IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL CONFIRMATION CASE No. 2/2023

WITH

CRIMINAL APPEAL NO. 427/2023.

....

CRIMINAL CONFIRMATION CASE No. 2/2023

State of Maharashtra,
through Police Station Officer,
Police Station Nandanwan,
Nagpur. ... APPELLANT.

VERSUS

Vivek Gulabrao Palatkar,
Aged 45 years, Occupation – Labour,
resident of Navargaon, Post Rewral,
Tahsil Mouda, District Nagpur. ... RESPONDENT.

Mr. S.S. Doifode, Addl.P.P. & Mr.M.A. Badar, A.P.P. for the Appellant/State.
Mr.D.V. Chauhan, Advocate (Appointed) with Mr. N.Jadhav, Advocate for the Respondent/Accused.
Mr. Mohd. Ateeque, Advocate assisting prosecution.

WITH

CRIMINAL APPEAL No. 427/2023

Vivek Gulabrao Palatkar,
Aged 40 years, Occupation – Nil,
resident of Navargaon, Post Rewral,
Tahsil Mouda, District Nagpur.
(Currently detained in Central
Jail, Nagpur.) ... **APPELLANT.**

VERSUS

State of Maharashtra,
through Police Station Officer,
Police Station Nandanwan,
Nagpur. ... **RESPONDENT.**

Mr.D.V. Chauhan, Advocate (Appointed) with Mr. N.Jadhav,
Advocate for the Appellant/Accused.
Mr. S.S. Doifode Addl.P.P. and Mr.A. Badar, A.P.P. for the
Respondent/State.
Mr. Mohd. Ateeque, Advocate assisting prosecution.

CORAM : VINAY JOSHI AND
M.W. CHANDWANI, JJ.

RESERVED FOR JUDGMENT ON : 18.12.2023
JUDGMENT PRONOUNCED ON : 27.03.2024.

JUDGMENT (PER VINAY JOSHI, J.) :

Sole accused Vivek Gulabrao Palatkar was tried for the offence punishable under Sections 302 and 201 of the Indian Penal Code in Sessions Case No.429/2018, for committing murder of 5 persons including women and children. The trial Court has returned a finding of guilt vide impugned judgment and order dated 15.04.2023. The trial Court was of the opinion that the case falls in "rarest of rare" category, and accordingly awarded capital punishment. In terms of mandate of Section 366 of the Code of Criminal Procedure, the learned Sessions Judge, has submitted the proceedings to this Court for confirmation vide Criminal Confirmation Case No.2 of 2023. Being aggrieved by the same impugned judgment and order of conviction, the accused has also preferred an appeal bearing Criminal Appeal No.427/2023, raising a challenge to the finding of guilt, as well as to the nature and proportionality of punishment.

2. Since the accused was un-represented, legal aid was provided to him by appointing Shri D.V. Chauhan, Advocate who has vast experience of criminal law. Shri Chauhan, has advanced exhaustive submissions with the assistance of Advocate N.Jadhav. On the other hand the Additional Public Prosecutors Shri S.S. Doifode and Shri A. Badar, were heard on behalf of State, as well as Shri Mohd. Ateeque, Advocate has assisted the prosecution.

3. Heard elaborate submissions advanced by both the sides, considered the factual aspect, evidence led before the trial Court, impugned judgment, as well as various pronouncements cited by the parties in support of the respective contentions. Also hard both sides exhaustively on the point of imposition of appropriate sentence.

4. The prosecution case in brief is that the accused- Vivek Palatkar was earlier tried in Sessions Case No.459/2014 for committing murder of his wife Savita. In said case he was convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life. The accused has

two children, daughter – Vaishnavi and son Krishna @ Ganu. Since the mother of ill feted children died and father was languishing in jail, both were sheltered by sister of the accused namely Archana and her husband Kamlakar. They were residing at Aradhana Nagar, Nagpur. Apart from Kamlakar and Archana, Kamlakar's mother Mirabai , daughters Vedanti, Mitali and two children of accused were residing together.

5. The accused has questioned his conviction before this Court, in which he was acquitted. After his release from jail, the accused was residing in a rented room of PW 5- Ramesh Giripunje. Accused was in visiting terms at the house of his sister Archana, since his children were living with Archana. Kamlakar was asking to return the money which he has incurred in maintaining the children of the accused and borne for legal expenses for the accused. He was insisting the accused to transfer land in the name of his wife Archana, and was humiliating him as an culprit. For these reasons the accused has nurtured a grudge against Kamlakar and was looking for an opportunity to eliminate Kamlakar. On 10.06.2018

in the late evening, accused went to the house of Kamlakar, had food and slept with the family of Kamlakar. In the midnight, he had killed Kamlakar, Archana, Vedanti, Krishna @ Ganu and Mirabai by smashing their heads with crowbar [sabbal], which he had brought with him. After committing the ghastly act, in the midnight itself the accused left the house and fled away. The accused was traced after two weeks at Ludhiyana (Punjab) from where he was arrested.

6. On the following day of the occurrence, two minor children Vaishnavi [PW 6] and Mitali [PW 1], who were also slept in the house, had informed the things to the neighbourers in the early hours. At relevant time informant PW 3- Keshav, younger brother of deceased Kamlakar was residing at Manewada, Nagpur. On 11.06.2018 in the morning around 7.30 a.m. he learnt about the multiple murders, on which he rushed to the house of deceased Kamlakar. He saw dead bodies of his brother Kamlakar, sister-in-law Archana, mother Mirabai , minor Vedanti and Krushna lying in the pool of blood. Almost all deceased had sustained head injuries and blood was oozing from their head and face. Blood was spread all

over including mattress, bed, floor and was also seen on the walls. He was stunned and shocked by watching the blood stained scattered bodies.

7. After getting a wind of the gruesome act, the concerned police of Nandanvan Police Station, Nagpur arrived on the spot. PW 3 Keshav has shown the entire things to the police. In presence of two panch witnesses, the police drew panchanama of the scene of offence [Exh.16]. Various articles have been seized, particularly blood stained crowbar was seized which was lying in the outer flowerbed. Motor cycle of the accused was parked in the court yard, which was also seized. Keys of the motor cycle were lying, which were seized. PW 3 Keshav has lodged the report regarding occurrence [Exh.19]. Keshav has stated that while accused Vivek was in jail, on the charge of murder of his wife, his two children [Vedanti and Krishna] were staying in the house of his brother Kamlakar. After release from jail, accused Vivek was asking for custody of children, which Kamlakar refused as the accused had no place of abode. Moreover, children were taking education, hence

Kamlakar resisted for return of custody. Keshav expressed strong suspicion that since the accused Vivek was having grudge against Kamlakar, he has eliminated Kamlakar and his family.

8. On the basis of said information relating to the commission of a cognizable offence, the police registered crime and commenced the investigation. Five dead bodies were sent to the Government Medical College, Nagpur for postmortem examination. Inquest panchnamas were drawn on the dead bodies. Medical Officers have conducted autopsy on the dead bodies. The police have searched the rented room of the accused, from where police seized blood stained clothes worn by the accused at the time of commission of the offence. The accused was traced and apprehended on 22.06.2018 from Ludhiyana, Punjab. While the accused was in custody, at his instance the police visited the hardware shop of PW-11 Prashant, from where the accused has purchased a crowbar, used in the crime. The accused has also shown the place of crime, the place where the crowbar was concealed, and the place where he has concealed the blood stained clothes. The

seized articles were sent for scientific analysis to the Regional Forensic Science Laboratory, (RFSL) as well as for DNA profiling. While taking search of the room of the accused, some handwritten papers were found written as 'Kamlakar Mela'. The police took specimen handwriting of accused and sent for experts opinion. Statement of relevant witnesses were recorded during the course of investigation. After completing the investigation, having been found sufficient material against the accused, final report came to be submitted to the Court of the jurisdictional Magistrate. On committal, the Trial Court has framed charge vide Exh.6. The accused abjured the guilt and put the prosecution to the task of establishing the guilt with requisite standard of proof. The defence of the accused is of total denial and a case of false implication. The accused had stated that at the relevant time he was serving as a security guard at Ludhiyana, however, the accused did not led defence evidence.

9. In order to bring home the guilt of the accused, the prosecution has examined as many as 29 witnesses and relied on

several documents. For the sake of convenience we prefer to refer the oral evidence and documents tendered by the prosecution in tabular form as below.

Sr. No.	Exh. No.	Name of Witness	Details on which examined.
1.	10	PW-1 Mitali Kamlakar Pawankar. (Minor)	Eye witness.
2.	14	PW -2 Vijay Shankarrao Zalke.	Panch witness on the spot panchnama and seizure of various articles including crowbar, motor cycle and keys.
3.	18	PW-3 Keshav Motiram Pawakar.	Informant and brother of the deceased Kamlakar.
4.	25	PW-4 Rupesh Baburaoji Pawankar.	Panch on inquest of deceased Krushna.
5.	28	PW-5 Ramesh Lalchandrao Giripunje.	Landlord of accused.
6.	30	PW-6 Vaishnavi Vivek Palatkar. (Minor)	Eye witness.
7.	32	PW -7 Lata Baburao Palatkar.	Neighbour and relative of the deceased.

