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A.F.R.

Court No. - 9

Case :- CAPITAL SENTENCE No. - 1 of 2016

Appellant :- State of U.P.

Respondent :- Ramanand @ Nand Lal Bharti

Counsel for Appellant :- Govt. Advocate,Amicus Curaie,Rajesh Kumar Dwivedi

Connected with

Case :- CRIMINAL APPEAL No. - 1959 of 2016

Appellant :- Ramanand @ Nandlal Bharti (Jail Appeal)

Respondent :- State of U.P.

Counsel for Appellant :- Jail Appeal,Rajesh Kumar Dwivedi

Counsel for Respondent :- Govt. Advocate

Hon'ble Ramesh Sinha, J.

Hon'ble Rajeev Singh, J.

(Per : Ramesh Sinha, J. for the Bench)

1 The appellant Ramanand alias Nandlal Bharti was charged by the Sessions Judge, Lakhimpur Kheri in Sessions Trial No. 379 of 2010 for offence punishable under Section 302 Indian Penal Code. Vide judgment and order dated 04.11.2016, learned Sessions Judge convicted and sentenced him under Section 302, I.P.C. to death and fine of Rs.20,000/- and in default of payment of fine to undergo imprisonment for one year.

2 Aggrieved by his conviction and sentence, Ramanand alias Nandlal Bharti has preferred, in this Court, Criminal Appeal No. 1959 of 2016 from jail.

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3 Capital Sentence Reference No. 1 of 2016 arises out of the reference made by the learned trial Court under Section 366 (1) of the Code of Criminal Procedure, 1973 to this Court for confirmation of the death sentence of Ramanand alias Nandlal Bharti.

4 Since Criminal Appeal No. 1959 of 2016 and Capital Sentence Reference No. 1 of 2016 arise out of a common factual matrix and impugned judgment, we are disposing them of by this judgment.

5 Shortly stated, the prosecution case runs as under:

On 22.01.2010, when informant Shambhu Raidas (P.W.1) was present at his home situate in Village Namdarpurwa, Police Station Dhaurhara, District Lakhimpur Kheri, his brother-in-law (sala) Ramanand alias Nand Lal (accused/appellant herein), who is the resident of Namdarpurwa, hemlate of Amethi, Police Station Dhaurhara, Lakhimpur Kheri, came at his house at about 06:30 a.m. and told him that in the intervening night of 21/22.01.2010, he (accused/appellant Ramanand alias Nand Lal) along with his wife (Smt. Sangeeta) and daughters were sleeping in his house. In the night, at 1:00 a.m., someone knocked his door. Thereupon, accused/appellant asked that who was knocking his door but there was no response. Thereafter, he (accused/appellant) went at the roof of his house and saw that among them one person was a resident of Village Basheda, who

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fired a shot upon him (accused/appellant), however, he escaped unhurt. Thereafter, accused/appellant jumped at the ground floor. At the same time, one of the miscreant gave a blow at his head with the butt of gun. Thereupon, he (accused/appellant) ran away from there and by concealing himself in the field, saw that the miscreants have jumped in to his house and thereafter smoke was coming out from his house. He (Ramanand) reached at Behman Purwa at the crusher of Khalik as well as at Ram Nagar Lahbadi and told about the incident but no one came to help him.

After hearing the aforesaid narrated version from accused/appellant, the informant-Shambhu Raidas (P.W.1) along with his nephew Pratap reached at the house of the accused/appellant and saw that Sangeeta, wife of accused/appellant and his daughters Tulsi aged about 7 years, Lakshmi aged about 5 years, Kajal aged about 3 years and another daughter aged about one and a half month, have been murdered and their dead bodies were burning. On seeing this, the informant and his nephew Pratap started pouring water in order to extinguish the fire. In the meanwhile, accused/appellant started enjoying heat by sitting near fire in the courtyard. The informant and his nephew snubbed him saying that his wife and children have been murdered and he was still enjoying the heat. On this, accused/appellant became angry and went away from there. The dead bodies were lying there. The informant Shambhu Raidas (P.W.1) went to P.S.

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Dhaurhara and narrated the said incident to the police and lodged the F.I.R. at police station Dhaurhara.

6 The Head Constable Dhani Ram Verma (P.W.10) deposed that on 22.01.2010, he was posted as Head Moharrir at Police Station Dhaurhara. On the basis of written report submitted by the informant Shambhu Raidas (P.W.1) on 22.01.2010, at 09.45 a.m., he registered the F.I.R., on the basis of which, case crime No. 49 of 2010, under Section 302, I.P.C. was registered against four unknown persons. A perusal of the chik F.I.R. also shows that the distance between the place of the incident and the police station was four and half kilometres. He sent the appellant Ramanand alias Nandlal Bharti to the Community Health Centre, Dhaurhara along with Constable Brij Mohan Singh for treatment.

7 The evidence of S.I. Yogendra Singh P.W. 7 reveals that on 22.01.2010, he was posted as Incharge Inspector at Police Station Dhaurhara. On the date itself i.e. on 22.01.2010, he took investigation of the case on its own. He immediately had recorded the statement of scriber of the F.I.R. Head Constable Dhaniram Verma (P.W.10) and informant Shambhu Raidas (P.W.1) and left for the place of the incident. On the pointing out of the informant Shambhu Raidas (P.W.1), he inspected the spot, prepared the site plan (Ext. Ka.6) and also recorded statements of Ahmad Hussain and Nizamuddin, who was present there. The inquest proceedings were also initiated. The

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panchanama of the deceased was also prepared. Thereafter, the deadbody of the deceased was sealed and the impression of seal was taken and the challan nash was prepared. On 23.01.2010, he recorded the statements of Chatrapal Raidas (P.W.2) and Rustam Raidas. On 24.01.2010, accused/appellant-Ramanand alias Nandlal Bharti was arrested and he recorded his statement. On the pointing out of the accused/appellant, the weapon of offence banka was recovered and also prepared site plan of the spot of recovery. Thereafter, on 25.01.2010, he recorded the statements of Chaila Bihari Raidas, Balgovind Raidas, Ram Kumar, Baburam Hans. The sample of blood stained as well as sample of earth were taken from the spot and were taken into possession vide Ext. Ka-9. The inquest papers of the deceased persons were prepared by S.I. Nand Kumar in his supervision. P.W.7 has also proved the panchnama and other related document of deceased Sangeeta Devi as Ext. Ka-10 to Ext. Ka 15. The panchnama and other related papers of deceased Tulsi were proved as Ext. 16 to Ext.. 21. The panchnama and other related papers of deceased Kajal were proved as Ext. Ka 22 to Ext. Ka-27. The panchnama and other related papers of deceased Laxmi were proved as Ext. Ka-28 to Ext. Ka. 33. The panchnama and other related papers of deceased Km. Chhoti were proved as Ext. Ka-34 to Ext. ka 39. On 05.02.2010, he recorded the statements of witnesses of recovery memo S.I. Nand Kumar, S.S.I. Uma Shankar (P.W.6), Constable Usman,

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Constable Prabhudayal, Constable Santosh, Constable Shrawan Kumar.

8 P.W.7 Inspector Yogendra Singh has also deposed that after completion of the investigation, the accused/appellant was charge-sheeted vide charge-sheet (Ext. Ka-8).

9 The Sub-Inspector Uma Shanker Mishra P.W.6, in his deposition, before the trial Court stated that on 24.11.2010, he was posted as Senior Sub-Inspector at Police Station Dhaurhara. The appellant, who was arrested in the present case, was interrogated. Appellant Ramanand has confessed the crime and disclosed that he had concealed 'banka' used in the incident and his blood stained shirt and paint at unknown place and can get recovered the same. Thereafter, at the instance of appellant, police officials along with public witness Chhatrapal and Pratap took the accused/appellant to Village Namdarpurwa. Appellant Ramanand took the police and witnesses on the road of village Bhakuraiya to Ram Nagar and at a distance of about 100 steps from his house, he took out one 'Banka' and a blood stained shirt and paint from the shrubbery on the corner of the road opposite to field one Kafeel. Appellant Ramanand told that this 'Banka' was used by him in committing the murder of his wife and children. The recovered 'Banka', shirt and paint were sealed at the spot and were taken into police possession vide recovery memo Ext. Ka-5.

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10 The injuries of accused/appellant Ramanand alias Nandlal Bharti was examined by P.W. 9 Dr. Ankit Kumar Singh on 22.01.2010 at 10:30 a.m. in Community Health Centre, Dhaurhara. He deposed that on 22.01.2010, he was posted as Medical Officer at Community Health Centre, Dhaurhara. After examination of accused/appellant Ramanand alias Nandlal Bharti, he found following injuries :

"**Injuries of Ramanand alias Nandlal Bharti (appellant)**

(1) C.L.W. on the left side of head 2 cm x 0.5 cm in length 10 cm above from left ear.

(2) C.L.W. on the middle of Head 5 cm x 0.5 cm in length 2 cm from injury No. (1).

(3) C.L.W. on the middle of Head 4.5 cm x 0.5 cm in length 1 cm from injury No. (2).

(4) Superficial burn injuries on the left side of neck in length 8 cm x 6 cm.

(5) Superficial burn injuries on the (Rt) side of neck in length 10 cm x 7 cm.

In the opinion of P. W. 9 Dr. Ankit Kumar Singh, all injuries are simple in nature. Injuries No. (1), (2) and (3) were caused by hard and blunt object, whereas injuries No. (4) and (5) were caused by burn. During examination, he also opined that smell of Kerosene Oil were coming from his body and cloth.

11 The post-mortem on the corpse of the deceased **Sangeeta aged about 35 years** and **Km. Tulsi, aged about 7 years** were

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conducted, on 23.01.2010 (on the next date of incident) at 4.00 p.m., by P.W.8 Dr. S.V. Singh at District Hospital, Kheri, who found on it the ante--mortem injuries enumerated below:-

"**Ante-mortem injuries of deceased Sangeeta, aged about 35 years, wife of appellant Ramanand alias Nandlal Bharti**

1. Incised wound 25 c.m. x 1 c.m. x cranial deep on Rt side of head 3 c.m. above (L) ear underlying (R) temporal and parietal bones found fractured and brain cut.

2. Incised wound 20 c.m. x 1 c.m. x brain deep (bone deep) over back of head Rt side of Neck below Lt. ear underlying muscles and vessels found cut.

Postmortem injuries of deceased Sangeeta

Superficial to deep burn all over body head, Neck.

Burn 90%.

In the opinion of P.W.8 Dr. S.V. Singh, deceased Sangeeta died due to shock and hemorrhage as a result of ante-mortem injuries.

Ante-mortem injuries of deceased Km. Tulsi, aged about 7 years, Daughter of appellant Ramanand alias Nandlal Bharti

Multiple incised wound in an area of 20 c.m. x 10 c.m. x cranial cavity deep on Rt. side of head including (R) ear and Rt eye largest 10 c.m. x 1 c.m. x cranial cavity deep. Smallest 4 c.m. x 0.5 c.m. x bone deep underlying vessels muscles and temporal bone (R), parietal bone found fracture, membrane & brain found cut (cooked).

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Postmortem injuries of deceased Tulsi

Deep burn all over body charred and blackened.

In the opinion of P.W.8 Dr. S.V. Singh, deceased Tulsi died due to shock and hemorrhage as a result of ante-mortem head injuries.

