on 8th March, 2005. During interrogations, in presence of witness Raj Kumar (PW3), the accused made a disclosure statement (Ex.PE) that he was not doing any work and it was difficult for him to maintain his family, and due to poverty, his wife had been quarrelling with him and on account of that, he was feeling burden in his mind and once he had thought of a scheme to kill himself and his wife. However, looking to consequences to follow that their kids would have become orphan, he planned to kill his kids also, with them. On 4th March, 2005 at about 2.30 a.m. during night he got up and having taken out a knife, inflicted incised wounds on the breasts of his wife and when she tried to scream, he strangled her to death with help of a rope. At that time, as his son got up, so he tied his hands on back with rope and caused knife blows into his chest, and in the same manner, he also knifed his daughter Sofia. Thereafter, in order to ensure that the kids were not left alive, he strangled them with rope. He further disclosed that he had concealed aforesaid knife in the same condition in back side box of the bed under clothes and he could get it recovered as well. Pursuant to that statement, the accused got a chhura (Ex.P5) recovered,—*vide* recovery memo (Ex.PF). A Sketch of chhura prepared by IO is on record,—*vide* Ex.PG. IO Onkar Singh (PW11) having reached police station deposited case properties with MHC. He has fully supported the prosecution case in respect of investigation, discovery and recoveries

effected by him. During cross-examinations, this witness was not confronted with any such material as to show any irregularity of substance in his investigation. Defence side could not bring any worthwhile information on record to impeach credibility of this witness and his testimony has remained un rebutted on all material aspects of investigations.

(24) On completion of prosecution evidence, statement of accused was recorded under Section 313 Cr.P.C., in which he has stated that he is innocent and not a previous convict. He is facing criminal trial only in an accident case, pending in the Court of Additonal Chief Judicial Magistrate, Jalandhar. He has also stated that his father has died and his old mother is staying with his younger brother. With reference to this occurrence, the accused has stated as :

“I have nothing to say with regard to this case and also with regard to the occurrence. My writing, mark-A, be read on the point of quantum which I produced today and I do not want to say anything else.”

(25) In his defence, the accused has examined his maternal uncle Dharam Pal (DW1) as the sole defence witness, who, after narrating family background of the accused, has stated on defence plea of alibi that :

“Sushil Kumar never remained idle, he had always been working. He had good habits. He was not addicted to any vices or drugs. On 3rd March, 2005, accused had come to Amritsar in connection with his work. Since he became late at Amritsar, he stayed with me at Amritsar. At about 3.30 a.m., on 4th March, 2005, he left my house saying that he was to go to Jalandhar. At about 8.00 a.m. on 4th March, 2005, I received telephonic message that accused was lying unconscious in Civil Hospital, Jalandhar. I immediately reached hospital at 10.00 a.m. Accused was lying in the said hospital unconscious. On the night intervening 3th/4th April, 2005, the accused was present with me at my house at Amritsar.”

(26) In his cross-examinations, defence witness Dharam Pal has admitted knowledge about registration of FIR in instant case. He has also admitted that he did not meet any higher police official in connection with this case alleging false registration of FIR against the accused. This sole DW is none else but maternal uncle of the accused.

(27) Now coming to rival submissions of learned counsel, we do not notice any contradiction in statements of prosecution witnesses Raj Kumar (PW3) and SI Onkar Singh, IO (PW11) on argument as to who gave information of police on telephone—Ram Lal, a local Councillor, or Raj Kumar (PW3) inasmuch as SI Onkar Singh (PW11) has clearly stated that he received a telephone call giving information about occurrence from local Councillor Ram Lal, and pursuant thereto, he rushed to scene of occurrence. Raj Kumar (PW3) has stated that when he received information about occurrence, he went to scene of incident and gave information to police but he has not said that he had given information on telephone to police. According to him, SI Karamjit Singh alongwith police party reached there. There is no dispute that SI Karamjit Singh, who has not been examined, arrived at scene of occurrence subsequent to SI Onkar Singh (PW11), who has clarified this fact in his testimony. It is SI Onkar Singh who recorded statement of complainant Sukhdev Kumar (PW2) having reached the scene of occurrence first in point of time. Court Statement of SI Onkar Singh (PW11) was completed on 3rd February, 2006 but as charge was amended later for making accusation of murder on three counts separately, he was further cross-examined on 2nd April, 2007,—*vide* an order of trial Court dated 17th March, 2007 on an application moved on behalf of the accused on the same date. In that cross-examinations, he has clarified that controversy as :

“I was accompanying the other police officials and we reached at the spot simultaneously and we were the first police officials. SI Karamjit Singh did not reach at the spot prior to me. We reached at the spot at 7.05–7.10 A.M. approximately (emphasis supplied). PW Pushpa was present there before I reached. It is wrong to suggest that I have made a biased investigation.”