8.	33	PW-8 Bhusban Baburao Pawankar.	Neighbouring relative of the deceased to whom the minor child informed about the incident in the morning.
9.	35	PW-9 Sanjay Gulabrao Shendre.	Neighbouring resident with whom the accused spoke on the earlier night.
10.	36	PW-10 Pushpa Sanjay Shendre	Wife of PW -9 who has seen the accused entering into the house of the deceased on earlier night.
11.	37	PW-11 Prashant Harishchandra Jibhkate.	Owner of hardware shop from whom the accused had purchased the crowbar.
12.	41	PW-12 Prakash Mahadevrao Mule.	Panch witnss who has identified the crowbar.
13.	43	PW-13 Sandip Mahadeo Ramteke.	Panch witness before whom the accused has shown the shop from where the crowbar was purchased and in his presence specimen handwriting of accused was taken.

14.	49	PW-14 Ashok Chintaman Khobragade	Panch witness in whose presence rented room of the accused was searched and blood stained clothes were seized.
15.	53	PW-15 Anil Ramchandra Kumeriya.	Neighbouring resident who saw the accused leaving the house of the deceased around 3 a.m. of the relevant night.
16.	55	PW-16 Anil Devmandrao Mahajan	Panch witness in whose presence the accused has shown the place of incident, place where the crowbar and blood stained clothes were concealed.
17.	59	PW-17 Jagannath Rajeram Dhaywat.	Police Head Constable – carrier of Muddemal to CA.
18.	61	PW-18 Omprakash Ramlal Paliya.	Assistant Police Sub Inspector, who carried out the spot panchnama.
19.	64	PW -19 Vitthal Ramaji Lakhe.	Saloon owner who has seen the accused in the morning of the earlier day of the incident.
20.	66	PW-20 Shrish Sharadchandra Varadpande.	Photographer -cum-Videographer.

21.	86	PW-21 Dr.Rahul Dadarao Shende.	Medical Officer who conducted postmortem on the dead bodies of Kamlakar, Archana and Krushna.
22.	91	PW-22 Dr.Dinesh Suresh Akarte.	Medical officer who conducted postmortem on the dead body of Vedanti.
23.	95	PW-23 Dr.Nishat Tarannum Sheikh.	Medical officer who conducted postmortem on the dead body of Mirabai .
24.	97	PW-24 Pramod Domaji Bambole.	Assistant Police Inspector who conducted preliminary investigation.
25.	99	PW-25 Mukund Madhav Salunke.	Police Inspector and Investigating Officer.
26.	143	PW-26 Sandhya Shrikrishna Chavan.	Assistant Police Inspector who carried inquest panchnama on the dead bodies of Mirabai and Archana.
27.	157	PW-27 Sonali Dayaram Waghare.	Police Sub Inspector who carried inquest panchnama on the dead body of Vedanti.

28.	169	PW-28 Krushna Sakharam Sonule.	Police Sub Inspector who carried inquest on the dead bodies of Kamlakar and Krushna.
29.	180	PW-29 Kiran Vasantrao Chaugale.	Police Inspector who traced and brought the accused from Ludhiyana, Punjab on 22.06.2018.

IMPORTANT DOCUMENTS PROVED AND RELIED BY THE PROSECUTION.

Sr. No.	Exh. No.	Details of documents.
1.	16	Spot Panchnama and seizure dated 11.06.2018.
2.	19	First information report lodged by Keshav Motiram Pawankar dated 11.06.2018 and printed FIR. Information was received on 11.06.2018 at 7.27 a.m., and crime came to be registered at 2.26 p.m.
3.	24	Chemical Analyzer's report dated 26.06.2020.
4.	27	Inquest panchnama of deceased Krushna Vivek Palatkar, dated 11.06.2018.
5.	146	Inquest panchnama of deceased Mirabai Motiram Pawankar, dated 11.06.2018.
6.	151	Inquest panchnama of deceased Archand Kamlakar Pawankar, dated 11.06.2018.

7.	159	Inquest panchnama of deceased Vedanti Kamlakar Pawankar, dated 11.06.2018.
8.	175	Inquest panchnama of deceased Kamlakar Motiramji Pawankar, dated 11.06.2018.
9.	87	Postmortem report of deceased Kamlakar Motiramji Pawankar, dated 11.06.2018.
10.	89	Postmortem report of deceased Archana Kamlakar Pawankar, dated 11.06.2018.
11.	90	Postmortem report of deceased Krushna Vivek Palatkar, dated 11.06.2018.
12.	92	Postmortem report of deceased Vedanti Kamlakar Pawankar, dated 11.06.2018.
13.	96	Postmortem report of deceased Mirabai Motiram Pawankar, dated 11.06.2018.
14.	45 46	Memorandum of statement of accused showing hardware shop, dated 28.06.2018.
15.	50	House search of the accused and seizure of clothes dated 15.06.2018.
16.	56 57	Memorandum of statement of accused showing spot, weapon and clothes, dated 25.06.2018.

CHEMICAL ANALYZER'S REPORT.

1.	24	Chemical Analyzer's report on Iron rod, blood soaked gauze pieces labeled as – Archana, Krushna, Vedanti, Mirabai and Kamlakar, dated 25.06.2018.

2.	128	Chemical Analyzer's report on Wall scrapping, pillow cover, skirt, peticoat, bedsheet, quilt etc., dated 03.12.2018.
3.	129	Chemical Analyzer's report on Full shirt and full pant, dated 03.12.2018.
4.	130	Chemical Analyzer's report on Blood soaked gauze labled Archana and scalp hair labeled Archana, dated 03.12.2018.
5.	131	Chemical Analyzer's report on Blood soaked gauze labeled Kushna and scalp hair labeled Krushna, dated 03.12.2018.
6.	132	Chemical Analyzer's report on Blood soaked gauze labeled Vedant and scalp hair labeled Vedant, dated 03.12.2018.
7.	133	Chemical Analyzer's report on Blood soaked gauze labeled Mirabai and scalp hair labeled Mirabai, dated 03.12.2018.
8.	134	Chemical Analyzer's report on Blood soaked gauze labeled Kamlakar and scalp hair labeled Kamlakar, dated 03.12.2018.
9.	135	Chemical Analyzer's report on White coloured substance in polythene of deceased Kamlakar, dated 31.07.2018.
10.	136	Chemical Analyzer's report on vicera labeled stomach and part of intestine, ½ liver, ½ spleen, ½ kidney of Kamlakar, dated 31.07.2018.
11.	137	Chemical Analyzer's report on vicera labeled stomach and part of intestine, ½ liver, ½ spleen, ½ kidney of Archana, dated 31.07.2018.

12.	138	Chemical Analyzer's report on vicera labeled stomach and pieces of loop of intestine, 1/3 liver, ½ spleen, ½ kidney of Vedant, dated 31.07.2018.
13.	139	Chemical Analyzer's report on vicera labeled stomach and part of intestine, ½ liver, ½ spleen, ½ kidney of Krushna, dated 31.07.2018.
14.	140	Chemical Analyzer's report on vicera labeled stomach and pieces of loop of intestine, 1/3 liver, ½ spleen, ½ kidney of Mirabai, dated 31.07.2018.

10. To begin with the first and foremost requirement to prove charge of 'Murder' punishable under Section 302 of the Indian Penal Code, is to establish that a person met with a homicidal death. It is the prosecution case that the accused Vivek has committed murder of 5 persons namely Kamlakar, Archana, Vedanti, Krushna and Mirabai . It is alleged that the accused by means of a weapon namely 'Crowbar', repeatedly dealt blows at the head of the deceased to make them motionless. At the inception, we may take a note that the defence has not challenged the homicidal death of either of the deceased. Though the learned defence Counsel fairly conceded the said position, however, we feel it necessary to scrutinize the said aspect on the basis of emerging evidence to satisfy ourselves in this

regard.

11. In order to establish the homicidal death, the prosecution is heavily banking upon the inquest panchnama Exhs. 27, 146, 151, 159 and 175, Postmortem notes Exhs. 87, 89, 90, 92 and 96 and relied on the evidence of the Medical Officers, Panch witnesses and Police officers.

12. After the occurrence, all the dead bodies were sent to Government Medical College, Nagpur for conducting postmortem. PW-21 Dr. Rahul Dadarao Shende has conducted autopsy on three dead bodies i.e. Kamlakar, Archana and Krushna. PW-22 Dr.Dinesh Suresh Akarte conducted postmortem on the dead body of Vedanti and PW -23 Dr.Nishat Tarannum Sheikh conducted postmortem on the dead body of Mirabai . We have gone through the related evidence of the Medical Officers coupled with the postmortem notes, which are at Exhs. 87, 89, 90, 92 and 96.

13. Evidence of PW 21 -Dr.Shende coupled with the postmortem note (Exh.87), describes the following injuries on the

body of deceased Kamlakar Pawankar.

A. **External Injuries:**

1. Lacerated wound over the right side of the forehead, 6.5 cm above the right eyebrow, 6.5 cm x 3.5 cm x bone deep margins blood infiltrated with e/o underlying bone fractured.

2. Lacerated wound over the right side of the forehead extending from the right eyebrow, 2.5 cm x 0.6 cm x bone deep, margins blood infiltrated.

3. Lacerated wound over the left side of the forehead, 5cm above the left eyebrow, 2 cm x 1.5 cm x bone deep, margins blood infiltrated.

4. Lacerated wound over the right side of the face, oblique, 1 cm from the tragus of the right ear, 4 cm x 1 cm x muscle deep, margins blood infiltrated.

5. Lacerated wound over the pinna of the right ear, 2 cm x 1 cm x cartilage deep margins blood infiltrated.

6. Lacerated wound over the right side of the zygoma, oblique, 3 cm x 0.6 cm x muscle deep, margins blood infiltrated.

7. Lacerated wound over the right side of the face at the right angle of mandible, oblique, 3 cm x 1.5 cm x muscle deep, margins blood infiltrated.