12 In his deposition, in the trial Court, P.W.8-Dr. S.V. Singh has deposed that on 23.01.2010, he was posted as Senior Consultant, Orthopedic Surgeon at District Hospital, Lakhimpur Kheri and on 23.01.2010, at 4:00 p.m., he did post-mortem on the corpse of the deceased Km. Tulsi and post-mortem on the corpse of deceased Smt. Sangeeta Devi at 4:30 p.m. In his deposition, P.W.8 has stated that on external examination, he found that deceased Km. Tulsi was aged about 7 years; on account of burial, her body became charred and blackend and bones were exposed; lower part of both hands and foot were found missing; and her scalp hair was burnt. P.W.8 has further stated that on external examination on the corpse of deceased Smt. Sangeeta, he found that at the time of death, deceased Smt. Sangeeta was aged about 35 years; on account of burial, her body became charred and blackend; both foot and legs found missing; bones were exposed; her body was at fencing attitude; her scalp hair was burnt. He has also stated that injuries sustained by the deceased Km. Tulsi and Smt. Sangeeta as per the report of post-mortem may be caused by sharp edged weapon like banka. He categorically stated that on account of burial badly the body of the deceased, the time of death cannot

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be ascertained. He, in his cross-examination, has deposed that 90% of the body of the deceased Sangeeta was burnt, whereas 100% of the body of the deceased Tulsi was burnt.

13 The post-mortem on the corpse of the deceased **Km. Laxmi, aged about 5 years**, **Kajal aged about 3 years** and **Chhoti alias Guddi, aged about 1/2 month** were conducted at 4.00 p.m., on 23.01.2010 (on the next date of incident) by P.W.5 Dr. A.K. Sharma at District Hospital, Kheri, who found on it the ante--mortem injuries enumerated below:-

> "**Ante-mortem injuries of deceased Km. Laxmi, aged about 5 years, daughter of appellant Ramanand alias Nandlal Bharti**
>
> 1. Incised wound 20 c.m. x 1 c.m. x cranial cavity deep on left side of head 3 c.m. above left ear underlying left temporal and parietal bone membran and brain found cut.
>
> 2. Incised wound 15 c.m. x 1 c.m. x Brain deep over back of head right side just below left ear underlying occipital bone, membrane and brain found cut.
>
> 3. Incised wound 20 c.m. x 1 c.m. x cranial cavity deep over right side of neck face including Rt ear underlying muscles, vessels upper and lower row of right side, Rt ear found cut.
>
> **Postmortem injuries of deceased Laxmi**
>
> Superficial to deep burn all over body except head and neck and upper part of chest.

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In the opinion of P.W.5 Dr. A.K. Sharma, deceased Laxmi died due to shock and hemorrhage as a result of Ante-mortem head injuries.

Ante-mortem injuries of deceased Kajal, aged about 3 years, daughter of appellant Ramanand alias Nandlal Bharti

Multiple incised wound in an area of 15 c.m. x 5 c.m. x cranial cavity deep on left side of head including left ear and left eye. Largest 10 c.m. x 0.5 c.m. x cranial cavity deep, smallest 6 c.m. x 0.5 c.m. x bone deep underlying muscle, vessels and left temporal and parietal bone, orbital bone, membrane and brain found cut.

Postmortem injuries of deceased Kajal

Post mortem deep burn all over body except forehead and left side of head.

In the opinion of P.W.5 Dr. A.K. Sharma, deceased Kajal died due to shock and Hemorrhage as a result of Ante-mortem head injuries.

Ante-mortem injuries of Km. Chhoti alias Guddi, aged about 1/2 month, daughter of appellant Ramanand alias Nandlal Bharti

1. Incised wound 8 c.m. x 1 c.m. x cranial cavity deep over Rt. side of Head above Rt. Ear. Underlying Rt. temporal and parietal bone membrane and brain found cut clotted blood present in cranial cavity and brain.

2. Incised wound 5 c.m. x 1 c.m. x scalp deep over left side of head 3 c.m. above left ear.

Postmortem injuries of Km. Chhoti alias Guddi

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Deep burn all over body charred and blackened.

In the opinion of P.W.5 Dr. A.K. Sharma, deceased Km. Chhoti alias Guddi died due to comma as a result of ante-mortem head injury.

14 It is pertinent to mention that in his deposition before the trial court Dr. A.K. Sharma (P.W.5) reiterated the said cause of death and stated that the deceased could have died on account of the ante-mortem injury suffered by them. He also stated therein that on account of burial, the body of the deceased Laxmi, Kajal and Chhoti alias Guddi became black and chard, therefore, time of the death of the deceased cannot be ascertained. He also stated that injuries sustained by the deceased as per the report of post-mortem may be caused by sharp edged weapon like banka.

15 The case was committed to the Court of Sessions by the learned Magistrate, where the appellant was charged for offence punishable under Sections 302 I.P.C. He pleaded not guilty to the charges and claimed to be tried. His defence was of denial.

16 During trial, in all, the prosecution examined ten witnesses, namely, P.W. 1 Shambhu Raidas, who is the informant and brother-in-law (Sala) of the accused-appellant, P.W.2 Chatra Pal Raidas, who is the brother-in-law (Sala) of the accused-appellant, and real brother of the deceased Sangeeta, P.W.3 Babu Ram Hans and P.W.4 Ram Kumar, before whom extra judicial confession has been made by the accused/appellant,

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P.W, 5 Dr. A.K. Sharma, who conducted the post-mortem on the corpse of Km. Laxmi, Kajal, Chhoti alias Guddi, P.W.6 Uma Shankar, who had prepared the fard recovery memo of blood stained weapon of assault i.e. banka and blood stained shirt of the accused/appellant, P.W.7 Yogendra Singh, who is the Investigation of the case, P.W.8 Dr. S.V. Singh, who conducted the post-mortem on the corpse of Km. Tulsi and Smt. Sangeeta Devi, P.W.9 Dr. Ankit Kumar Singh, who had examined the injuries of accused/appellant and P.W.10 Head Constable Dhani Ram Verma, who had registered the F.I.R. on the basis of written report of the informant P.W.1 Shambhu Raidas.

17 The accused/appellant was examined under Section 313 of the Code of Criminal Procedure, wherein he had denied the prosecution evidence and took the plea that earlier his brother Siyaram was murdered by one Ramakant, Kamalkant and Manua alias Ramakant. He had lodged a report about the said incident. His wife Sangeeta and daughter of Siyaram, namely, Gudiya, were eye-witnesses in that case. The accused persons of that case, in order to eliminate the evidence of that case, have burnt him and his wife by pouring kerosene. They wanted to kill him and have poured kerosene over him. Daughter of Siyaram, namely, Gudiya has died due to illness. The present incident was committed by Ramakant, Kamalkant and Manua alias Ramakant.

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18 It is pertinent to mention that the accused/appellant had also filed a written statement under Section 233 of the Code of Criminal Procedure but no evidence was led by him in his defence.

19 We would first like to deal with the evidence of informant Shambhu Raidas P.W.1. Since in paragraph 5, we have set out the prosecution story primarily on the basis of recitals contained in his examination-in-chief, for the sake of brevity, the same is not reiterated. P.W.1 Shambhu Raidas has further deposed that about six months back, when he was present at his house, at about 06:30 a.m., accused/appellant Ramanand came there and told him that in the night, he along with his children and wife was sleeping in his house. At around 01:00 a.m., in the night, someone knocked his door. He awoke and asked as to who was knocking the door, but no one responded. Ramanand went at the roof of his house and saw that four persons were standing outside his home and one of them was a resident of village Basdhiya. One of the miscreant fired a shot at the accused/appellant, however he escaped unhurt. Thereupon, Ramanand jumped on the ground floor. One of the miscreant gave a blow at the head of Ramanand with the butt of Gun. Ramanand further told the informant P.W.1 that he fled in to a field and saw that the alleged bandits have jumped into his house and thereafter smoke was coming out from his house. Ramanand further told him that he went to Behan Purwa,

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Kalikpurwa and Lehbadi and told about the incident but no one came from there. Thereafter, Ramanand came to P.W.1.

20 P.W.1 further stated that after coming to know the aforesaid facts from Ramanand, he along with Pratap and accused/appellant Ramanand went to the house of the accused/appellant Ramanand, where they saw that flame of fire were coming in the house. The deadbodies of Sangeeta and his four daughters including Tulsi were burning. There were signs of injuries on the dead bodies. P.W.1 and Pratap started extinguishing the fire by water, however, accused/appellant started enjoying heat in the courtyard by putting his Banyan in the fire. P.W.1 snubbed him saying that he was extinguishing the fire and he (Ramanand) was enjoying heat despite that his wife and children have to be murdered. Thereafter, P.W.1 left Pratap at the spot and went to police station Dhaurahara and submitted a written complaint against unknown persons.

21 P.W.1 Shambhu Raidas has further stated that accused Ramanand was having illicit relation with one Manju and due to this illicit relationship, Manju has sustained pregnancy. Thereafter, brother of Manju has fixed her marriage with accused Ramanand. The "*Chidna*" and "Tilak" ceremony have taken place. In the meanwhile, a case was registered under Section 307 I.P.C. against accused/appellant Ramanand. In that case, Ramanand was sent to jail, on account of which, the marriage of Manju with accused Ramanand could not be

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solemnized. Thereafter, the family members of Manju have married her at some other place. After marriage, Manju came to her parental home and thereafter she never returned back to her matrimonial home. Manju still wanted to marry with accused/appellant Ramanand only. For the marriage of Manju and Ramanand, the wife of the accused Ramamand, namely, Sangeeta was not ready. Accused Ramanand wanted to get compensation from the Government for which the accused/appellant Ramanand committed murder of his wife Sangeeta and his daughters and burned their dead bodies.

22 P.W.1 has also stated that earlier the murder of Siyaram, who was the brother of the accused/appellant, has taken place and the accused/appellant has got about Rs.4-5 Lakhs as compensation. He has stated that after filing of his report police came at the spot and the panchnama proceedings of the deceased persons were conducted. The deadbodies were sealed and were sent for post-mortem. The site plan of spot was also prepared.

23 P.W.1, in his cross-examination before the trial Court, has stated that earlier Ramanad resided at Basdhiya village. Siyaram was the real brother of Ramanand. Siyaram was murdered three years back, for which a report was lodged by Ramanand against Ramakant, Kamlakant and Munuwa at police station Basdhiya, Ishanagar. At the time of murder of Siyaram, his daughter, Gudiya, was alive. The incident of murder of Siyaram was seen

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by Gudiya and wife of Ramanand, namely, Sangeeta. They were the eye-witnesses. Thereafter, Gudiya died due to illness. In the said case, daughter of Siyaram, namely, Gudiya had received compensation from the Government but he did not know how much amount the compensation was given to him. Prior to one month of the murder of Siyaram, Ramakant had lodged an F.I.R. against Ramanand and Siyaram under Section 307 I.P.C., in which Siyaram and Ramanand were sent to jail and after detaining 7-8 days in jail, they were released on bail.

24 P.W.1, in his cross-examination, has further deposed that Ramanand had two brothers and one sister, namely, Kushuma. The sister of Ramanand, namely, Kushuma, was married with him (P.W.1) and from their wedlock, four children were born, who are still alive and are with him. His wife Kushuma deserted him one year back and gone to village Bauri started living with Guddu in his house. P.W.1 has further deposed that prior to three months of the murder of the wife and children of Ramanand, his wife Kushuma deserted him and had gone to village Bauri to the house of Guddu and since then, she is residing there. P.W.1 has also stated that the case, which was lodged by Ramakant under Section 307 I.P.C. against Ramanand and Siyaram, he was doing pairvi and had spent 10-12 thousands rupees for the same. The said money was not returned by Ramanand till date and after the murder of Siyaram, Ramanand came to his village Namdarpurwa. This witness has

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further stated that he had given his field to Ramanand for construction of his house. He, however, denied the suggestion that the field, upon which Ramanand constructed the house, was sold by him to the Ramanand on taking Rs.50,000/- from him and inspite of repeated request, he has not executed a sale deed.