(28) Besides, from cross-examinations of witness Raj Kumar (PW3) (last paragraph), it is made clear that landlord of house of the accused had given information about the incident to him after visiting his house. Landlord had also given this information to other residents of locality including one Ram Lal, local Councillor of that area. Thus, Raj Kumar (PW3) has admitted that information about occurrence was given to him as well as to other people around, including Ram Lal. This is not disputed that both police officials namely SI Onkar Singh (PW11) and SI Karamjit Singh had reached the scene of occurrence, but in view of clarification made by SI Onkar Singh (PW11) in his subsequent cross-examinations that SI Karamjit Singh reached the scene of occurrence later, this controversy stands settled. As regards contention that statements of PW3 and PW11 contradict each other on inquest proceedings, we notice none like that either. SI Onkar Singh (PW11) has only stated that he prepared inquest reports in respect of dead bodies separately. Inquest report of Pooja is Ex.PQ, of Jatin is Ex.PR and of Sofia is Ex.PS. Raj Kumar (PW3) is not a witness of inquest proceedings, nor has he said anything about that in his testimony. As far as submission of learned counsel for the appellant that relates to phone number of mobile on which the accused had called up complainant Sukhdev Kumar (PW2), it has come in testimony of the complainant that the accused had called up on mobile phone No. 9872561620 of one Mandirwala informing that he was calling from hospital and the complainant should go and see his sister Pooja and her children, who were alone there in his house. He abruptly disconnected the phone on being asked as to whether there was any unpleasantness at home. Thereafter, he again called up the complainant after 15 minutes at 6.45 a.m. and enquired as to what had he seen. When the complainant told that three dead bodies were lying on bed, again he suddenly disconnected the phone. This has come in cross-examinations of the complainant (PW2) that after shifting from house of the accused, he and his mother had started living in Guga Peer Mandir, which was just at a distance of 8-10 minutes walk from the house of accused. Thus, statement of mother of deceased Pushpa (PW5) that phone of the accused was received on mobile of Baba of Darbar does not contradict the complainant in his testimony. It rather appears to be in line with evidence of the complainant (PW2) that phone calls of the accused were

received on mobile phone of Mandirwala (owner of temple). Distance between two places being short, testimony of the complainant (PW2) that after attending first phone call of the accused, he rushed to his sister's place where he saw three dead bodies lying on a bed and then again attended another phone call of accused after a gap of 15 minutes does not seem to be an exaggeration because the complainant attended second phone call of the accused when he went to inform and bring his mother along to the scene of occurrence. Further, the accused has been shown to be admitted in hospital at 6.55 a.m. and time of discovery of dead bodies in inquest proceedings is noted as 7.00 a.m. wherein the accused has been mentioned as sole offender. Regarding credibility of testimony of Satpal (PW4), his statement under Section 161 Cr.P.C. was recorded on 4th March, 2005 itself. He had seen the accused coming out of his house early in morning at 5.00 A.M. He was further cross-examined after a gap of one year and seven months and in his last cross-examinations, of course, by Public Prosecutor, he has candidly reiterated his stand in support of prosecution case as :

“I also got recorded that in the morning on 4th March, 2005 I was on morning walk at 5.00 a.m. It is recorded correctly in my statement dated 19th September, 2005 when I came across the house of the accused I saw the accused and called him and accused did not stop, he went away.”

(29) Thus, we do not find any material flaw in testimony of Satpal (PW4) to discard it as incredible. We also do not find it obligatory for the prosecution to have investigated into employment status of the accused in view of statement of complainant Sukhdev Kumar (PW2), who clearly mentioned that the accused was staying jobless for about past 7-8 months, and moreover, the accused also did not produce his employer to prove that he was away to Amritsar in connection with his business. Maternal uncle of the accused namely Dharam Pal (DW1) has stated that the accused had left his place at Amritsar in night for Jalandhar at 3.30 a.m. and 8.00 a.m., he came to know that the accused was hospitalised in unconscious condition. However, DW1 has admitted to have knowledge about registration of FIR in instant case against the accused and has, besides, also admitted that he had not made complaint to any senior police officer alleging