8. Lacerated wound over the right side of the face at the

mandibular region, oblique, 1.5 cm x 1 cm x muscle deep, margins blood infiltrated.

9. Abrasion over the right side of the submandibular region, 6 cm from the chin, 2 x 1 cm, reddish.

10. Abrasion over the right shoulder laterally, 3 x 2 cm reddish.

B. **Internal Injuries:**

Under scalp contusion over the frontal and the right temporal region, 12 x 8 cm reddish

1. Depressed fracture of the right-sided frontal and the right temporal bone, 7 x 4.5 cm. Fracture of the base of the skull from the right orbital plate of the frontal bone up to the right-sided middle cranial fossa, 9 cm in length.

Meninges - torn. Subdural haemorrhage over both frontal and the right temporal and parietal lobe, 120 cc reddish. Subarachnoid haemorrhage over the whole cerebral hemisphere, reddish. Brain: lacerated wound over the right frontal lobe. .

14. According to PW -21 Dr.Shende, the injuries sustained by Kamlakar Pawankar were fresh. He opined that injuries No.1 to 3 mentioned in Column No.17 with their corresponding internal injuries mentioned in Column No.19 of the post-mortem report at

Exh.87 were individually sufficient in the ordinary course of nature to cause the death. He further opined that the probable cause of death was a head injury and he died a homicidal death.

15 Evidence of PW-21 Dr.Shende reveals that on 11.06.2018, he along with Dr.N.S. Barmate conducted the post-mortem examination on the dead body of Archana Pawankar which was brought by WNPC Leena (B.No.840) of the Police Station Nandanwan vide the post-mortem report at Exh.89. According to him, he found the following injuries on the dead body of Archana Pawankar.

A. **External Injuries:**

1. Lacerated wound over the forehead extending from the right side up to the left side 1 cm above the right eyebrow and 3 cm above the left eyebrow, 8 cm x 6.5 cm x cavity deep with e/o. underlying skull bone fractured, dura torn and brain exposed out. Margins blood infiltrated.

2. Lacerated wound over the lateral end of the right eyebrow, 3.5 cm x 1 cm x bone deep. Margins blood infiltrated.

3. Lacerated wound over the medial end of the right eyebrow up to the nose, 4.5 cm x 2 cm x bone deep.

Margins blood infiltrated.

4. Lacerated wound over the left side of the forehead extending from the left eyebrow 4 cm x 1 cm x bone deep. Margins blood infiltrated.

5. Lacerated wound over the face 0.5 cm below the nose, 2 cm x 1 cm x muscle deep. Margins blood infiltrated.

B. **Internal Injuries:**

Under scalp contusion over the frontal left temporal parietal region 10 x 9 cm, reddish.

Depressed fracture of the frontal and left temporal bone of 7x5 cm. Linear fracture of the base of the skull extending from the right to the left temporal bone, 9 cm in length.

Meninges: Torn, Subdural haemorrhage over both frontal, temporal and parietal lobe, 110 cc reddish, Subarachnoid haemorrhage over the whole cerebral hemisphere, reddish. Brain: lacerated wound over the left frontal and temporal lobe.

16. PW -21 Dr.Shende has opined that the injuries sustained by Archana Pawankar were fresh and injuries No.1 to 4 mentioned in Column No.17 with their corresponding internal injuries mentioned in Column No.19 of the post-mortem report at Exh.89 were

individually sufficient in the ordinary course of nature to cause death. He further opined that the probable cause of death of Archana Pawankar was a head injury and she died a homicidal death.

17. Evidence of PW -21 Dr.Shende shows that on 11.06.2018, he alongwith Dr.N.S. Barmate and PW -23 Dr.Nishat Sheikh conducted the postmortem examination on the dead body of Krishna Palatkar which was brought by PC Samar (B.No.2484) of the Police Station Nandanwan vide the post-mortem report at Exh.90. According to him, he found the following injuries on the dead body of Krishna Palatkar.

A. **External Injuries:**

1. Lacerated wound over the central region of the forehead and face, extends from right eyebrow up to the left eyebrow and nose, 4.6 cm x 1.5 cm x bone deep, margins blood infiltrated.

2. Lacerated wound over the left eyebrow, 2 cm x 1 cm x bone deep, margins blood infiltrated.

3. Lacerated wound over the medial end of the left eyebrow, 1 cm x 1 cm x muscle deep, margins blood infiltrated.

4. Lacerated wound over the left frontotemporal region, 8

cm above the left mastoid process. 7.5 cm x 2.3 cm x cavity deep, margins blood infiltrated with e/o. underlying skull bone fractured, dura torn, brain exposed out.

B. **Internal Injuries:**

Under scalp contusion over the frontal and left temporal region, 9x6 cm reddish.

1. Depressed fracture over the left frontotemporal bone, 8x2 cm. Fracture of the base of the skull from the left orbital plate of the frontal bone towards the right temporal bone, 8 cm in length.

Meninges - Torn. Subdural haemorrhage over both frontal, left temporal and parietal lobe, 100 ccs, reddish. Subarachnoid haemorrhage over the whole cerebral hemisphere, reddish. Brain: Lacerated wound over the left frontal and temporal lobe.

18. According to PW -21 Dr.Shende, the injuries sustained by Krishna Palatkar were fresh. He has opined that injuries No.1 to 4 mentioned in Column No.17 of the postmortem report with their corresponding internal injuries mentioned in Column No.19 of the post-mortem report Exh.90 were individually sufficient in the ordinary course of nature to cause the death of Krishna Palatkar. He

further opined that the probable cause of death of Krishna Palatkar was a head injury and he died a homicidal death.

19. Evidence of PW-22 Dr.Akarte discloses that on 11.06.2018, PW -23 Dr.Nishat Sheikh, Dr.Roshan Fulzele and he conducted the post-mortem examination on the dead body of Vedanti Pawankar which was brought by WPC Smita (B.No. 2585) of the Police Station Nandanwan vide the post-mortem report at Exh.92. According to him, he found the following injuries on the dead body of Vedanti Pawankar.

A. **External Injuries:**

1. Lacerated wound of size 10 cm x 3 cm x cranial cavity deep over the middle of the forehead, 2.5 cm above the glabella, transversely obliquely placed, the frontal bone fractured, underlying muscles, vessels, soft structures, the brain crushed margins irregular and contused.

2. Lacerated wound of size 10 cm x 2 cm x bone deep over the left side of the forehead, 3 cm above and lateral to injury No.1, underlying muscles, vessels, soft structures crushed, margins irregular and contused.

3. Lacerated wound of size 5 cm x 1 cm x bone deep over the right side of the forehead, 6 cm above from the lateral end of right eyebrow, underlying muscles, vessels, soft

structures crushed, margins irregular and contused.

B. **Internal Injuries:**

Under scalp hematoma present over the frontal region of scalp involving the temporal region of size 15x9 cm, reddish colour.

Comminuted fracture over the frontal bone extending into the right temporal bone as a linear fracture of length 13 cm vertically oblique, margins are irregular and blood infiltrated. The base of the skull- intact.

Dura - torn fateful in the frontal region. Subdural hematoma over the bilateral and temporal lobe of the brain, about 50 ccs, blood and blood clots present, dark red in colour. Crushed injury to the frontal lobe corresponding to injury No.1 of Column No.17.

20. Dr.Akarte has opined that injuries sustained by Vedanti Pawankar were fresh and injury No.1 mentioned in Column No.17 with its corresponding internal injury mentioned in Column No.19 of the post-mortem report Exh.92 were individually sufficient in the ordinary course of nature to cause her death. He further opined that the probable cause of death of Vedanti Pawankar was a head injury and she died a homicidal death.

21. Evidence of PW -23 Dr.Nishat Sheikh goes to show that on 11.06.2018, Dr.Arun Jaiswani, Dr.Roshan Fulzele and she conducted the post-mortem examination on the dead body of Mirabai Pawankar which was brought by WNPC Leena (B.No.840) of the Police Station Nandanwan vide the post-mortem report at Exh.96. According to her, she found the following injuries on the dead body of Mirabai Pawankar.

A. **External Injuries:**

1. Lacerated wound of size 3 cm x 1 cm x cranial cavity deep over the left side of the forehead, 1 cm above the medial aspect of the left eyebrow, transversely oblique, underlying frontal bone fractured, underlying muscles, vessels, crushed meninges are torn and the brain contused, margins irregular and contused.

2. Lacerated wound of size 3 cm x 1cm x cranial cavity deep over the right side of the forehead, 2 cm above the lateral end of the right eyebrow, transversely oblique, underlying frontal bone fractured, underlying muscles, vessels crushed, meninges are torn and the brain contused, margins irregular and contused.

3. Lacerated wound of size 4 cm x 2 cm x bone deep over the right side of the forehead, 2 cm below injury No.2 underlying muscles, vessels, soft structures crushed, margins irregular and contused.

4. Lacerated wound of size 1 cm x 1 cm x bone deep over the right side of the frontal region, 2 cm above injury No.2, underlying muscles, vessels, soft structures crushed, margins irregular and contused.

5. Lacerated wound of size 5 cm x 1.5 cm x bone deep over the right side of the face, 6 cm below injury No.3, underlying mandible bone fractured, muscles, vessels, soft structures crushed, margins irregular and contused.

6. Lacerated wound of size 2 cm x 1 cm x bone deep over the medial aspect of the right eyebrow, transversely placed, underlying muscles, vessels, soft structures crushed, margins irregular and contused.