25 P.W.1, in his cross-examination, has further stated that Chatrapal resides in his village and is the brother of the deceased Sangeeta. Chatrapal had married his sister Sangeeta (deceased) in village Bahad with one Pairu. Sangeeta resided eight days in her in-law's house and, thereafter, she had fled from her in-law's house with Ramanand and performed Court marriage with him, due to which, Chatrapal faced great humiliation and since then Chatrapal is inimical to Ramanand. This witness has further stated that the distance of house of Ramanand from his house is one kilometre. On the date of incident, Ramanand came to his house in the morning at 6:30 a.m. and he reached to his house by foot. He (Ramanand) appeared to be in much perturbed condition. Ramanand told him (P.W.1) that 4-5 persons of village Basadiya had entered his house and set afire. He (Ramanand) had further told him (P.W.1) that he (Ramanand) came to his house stealthily. Thereafter, this witness along with Pratap went to the house of Ramanand, where he saw the door of the house of Ramanand was opened and in the house, corpses were burning in flames.

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Approximately 4-5 minutes, flames came out from the corpse. The corpses were burning in the kothari (closet) in the house. He along with Pratap started extinguishing the fire by water. Ramanand was taking the heat of fire in a courtyard. There was a tap at a distance of 4-5 steps, from which he carried 4-5 buckets (balti) of water and poured it over the fire and 4-5 buckets of water were poured by Pratap over the fire. All corpses were completely burnt. Out of the burnt corpses, one girl from neck to the head was found half burnt, whereas in rest of the corpses, burnt bones were left only. This witness has further deposed that the distance of police station from village Namdarpurwa is 09 kilometers. He went to police station to lodge the F.I.R. by bicycle. He told the whole incident to the Inspector after reaching the police station. Thereafter, on the behest of the Inspector, report Ext. Ka.1 has been written. The tahriri report was not written at police station in his presence. He did not know the scriber of the tehriri report. The report was written at the chauraha (crossroads). The distance between the chaurha (crossroad) to police station is one mile. He put thumb impression at the chauraha (crossroad). This witness also stated that he did not know Manju. He had came to know about pregnancy of Manju when Ramanand told him. The marriage of Manju was performed prior to one year of the incident and since then, Manju is residing in law's house or he did not know whereabout she is. He also deposed that two months prior to the incident, Ramanand, his wife Sangeeta and

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his children has adopted Islam. The Inspector had not interrogated him at the police station. The Inspector reached at the police station with police van. He went at about 2:00 a.m. from the police station. He remained present at police station from lodging of the report till 2:00 a.m. and Ramanand was also present at police station. He was not present at the place where the police had sealed the corpses. The constable left him at 2 O'clock in the night in his house. Ramanand was stopped at the police station. The Inspector did not meet with Ramanand nor he was called. He went to police station along with Pratap and Chatrapal and in his presence, the Inspector did not put signature of Chatrapal and Pratap to any paper. Ramanand was challaned by the police after three days of the incident and since then, Ramanand was continuously at the police station. He denied the suggestion that he cultivated the field of Ramanand. He further denied the suggestion that after his wife deserted him, Ramanand has made a complaint against him to the police and due to this grudge, he is falsely deposing against the appellant.

26 P.W.2 Chhatrapal Raidas, who is the real brother of deceased Sangeeta Devi, has deposed that his sister Sangeeta Devi has solemnized Court marriage with accused/appellant Ramanand about 12 years prior to the incident. Thereafter, Ramanand started living with his wife at a distance of about 500 meters from his village, while originally he was a resident of village

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Basdhiya. Out of this marriage, there were five children of Ramanand and Sangeeta Devi. The name of the eldest one among them is B.R. Ambedkar, aged about 10 years. The remaining daughters were Tulsi aged 07 years, Laxmi aged 05 years, Kajal aged 03 years and the youngest one Guddi aged 1 ½ month. At the time of incident, B.R. Ambedkar was not present at the house. About 2 ½ years prior of the incident, accused/appellant Ramanand has started living in his village Naamdar Purwa as he has constructed a house at the land of his brother-in-law's Shambhu Raidas. Ramanand was a person of rakish and immoral character. About 02 years prior of the incident, he has developed illicit relationship with Km. Manju resident of village Pakariya, District Sitapur. Accused Ramanand used to visit there and due to his illicit relationship, Manju became pregnant. After coming to know about it, the father of Manju talked about her marriage with accused/appellant Ramanand. The marriage was fixed with the accused/appellant. P.W.2 Chhatrapal Raidas further stated that his sister Sangeeta was an illiterate and simple lady and in the influence of her husband Ramanand, she became ready for marriage of Ramanand with Manju. Thereafter, 'Tilak' and 'Chhedna' ceremony has taken place. Accused Ramanand has incurred about Rs.80-90 thousands in 'Tilak' ceremony. In the meanwhile, one Manua lodged a case under Section 307 I.P.C. against accused/appellant Ramanand. In that case, accused/appellant Ramanand was sent to jail, on account of

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which, his marriage with Manju could not be solemnized. Thereafter, father of Manju has married her at some other place. After release from jail, accused/appellant Ramanand again started contacting Manju and made talk for marriage with her. In the month of the incident itself, Manju Devi came to the house of accused/appellant Ramanand and after staying 2-3 days there, she went back to her house. This time, his sister Sangeeta was not ready for marriage of accused/appellant Ramanand with Manju. Accused/appellant has threatened her that if she (Sangeeta) does not became ready for his marriage with Manju, he would kill her and thereafter would marry with Manju.

27 P.W.2 has further deposed before the trial Court that about 10 days prior to the incident, Sangeeta came to his house and has told him about these facts. At that time, Ruttam and his neighbours Chhail Bihari and Bal Govind were also present. They tried to console Sangeeta and sent her back to her matrimonial home by saying that they would make Ramanand understand. On the next day, P.W.2 and above named persons went to the house of accused Ramanand and tried to make him understand but accused/appellant Ramanand paid no heed and went away. P.W.2 Chhatrapal Raidas has further stated that on the night of 21/22.01.2010, the accused/appellant Ramanand murderd his sister Sangeeta and her daughters Tulsi, Laxmi, Kajal and Guddi and burnt their deadbodies. Accused/appellant

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Ramanand has committed these murder due to the fact that his marriage could not take place with Manju.

28 P.W.2, in his cross-examination, has denied that he had married his sister Sangeeta with one Pairu. He further stated that Sangeeta had eloped from his house and gone with Ramanand. This incident is of 12 years back i.e. in the year 1998. He did not lodge any report for the said incident. He had denied the suggestion that he had married his sister Sangeeta with one Pairu twelve years back. He also denied the suggestion that Sangeeta had eloped with Ramanand after one year. He did not feel any humiliation when his sister Sangeeta eloped with Ramanand but he had married his sister with Ramanand. This witness has further stated that Ramanand was living in his village Naamdarpurwa prior to two years and before that he was living at village Bhasadiya. He, in his cross-examination, has stated that prior to 3-4 years, brother of Ramanand, namely, Siyaram, was murdered, for which Ramanand had lodged an F.I.R. against Ramakant, Kamlakant and Munuwa, who were the residents of village Bhasadiya and they were sent to jail in the said case. In the said case, daughter of Siyaram, namely, Guddi and wife of Ramanand, namely, Sangeeta were eye-witnesses as they were present at the time of the incident. After 1 ½ years of the murder of Siyaram, Gudia died on account of illness and after her death, Ramanand had received compensation from the Government. He used to visit the house of Siyaram. Siyaram and Ramanand used

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to live in one house and in the said house, daughter of Siyaram, namely, Gudia, Ramanand, wife of Ramanand, namely, Sangeeta and their children also used to live. His sister Sangeeta had married 12 years back after she eloped with Ramanand and since then Sangeeta used to live with Ramanand. In the last 12 years, his sister Sangeeta had made several complaints against her husband (Ramanand) viz. not providing food, clothes and not permitting her to go elsewhere and also made illicit relationship, but she used to live with Ramanand as wife till the incident. However, he did not lodge any report to the police station against the complaint made by his sister. His sister used to visit his house and after staying about 1-2 months, she went back to the house of Ramanand. He had heard that Ramanand and his wife Sangeeta and their children adopted Islam prior to the date of incident. At that relevant time, he was outside the village for a period of one month and when he returned after one month, then, he came to know from the villagers that Ramanand, his wife and their children adopted Islam. Thereafter, he had much persuaded Sangeeta and Ramanand, then, they lived as such as it was.

29 P.W.2, in his cross-examination, has further stated that he had seen Km. Manju and she and her father used to visit the house of Ramanand six months prior to the incident. He did not know whether marriage of Manju had taken place prior to the incident. The fact that Ramanand and Manju had illicit relationship and Manju became pregnant, has been told to him by his sister

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Sangeeta when she came to his house. When she told the said fact, 10-20 persons were present in his house. Prior to 1-2 months of the incident, Sangeeta told the aforesaid fact outside the house where 20-25 persons were present. Thereafter, Sangeeta went to the house of Ramanand. Neither he nor Sangeeta had lodged any report in this regard. This witness has also stated that he came to know about the incident at 07:00 a.m. in the morning from Ramanand, who had came to his house at about 07:00 a.m. At that relevant time, Ramanand was alone and he told him that his wife and children have been burnt in the house and someone after murdering him burnt them. On saying the aforesaid, Ramanand went away to his house. Thereafter, Pratap and Shambhu and he reached to the house of Ramanand by bicycle and by foot, respectively. When he reached to the house of Ramanand, then, Pratap and Sambhu extinguishing the fire from water and Ramanand was taking the heat by sitting near fire and villagers were standing there. The cloth of Ramanand was blood stained. After sometime, the Inspector had arrived and other officials had also arrived at the place of occurrence. The police had taken Ramanand. When it was ascertained that Ramamanand had murdered his wife and their children and post-mortam has been conducted/completed, then, he reached to the police station. The report was lodged by Sambhu. This witness has stated that he did not aware of about the fact as to whether ceremony of Tilak of Ramanand with Manju had taken place or not. He denied the suggestion that Sangeeta had married with

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one Pairu prior to 12 years back. He further denied the fact that Sangeeta Devi had eloped from her in-law's house with Ramanand and married him due to which his family faced humiliation. He also denied the suggestion that he was inimical with Ramanand and Sangeeta and he did not have any relationship with them because of which he had falsely deposed against the appellant.

30 P.W.3 Babu Ram Hans, in his examination-in-chief, has deposed that he is the leader of Bahujan Samajwadi Party and earlier he was the President of the said party in Dhaurahara Assembly Constituency. In the morning of 23.01.2010, at about 09:00 a.m., accused/appellant Ramanand alias Nand Lal came at his house and told him that a big mistake has taken place from him. He (accused/appellant) told him (P.W.3) that though he wanted to marry with one Manju r/o Pakariya, P.S. Tambaur, District Sitapur but his wife Sangeeta was not agreeable for the said marriage, therefore, he (accused/appellant), on 21/22.01.2010, at about 01:00 a.m., after committing brutely murder of his wife Sangeeta and daughters Tulsi, Laxmi, Kajal and Guddi with banka, burnt their deadbodies on bed in the house. Accused/appellant has further stated to P.W.3 Baburam Hans that he (P.W.3) is a big leader and there is Government of B.S.P. and that he has good hold in the Government and thus accused/appellant requested him (P.W.3) to save him from the alleged crime. Thereupon, P.W.3-Baburam Hans told the accused

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appellant that as he is a criminal, thus, he cannot help him and turned Ramanand out from his house. P.W.3 has also stated that his statement was recorded by the police.