false implication of the accused. Statement of defence witness Dharam Pal appears to be contrary to testimony of Dr. Bawa (PW10), who has nowhere in his evidence stated that the accused was unconscious when he was admitted in hospital or thereafter. Dr. Bawa (PW10) rather expressed doubts about statement of the accused that he had consumed sulphas tablets. As regards weapon of offence, a chhura was recovered from underneath some clothes lying in back side box of bed pursuant to disclosure statement of the accused. Learned counsel for the appellant submitted that IO should have recovered chhura used in commission of offence when he had seized other articles lying near dead bodies, and for that reason, a serious doubt is created about *bona fide* of police in effecting recovery of weapon of offence. We do not find any substance in this submission. There was no reason for IO to have visualised that incised wounds noticed during inquest proceedings of dead bodies would be caused only with chhura and not by any other sharp edged weapon. It would look fantastic to hold that IO should have first thought of Chhura and then to have imagined its being concealed underneath some clothes in bed box. Therefore, this argument of learned counsel for the appellant also does not seem to carry any weight. No doubt, association of a Finger Prints Expert by police during recovery proceedings of weapon of offence could lend additional credence to prosecution evidence but due to absence of presence of mind in subordinate police officers, prosecution case does not become incredible, for recovery of chhura was effected only pursuant to disclosure statement of the accused which was found to have stains of human blood like other incriminating articles,—*vide* FSL report (Ex.PW). So far as motive part of this case is concerned, looking to presence of enough clinching evidence pointing towards guilt of the accused, even in absence of motive, the prosecution case would not become doubtful nevertheless the complainant has stated that the accused was disturbed due to hardships of poverty and the accused has also repeated this fact in his disclosure statement before the police, which led to discovery and recovery of weapon of offence, knife. However, in the following statement under Section 313 Cr.P.C. of the accused, we notice a different but stronger reason behind this gruesome incident of triple murder :

“While in the house of Badri, Pooja developed illicit relations with the son of Badri. I was forced to leave that house and

shift to another house and again to another house in order to avoid any mishap.... I suspected Pooja having affairs with certain persons in my absence and I used to admonish her and also used to request Pushpa and Sukhdev Kumar to prevail upon Pooja to behave properly but they did not listen to my requests.”

(30) Though allegations of infidelity attributed by the accused to his wife have been firmly denied by his brother-in-law complainant Sukhdev Kumar (PW2) but since the accused himself has given this explanation under Section 313 Cr.P.C., it has been rightly held to be motive for commission of offence by the trial Court. Besides, prosecution evidence as discussed herein above, even shorn of its motive part, is independently found to be sufficient to prove the prosecution case to hilt. In addition to that as the accused was seen coming out of his residence in early hours of morning at 5.00 a.m. by witness Satpal (PW4), in absence of any explanation as to how his wife and two children were brutally done to death inside his rented house, this can be held to be a strong incriminating circumstance against the accused under Section 114 of the Evidence Act. Now, coming to defence evidence and plea of alibi, we have discussed the statement made by the accused under Section 313 Cr.P.C. and testimony of Dharam Pal (DW1), his maternal uncle, herein-above. Accused Sushil Kumar tried to set up an alibi that he was away to Amritsar in connection with his employment, but he did not adduce any cogent evidence in support. He even gave up his employer later during course of trial on 13th November, 2006. As per statement under Section 313 Cr.P.C., the accused claimed to have reached his house at 6.30 a.m. on fateful day having returned from Amritsar. He was informed about occurrence by his neighbours. On seeing gruesome incident of murder, he fainted, and when he regained his consciousness, he found himself in Civil Hospital, Jalandhar. Relevant portion of statement of accused, on reproduction, reads as :

“..... I went to Amritsar in connection with my duty. It became late I had to stay in the house of my maternal parents there. Before coming to my house on 4th March, 2005, I went to

my employer and delivered them their goods then I came to my house at about 6.30 P.M. On 4th March, 2005, I was informed by my neighbours that Pooja and my two children have been killed by some one during the night. On seeing this gruesome incident, I fainted. Later when I recovered consciousness, I found myself in the Civil Hospital, Jalanhdar....”

(31) However, this statement of accused stands belied in view of testimonies of Satpal (PW4) who had noticed him at 5.00 a.m. in morning while going for morning walk, and complainant Sukhdev Kumar (PW2) who received two telephone calls from the accused at 6.30 a.m. and 6.45 a.m. when he was fully conscious. Accused Sushil Kumar avoided to give answers to some pointed questions asked by the complainant and abruptly closed his conversation. Moreover, this has come nowhere in testimony of Dr. Bawa (PW10) that the accused was unconscious when he was admitted in Civil Hospital or thereafter. Further, defence witness Dharam Pal (SW1) could not give any answer as to how he came to know that the accused was admitted in hospital. From medical records, it appears that the accused was only given a capsule of Ocid and syrup of Digene, besides, some injections of Glucose. In OPD slip of hospital, in column of diagnosis, Dr. Bawa has mentioned suspected poisoning with a question mark. In his testimony, Dr. Bawa has stated as :

“.....A person cannot survive even if he has taken sulphas in the quantity of one tablet or even half tablet. I am not sure if the present case is of consumption of sulphas and that is why I have put question mark after writing word sulphas in bracket in the column of diagnosis.”