7. Lacerated wound of size 3 cm x 0.5 cm x nasal cavity deep over the right ala of the nose, underlying nasal bone fractured, muscles, vessels, soft structures crushed, margins irregular and contused.

8. Lacerated wound of size 2 cm x 0.5 cm x muscle deep present over the right side of the face, 1.5 cm below right corner of the lip, transversely oblique, underlying muscles, vessels, soft structures crushed, margins irregular and contused.

9. Lacerated wound of size 3 cm x 0.3 cm x muscle deep present over the chin, 2 cm below the lower lip, underlying muscles, vessels, soft structures crushed margins irregular and contused.

B. **Internal Injuries:**

Under scalp hematoma over the frontal and right parietal region of the scalp of size 13x6 cm, reddish colour.

Linear fracture over the right fronto-parietal-temporal bone extending up to the anterior cranial fossa; vertically oblique, of length 15 cm margins are irregular and blood infiltrated.

Meninges - Refer to injury No.1, 2 of column No.17, Subdural hematoma over both hemispheres, about 80 cc blood and blood clots present, dark red in colour. Subarachnoid haemorrhage present as a thin film of blood over both hemispheres. Brain-congested and Oedematous, contusions present over both frontal lobes.

22. Dr.Nishat Sheikh opined that the injuries sustained by Mirabai Pawankar were fresh and injuries Nos.1 and 2 mentioned in Column No.17 with their corresponding internal injuries mentioned in Column No.19 of the post-mortem report at Exh.96 were individually and collectively sufficient in the ordinary course of nature to cause her death. She further opined that the probable cause of death of Mirabai Pawankar was a head injury and she died a homicidal death.

23. Record shows that except for putting bare suggestions to PW -21 Dr.Shende, PW -22 Dr.Akarte and PW -23 Dr.Nishat Sheikh that they have wrongly mentioned the head injuries as the cause of the death of Kamlakar, Archana, Vedanti, Mirabai and Krishna, there was no cross-examination to deny their evidence about the injuries found by them on the dead bodies and opinion given by them about the cause of their death. As such, the evidence of PW -21 Dr Shende, PW -22 Dr Akarte and PW -23 Dr Nishat Sheikh in this regard has remained unshattered.

24. Evidence of PW -21 Dr.Shende, PW -22 Dr.Akarte and PW -23 Dr.Nishat Sheikh goes to show that they had handed over the sealed viscera and samples of the deceased Kamlakar, Archana, Vedanti, Mirabai and Krishna to the police station Nandanwan and this was confirmed by PW -25 PI Salunkhe in his evidence.

25. It is apparent that all the deceased sustained head injuries of grave nature. The medical officers have specifically opined that

those injuries were sufficient in ordinary course of nature to cause death and the head injury was the cause of death for each one. In the circumstances, we have no manner of doubt to hold that all the deceased met with homicidal death.

26. When we hold that all deceased met with homicidal death, the enquiry proceeds further about authorship of causing multiple deaths. The prosecution is banking upon ocular, as well as circumstantial evidence to establish leveled charges. The prosecution evidence consists of two eye witnesses i.e. PW 1 Mitali and PW 6 Vaishnavi. Besides that the prosecution led circumstantial evidence leading to the only inference about the guilt of the accused. According to the prosecution, the eye witnesses have specifically deposed about the role of the accused in assaulting all 5 persons, the chain of circumstantial evidence is so complete that it would exclude every hypothesis of the innocence of the accused. The prosecution claims that from both quarters the evidence is adduced, which unerringly points out the guilt of the accused.

OCULAR EVIDENCE.

27. The prosecution has relied on the direct evidence of PW 1 Mitali and PW 6 Vaishnavi. It is the prosecution case that on the fateful night both minors were sleeping beside the deceased. They have seen the accused while assaulting the deceased by means of crowbar. We may recapitulate that PW 1- Mitali was the daughter of the deceased Kamlakar, whilst PW 6- Vaishnavi was daughter of accused himself. Since the accused was incarcerated for the charge of murder of his wife, both children of the accused i.e. daughter Vaishnavi and son Krishna were staying in the house of deceased Kamlakar. Rather the defence has not disputed that at the relevant time both the eye witnesses were staying in the house of Kamlakar, where the incident took place. It is the defence that though these eye witnesses were staying in the house of Kamlakar, however, they have not witnessed the actual occurrence.

28. With this brief background, we have gone through the evidence of PW 1- Mitali, who was 12 years of age at the time of recording evidence, meaning thereby she was about 8 years of age at

the relevant time. The learned Sessions Judge has put preliminary questions to the witnesses to know whether she understands the sanctity of oath. The learned Sessions Judge has formed an opinion that she is competent to understand the questions put to her, as she gave rational answers and, then her evidence was recorded on oath. It has come in her evidence that on 10.06.2018, in the late evening around 9.30 p.m. Vivek Mama [accused] came to their house. Her mother [Archana] served food to the accused. She has stated that in the night she got up for washroom and saw that the accused assaulting her mother, father, grand mother, sister Vedanti and Ganu with iron rod. She stated that as she was scared and therefore, went to sleep. It has come in her evidence that at night she herself, her parents, Vedanti and Ganu were slept in the bedroom, whilst her grand-mother Mirabai and accused were slept in the living room. In the morning she saw that all her family members were lying in injured condition and blood was oozing, therefore, she with PW 6-Vaishnavi went to the nearby house of her paternal aunt and informed the things.

29. Contextually, we have also gone through the evidence of another eye witness PW 6- Vaishnavi, who was 13 years of age at the time of evidence, meaning thereby 9 years of age at the relevant time. This time also the learned Sessions Judge ensured about her understanding capacity and competence by asking preliminary questions and on satisfaction recorded her evidence in question and answer form. She has stated that at the relevant night, her father [accused] came to their house. She was sleeping with Vedanti, Krushna, Mitali (PW -1) and her [she calls Archana and Kamlakar as her parents] parents in the bed room, whilst grand mother was sleeping in the front room. She deposed that at night she heard a loud noise. She woke up and saw that her baba [Vivek] assaulting pappa [Kamlakar], mummy [Archana], Ganu [Krishna] and Vedutai [Vedanti] by means of iron object. She stated that she got frightened and went to sleep. On the following day she along with Mitali [PW 1] went to the house of her mothi mummy and informed the things. Thus, the prosecution has led the direct evidence of two eye witnesses who have survived in the occurrence.

30. The learned defence Counsel has criticized the evidence of both child witnesses on various counts. At the inception, it is submitted that it is not safe to rely on the evidence of child witness as they are prone of tutoring. The police have recorded statement of both child witnesses after two days of the occurrence. It emerges every possibility of tutoring, since during the meantime children were in the custody of other relatives. It is argued that the evidence of child witnesses is doubtful since their conduct is unnatural. According to the defence, it is difficult to believe that even after witnessing a gruesome attack on parents, both went to sleep. Moreover, in the morning they did not disclose the incident of assault by their father which is not free from doubt, and a result of tutoring.

31. Mr.D.V.Chauhan, learned Counsel appearing for the defence initially relied on the decision of Supreme Court in case of **Pradeep .vrs. State of Haryana – 2023 SCC Online SC 777** to contend that the child witness are easily susceptible to tutoring and thus, it is not safe to base conviction on the testimony of the child witnesses. In order to impress that there is always danger to accept the evidence

of child witness, reliance is also placed on the decision of Supreme Court in cases of – (1) **The State of Bihar .vrs. Kapil Singh - AIR 1969 SC 53,** (2) **Bhagwan Singh and others .vrs. State of MP – [2003] 3 SCC 21** and (3) **Shivasharanappa and others .vrs. State of Karnataka – [2013] 5 SCC 705.** On the other hand, the learned Addl.P.P. would submit that there is no difficulty in basing conviction on the testimony of child witness, if found truthful, reliable and trustworthy. In this regard he has also relied on the decision of Supreme Court in case of **Ratansingh Dalsukhbhai Nayak .vrs. State of Gujarat – AIR 2004SC 23.**

32. We may refer to the decision of Supreme Court in case of **Pramila .vrs. State of Uttar Pradesh - [2021] 12 SCC 570,** wherein it is observed that the evidence of child witness alone can form the basis for conviction, however, when he is a sole witness, higher scrutiny is required. Observations made in paragraph nos. 5 and 6 are relevant for our purpose, which reads as under :

> *"5. Criminal jurisprudence does not hold that the evidence of a child witness is unreliable and can be discarded. A child who is aged about 11 to*

12 years certainly has reasonably developed mental faculty to see, absorb and appreciate. In a given case the evidence of a child witness alone can also form the basis for conviction. The mere absence of any corroborative evidence in addition to that of the child witness by itself cannot alone discredit a child witness. But the Courts have regularly held that where a child witness is to be considered, and more so when he is the sole witness, a heightened level of scrutiny is called for of the evidence so that the Court is satisfied with regard to the reliability and genuineness of the evidence of the child witness. PW -2 was examined nearly one year after the occurrence. The Court has, therefore, to satisfy itself that all possibilities of tutoring or otherwise are ruled out and what was deposed was nothing but the truth.