31 In cross-examination, P.W.3-Baburam Hans has denied the fact that he has been informed by the accused/appellant to the fact that some miscreants entered in his house and committed the murder of his wife and children and also assaulted him. P.W.3, in his cross-examination, has deposed that when accused/appellant left his house, he immediately informed about the incident to the Incharge of police station Dhaurhara from his mobile number 9838278181. Thereafter, he reached at the place of occurrence at about 09.00 a.m. He also stated that deceased Sangeeta Devi was the daughter of his brother-in-law and wife of the accused/appellant. The marriage of deceased Sangeeta was held 12-13 years ago. Thereafter, deceased Sangeeta run off secretly and got married with accused/appellant Ramanand, upon which Chattrapal and father of Chattrapal, his brother-in-law and father of deceased Sangeeta felt insulted. Thereafter, there was no talk between Sangeeta and her father till the death of deceased Sangeeta. Earlier Ramanand resided at village Bhasadiya, where his brother Siyaram was murdered and at that time, he had gone there. For the murder of his brother Siyaram, appellant Ramanand had lodged a report against Ramakant and others.

32 P.W. 3 has denied the suggestion that Ramanand had not confessed his guilt before him and as Sangeeta was the daughter

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of his brother-in-law (Sadru), therefore, he is falsely deposing against Ramanand.

33 P.W.4- Ram Kumar, in his examination-in-chief, has deposed that about one year back, he was in B.S.P. Party and was a member of Zila Panchayat. In the morning at about 06.30 a.m., on which incident took place, accused/appellant Ramanand came at his home and stated that his wife and childrens have been murdered and asked P.W.4 to help him. P.W.4 asked him to disclose true facts and only then he could help him. On inquiry, the accused/appellant Ramanand stated that he himself has committed the murder of his wife and children and has burn their bodies and asked P.W.4 to save him. On asking about the reason for committing murders, the accused/appellant Ramanand also told P.W.4 that he wanted to marry one Manju of Tambaur but his wife was opposing the same and due to this reason, he committed this incident. P.W.4 has further stated that the son of Ramanand used to live with a police man in District Mau. Only one week back, Ramanand has left his son at Mau. Son of Ramanand was brought by that constable and by that time after the post-mortem of the deceased persons, their dead bodies have been brought in the village. Seeing his son, accused Ramanand was wept bitterly and stated that he has committed the murder of his mother and sisters. P.W.4 has refused to help the accused. P.W.4 also stated that his statement was recorded by the police.

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34 P.W.4, in his cross-examination has further deposed that he is residing at village Dhaurhara. The distance from the village of Ramanand to Dhaurhara is 6-7 kilometers. Ramanand reached to his house by foot. The police station Dhaurhara from his house is 40-50 steps. He was the elected Member of the Zila Panchayat from Bahujan Samaj Party. At that relevant time, Government of Bahujan Samaj Party was in the State of U.P. He had good relationship with the Inspector of police station Kotwali Dhaurhara and he used to visit every day to the police station. He knew Babu Ram Hans, resident of village Dhaurahara, who was the President of the Assembly Constituency Dhaurhara from Bahujan Samaj Party at the time of incident. He was told by Ramanand that his wife and children were done to death by some unknown persons. Thereafter, he questioned from Ramanand as to why the said persons had only killed his wife and children and not him. This witness has further stated that when Ramanand came to him, he bear pant and shirt and blood was oozing out from his head and his pant and shirt were blood stained. Ramanand came to him between 6 ½ to 7 and stayed there about 10 minutes and thereafter, he went from there on its own. This witness further deposed that he went to the police station Dhaurhara at 7 ½ a.m. on the date of incident, wherein he was informed that all officials had gone to the place of incident. He, thereafter, reached at the place of incident at about 09:00 a.m. and at that

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relevant time, Ramanand was gone for treatment to Dhaurhara hospital. He narrated the facts of Ramanand to the police officials, then, the police had arrested Ramanand at 9-9.15 a.m. This witness denied the suggestion that he is related to Chatrapal and Ramanand is connected to Bahujan Samaj Party and used to sing a song for Bahujan Samaj Party. He denied the suggestion that Ramanand wanted to contest the election against him for Zila Panchayat, due to which he has falsely deposing against him.

35 The learned trial Judge accepted the testimony furnished by P.W.1 Shambhu Raidas and P.W.2 Chatra Pal Raidas as also the extra judicial confession made by the accused/appellant before P.W.3 Babu Ram Hans and P.W.4 Ram Kumar, the post-mortem report furnished by P.W.5 Dr. A.K. Sharma and P.W.8 Dr. S.V. Singh, motive of murdering the deceased, recovery of banka and paint and shirt on the pointing out of the accused/appellant, the statement of P.W.9 Dr. Ankit Kumar Singh regarding presence of burn injury on the body of the accused/appellant and smell of kerosene oil was coming out from the body and clothes of the accused/appellant and report of the FSL, which showed that samples of earth were put in envelop in the laboratory itself after examination of blood spots and the nature of earth of both the samples i.e. blood stained as well as of simple earth, was found identical. Accordingly, the trial Court

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convicted and sentenced the accused/appellant in the manner as stated in paragraph 1 hereinabove.

36 Hence, this appeal and reference.

37 We have heard Mr. Rajesh Kumar Dwivedi, Amicus Curiae for the convict/appellant and Sri Vimal Kumar Srivastava, learned Government Advocate, assisted by Sri Chandra Shekhar Pandey, learned Additional Government Advocate for the State of U.P. in Criminal Appeal No. 1959 of 2016 and Sri Vimal Kumar Srivastava, learned Government Advocate, assisted by Sri Chandra Shekhar Pandey, learned Additional Government Advocate for the State of U.P. and Mr. Rajesh Kumar Dwivedi, Amicus Curiae for the convict/appellant in Capital Sentence Reference No. 1 of 2016. We have also perused, the depositions of the prosecution witnesses; the material exhibits tendered and proved by the prosecution, the statement of the appellant recorded under Section 313, Cr.P.C.; and the impugned judgment of the trial Court.

38 While challenging the impugned judgment, Sri Rajesh Kumar Dwivedi, learned Amicus Curiae appearing on behalf of the accused/appellant has contended that there are several lacuna in conducting the investigation viz. F.I.R. is ante-dated and ante-timed; the F.I.R./Special Report was not forwarded to Magistrate concerned forthwith; the scribe of the written report was not produced in the witness box by the prosecution; blood

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stained and plain earth soil was not recovered by the Investigating Officer from the spot; and Investigating Officer also did not take and send the samples of blood stained and plain plaster from the room in which the dead bodies were allegedly burning after assault, for chemical examination to Forensic Science Laboratory. In the inquest reports of the deceased, the date and time when the corpses were dispatched to mortuary for autopsy is not mentioned. In support of his contention with regard to unexplained delay in dispatch of the F.I.R. to Magistrate, he has relied upon the judgment of the Apex Court in **Marudanal Augusti Vs. State of Kerala :** 1980 SCC (Cri.) 985.

39 Mr. Dwivedi has contended that there is no eye witness of the alleged incident. The prosecution case is based on circumstantial evidence and extra judicial confession of the accused before the P.W.3-Babu Ram Hans and P.W.4 Ram Kumar. He has contended that the alleged extra judicial confession made by the accused/appellant are not reliable for the reason that P.W.3-Babu Ram Hans is a related, interested and inimical witness, whereas there are variations, inconsistencies and major contradictions in the testimony of P.W.4-Ram Kumar, who is also an inimical witness. Thus, the trial Court has erred in relying the unreliable witnesses P.W.3 and P.W.4 while passing the impugned judgment. The extra-judicial confession cannot form the basis of conviction of the

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appellant since it has no corroboration and when examined in light of the settled principles of law, it is inconsequential, thus, the appellant is entitled to the benefit of doubt.

40 Elaborating his submission, Mr. Dwivedi, learned Amicus Curiae appearing for the appellant has contended that the testimonies of P.W.1 and P.W.2 are not reliable as P.W.1 and P.W.2 are related, inimical and interested witnesses. He contended that P.W.1 was married to the sister of the accused/appellant and the sister of the accused/appellant has deserted P.W.1. Similarly, P.W.2 was the brother of deceased Sangeeta and he (P.W.2) was inimical to the accused/appellant as his sister has married the accused/appellant against the wishes of her family members.

41 It has further been contended by Sri Dwivedi that no motive has been established by the prosecution against the accused/appellant to commit the murder of his own wife and four minor daughters. He also contended that according to recovery memo, blood stained banka i.e. a weapon of assault and blood stained clothes (Pant & shirt) were recovered under Section 27 of the Evidence Act on 24.01.2010 at 09.50 a.m. on the pointing out of the accused/appellant but it is a fake recovery as it is not made in accordance to the provisions of Section 27 of the Evidence Act. The disclosure statement under Section 27 of the Evidence Act should be made voluntarily without any duress or coercion in the presence of independent

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witnesses. In support of his contention, he relied upon the judgments of the Apex Court reported in AIR 1956 SC 217 : **Aher Raja Khima Vs. The State of Saurashtra** and in AIR 2002 SC 3040 : **Harjit Singh and others Vs. State of Punjab**.

42 Sri Dwivedi has further contended that it has been alleged that appellant was arrested by the police on 24.01.2010 at 06:30 p.m. from Taxi Stand and the recovery was made under Section 27 of the Evidence Act on 24.01.2010 at 09:50 a.m. This shows that his arrest on 24.01.2010 at 06:30 p.m. is fake as no arrest memo of the accused/appellant has been prepared and no public witness has been mentioned before whom the arrest of the accused was made and in the Fard recovery, there is no signature of Senior Sub-Inspector, who scribed the fard Ext. Ka-5, witnesses of recovery as well as the signatures of the accused to whom the copy of the fard was given.

43 Mr. Dwivedi has also contended that the investigation of the case has been conducted in highly careless manner and the charge-sheet has been filed by the Investigating Officer P.W.7 S.I. Yogendra Singh without collecting sufficient evidence in support thereof. The trial Court has also erred to consider that the prosecution has not produced the best evidence to prove it's case and deliberately withheld the material witnesses, namely, Manju, her father Kandhai Raidas and husband of Manju to prove the guilt of the accused/appellant, for which presumption under Section 114 (g) of the Evidence Act was desired to be

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drawn against the prosecution. He has contended that the case of the prosecution is based on circumstantial evidence and chain of circumstances proved by the prosecution is not complete and the prosecution has miserably failed to establish the fact that only the accused/appellant and no one else except him could have committed the offence.

44 Learned Counsel for the appellant has further submitted that the trial Court had found conviction against the appellant in view of the provisions of Section 106 of the Evidence Act, 1972. He submitted that onus is on the prosecution to prove the case beyond reasonable doubt against the appellant and the presumption, which has been raised against the appellant for recording his conviction in the present case, is not sustainable in the eyes of law. He has drawn the attention of the Court towards the judgments of the Apex Court reported in 2013 (3) JIC 548 (SC) : **Joydeb Patra & others Vs. State of West Bengal**.