(32) In his cross-examination, Dr. Bawa has admitted that if a person has consumed sulphas of any quantity, he cannot move alone. On the contrary, the accused was fully conscious and in full command of his senses at the time of admission in hospital and thereafter. He had called up on mobile at 6.30 am and then at 6.45 a.m. when he had talked to the complainant (PW2), and thereafter, he has been shown to be admitted in hospital at 6.55 a.m. Moreover, in inquest proceedings,



time of discovery is mentioned as 7.00 a.m. and the accused has been shown as sole offender, besides being mentioned in statement of the complainant (PW2) and FIR, both, recorded promptly. Thus, in view of sufficient inculpatory materials placed on record by the prosecution, and inherent contradictions in defence evidence, plea of alibi taken by the accused is found to be palpably untrue, and thus, it falls flat under its own weaknesses.

(33) In the premises set out herein-above, we are of considered view that the impugned judgment recording conviction against the accused for committing triple murder of his wife Pooja, son Jatin (6 years), and daughter Sofia (4 years), deserves to be affirmed. Resultantly, Criminal Appeal No. 447-DB of 2007 fails and is hereby dismissed.

(34) In regard to Murder Reference submitted by learned Additional Sessions Judge, Jalandhar, for confirmation, learned Additional Advocate General, Punjab, submitted that looking to enormity of offence that the accused killed his wife and two small children in a brutal manner, he does not deserve to be visited with any other punishment except the penalty of death. Learned Additional Advocate General also submitted that the state of mind of the accused was not such, where, he could not have exercised his wisdom even if he was living in stravation.

(35) On the other hand, learned counsel for the accused-appellant submitted that the accused is an educated person having studied upto matriculation and till before this occurrence, he had been working and maintaining his family. He has no criminal past to say that by committing this offence, he has now turned to be a menace to Community. This is also his submission that the accused was living in poverty, therefore, he could not have thought of committing this gruesome offence of triple murder.

(36) Having given our anxious consideration to rival submissions made by learned counsel for parties and on a careful reading of evidence on record, we are of the view that this Murder Reference deserves to be accepted and death penalty needs to be confirmed.

(37) Hon'ble the Apex Court in judgments reported in **Bachan Singh versus State of Punjab (5)** and **Machhi Singh and others versus State of Punjab (6)** had laid detailed guidelines to be followed before awarding death sentence in murder cases.

In Machhi Singh's case (supra), it has been held as :

“.....When ingratitude is shown instead of gratitude by killing a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation, the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so ‘in rarest of rare cases’ when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise or retaining death penalty.....”

(38) Hon'ble Court thereafter encapsulated the circumstances which may help a Court in finding out and forming opinion as to whether a case of murder would fall in the category of the rarest of rare cases. The said circumstances are reproduced as :

“I. Manner of commission of murder :

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

- (i) when the house of the victim is set aflame with the end in view to roast him alive in the house.
- (ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

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(5) (1980) 2 S.C.C. 684

(6) (1983) 3 S.C.C. 470

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

**II. Motive for commission of murder :**

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

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

- (a) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance, when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.
- (b) In cases of bride burning and what are known as dowry deaths or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

**IV. Magnitude of crime :**

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

**V. Personality of victim of murder :**

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

less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.”

(39) In this background, Hon’ble the Apex Court culled out the guidelines from the discussions in the Constitution Bench Judgment in Bachan Singh’s case (supra), which are to be followed before awarding death sentence in a case of murder. The said guidelines are as :

- “(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.
- (ii) Before opting for the death penalty the circumstances of the ‘offender’ are require to be taken into consideration alongwith the circumstances of ‘crime’.
- (iii) Life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.
- (iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.”

(40) Moreover, in the judgment reported in **Mahesh etc. versus State of Madhya Pradesh (7)**, Hon'ble the Apex Court held as :

“we feel that it will be a mockery of justice to permit these appellants to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the appellants would be to render the justicing system of this country suspect. The common man will lose faith in Courts. In such cases, he understands and appreciates the language of deterrence more than the reformatory jargon. When we say this, we do not ignore the need for a reformatory approach in the sentencing process. But here, we have no alternative but to confirm the death sentence. Accordingly, we dismiss the appeal.”