6. The evidence of a child witness and the manner of its consideration has been dealt with in State of M.P. vs. Ramesh, (2011) 4 SCC 786, as follows:

> *"14. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in*

> *case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition."*

33. In terms of Section 118 of the Indian Evidence Act, a child witness is competent to depose, unless the Court considers that he is prevented from understanding the questions put to him. The learned trial Judge has made a preliminary enquiry and on satisfaction recorded the evidence of child witnesses. There can be no straight jacket rule or formula that whether the evidence of child witness is to be relied or otherwise. It depends upon the facts and circumstances of each case but, certainly the Court must be cautious while accepting the evidence of the child witnesses. The observations of Supreme Court in above referred case of **Pradeep** are relevant, which reads as under :

> *"9. It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to*

> *reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care caution."*

34. In the light of above settled principles we have scrutinized the evidence of both the child witnesses. It is not in dispute that on the ill-fated night, both child witnesses were in the house, where the incident occurred. Though it is argued that the investigating officer has not seized the blood stained clothes of child witnesses, however, to our mind those lapses cannot be the sole reason for rejecting their testimony if otherwise found credible. Indeed the statement of child witnesses have been recorded by the police on 13th August, 2018 wherein they have stated about the role of the accused. The investigating officer ought to have recorded their statements assiduously, but, it is a fact that their statements have been belatedly recorded that too without explanation.

35. The learned defence Counsel would argue that both the child witnesses have not seen the actual occurrence that it why they have not disclosed the role of appellant immediately to PW 7-Lata Pawankar and PW 8 -Bhushan Pawankar to whom they reported about the death of family members. We have gone through the evidence of PW 7 – Lata who is relative as well as neighbour of Kamlakar. It is her evidence that on 11.06.2018 around 6.30 a.m, PW 1- Mitali and PW 6- Vaishnavi came to her house with blood stained faces. On enquiry they disclosed that their parents, grandmother, sister and Krushna are smeared with blood and lying dead. Similarly PW 8- Bhushan stated that on the next morning both children disclosed about death of 5 family members. It assumes significance that on the next morning, though both eye witnesses have informed that other family members were lying in pool of blood, however, they did not disclose that their father and uncle i.e. accused Vivek killed them by means of iron rod.

36. Naturally when the children went to these witnesses, who are relatives, first question would be as to how the family members

died. Certainly if these witnesses have seen the accused while assaulting the victims by means of iron rod, they would have disclosed then and there only. Moreover, PW 3- Keshav who has lodged the report on the following day, never stated about such disclosure. Rather the first information report [Exh.19] indicates that Keshav has expressed suspicion against the accused about his likelihood to commit murder. Certainly Keshav must have asked the children about the cause, but, he never said about such disclosure. It supports the defence version that both child witnesses might not have seen the actual occurrence and therefore, it is not safe to rely on their evidence to that extent only.

37. During the course of evidence of both the child witnesses the defence has not disputed about their presence in the house at earlier night. It has come in their evidence that on the earlier night about 9.30 p.m. accused Vivek came there, had food and slept. There is no denial to that effect. Rather it is the defence that the children were living in the house of Kamlakar, therefore, their presence cannot be doubted. Moreover, both of them have stated

that on earlier night accused came there and slept in the house itself. It is their evidence that in the morning besides 5 dead bodies no one was in the house, meaning thereby only the child witnesses were present, whilst the accused was absent.

38. In our criminal jurisprudence, the principle *falsus in uno, falsus in omnibus,* would not apply. Meaning thereby the portion of evidence which is acceptable and supported by other material can be relied by discarding the portion which is found to be unreliable. There is no reason to discard the natural testimony of both child witness to the extent that on earlier night around 9.30 p.m. accused Vivek came to the house, had food, slept, but, on the following day in the morning he vanished. We do not see any reason to discard the evidence of child witnesses to that extent which is rather undisputed. The said circumstance supports the prosecution case to the extent of presence of accused in the night at the house where multiple murders have been committed. Apparently after having food with other family members and accused Vivek, both children went to sleep and in the morning when they woke up they saw dead bodies

and then in fear they ran to the neighbouring relatives to inform the things. Therefore, the evidence of child witnesses though not reliable to the extent of actual incident, but, assists the prosecution to the extent of proving presence of the accused at the relevant time.

39. The learned defence Counsel would submit that when the evidence of eye witness not found to be wholly reliable, it is not safe to base conviction on such evidence. In this regard he relied on the decision of Supreme Court in case of **Narendra Kshubhai Zala .vrs. State of Gujarat – 2023 SCC Online SC 284**. In said decision the conviction was based on the testimony of single eye witness which was not found to be creditworthy. In the circumstances, it has been observed that unless such evidence is supported by independent corroboration on material particulars, reliance cannot be placed. It is not the quantity, but, the quality of witness is material. There can be no dispute about said proposition of law, however, the present case is not only based on testimony of two minor eye witnesses, but, on various circumstances to fasten the guilt on the accused. With this we undertake to evaluate the circumstantial evidence led by the

prosecution.

40. Since the case is mainly based on circumstantial evidence, it necessitates us to remind ourselves well cherished principles in the field. The Supreme Court in case of **Sharad Birdhichand Sarda v. State of Maharashtra – [1984] 4 SCC 116,** observed as under :

> *"151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court.*
>
> *152. …*
>
> *153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

> *"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human

probability the act must have been done by the accused.

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

41. We must remember that in our criminal justice system having regard to the guilt of the accused, it is not necessary for the prosecution to prove the case with absolute or mathematical certainty, but, the requirement is to prove the guilt beyond reasonable doubt.

42. At the inception by placing reliance on the decision of Supreme Court in case of **Kamal .vrs. State (NCT of Delhi) – 2023 SCC Online SC 933,** Mr. Chauhan, learned Counsel reminded us about the standard of proof required under criminal law to establish the guilt on circumstantial evidence. In the said decision the Supreme Court relying on its earlier off quoted decision in case of **Sharad Sarda** reiterated the position of law that, the guilt must be proved with certainty. The relevant observations made in paragraph

no.18 of the said decision reads as below.

> *"18. It can thus be seen that this Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established. It has been held that the circumstances concerned "must or should" and not "may be" established. It has been held that there is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved". It has been held that 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. It has been held that the circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one sought to be proved, and that there must be a chain of evidence so complete so 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."*

Undoubtedly, by keeping in mind the above position of law in the field of appreciation of evidence we undertake to analyze the evidence adduced on record.

43. During the course of investigation, on the following day the police reached to the place of occurrence and in presence of two panch witnesses carried panchnama of the scene of offence. Several articles have been seized by drawing panchnama Exh.16. The entire process was video-graphed by PW 20 Shrish, as well as photographs have been taken. The prosecution has examined PW 24 API Bambole who has carried spot panchnama in presence of PW 2 Panch Vijay Zalke. Panchnama was carried on 11.06.2018 in between 9 a.m. to 1 p.m. when the dead bodies were lying on the spot itself. The photographs depict the horrifying scene inside the house of Kamlakar. A dead body of an elderly woman [Mirabai] was lying in the pool of blood in kitchen. She had sustained head injuries. Blood was oozing from her head and was accumulated on the floor. When the police and panch entered into the bed room, 4 dead bodies were lying in the pool of blood. All had sustained similar bleeding injuries. Large scale of blood was spurted on walls, floor, bed, pillows, mattresses and every where. The police have lifted blood samples from various places, which was later on sent for chemical analyzation. Blood was detected on wall scrapping, pillow

covers, clothes, bed-sheets, quilt, which were seized under panchnama. It is not disputed that 5 dead bodies of Kamlakar, Archana, Mirabai , Vedanti and Krishna [Ganu], were lying in the house of Kamlakar. The evidence to that regard makes out a deadly scene of crime.

44. It is the prosecution case that in the early hours both the children PW 1- Mitali and PW -6 Vaishnavi rushed to the nearby house of their relative to inform the things. They disclosed that their family members are lying in pool of blood, on which the neighbours went and saw the horrifying scene. In this regard the prosecution has examined PW 7- Lata and her son PW 8- Bhushan. PW 7- Lata was cousin sister of deceased Kamlakar. She was residing near to the house of Kamlakar. It is her evidence that on 11.06.2018 around 6.30 a.m., PW 1-Mitali and PW 6-Vaishnavi came to her informing that their parents, sister and Krishna @ Ganu are smeared with blood and not waking up. Immediately PW 7-Lata alongwith her son PW 8- Bhushan and some others rushed to the house of Kamlakar to see the matter. Iron compound gate was

locked. PW 8- Bhushan entered within by climbing the iron gate, broke open the lock and all of them entered into the house of Kamlakar. They saw that Mirabai was lying dead in the pool of blood in kitchen with head injuries. When they entered into the bed room, they saw that Kamlakar, Archana, Vedanti and Krishna were lying dead in pool of blood. Blood was oozing from their head and face.

45. The evidence of PW 8- Bhushan is on the similar lines. He has stated about the motive for the accused Vivek for commission of crime to which we are coming little later. On facts his evidence is consistent with PW 7- Lata to the extent that after getting information from two minors, he rushed with his mother and witnessed the disastrous. The evidence of this witness has not been challenged as regards to they seeing the dead bodies lying in the house. In true sense, their evidence to the extent of noticing the dead bodies on the following day does not connect the accused in any manner. It has duly established that 5 dead bodies were lying in blood in the house of Kamlakar, which is not disputed.

46. The prosecution case equally rests on the circumstantial evidence. It would be convenient to deal each and every circumstance separately which are as below.

LAST SEEN EVIDENCE.