45 Lastly, Mr. Dwivedi has contended that the extreme penalty of death awarded to the accused/appellant by the trial Court is too harsh and excessive in nature and as an alternate penalty the punishment of imprisonment for life would meet the ends of justice if this Court arrives at a conclusion otherwise as the case of the prosecution is solely based upon the extra-judicial confession, which confession is neither reliable nor has been recorded in accordance with law. In support of his argument,

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he has placed reliance upon the judgment of this Court reported in 2020 (3) JIC 125 (All HC DB) **: Najeem Miyan Vs. State of U.P.** and judgments of the Apex Court reported in 2020 (2) JIC 491 (SC) **: Manoj Suryavanshi Vs. State of Chhattisgarh**, and in 2019 (107) ACC 731 (SC) : **Vijay Kumar Vs. State of J & K.**

46 Per contra, learned Counsel appearing for the State, while supporting the impugned judgment of the trial and pleaded for confirmation of death penalty, argued that the appellant was living along with his wife and children in the same house, in which the incident had taken place. The appellant, in his statement under Section 313 Cr.P.C., has not denied his presence at the place of occurrence and on the other hand, injuries sustained on his person goes to show that he was present at the time of the incident and has committed the murder of his wife and four minor children. The motive for the appellant to commit the murder of the deceased has been proved by the evidence of P.W.2- Chatra Pal Raidas, who is real brother of the deceased Sangeeta. The recovery of blood stained banka and clothes of the appellant at his pointing out further shows the incriminating circumstance against the appellant for his involvement in the present incident. He has also submitted that extra-judicial confession made by the appellant before P.W.3-Babu Ram Hans and P.W.4-Ram Kumar goes to show that the said confession made by the appellant

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before the said witnesses is admissible one as the appellant was also the active member of a political party BSP, in which P.W.3-Babu Ram Hans and P.W.4-Ram Kumar were holding the good position and were able to help him out of the present case. He next submitted that the explanation given by the appellant for the death of his wife and children, in his statement under Section 313 Cr.P.C., is self-contradictory to his written statement under Section 233 Cr.P.C. He argued that the appellant had given a false explanation about the death of his wife and children and the trial Court has rightly rejected the defence version.

47 Learned Counsel for the State has further contended that the present case is of circumstantial evidence and the prosecution has succeeded in establishing every circumstance of the chain of events that would fully support the view that the accused/appellant is guilty of the offence. The trial court while dealing with the judgment under appeal, upon proper appreciation of evidence, thus, has come to the right conclusion.

48 We have given a thoughtful consideration to the rival submissions advanced by learned Counsel for the parties and have gone through the lower Court record and the impugned judgment and order passed by the trial Court.

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49 In the instant case, there is no eye-witness of the incident and it is a case of circumstantial evidence. In a case of circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused. Furthermore, in case of circumstantial evidence, where the prosecution relies upon an extra-judicial confession, the court has to examine the same with a greater degree of care and caution. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra- judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra- judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

50 The present case rests on circumstantial evidence and the appellant has been convicted and sentenced to death by the trial Court for murdering his wife and children vide impugned judgment. In respect to convict the person in a case of circumstantial evidence, the Apex Court in the celebrated case of **Sharad Birdhichand Sarda v. State of Maharashtra: AIR**

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1984 SC 1622, has held that the following conditions must be fulfilled before a case against an accused can be said to be fully established:-

> *"1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;*
>
> *2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
>
> *3. The circumstances should be of a conclusive nature and tendency;*
>
> *4. They should exclude every possible hypothesis except the one to be proved; and*
>
> *5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."*

51 The aforesaid principles of law, which have been laid down by the Apex Court, shows that while dealing with circumstantial evidence, the onus is on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea.

52 In a case of circumstantial evidence, conditions precedent before conviction could be placed on circumstantial evidence, must be fully established such as *(1) the circumstances from which the conclusion of guilt is to be drawn should be fully*

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

53 Keeping in mind the aforesaid principles of law, we proceed to examine the instant case whether the prosecution has been able to establish a chain of circumstances so as to not leave any reasonable ground for the conclusion that the allegations brought against the accused persons are sufficiently proved and established.

54 Learned Counsel for the appellant has raised an argument that the motive, which has been suggested by the prosecution to commit the murder of his wife and children by the appellant is absolutely a weak one as the prosecution has failed to prove the same but the said argument of the learned Counsel for the appellant does not appear to have much substance.

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55 In the present case, as is apparent from the evidence on record that there appears to be a motive for the appellant to commit the murder of his wife Sangeeta along with her children, which is established from the evidence of P.W.2-Chatra Pal Raidas, who is the real brother of deceased Sangeeta. P.W.2, in his deposition before the trial Court, has stated that his sister Sangeeta, who used to come to his house and stayed there for about 1-2 months, had made a complaint to him about the illicit relationship of the appellant with Manju; Manju had become pregnant from the appellant; and the appellant wanted to marry with Manju, which was objected by his sister Sangeeta; and the appellant was adamant to marry with Manju, on account of which, the appellant committed the murder of his wife deceased Sangeeta along with four minor children, who was living along with the appellant in his house. P.W.2-Chatra Pal Raidas has further stated that when Sangeeta had come to his house, she told about the aforesaid fact. He also stated, in his evidence, that ten days prior to the incident, the deceased Sangeeta had come to his house and in the presence of his neighbours, namely, Chailbihari and Balgovind, had also disclosed about the illicit relationship of the appellant with Manju. Thus, the motive to commit the murder of the deceased Sangeeta along with her children stands proved from the evidence of P.W.2 and there is no reason for him to depose falsely against the appellant.

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56 The fact that the evidence of witness P.W.2-Chatra Pal Raidas could not be relied upon on account of the fact that he happens to be the real brother of deceased Sangeeta and as Sangeeta had eloped the appellant Ramanand against the wishes of her family members, therefore, witness was falsely deposing against the appellant, cannot be accepted to the fact as quoted his testimony with respect to the motive, which has been categorically stated by him for the cause of murder of his wife Sangeeta and her four minor children.

57 Here it would also be pertinent to mention that another motive of the appellant to commit the murder of his wife and his children, as has been apparent from the evidence of P.W.1 and P.W.2, that the appellant, on taking advantage of the murder of his wife and children, wanted to get compensation from the State Government as earlier also the appellant had taken the compensation for the murder of his real brother Siyaram, which was paid by the State Government to the tune of Rs.4-5 Lakhs, and which was, in fact, given to the daughter of deceased Siyaram, namely, Gudiya but he managed to take the said compensation from Gudiya, who died on account of illness.

58 From the aforesaid analysis of the evidence on record, it is established that the prosecution has proved beyond doubt that the appellant has motive to commit the murder of his wife and his four minor children and, therefore, the contention of the

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learned Counsel for the appellant on this score is not sustainable and the same is rejected also.

59 The next contention of the learned Counsel for the appellant is that the appellant is innocent and he has falsely been implicated in the case on account of enmity and further the appellant has not committed any offence.

60 The circumstance, which shows the involvement of the appellant in the present case is that in the medical examination of the appellant, which was conducted by P.W.9-Dr. Ankit Kumar Singh on 22.01.2010, at 10:30 A.M., P.W.9 opined that the smell of kerosene oil are coming from the body of the appellant. The appellant, in his statement under Section 313 Cr.P.C., has stated that the miscreants of the incident have poured kerosene over his body so as to burn him, whereas in his statement under Section 233 Cr.P.C., the appellant has stated that when he reached at village Namdarpurwa for help, some villagers have poured kerosene over his injuries. Moreover, injuries no. 4 and 5, which were superficial burn injuries on the person of the appellant further goes to show that his presence at the place of occurrence is also established and the explanation, which he had given for the same, in his statement under Section 313 Cr.P.C. and written statement under Section 233 Cr.P.C., are self contradictory. The kerosene oil found on the body of the appellant along with superficial burn injuries on his person has further goes to show that he had committed the murder of

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his wife and children and after causing injuries to them, he had burnt their dead bodies as post-mortem burns are found on the person of all the deceased. Moreover, the prosecution has established that prior to the commission of crime, the appellant and the deceased were living together in their house and the explanation, which has been offered by the appellant regarding how the deceased died, is not at all substantiated in the facts and circumstances of the case. Thus, the contention of the appellant that he has not committed the murder of his wife and his four minor children is bogus and false and is also rejected.

61 The argument of the learned Counsel for the appellant that the recovery, which has been made of blood stained banka and blood stained clothes of the appellant on his pointing out, is not in accordance with Section 27 of the Evidence Act, hence the said recovery is a false one and the appellant be acquitted on this ground alone, is also not acceptable as it is apparent from the fard recovery memo of the two articles Ext. Ka.5, which was proved by P.W.6-Uma Shankar and P.W.7-Yogendra Singh. Moreso, the legal position regarding scrutiny of recovery memo, statement recorded under Section 27 of the Indian Evidence Act is well settled by the Apex Court in the case of **Golakonda Venkateswara Rao vs. State of Andra Pradesh** : AIR 2003 SC 2846, wherein the Apex Court once again reconsidered the entire issue and held that merely because the recovery memo was not signed by the accused, will not vitiate

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the recovery itself, as every case has to be decided on its own facts. In the event that the recoveries are made pursuant to the disclosure statement of the accused, then, despite the fact that the statement has not been signed by him, there is certainly some truth in what he said, for the reason that, the recovery of the material objects was made on the basis of his statement.

62 From perusal of the record, it revealed that the police arrested him on 24.01.2010 and kept him in police lock up. On the interrogation, the appellant disclosed the P.W.7- Inspector Yogendra Singh, who was the Investigating Officer, that he can get the blood stained banka and his clothes, which was used in the crime and wearing at the time of the incident. On this information given by the appellant to P.W.7, the appellant was taken out from the lock up and on his pointing out, the appellant was taken along with other police personnel by P.W.7 with witnesses Chatra Pal Raidas (P.W.2) and one Pratap son of Basartilal Raidas to the field of one Kafil, from where blood stained banka and blood stained clothes were recovered by P.W.7, which was concealed in the shrubs and the appellant has also disclosed him that he had concealed the blood stained banka and blood stained clothes after the murder. The said recovery was made on the pointing out of the appellant on 24.01.2010 at 09.15 a.m. A fard recovery memo regarding the blood stained banka and blood stained clothes was prepared by P.W.7 at the place of occurrence and the same was also signed

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by the witnesses and the appellant and copy of the same was also given to the appellant. As per the Forensic Report of the recovered items, blood was found on the said recovered items.

63 In the light of the aforesaid facts and circumstances of the case and also keeping in mind the law laid down by the Apex Court in **Golakonda Venkateswara Rao vs. State of Andhra Pradesh (supra)**, the plea of the learned Counsel for the appellant in this regard is not acceptable and the same is rejected.

64 The other circumstance, which goes against the appellant, is his conduct. The conduct of the appellant is apparent from the record as he had gone to the house of P.W.1 -Shambhu Raidas at 6:30 a.m., in the morning, who is his brother-in-law and informed him about the incident, wherein he stated that some unknown miscreants of village Bardhiya had come to his house in the mid night and knocked the door and when he gone to see them from roof, he identified one person of village Bardhiya and one of the miscreants had fired at him, upon which he came down from the roof and thereafter, one of the miscreants had assaulted him from butt of the gun and then he fled from his house in a field and by concealing himself, he saw that miscreants had jumped into his house and smoke coming out from his house. On receiving the said information, P.W.1-Shambhu Raidas along with his nephew Pratap reached the

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house of the appellant and saw the dead-bodies of his wife Sangeeta and four minor children burning. Thereafter, P.W.1 and Pratap extinguished fire by pouring water and the appellant was noticed by P.W.1-Shambhu Raidas taking the heat by sitting near fire in the courtyard, on which, P.W.1 Shambhu Raidas asked him that his wife and her minor children has been burnt and he takes the heat of the fire, then, the appellant went away from his house as he felt annoyed. The said conduct of the appellant goes to show that he did not make any effort to save his wife Sangeeta and four minor children, firstly from the alleged miscreants and instead fled away from his house and watching the entire incident from a short distance of his house from a field and further when the miscreants had went away from his house after the incident, he did not make any effort to extinguish fire at the place of occurrence nor he went to the house of P.W.1-Shambhu Raidas or P.W.2-Chatra Pal Raidas immediately after the incident, who were living in the village (Namdarpurwa) of the appellant at a short distance from his house as it has come that P.W.1-Shambhu Raidas was living at a distance of one kilometer from the house of the appellant.