(41) In yet another judgment reported in **Ranjeet Singh and another versus State of Rajasthan (8)**, Hon'ble the Apex Court held that where a murder was predetermined and cold blooded and the act of accused was absolutely devilish and dastardly and innocent children were done to death with lethal weapons when they were fast asleep, sentence of death awarded cannot be said to be inappropriate.

(42) In **State of Rajasthan versus Kheraj Ram (9)**, the accused suspected infidelity on the part of his wife; the accused and his wife had quarreled in previous night; the accused tried to falsely implicate other people whom he had called to scene of occurrence after committing offence; when people arrived at the scene of occurrence, the accused started smoking chilam; the accused was last seen in company of the deceased in his house; he made extra judicial confession, and on his pointing out, incriminating articles were recovered. Under such circumstances, Hon'ble the Apex court upheld the death sentence.

(43) In **Umashankar Panda versus State of Madhya Pradesh (10)**, also Hon'ble the Apex Court upheld punishment of death sentence, where the accused having doubted fidelity of his wife committed her murder, and also killed his daughters aged 16 and 10 years in a brutal

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(7) AIR 1987 S.C. 1346

(8) AIR 1988 S.C. 672

(9) (2003) 8 S.C.C. 224

(10) AIR 1996 S.C. 3011

manner and attempted to commit murder of other children of tender age without any provocation.

(44) In **Saibanna versus State of Karnataka (11)**, Hon'ble the Apex Court noticed that a lifer, while undergoing life imprisonment for committing murder of his first wife, on being released on parole, committed murder of two helpless victims namely, second wife and her 1½ years older child when they were asleep. In this background, death sentence passed by Karnataka High Court was upheld.

(45) In the light of aforesaid authoritative pronouncements laying down guidelines to be followed in cases of death sentence, on a careful reading of facts; minute analysis of evidence on records, and due consideration of rival submissions, we notice the following special reasons to hold that this case has acquired enormity of that kind which brings it in the rarest of rare category and for those reasons, we accept death reference and confirm death sentence :

- (1) Enormity of offence is punctuated by killing of three helpless victims being none else than wife and two children of the accused namely Pooja, son Jatin and daughter Sofia, in a gruesome, diabolical and dastardly manner in dead of night when they were asleep. Accused used a large size knife having blade of 8½ inches with handle of 3½ inches. He used the knife with brutality of butcher. He selected only vital parts of body like breasts of his wife and daughter and chest of his son. When he attacked his wife with knife, his son aged only 6 years, got up, therefore, in order to quell his opposition and screaming, the accused tied his hands on back and then gave fatal knife blows into his chest. Similarly, he also caused knife blows into his daughter's breast. To ensure further that they were not left alive, even after causing a number of incised wounds on vital parts, he strangled them with a rope and killed them on the spot. Thus, this offence was committed in such a gruesome manner that it has utterly shocked the common conscience of community.

- (2) Accused was suspecting infidelity on the part of his wife and for that reason he committed this offence in a pre-planned and premeditated manner without giving a wind of it during its commission.
- (3) Instead of showing any remorse, the accused tried to create alibi by getting himself admitted in hospital on a false statement before Doctor regarding suspected poisoning by consuming sulphas tablets.
- (4) This is not case of sentimental killing as the accused having called up his brother-in-law complainant Sukhdev Kumar (PW2) with a sense of accomplishment, asked him to go and see in his house and after the complainant had seen three dead bodies lying on bed, he called him up again and asked him in Punjabi 'Kiddan' which means 'how has it been'.
- (5) Even after committing offence of triple murder, the accused appeared least disturbed and was in full command of his senses when he called up his brother-in-law, the complainant (PW2) twice. Moreover, every time he avoided to face pointed questions from the complainant and abruptly disconnected the phone connection. This appears to be an unfortunate case of killing where the accused was feeling relieved with a sense of achievement irrespective of killing of his wife and two children in a diabolical manner.
- (6) One day prior to occurrence, the accused had told his mother-in-law Pushpa (PW5) to take her daughter along, or else he will kill her. Accused, thereafter, carried the threat to its logical conclusion in a cold blooded way.

(46) In view of the aforesaid discussion, we accept Murder Reference No. 3 of 2007 and confirm the death sentence. Resultantly, Crl. Appeal No. 447-DB of 2007 (**Sushil Kumar @ Luckey versus State of Punjab**) stands dismissed.

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**R.N.R.**