46. It is the prosecution case that the accused was seen on earlier night entering into the house of deceased Kamlakar, as well as seen on the following day while leaving the house in wee hours around 3 a.m. We may recall that the horrifying incident occurred in the intervening night of 10.06.2018 to 11.06.2018. In order to establish the last seen evidence, the prosecution has heavily relied on the evidence of P.W 9- Sanjay, PW 10- Pushpa and also relied on the evidence of PW 15- Anil, who has seen the accused while leaving the place. PW 9- Sanjay was serving as a senior technician in the Railway Department. He was assigned with night shift duty. He was residing in the apartment situated opposite to the house of the deceased Kamlakar. He was knowing Kamlakar and his family members, as well as knowing the accused, who also stayed earlier in

the house of Kamlakar.

47. It is his evidence that as usual on 10.06.2018, he came out of the house around 10 p.m. to proceed for night shift. He took his two wheeler and while he was closing the gate, he saw the accused standing near the house of Kamlakar by parking his two wheeler. The accused was carrying a huge bag. The accused told him that though he gave a call to Kamlakar to open the gate, however, there was no response. The accused requested the witness PW 9- Sanjay to give a phone call to Kamlakar to open the gate. Accordingly he has called Kamlakar from his own mobile. It was followed by Kamlakar and his wife Archana coming out and opening the iron gate. Then the accused entered with his vehicle and then the witness left for duty.

48. In order to corroborate his version, the prosecution has examined wife of PW 9 Sanjay namely PW 10 – Pushpa. She has equally stated that she is residing in front of the house of deceased Kamlakar. It is her evidence that on 10.06.2018, while her husband was leaving to attend night shift, she was standing in the balcony, to

see off her husband. She has seen that the accused was standing infront of the house of Kamlakar with his two wheeler. She saw accused keeping crowbar behind the iron-sheet. It is her evidence that accused had talk with her husband, on which her husband has called somebody on mobile. It was followed by Kamlakar and his wife opening the iron gate and taking accused inside with his vehicle. Both the witnesses were cross examined, but, nothing fruitful has revealed to discard their natural testimony. It is not denied that the couple was staying opposite to the house of deceased Kamlakar. Naturally they were having acquaintance with Kamlakar, as well as they were knowing accused Vivek, since he was frequently visting to the house of deceased Kamlakar.

49. The defence tried to state that duty hours of PW 9- Sanjay were from 9.30 p.m., however, it does not make any difference. The defence is unable to bring on record the rivalry or any reason for the couple to depose falsely against the accused. Rather their testimony is quite natural and reliable. They have stated about the things which they saw and experienced on the earlier night. True the

police have not procured the CDR of the mobile of PW 9 Sanjay, but, that by itself is not sufficient to discard his testimony. We may concede that if the investigation would have been done in said direction, that would have supported the evidence of the couple. However, minor lapses in investigation would not make their evidence doubtful.

50. Be that as it may, we see no reason to disbelieve the consistent natural testimony of both the witnesses. On material aspect their evidence is consistent that they have seen the accused Vivek on earlier night at 10 p.m. entering into the house of the deceased Kamlakar. Pertinent to note that PW 9- Sanjay had conversation with the accused, and at his request he gave a call to Kamlakar, thus there is no element of mistaken identity. Rather the accused was well known to the couple, there was a talk between the accused and Sanjay. Thus, it accentuates the evidence about seeing the accused entering the house of Kamlakar on the fateful night.

51. The prosecution has also led evidence of PW 15- Anil,

who is another neighbour. It is his evidence that by change on the intervening night around 3 to 3.30 a.m., he came out for urinating. He heard noise of falling some iron object, on which he saw the accused while getting down from the compound wall of the house of deceased Kamlakar. The witness has carried an impression that the accused being a security guard might be going to attend duty. Moreover, it is his evidence that in the morning he saw that a crowbar was lying outside the compound wall, which the police seized.

52. The defence contented that evidence of this witness falls in the category of chance witness. Normally no one would come out of the house in the midnight around 3 a.m., but, evidence is specific that for the purpose of urinating he came out of the house and by chance saw the accused. Unless something is brought on record to doubt the credibility of this witness, we have no reason to discard his natural testimony. It is not denied that he is neighbouring resident. There is nothing on record to suggest that he was in rival terms with the accused. Moreover, his evidence is specific that due

to fall of iron object, his attention was attracted, on which he saw the accused getting down from the compound. It is quite natural that after some one hears a sound of falling any object in the night, he would look to the things.

53. Taking into account the evidence of PW 9-Lata, PW 10 - Bhushan and PW 15 -Anil, it reveals that on 10.06.2018 around 10 p.m. the accused came to the house of the deceased Kamlakar by riding motorcycle, and suspiciously left the house at 3 a.m. by crossing the gate and leaving his motor cycle in the compound itself. The said circumstance very strongly supports the prosecution case about the presence of accused on the spot at relevant time. Moreover, the act of accused of crossing the compound at midnight, by leaving motor cycle point towards his complicity. In our considered view this circumstance is very strong piece of evidence which heavily goes against the accused.

54. While criticizing the evidence of PW 9-Sanjay, PW 10- Pushpa and PW 15- Anil, it has been argued that they being chance

witnesses, it is risky to rely on their testimony. For this purpose the learned defence Counsel drew support from the decision of Supreme Court in case of **Rajesh Yadav and another .vrs. State of Uttar Pradesh – [2022] 12 SCC 200**, wherein principally it is observed that the evidence of chance witness requires very cautious and close scrutiny. A chance witness is the one who happens to be present at the place of occurrence by chance, and therefore, not as a matter of course. In other words, chance witness is not expected to be in the said place at relevant time.

55. Certainly considering the characteristics of chance witness, it requires stricter scrutiny to vouch the credibility of his evidence. It is required to be noted that when the evidence which chance witness sought to be adduced occurred in open space, naturally some one is supposed to witness the things. Of course by chance such person happens tobe there and had seen the occurrence by chance. While analyzing the evidence of chance witness the first test would be whether his presence though by chance, was probable on the spot, and secondly whether he has any animosity against the

accused for false implication.

56. So far as the evidence of PW 9- Sanjay and PW 10- Pushpa are concerned in strict sense, it cannot be termed as mere chance witnesses, because they were residing exactly opposite to the house of the deceased Kamlakar, therefore, their presence near their own house cannot be stated to be as a coincidence. It is not denied by the defence that both were residing opposite to the house of Kamlakar which requires to be noted. PW 9- Sanjay has explained his presence out of the house, particularly around 10 p.m. by stating that at the relevant time he was about to leave to join his duty in railway department. It is not denied that he was serving in railway or use to attend night shift. Moreover, it is a general phenomena that women use to see off their husband while leaving for duty, though may not be daily, but, most of the times they do so. Therefore, their presence out of their own house around 10 p.m. cannot be doubted since it is a natural day to day affair for them.

57. As regards PW 15-Anil is concerned, true he is purely a chance witness. Pertinent to note that he was residing near the

house of Kamlakar has not been denied. The question is whether it is believable that at 3 a.m. he came out from his house, which was the usual time to have a fast/deep sleep. One cannot predict the habits and behavior of human beings which are beyond calculation. Normally one may not wake up in the midnight, but, it is a habit of grown up/elderly people to urinate at midnight and thus, merely by chance he came out. That cannot be the reason for castigating him unless otherwise proved to be doubtful. In substance merely on account of their characteristic as chance witness, we are not ready to discard their testimony which was otherwise found material and worthy of credit.

58. The prosecution has also led evidence to the effect that street lights were on at the relevant time, so that there can be no possibility of mistaken identification. It has come in the evidence of PW 25- Mukund Salkunke, Investigating Officer that in order to eliminate the chances of mistaken identification, he has issued a letter [Exh.115] to the Junior Engineer of Nagpur Municipal Corporation, Zone-5 enquiring whether at the relevant time the

street lights were on at Aaradhana Nagar, Kharbi Road, Nagpur. In response, the Junior Engineer [Electrical] attached to the Nagpur Municipal Corporation vide letter dated 13.07.2018 [Exh.116] communicated that at the relevant time and place the street lights were on. That apart, the investigating officer also enquired vide letter Exh.117 to the electric company, whether the domestic electric supply was on at the relevant time. The electrical company equally responded vide letter Exh.118 that after verifying the log book and complaint register, they found that at the relevant time the domestic electric supply was on in the said area. The said evidence has not been shattered during the cross examination. It emerges from said evidence that though it was late midnight, the street lights were on, meaning thereby one can easily see and identify the things. The said evidence supports the identification of the accused by PW 15 Anil in the late midnight.

SEIZURE OF WEAPON AND CONNECTION WITH THE ACCUSED.

59. It is the prosecution case that the accused has assaulted all deceased by means of a weighty iron crowbar [sabbal], which he

brought with him. According to the prosecution, after assault, while leaving the place the accused has thrown the crowbar in the flowerbed within the compound wall. The crowbar was purchased by the accused from PW 11-Prashant, who owns a hardware shop. To establish said fact the prosecution has relied on the evidence of PW 11-Prashant, PW 12-Prakash, PW 2- Panch Vijay, PW 21-Dr.Shende, PW 22- Dr. Akarte with the related documents.

60. It has come in the evidence of PW 24- API Pramod, that after receiving intimation around 9 a.m. on 11.06.2018, he visited the place and drawn panchnama of the scene of offence at Exh.16. While carrying panchnama during search an iron crowbar was found lying in the flowerbed adjacent to the northern compound wall. The same was seized under panchnama Exh.16. To support said contention, the prosecution has examined PW 2 – Panch witness Vijay Zalke. It is his evidence that at the relevant time he was called by the police to witness the panchnama and seizure. It has come in his evidence that during search, they found a crowbar lying in the flowerbed near compound wall, which was seized. Panchnama

Exh.16 was drawn on 11.06.2018 in between 9 a.m. to 1 p.m. Besides mere denial, nothing has been brought through cross examination of these two witnesses to raise suspicion. The said evidence to the extent of seizure of crowbar in the proximity is found tobe reliable and trustworthy.