65 It further connects important feature which was inference against the appellant is that he was admittedly living in his house along with his wife Sangeeta and four minor daughters, who were murdered in a brutal manner and the appellant has failed to explain the death of his wife and his children and the

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explanation, which was given by him for their death was false, firstly on the ground that from perusal of the post-mortam report of the deceased shows that all the deceased had received injuries by sharp edged weapon as the incised wound were on their persons, which could be caused by Banka and the same has been recovered at the pointing out of the appellant. Secondly, after causing injuries to the five deceased persons, their deadbodies were burnt as there are post-mortam burn upon all the five deceased as it is apparent from their post-mortam report.

66 P.W.7- S.I. Yogendra Singh, in his deposition, has also deposed that after arrest of the appellant and on interrogation, appellant has disclosed that after the murder of his real brother, namely, Siyaram, he has started to even keeping the daughter of his real brother, namely, Gudiya as a wife and later on, daughter of Siyaram, namely, Gudiya, has committed suicide. This evidence of P.W.7 also shows the conduct of the appellant was immoral as has been apparent from the record that after eloping with two married ladies, he has not spared even his own niece.

67 Another strong circumstance, which appears against the appellant, is that the reason for the appellant for killing his minor daughters and his wife Sangeeta appears to be that he wanted to escape his responsibility of his four minor daughters of their clothing, studies and further their marriage after they would have grown up, therefore, the appellant thought to eliminate them

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along with his wife. It is noteworthy to mention here that the appellant had an elder son, who was aged about ten years and whom he had left at Mau with a police constable for studies one week ago from the date of the incident and he did not kill him for oblique motive being a male child. The appellant appears to be a very clever person and not innocent. He had earlier taken compensation for the murder of his brother, namely, Siyaram and now with a motive to take compensation for the death of his wife and minor children because of the present incident.

68 Had the incident been caused by the alleged unknown miscreants, who have entered the house of the appellant, as has been stated by the appellant Ramanand and who also saw the incident, but he has not stated that miscreants were armed with any sharp edged weapon and on the other hand, appellant has stated that one of the miscreants fired at him and also caused injuries by the butt of the gun but no cartridge was found from the place of occurrence when he saw them from the roof of his house. Thus, it goes to show that the explanation, which has been given by the appellant, is absolutely bogus and false one.

69 The argument of the learned Counsel for the appellant that the F.I.R. is the ante-dated and ante-timed, has also not legs to stand as it is evident from the statement of P.W.10-HCP Dhani Ram Verma that the informant had come with his written report to the police station on 22.01.2010 and handed over to him, on the basis of which, he lodged the F.I.R. of the incident at

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concerned police station and thereafter police personnels visited the house of the appellant and conducted the inquest proceedings and sent the corpses for post-mortem etc. and at the same time, higher officials had reached at the place of occurrence. Thus, it is established from the evidence of P.W.10 that the F.I.R. has been lodged on the date and time as has been suggested by the prosecution.

70 The argument of the learned Counsel for the appellant that special report of the incident was sent to the Magistrate concerned after a great delay, also has no much bearing on the prosecution case as if there had been some lapses on the part of the investigating agency that cannot said to be a fatal one particularly that has not caused any prejudice to the appellant.

71 It is relevant to mention here that the legal effect of any delay in sending the special report of the incident to Magistrate has also been dealt with by the Apex Court in **Ombir Singh Vs. State of Uttar Pradesh and others** : AIR 2020 SC 2609. The relevant part of the report is reproduced as under :

> *"4. There was undoubtedly a delay in compliance of section 157 of the Code, as the FIR was received in the office of the Chief Judicial Magistrate with a delay of 11 days. Effect of delay in compliance of Section 157 of the Code and its legal impact on the trial has been examined by this court in Jafel Biswas v. State of West Bengal: (2019) 12 SCC 560 after referring to the earlier case laws, to elucidate as follows:*
>
> *"18. In State of Rajasthan [State of Rajasthan v. Daud Khan, (2016) 2 SCC 607 : (2016) 1 SCC*

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(Cri) 793] in paras 27 and 28, this Court has laid down as follows: (SCC pp. 620-21) "27. The delay in sending the special report was also the subject of discussion in a recent decision being Sheo Shankar Singh v. State of U.P. [Sheo Shankar Singh v. State of U.P., (2013) 12 SCC 539 :(2014) 4 SCC (Cri) 390] wherein it was held that before such a contention is countenanced, the accused must show prejudice having been caused by the delayed dispatch of the FIR to the Magistrate. It was held, relying upon several earlier decisions as follows: (SCC pp. 549-50, paras 30-31) '30. One other submission made on behalf of the appellants was that in the absence of any proof of forwarding the FIR copy to the jurisdiction Magistrate, violation of Section 157 CrPC has crept in and thereby, the very registration of the FIR becomes doubtful. The said submission will have to be rejected, inasmuch as the FIR placed before the Court discloses that the same was reported at 4.00 p.m. on 13-6-1979 and was forwarded on the very next day viz. 14-6-1979. Further, a perusal of the impugned judgments of the High Court [Sarvajit Singh v. State of U.P., 2003 SCC OnLine All 1214 : (2004) 48 ACC 732] as well as of the trial court discloses that no case of any prejudice was shown nor even raised on behalf of the appellants based on alleged violation of Section 157 CrPC. Time and again, this Court has held that unless serious prejudice was demonstrated to have been suffered as against the accused, mere delay in sending the FIR to the Magistrate by itself will not have any deteriorating (sic) 1 (2019) 12 SCC 560 effect on the case of the prosecution. Therefore, the said submission made on behalf of the appellants cannot be sustained.

31. In this context, we would like to refer to a recent decision of this Court in Sandeep v. State of U.P. [Sandeep v. State of U.P., (2012) 6 SCC 107 : (2012) 3 SCC (Cri) 18] wherein the said position has been explained as under in paras 62-63: (SCC p. 132) "62. It was also feebly contended on behalf of the appellants that the express report was not forwarded to the Magistrate as stipulated under Section 157 CrPC instantaneously. According to the learned counsel

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FIR which was initially registered on 17-11-2004 was given a number on 19-11-2004 as FIR No. 116 of 2004 and it was altered on 20-11-2004 and was forwarded only on 25-11-2004 to the Magistrate. As far as the said contention is concerned, we only wish to refer to the reported decision of this Court in Pala Singh v. State of Punjab [Pala Singh v. State of Punjab, (1972) 2 SCC 640 : 1973 SCC (Cri) 55] wherein this Court has clearly held that (SCC p. 645, para 8) where the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the court then, however improper or objectionable the delay in receipt of the report by the Magistrate concerned be, in the absence of any prejudice to the accused it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.

63. Applying the above ratio in Pala Singh [Pala Singh v. State of Punjab, (1972) 2 SCC 640 : 1973 SCC (Cri) 55] to the case on hand, while pointing out the delay in the forwarding of the FIR to the Magistrate, no prejudice was said to have been caused to the appellants by virtue of the said delay. As far as the commencement of the investigation is concerned, our earlier detailed discussion discloses that there was no dearth in that aspect. In such circumstances we do not find any infirmity in the case of the prosecution on that score. In fact the above decision was subsequently followed in Sarwan Singh v. State of Punjab [Sarwan Singh v. State of Punjab, (1976) 4 SCC 369 : 1976 SCC (Cri) 646] , Anil Rai v. State of Bihar [Anil Rai v. State of Bihar, (2001) 7 SCC 318 : 2001 SCC (Cri) 1009] and Aqeel Ahmad v. State of U.P. [Aqeel Ahmad v. State of U.P., (2008) 16 SCC 372 : (2010) 4 SCC (Cri) 11] ""

28. It is no doubt true that one of the external checks against antedating or ante-timing an FIR is the time of its dispatch to the Magistrate or its receipt by the Magistrate. The dispatch of a copy of the FIR "forthwith" ensures that there is no manipulation or interpolation in the FIR. [Sudarshan v. State of Maharashtra, (2014) 12 SCC 312 : (2014) 5 SCC (Cri) 94] If the

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prosecution is asked to give an explanation for the delay in the dispatch of a copy of the FIR, it ought to do so. [Meharaj Singh v. State of U.P., (1994) 5 SCC 188 : 1994 SCC (Cri) 1391] However, if the court is convinced of the prosecution version's truthfulness and trustworthiness of the witnesses, the absence of an explanation may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case. [Rattiram v. State of M.P., (2013) 12 SCC 316 : (2014) 1 SCC (Cri) 635] "

19. The obligation is on the IO to communicate the report to the Magistrate. The obligation cast on the IO is an obligation of a public duty. But it has been held by this Court that in the event the report is submitted with delay or due to any lapse, the trial shall not be affected. The delay in submitting the report is always taken as a ground to challenge the veracity of the FIR and the day and time of the lodging of the FIR.

20. In cases where the date and time of the lodging of the FIR is questioned, the report becomes more relevant. But mere delay in sending the report itself cannot lead to a conclusion that the trial is vitiated or the accused is entitled to be acquitted on this ground.

21. This Court in Anjan Dasgupta v. State of W.B. [Anjan Dasgupta v. State of W.B., (2017) 11 SCC 222 : (2017) 4 SCC (Cri) 280] (of which one of us was a member, Hon'ble Ashok Bhushan, J.) had considered Section 157 CrPC. In the above case also, the FIR was dispatched with delay. Referring to an earlier judgment [Rabindra Mahto v. State of Jharkhand, (2006) 10 SCC 432 : (2006) 3 SCC (Cri) 592] of this Court, it was held that ***in every case from the mere delay in sending the FIR to the Magistrate, the Court would not conclude that the FIR has been registered much later in time than shown.****"*

(Emphasis supplied)

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72 The issue whether the infirmities in investigation and discrepancies pointed out in the prosecution evidence make out a ground for rejecting the prosecution version was explained at length in the case of **State of Karnataka Vs. Suvarnnamma** : 2015 (88) ACC 317, wherein the Apex Court, after taking note of **Zahira Habiullha Sheikh (5) vs. State of Gujarat** : (2006) 3 SCC 374 and other reports, has held that mere lapses on the part of the Investigating Agency could not be enough to throw out overwhelming evidence clearly establishing the case of the prosecution.

73 In the instant case, from perusal of the record and the evidences brought on record, we are of the view that though there is some lapses on the part of the Investigating Agency in the investigation but the prosecution has established the case against the appellant beyond reasonable doubt. Therefore, the plea of the appellant in this regard is not sustainable and is, accordingly, rejected.

74 The argument of the learned Counsel for the appellant regarding the arrest of the appellant on 24.01.2010 at 06:30 a.m. and the recovery, which has been made on the same date at 09:50 a.m., is also of no significance as the same has been dealt with by the trial Court in the impugned judgment, which, in our view, has rightly been dealt with giving sound reasoning.

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75 The other argument of the learned Counsel for the appellant that the evidence of P.W.1-Shambhu Raidas and P.W.2-Chatra Pal Raidas, who are highly interested and inimical to the appellant, is also of no significance as P.W.1-Shambhu Raidas narrated the facts about the murder of his sister and her children by the appellant himself in the morning at 06:30 a.m. at his house. Similarly, P.W.2-Chatra Pal Raidas, who is the real brother of the deceased Sangeeta, has categorically disclosed about the motive of the appellant in the murder of his wife and children, cannot be discarded on the ground that he happens to be the real brother of the deceased Sangeeta as it is well settled law that simply because a witness being related to the deceased or injured, his testimony cannot be thrown for this ground alone but on the other hand, his evidence has to be examined minutely with a great caution. From the entire evidence of P.W.1 and P.W.2 goes to show that their testimony has been consistent one regarding the fact that the appellant had disclosed about the incident to P.W.1 and also P.W.2 and in their cross-examination, nothing has been carved out by the defense, which may come to this Court to discard their testimony.

76 Here, it is out of place to mention that the extra-judicial confession, which has been made by the appellant before P.W.3-Babu Ram Hans and P.W.4-Ram Kumar, is also relevant in order to determine the guilt of the appellant as the appellant himself was connected with a political party i.e. Bahujan Samaj

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Party. P.W.3 was the District President of the Bahujan Samaj Party and P.W.4 was the Member of Zila Panchayat of the Bahujan Samaj Party. Both these witnesses holding a good position in Bahujan Samaj Party, were competent enough to get the appellant exonerated from the charges, which he had committed and confessed before them but after hearing the accused/appellant that he himself had killed his wife and children in a brutal manner, they refused to help him and on the other hand, they informed the police about the incident, to which in the place of occurrence, the other high officials also reached there and the appellant was taken by the police after being satisfied that it was he (appellant), who had killed his wife and children, and was challaned in the present case and the recovery, thereafter, was made from him of the weapon of assault Banka along with his blood stained cloths. The suggestions, which have been given for disbelieving the extra judicial confession made by the appellant before P.W.3 and P.W.4, had happened to be related to P.W.2-Chatra Pal Raidas as the deceased Sangeeta was the daughter of his brother-in-law, hence, they were falsely deposing against him, is not at all acceptable and their evidence cannot be disbelieved on the said counts. Taking into account the other circumstances, which has been referred hereinabove, which speaks out the guilt of the appellant in the present case.

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77 At this juncture, it would be apt to deal with some of the judgments of the Apex Court on this aspect.

78 In **Balwinder Singh v. State of Punjab** [1995 Supp. (4) SCC 259], the Apex Court stated the principle that an extra-judicial confession, by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.

79 In **Pakkirisamy v. State of T.N**. [(1997) 8 SCC 158], the Apex Court held that it is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession.

80 Again in **Kavita v. State of T.N**. [(1998) 6 SCC 108], the Apex Court stated the dictum that there is no doubt that conviction can be based on extrajudicial confession, but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon veracity of the witnesses to whom it is made.

81 While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, the Apex Court in the case of **State of Rajasthan v.**

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Raja Ram [(2003) 8 SCC 180] stated the principle that an extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The Apex Court, further expressed the view that such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused.

82 In the case of **Aloke Nath Dutta v. State of W.B**. [(2007) 12 SCC 230], the Apex Court, while holding the placing of reliance on extra-judicial confession by the lower courts in absence of other corroborating material, as unjustified, observed:

> *"87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness*

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of the confession; (ii) truthfulness of the confession; (iii) corroboration.

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89. A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof."

83 Accepting the admissibility of the extra-judicial confession, the Apex Court in the case of **Sansar Chand v. State of Rajasthan** [(2010) 10 SCC 604] held that :-

"29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide ***Thimma and Thimma Raju V. State of Mysore, Mulk Raj V. State of U.P. Sivakumar V. State*** *(SCC paras 40 and 41 : AIR paras 41 & 42),* ***Shiva Karam Payaswami Tewari V. State of Maharashtra and Mohd. Azad v. State of W.B.***

In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession

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was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872."

84 Dealing with the situation of retraction from the extra-judicial confession made by an accused, the Apex Court in the case of **Rameshbhai Chandubhai Rathod v. State of Gujarat** [(2009) 5 SCC 740], held as under :

"*It appears therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless, the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true."*

85 Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. [Ref. **S.K. Yusuf v. State of W.B**. [(2011)

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11 SCC 754] and **Pancho v. State of Haryana** [(2011) 10 SCC 165].

86 Upon a proper analysis of the above-referred judgments of the Apex Court, it would be apt to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused. The Principles, thus, comes out are that (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution; (ii) It should be made voluntarily and should be truthful; (iii) It should inspire confidence; (iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence; (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities; and (vi) Such statement essentially has to be proved like any other fact and in accordance with law.

87 Having regard to the aforesaid principles, while examining the acceptability and evidentiary value of the extra- judicial confession, we may now refer to the extra-judicial confession in the case before us. The extra-judicial confession is alleged to

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have been made by the accused/appellant before P.W.3-Babu Ram Hans and P.W.4-Ram Kumar.

88 As per the case of the prosecution, the deceased were murdered on 21/22.01.2010. The dead bodies of the deceased were taken into custody by the police in the morning of 22.01.2010. Both P.W.3-Babu Ram Hans and P.W.4 Ram Kumar had categorically made statement on oath that the accused/appellant Ramanand came to their house in order to get help from them as they are the members of the Bahujan Samaj Party in the morning of 23.01.2010 and told them that he (accused/appellant) did a mistake as he murdered his wife Sangeeta and his children with banka and thereafter he burned their deadbodies on bed in the house. The trial Court, after discussing this issue in detail, has opined that testimony of P.W.3 and P.W. 4 is consistent and credible. Both the witnesses were in such a position that it was natural on the part of the accused/appellant to think that they may help him from saving this crime. Both the witnesses have consistently deposed that the accused/appellant has admitted before them that he had committed the murder of his wife and children in order to marry Manju and has sought their help. When P.W.3 has refused to help him, the accused/appellant had approached P.W.4 for the help. Both the witnesses were politically known to accused/appellant as earlier he was also in the same party. The trial Court has further found that there is absolutely nothing that these witnesses were inimical towards

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the accused/appellant nor there were any such reasons that why they would depose falsely against the accused. In these circumstances, the trial Court has rightly came to the conclusion that the admission of guilt by the accused before P.W.3 and P.W.4 falls in the category of extra judicial confession and the extra judicial confession made by the accused/appellant before P.W.3 and P.W.4 is found fully reliable and the same can safely be used against the accused/appellant.

89 The fact that defense version, which has been pleaded by the appellant, is a plausible one or not, has been considered in great detail by the learned trial Court, which after going through the entire defense evidence found to be false one. Here, it would not be out of place to mention that the burden to prove his case lies on the prosecution and the accused/appellant is not expected to prove its case beyond doubt. From perusal of the post-mortem report of the deceased persons, it is apparent that they were done to death in a brutal and barbaric manner.

90 Thus, this Court comes to the conclusion that the accused/appellant Ramanand *alias* Nandlal Bharti had strong motive to commit the murder of his wife; at the time of the incident, the appellant and the five deceased were the only occupants in the house, in which they were living together; after the arrest of the appellant at his pointing out the weapon of murder i.e. ‘blood stained Banka’ and his ‘blood stained clothes’ were recovered which he had concealed; soon after the

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incident, the appellant made an extra-judicial confession before P.W.3-Babu Ram Hans and P.W.4- Ram Kumar admitting his guilty; the conduct of the appellant which is totally inculpatory as he never tried to inform the police about the incident but on contrary he concocted a false and baseless story of the occurrence; the appellant even did not inform about the incident to P.W.1-Shabhu Raidas and P.W.2-Chatrapal Raidas, who were the resident of the same village, where the accused/appellant had gone to seek help from other villagers; the defense taken by the appellant under Section 313 Cr.P.C. is self-contradictory to his written statement under Section 233 Cr.P.C.; the appellant has not even denied his presence at the place of occurrence, moreover, it found established as the appellant has sustained two burn injuries on his person and further the presence of kerosene oil over his body and clothes. These facts go to show that the appellant was involved in the incident and in that transaction**,** he sustained burn injuries and kerosene oil was found on his body and clothes.

91 Hence, from the totality of circumstances and entire evidence on record, it stands proved that it was none else but the appellant and he alone, who committed the murder of his wife and four minor daughters. The prosecution has been able to established the chain of circumstances, which are in themselves complete and the same are conclusive in nature and excludes all

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possible hypothesis except the fact that it was the appellant alone who is guilty of the crime.

92 Taking all these aspects of the matter, we are of the view that the trial Court was fully justified in convicting the accused appellant under Section 302 of IPC .

93 While upholding the conviction of the accused/appellant, we now proceed to consider the question of '*death sentence*' awarded to him by the trial Court under Section 302 of IPC.

94 It is true that capital punishment has been the subject-matter of great social and judicial discussion and catechism. From whatever point of view it is examined, one indisputable statement of law follows that it is neither possible nor prudent to state any universal form which would be applicable to all the cases of criminology where capital punishment has been prescribed. Thus, it is imperative for the Court to examine each case on its own facts, in the light of enunciated principles and before opting for the death penalty, the circumstances of the offender are also required to be taken into consideration along with the circumstances of crime for the reason that life imprisonment is the rule and death sentence is an exception.

95 Before going into the legality and propriety of question of sentence imposed upon the accused/appellant by the trial Court by means of the impugned order, we deem it apt to have a

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glance at the various decisions of the Hon'ble Supreme Court on the issue.

96 The decision pronounced by the Constitutional Bench of Hon'ble Supreme Court in the case of **Bachan Singh v. State of Punjab** : AIR 1980 SC 898 stands first among the class making a detailed discussion after the amendment of Code of Criminal Procedure in 1974. The Constitutional Bench of Hon'ble the Supreme Court in **Bachan Singh v. State of Punjab (Supra)**, while upholding the constitutionality of death penalty under Section 302 of Indian Penal Code and the sentencing procedure embodied in Section 354 (4) of the Code of Criminal Procedure, struck a balance between the protagonists of the deterrent punishment on one hand and the humanity crying against death penalty on the other ane elucidated the strict parameters to be adhered to by the Courts for awarding death sentence. While emphasizing that for persons convicted of murder, life imprisonment is the 'rule' and death sentence an 'exception', the Hon'ble Supreme Court observed that a rule abiding concern the dignity of the human life postulates resistance in taking the life through laws instrumentality and that the death sentence be not awarded "save in the rarest of the rare cases" when the alternative option is foreclosed. The relevant paragraphs of the said judgment are reproduced herein below:-

> *"132. To sum up, the question whether or not death penalty serves any penological purpose is a difficult,*

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complex and intractable issue. It has evoked strong, divergent views. For the purpose of testing the constitutionality of the impugned provision as to death penalty in Section 302 of the Penal Code on the ground of reasonableness in the light of Articles 19 and 21 of the Constitution, it is not necessary for us to express any categorical opinion, one way or the other, as to which of these two antithetical views, held by the Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion on this issue, is a ground among others, for rejecting the petitioners argument that retention of death penalty in the impugned provision, is totally devoid of reason and purpose. If, notwithstanding the view of the Abolitionists to the contrary, a very large segment of people, the world over, including sociologists, legislators, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of society, if in the perspective of prevailing crime conditions in India, contemporary public opinion channelized through the people's representatives in Parliament, has repeatedly in the last three decades, rejected all attempts, including the one made recently, to abolish or specifically restrict the area of death penalty, if death penalty is still a recognised legal sanction for murder or some types of murder in most of the civilised countries in the world, if the framers of the Indian Constitution were fully aware -- as we shall presently show they were -- of the existence of death penalty as punishment for murder, under the Indian Penal Code, if the 35th Report and subsequent reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code and the insertion of the new Sections 235 (2) and 354 (3) in that Code providing for presentence hearing and sentencing procedure on conviction for murder and other capital offences were before the Parliament and presumably considered by it when in 1972-1973 it took up revision of the Code of 1898 and replaced it by the Code of Criminal Procedure, 1973, it is not possible to hold that the provision of death penalty as an alternative punishment for murder, in Section 302 of the Penal Code is unreasonable and not in the public interest. We would, therefore, conclude that the impugned provision in Section 302, violates neither the letter nor the ethos of Article 19."

"200. Drawing upon the penal statutes of the States in U.S.A. framed after Furman v, Georgia, in general, and Clauses 2(a), (b), (c), and (d) of the Indian Penal Code (Amendment) Bill passed in 1978 by the Rajya Sabha, in particular, Dr. Chitale has suggested these "aggravating circumstances":

"Aggravating circumstances : A Court may, however, in the following cases impose the penalty of death in its discretion:

(a) if the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

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(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed-

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by suc member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the CrPC, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.

201. Stated broadly, there can be no objection to the acceptance of these indicators but as we have indicated already, we would prefer not to fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other.