61. After seizure of the weapon namely crowbar, it was sent to the Doctor for seeking opinion about its use in the commission of crime. PW 21-Dr. Rahul Shendre as well as PW 22- Dr.Akarte stated that Dr.Roshan Fulzele [deceased] has examined the crowbar vis-a-vis the postmortem notes and opined that the injuries mentioned in the postmortem report of all deceased could have been caused by the said weapon. The query report [Exh.88] is produced on record which states about the opinion given by Dr.Fulzele. The query report bears description of the crowbar that there were reddish brown stains on the crowbar. During cross examination, the defence has not challenged the material evidence that the injuries sustained by the deceased were possible by the seized crowbar.

62. Contextually we have gone through the requisition letter [Exh.107], sent to the Regional Forensic Science Laboratory [RFSL] by which the crowbar [Exh.A-12] along with other articles have been sent for forensic examination. Pertinent to note that the chemical analyzer's report [Exh.128] states that Article No.13 crowbar was stained with human blood, though result was inconclusive. It is evident that the crowbar found at the scene of offence on the very next day was having human blood and the injuries sustained by the deceased were possible by the said weapon. Since the said evidence is not impeached by effective cross examination, we have no hesitation in accepting that the seized crowbar was used in the commission of the crime.

63. It is the prosecution case that the accused has brought said crowbar by which he has done all 5 persons to death. In order to establish the link of the accused with the weapon namely crowbar, the prosecution has heavily relied on the evidence of PW 13 Sandeep Ramteke and PW 11 – Prashant Jibhkate. It has come in the evidence of PW 13 – Ramteke that on 28.06.2018 at 11 O'clock he

was called by the concerned police for recording memorandum panchnama. In his presence the accused expressed his willingness to show the place from where he has purchased the crowbar. Memorandum panchnama [Exh.45] to that effect was recorded. The accused led them to a shop namely 'Shivshakti Hardware' and stated that he has purchased the crowbar from said shop. Evidence of PW 11- Prashant Jibhkate discloses that he is running the hardware shop namely Shivshakti Hardware. He has stated that the accused Vivek had purchased the crowbar from his shop. True no receipt has been produced, however, one has to take judicial note that generally small type vendors do not use to issue receipt for sale of insignificant articles.

64. The defence has objected the admissibility of the said evidence stating that it cannot be said to be discovery of a fact since nothing has been recovered in consequence of the information given by the accused. Though the said fact is inadmissible in terms of Section 27 of the Evidence Act, however, certainly it is admissible under Section 8 of the Evidence Act, as a previous conduct of the

accused. The learned A.P.P. has relied on the decision of Supreme Court in case of **HP Administration .vrs. Om Prakash – AIR 1972 SC 975**, wherein also the accused led the police and panch to a shop from where a weapon namely dragger was purchased. The Supreme court has observed that though the said evidence is not strictly admissible under Section 27, however, it is squarely admissible in terms of Section 8 of the Evidence Act. The said independent evidence supports the prosecution case that the accused had purchased crowbar few days preceding to the occurrence which was used in the commission of crime.

65. Though the prosecution has endeavored to effect test identification panchnama of the crowbar through PW 11- Prashant, however, the said mode is unknown to the law. There can be test identification parade of the accused in terms of Section 16[2][h]of Chapter I of the Criminal Manual, which cannot be applied for identification of articles, therefore, we are not relying on the said particular evidence.

66. The prosecution evidence is sufficient to establish that blood stained crowbar was seized from the scene of crime on the following day in the morning. The said evidence is not shattered by way of cross examination. Scientific examination report says that human blood was found on the crowbar. Medical officer has specifically opined that the injuries sustained by all deceased were possible by the said crowbar. Though PW 21 Dr. Rahul admitted that lacerated wound can be caused due to fall, however, he stated that it depends upon what height such person falls. The defence cannot muster any strength from said admission since it was one of the remote possibility. It is not the case that some body fell in the open courtyard. As noted above the deceased were lying in the bedroom and kitchen thus, the said admission is of no avail.

67. We may recapitulate PW 9 Sanjay, a neighbouring resident. It is his evidence that on the earlier night when he had conversation with the accused, he saw that the accused was carrying a huge bag hung on his motorcycle. Moreover, PW 10 Pushpa, the neighbouring lady stated that while she went to the balcony to see

off her husband, she saw the accused taking out crowbar and keeping it behind the tinsheet around the tree. Though the defence argued that while carrying spot panchnama the tinsheet was not seen, however, the said submission would not destroy the natural testimony of these two witnesses. Notably, PW 10 Pushpa has seen the accused keeping the crowbar behind the tin sheet on 10.06.2018 around 10 p.m. It is the prosecution case itself that thereafter the assault was made and thus naturally the place of crowbar must have been changed as while leaving, it was thrown at other place. Merely a tinsheet was gone unnoticed by the panch or then would not have found it necessary to refer a tin sheet in the panchnama, that by itself is of no consequence. Thus, the prosecution evidence unfolds that the accused was seen on earlier night reaching to the Kamlakar's house with crowbar. Secondly the natural testimony of PW 11 Prashant, hardware shop owner supports the prosecution case that the accused had purchased the crowbar from his shop few days before the occurrence. The said reliable evidence has established a direct nexus of the accused with the seized crowbar, which was used in commission of crime. Moreover, there is no explanation by the

accused on said aspect. We do not see any material to discard the said clinching piece of evidence. Taking it together, the prosecution has established that the accused has used the seized crowbar in commission of crime.

SEIZURE OF BLOOD STAINED CLOTHES OF ACCUSED & ITS LINK.

68. The present case has various dimensions. PW 5 – Ramesh Giripunje's mother owns 6 rooms adjacent to Kharbi Chamat Hall. In the month of February, 2018 accused expressed his desire to take a room on rent. PW 5- Ramesh has shown his mother's room at Kharbi area. Rent amount was fixed and one room was let-out to the accused. It is the evidence of PW 5- Ramesh that he has seen the photograph of accused in the newspaper naming him to be murderer of his sister and other family members. After seeing the photograph PW 5- Ramesh realized that the culprit is his tenant, hence, he rushed to Nandanwan Police Station to inform the things.

69. PW 25- PI Mukund Salunke rushed to the rented room alongwith panch witness and PW 5 – Ramesh. The room was locked

which was made open by breaking the lock. Several items/ articles were found on which indiscriminately it was written that “Kamlakar gone, Pandya died” etc. While taking thorough search, they found one cloth bag kept on the loft/shelf above toilet. On opening the bag,one blue and red coloured full sleeves shirt having label of ‘Premium Rigs and Rags Heritage XL-42’ and one faint blue coloured jeans full pant bearing lable ‘Stretch’ was found. These clothes were stained with blood. The police have seized those articles by drawing panchnama [Exh.50]. We have also gone through the corresponding evidence of PW 14 – Ashok Khobragade, who is panch witness. It is his evidence that on 15.06.2018, police have called him for taking search of a room owned by Ramesh Giripunje. Accordingly all of them went to the room shown by Ramesh, which was made open by breaking the lock. It is his evidence that amongst several articles there was one jeans pant [Article-32] and one shirt [Article 33], which were sealed and seized by the police under panchnama. PW 19 -Vitthal Lakhe who was running a Saloon in the said area, has also seen the process of search and seizure of the clothes of the accused. The said evidence withstood to the scrutiny

of cross examination.

70. It has come in the evidence that the seized clothes of the accused were sealed and deposited in the malkhana. The police under requisition letter dated 18.06.2018 (outward no.2035/18) sent those articles to Forensic Science Laboratory for analysis. Chemical Analyzer's report [Exh.129] bears the description of both the articles which were received in sealed condition. After analysis, human blood was detected on both the clothes, though blood grouping was inconclusive. Pertinent to note that both blood stained clothes seized from the house of the accused were sent for DNA profiling. The DNA examination report [Exh.24] indicates that DNA profile obtained from the blood detected on both the clothes was identical from one and the same source of male origin and matches with the DNA profile obtained from the blood soaked gauze piece of the deceased Kamlakar. By the time DNA profiling is an advance scientific test which is a full proof science. The said clinging material heavily goes against the accused.

71. The evidence of PW 5 Ramesh is specific on the point that the said room was let out to the accused. He has also identified the accused from the photograph published in the newspaper which has established the link. He has identified both clothes in the Court. The defence did not challenged that the accused has taken said room on rental basis. It is argued that the panch witness has not deposed that he has seen the blood stains on clothes, however, that does not carry much weight. Both clothes were old colourful clothes, and thus it is difficult to make out blood stains at a glance. The scientific evidence is clear enough to indicate existence of blood stains which also appeared in seizure panchnama. The submission in this regard is of no avail. Though it is argued that PW 5 – Ramesh has not checked the identity proof of the would be tenant, however, we can take judicial note that said exercise is rarely done in middle class locality.

72. Though the accused was absent, however, it reveals that from his house blood stained clothes have been seized under panchnama, which bears human blood and particularly blood of

Kamlakar. though it is submitted that DNA profiling does not matches with the blood of other deceased, however, it reveals from the DNA report [Exh.24], that blood of Kamlakar and Vedanti was only collected for DNA profiling, and thus it is not essential to find blood of all the deceased on the person of the accused.