204. Dr. Chitaley has suggested these mitigating factors:

"Mitigating circumstances":- In the exercise of its discretion in the above cases, the Court shall take into account the following circumstances:

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. It the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society. (4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.

(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.
(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect unpaired his capacity to appreciate the criminality of his conduct.

207. We will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence.

209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a a judicial computer all such

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situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354 (3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and figures albeit incomplete, furnished by the Union of India, show that in the past Courts have inflicted the extreme penalty with extreme infrequency - a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the high-road of legislative policy outlined in Section 354 (3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

97 In **Machhi Singh v. State of Punjab** : (1983) 3 SCC 470, a Three Judges Bench of the Hon'ble Supreme Court formulated the following two questions to be considered as a test to determine the 'rarest of rare' cases, in which death sentence can be inflicted. The same are reproduced hereinbelow :-

> *''(i) Is there something uncommon, which tenders sentence for imprisonment for life inadequate calls for death sentence ?*
>
> *(ii) Rather the circumstances of the crime such that there is no alternative, but to impose the death sentence even after according maximum weightage to the mitigating circumstances which speaks in favour of the offender ?"*

98 Hon'ble Supreme Court in **Machhi Singh v. State of Punjab (supra)**, then, proceeded to lay down the circumstances in

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which death sentence may be imposed for the crime of murder and has held as under :

> *"32. The reasons why the community as a whole does not endorse the humanistic approach reflected in "death sentence-in-no-case" doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of "reverence for life" principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent for those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by "killing" a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self- preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so "in rarest of rare cases" when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as for instance:*
>
> *I.* ***Manner of commission of murder***
>
> *33. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,*
>
> *(i) when the house of the victim is set aflame with the end in view to roast him alive in the house.*
>
> *(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.*
>
> *(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.*

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

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance when

(a) a hired assassin commits murder for the sake of money or reward

(b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust, or

(c) a murder is committed in the course for betrayal of the motherland.

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

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

(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***

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

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

37. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

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> *38. In this background, the guidelines indicated in Bachan Singh case will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh case.*
>
> *(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.*
>
> *(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.*
>
> *(iii) Life Imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.*
>
> *(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances 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."*

99 In the aforesaid case i.e. **Machhi Singh Vs. State of Punjab (supra)**, the Hon'ble Supreme Court has confirmed the death sentence awarded to Kashmir Singh, who was one of the appellants as he was found guilty of causing death to a poor defenceless child, namely, Balbir Singh, aged about 6 years. The appellant Kashmir Singh was categorized as a person of depraved mind with grave propensity to commit murder.

100 The ratio laid down by the Hon'ble Supreme Court in **Bachan Singh v. State of Punjab (Supra)** and **Machhi Singh Vs. State of Punjab (supra)**, continue to serve as the foundation-stone of

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contemporary sentencing jurisprudence though they have been expounded or distinguished for the purpose of commuting death sentence, mostly in the cases of (i) conviction based on circumstantial evidence alone; (ii) failure of the prosecution to discharge its onus re: reformation; (iii) a case of residual doubts; (iv) where the other peculiar ‘mitigating circumstances outweighed the ‘aggravating circumstances’.

101 The issue has again came up before Hon'ble Supreme Court in ***Ramnaresh & others v. State of Chhattisgarh*** : (2012) 4 SCC 257, wherein the Hon’ble Supreme Court reiterated 13 aggravating and 7 mitigating circumstances as laid down in the case of **Bachan Singh v. State of Punjab (Supra)** required to be taken into consideration while applying the doctrine of "*rarest of rare*" case. The relevant para of the aforeaid judgment of the Hon’ble Supreme Court reads as under :

> *"76. The law enunciated by this Court in its recent judgements, as already noticed, adds and elaborates the principles that were stated in the case of Bachan Singh (supra) and thereafter, in the case of Machhi Singh (supra). The aforesaid judgments, primarily dissect these principles into two different compartments - one being the "aggravating circumstances" while the other being the "mitigating circumstances". The Court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the Court. It will be appropriate for the Court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the Court as contemplated under Section 354 (3) of Cr.P.C.*

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Aggravating Circumstances:

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 Cr.P.C.

(9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

(10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating Circumstances:

(1) The manner and circumstances in and under which the offence was committed, for example,

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extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a pre-ordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused."

102 Having noticed the legislative mandate laid down in Section 354 (3) of the Code of Criminal Procedure and the decisions of the Hon'ble Supreme Court on the aspect of imposition of death sentence in the '*rarest of rare*' cases, we deem it expedient to revert to the factual position in the instant case in our quest for the appropriate sentence.

103 In the instant case, the accused/convict Ramanand has committed murder of his wife and four minor innocent daughters aged about 7 years, 5 years, 3 years and the youngest

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one aged about one and a half month. It transpires from the evidence on record that the criminal act of the accused/convict was actuated to pave a way to marry with one lady, namely, Manju, who was already married. It was the deceased Sangeeta (wife of the appellant), who opposed his marriage with Manju but the accused/convict was adamant to marry with Manju at any cost and in order to marry with Manju, accused/convict murdered not only murder his own wife but also his own four innocent minor daughters aged between one and half month to eight years in a most brutal and barbaric manner without their no fault and without any rhyme or reason. Before murdering the deceased, the accused/convict had also chopped of various parts of their bodies and inflicted severe incised wounds as is evident from the post-mortem report.

104 Keeping in mind the law laid down by the Apex Court in **Machhi Singh v. State of Punjab (Supra)** as well as various other pronouncement of the Hon'ble Supreme Court and also considering the law on the issue by the Hon'ble Supreme Court that a balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating circumstances have to be accorded full weightage and just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised, the trial Court has recorded the aggravating circumstances looking to the evidences brought on record and we deem it appropriate

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to reproduce the same in order to reach logical end in respect of awarding the appropriate sentence. The same is reproduce as under :-

> "1- The accused has committed murder of his wife and four minor daughters aged 7, 5, 3 years and the youngest one was just one and a half month old. The accused was in a dominant position and a position of trust as the head of family. The accused betraying the trust and abusing his position murdered his wife and children. Instead of protecting them, the accused himself became devourer of his own offspring.
>
> 2- The murders were committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. There were severe incised wounds on the bodies of all the accused persons. The various parts of their dead bodies like hands and feet were chopped off from their bodies. Some parts of their bodies were found missing. After committing the murders, all the deceased persons were put on fire. There were superficial to deep burns all over their bodies.
>
> 3- The callousness and depravity of the accused may also be seen from the fact that after the incident when the complainant/PW 1 reached at the spot and seeing the scene, started pouring water to extinguish the fire, the accused sat around fire and started enjoying heat as it was a winter season. When the complainant snubbed him saying that his wife and children have been murdered and he was still enjoying the heat, the accused went away. His conduct show extreme depravity and diabolical nature.
>
> 4- The crime committed by the accused is enormous in proportion, as the accused has murdered as much as five members of his family. The murders of the deceased were cold blooded and without any provocation. The murders were committed so brutally that it shocks not only the judicial conscience but even the conscience of the society.
>
> 5- The deceased included four innocent children, who could not have provided even an excuse, much less a provocation, for the crime and a helpless woman, who was none but his own wife. Its beyond imagination that the deceased girls aged 3, 5 and 7 years might have given any

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> excuse or provocation. The youngest deceased was an infant aged just one and a half month. The accused just butchered five persons to death including four minor girls in most inhuman, cruel and merciless way.
>
> 6- All the facts and circumstances go to show that the deceased were murdered in the mid night while they were in sleep.
>
> 7- The accused being married with the deceased Sangeeta since long, developed illicit relationship with another woman. He did not stop this relationship even after marriage of that woman and wanted to marry her. The accused committed murder of his wife and four hapless minor daughters to pave a way for his marriage with that lady. The murders were committed for a motive which evidences total depravity and meanness.
>
> 8- The evidence shows that the accused is a person of rakish, depraved and immoral character.
>
> 9- The victims were innocent, helpless and they relied upon the trust of relationship and social norms, as the victims included the four minor daughters of the accused, the youngest one aged one and a half month and a helpless woman, his wife, who loved the accused and was opposing his second marriage with another lady. The accused has betrayed their faith and hope.
>
> 10- The facts and circumstances show that the accused has deliberately planned crime and meticulously executed it to pave a way for his marriage with alleged Manju. He chose the time of midnight when there is no one around the spot and the victims were alseep. He arranged a 'banka' to commit murders and also arranged kerosene to burn their dead bodies."

105 The mitigating circumstances as observed by the Trial Court is as under :

> "1- The accused is not a previous convict.
>
> 2- There was no eye-witness of the incident and the case is based on circumstantial evidence."

106 From a perusal of the above, it is clear that the special reasons assigned by the trial Court for awarding extreme penalty of death are that the murder was horrifying as the accused-

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appellant was in a dominant position; victim was helpless being children aged about 7, 5, 3 years and the youngest one was just one and a half month old and the murder was pre-meditated and pre-planned one with a motive and committed in a cruel, grotesque and diabolical manner. The accused is a menace to the Society and, therefore, imposition of lesser sentence than that of death sentence, would not be adequate and appropriate. In these circumstances, the trial Court has held that the balance-sheet of the aggravating and mitigating circumstances was heavily weighed against the appellant making it the rarest of rare cases and consequently awarded the death sentence.

107 Having gone through the facts and circumstances of this case, we find that there was ample evidence on record to establish that the accused/convict committed pre-planned and pre-meditated murder of his wife and minor innocent children and such evidence has been led by the prosecution to establish this fact. Moreso, the appellant cut the body of the deceased and inflicted severe incised wounds. Thus, it is beyond doubt that the manner in which crime is committed by banka and thereafter buried the deadbodies by pouring kerosene oil, is brutal, cruel and gruesome.

108 The trial Court also called for a report from the District Probation Officer who also reported that there was no possibility of reformation of the accused/appellant. From the facts and circumstances of the case particularly the report of the

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District Probation Officer, we are in agreement with the findings recorded by the Trial Court with regard to no possibility of the appellant of reformation. Moreso, learned Government Advocate, during the course of argument, has vehemently argued that there is no chance of the accused/appellant for reformation.

109 For the reasons aforesaid, we are of the view that we are in complete agreement with the view taken by the trial Court convicting and sentencing the accused for the offence punishable under Section 302 I.P.C. The instant case falls in the category of 'rarest of rare case', warranting capital punishment. Hence, the death sentence awarded to the appellant under Section 302 of IPC is liable to be confirmed.

110 In view of the above and for the reasons stated hereinabove, Criminal Appeal No. 1959 of 2016 filed by the appellant from jail fails and the same deserves to be dismissed and is, accordingly, **dismissed**. However, we **confirm the death reference** under Section 366 (1) of the Code of Criminal Procedure, 1973. made by the learned Sessions Judge, Lakhimpur Kheri in the light of discussions made above.

111 Before we part with the case, we must candidly express our unreserved and uninhibited appreciation for the distinguished assistance rendered by Mr. Rajesh Kumar Dwivedi, learned Amicus Curiae in the instant appeal and, therefore, we deem it

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appropriate to direct for payment to Mr. Rajesh Kumar Dwivedi, learned Amicus Curiae for his valuable assistance as per Rules of the Court.

112 Let Mr. Rajesh Kumar Dwivedi, learned Amicus Curiae be paid as per Rules of the Court within a month.

113 The Senior Registrar of this Court is directed to communicate this order to the District & Sessions Judge, Lakhimpur Kheri, who shall further communicate this order to the appellant, where he is confined in jail forthwith.

114 Registry is directed to transmit the original lower Court record to the Court concerned forthwith.

(Rajeev Singh, J.) **(Ramesh Sinha, J.)**

Order Date : 09th July, 2021
Ajit/-