73. In case of **Dharam Deo Yadav v. State of UP – [2014] 5 SCC 509** the Supreme Court has discussed the reliability of DNA evidence in a criminal trial, and held as follows:

> *"The DNA stands for deoxyribonucleic acid, which is the biological blueprint of every life. DNA is made-up of a double standard structure consisting of a deoxyribose sugar and phosphate backbone, cross-linked with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine pyrimidines…..DNA usually can be obtained from any biological material such as blood, semen, saliva, hair, skin, bones, etc. The question as to whether 31 DNA tests are virtually infallible may be a moot question, but the fact remains that such test has come to stay and is being used extensively in the investigation of crimes and the Court often accepts the views of the experts, especially when cases rest on circumstantial evidence. More than half a century, samples of human DNA began to be used in the*

> *criminal justice system. Of course, debate lingers over the safeguards that should be required in testing samples and in presenting the evidence in Court. DNA profile, however, is consistently held to be valid and reliable, but of course, it depends on the quality control and quality assurance procedures in the laboratory."*

74. Seizure of blood stained clothes from the house of the accused coupled with scientific evidence especially DNA profiling report directly connects the accused with the crime. Moreover, the accused did not furnish any explanation regarding the finding of blood stained clothes at his house, and further finding of blood stains on his clothes in particular having blood of deceased Kamlakar. In our view, the said circumstance is a clinging piece of evidence to round up the accused with the crime.

75. As per prosecution case, blood stained crowbar and clothes worn by the accused were seized from respective places. It is the evidence of PW 25 API Salunke that the seized articles were kept in safe custody in police malkhana room. He deposed that on

14.06.2018, he has sent the seized articles to Regional Forensic Science Laboratory, Nagpur for Chemical Analysis through PW 17 Police Head Constable Dhaiwat in sealed condition. The evidence of PW 17 Dhaiwat [carrier], is specific that on 14.06.2018 he has carried 37 sealed parcels and deposited the same with the RFSL Nagpur. Contextually the requisition letters [Exhs. 107-108] bears a reference about the sealed articles. Not only that the chemical analysis report Exhs.128-129 describes that the seals were intact on the parcels forwarded for analyzation. Thus, the chain of custody was duly established which eliminates the chances of tampering. Rather the defence has not challenged the safe custody of the seized articles, however, to complete the point in all respect, we have gone through the evidence to that effect.

MOTOR CYCLE OF ACCUSED ON THE SPOT.

76. The next circumstance relied by the prosecution is seizure of motorcycle of the accused from the scene of crime. It is the evidence of API Pramod Bambole [PW 24] that on 11.06.2018 in the morning around 7 a.m. they received a message from the control

room about multiple murders committed at Aaradhana Nagar. He took entry in the station diary and proceeded to the place of occurrence along with the police party. The informant PW 3-Keshav has informed that in the house of his brother Kamlakar the incident took place. PW 24 Pramod went inside the house and seen the dead bodies lying in the bedroom and kitchen. He has seen that one motorcycle bearing registration No. MH40/Z5709 was parked in the courtyard. Documents of the motorcycle were found in the dickey. On verifying the documents it was revealed that the said motorcycle was registered in the name of the accused Vivek Palatkar. He has also noticed that one bunch of keys was lying which was seized while drawing panchnama [Exh.16].

77. In this regard, the prosecution has also examined PW 2 Vijay Zalte, a panch witness. It is his evidence that in his presence the police have carried panchnama of the scene of offence and seized various articles. He deposed that one Hero Honda motorcycle was parked in the courtyard. The police have seen the registration papers and found that it was registered in the name of the accused.

A bunch of keys was also lying near by. All these articles were seized by the police vide panchnama Exh.16, which was duly proved. Panchnama Exh.16 equally bears reference that a Hero Honda motorcycle bearing registration no. MH40/Z 5709 was parked in the courtyard. Registration papers were found in the dickey of the said motorcycle. The said vehicle was registered in the name of the accused Vivek Palatkar. Panchnama also bears a reference of bunch of 4 keys lying nearby. All the articles were seized by the police. The said evidence has not been seriously challenged by the defence during cross examination. The accused has not denied ownership of the seized motorcycle, which was found in the courtyard of Kamlakar's house where the incident occurred.

78. It is the evidence of PW 9- Sanjay Shende, that on 10.06.2018 while he was leaving his house to join night shift, he saw that accused was standing in front of Kamlakar's house by parking his motorcycle. At the request of the accused he telephoned Kamlakar who in turn came out and opened the gate. It is his evidence that thereafter accused went in the courtyard along with his

motorcycle. Similarly PW 10- Pushpa, who is wife of PW 9 Sanjay, stated that on 10.06.2018, while she was in the balcony, she saw that accused was standing in front of house of Kamlakar with two wheeler. She has also stated that after opening of the gate, the accused went inside with his motorcycle.

79. The defence has not particularly challenged the evidence to the extent of ownership of the motorcycle, which was seized from the place of occurrence. Rather it is argued that finding of motorcycle of the accused at his sister's house is quite natural and probable. In peculiar facts of this case the said circumstance has become vital. The courtyard of the house of the deceased was generally kept locked. It is the evidence that after opening the lock, Kamlakar took the accused inside the compound along with the vehicle around 10 p.m. of 10.06.2018. It is required tobe noted that on the intervening night around 3 a.m. of 11.06.2018, the accused was seen leaving the house by jumping from the compound wall. Notably during said span 5 persons have already been killed. In natural course the accused would not have left in the midnight by

jumping the compound by leaving his motorcycle. In the circumstances, it is difficult to accept the defence submission that it is quite natural. Moreover, the bunch of keys was lying near the motorcycle. Existence of motorcycle at night and leaving without motorcycle in early hours strongly goes against the accused. Moreover, the accused has not explained as to why his motorcycle was parked in the courtyard of Kamlakar's house. To our mind it is one more circumstance which strongly corroborates the evidence of PW 9- Sanjay, PW 10 Pushpa, PW 15 – Anil who have seen the accused entering into the house of the deceased at 10 p.m. on 10.06.2018 and leaving at 3 a.m. of 11.06.2018. This is one another circumstance which heavily goes against the accused.

FAILURE TO GIVE EXPLANATION.

80. It has become obligatory on the part of the accused to satisfy the Court as to how, where and under what circumstances he has parted with the company of the deceased and why his motorcycle was found at the house of the deceased. This is on the principle that a person who is last found in the company of another,

after later is found dead, which means that the person with whom he was last found has to explain the circumstances in which they parted the company. In the instant case the accused has failed to discharge this onus. In the statement under Section 313 of the Code of Criminal Procedure, the accused has not taken any specific stand whatsoever despite a faint attempt of alibi. Therefore, in the absence of any specific explanation in this Court coupled with other incriminating circumstances, an adverse inference have tobe drawn against him as regards to the multiple deaths.

81. In case of **Munna Kumar Upadhaya .vrs. State of Andhra Pradesh – [2012] 6 SCC 174** the Supreme Court has observed as under.

> *"76. If the accused gave incorrect or false answers during the course of his statement under Section 313 CrPC, the Court can draw an adverse inference against him. In the present case, we are of the considered opinion that the accused has not only failed to explain his conduct, in the manner in which every person of normal prudence would be expected to explain but had even given incorrect and false answers. In the present case, the Court not only draws an adverse inference, but such conduct*

of the accused would also tilt the case in favour of the prosecution."

In conclusion, failure on the part of the accused to give probable explanation is one more circumstance against him.

MOTIVE.

82. The prosecution has also led evidence to establish the motive for accused to commit murder of Kamlakar and others. Motive for commission of crime is relevant under Section 9 of the Evidence Act. Undoubtedly, when the prosecution case is based on circumstantial evidence, motive is of much significance. Motive is a hard nut to crack, since motive is always hidden in the mind of the culprit, and thus, seldom to have. There can be no action without a motive which must exists for every voluntary act. A motive is something which permits a person to form an intention to do certain illegal act. However, the absence of motive does not render the evidence unreliable because most often it is the perpetrator of the crime alone knows as to what has promoted him to do the crime. Therefore, adequacy and proof of motive is not *sine co non* for

establishing the guilt. However, in cases based on circumstantial evidence the Court must endeavor to seek for motive to lend assurances to the other evidence about the guilt of the accused.

83. In case at hand, fortunately the prosecution has brought on record sufficient motive of accused for commission of crime. In order to appreciate the evidence on motive, it necessitates us to have a brief look to the background facts. The accused was arrested in past for committing murder of his wife. While he was in jail, his two children namely daughter – Vaishnavi and son Krishna were staying in the house of Archana, who was sister of the accused. Deceased Kamlakar was husband of Archana, and thus the couple was living with their two daughers – Vedanti Mitali, mother of Kamlakar Mirabai , and two children of accused Vaishnavi and Krishna. The said position has come on record through the evidence of PW 3-Keshav, who is brother of the deceased Kamlakar. Rather the said fact was not challenged by the defence. Moreover, while replying to question no.3 in statement under Section 313 of the Code, the accused has admitted said position.

84. According to the prosecution, while the accused was in jail for the charge of murder of his wife, his both the children were maintained by Kamlakar. After release of accused from jail, Kamlakar was asking for money towards expenses which he had incurred on the children of the accused. Kamlakar was also asking the accused to pay monthly sum for maintaining the children and also refused to hand over custody of the children [Vaishnavi and Krishna] by saying that they are taking education, and accused has no place of abode. According to the prosecution, the accused got annoyed by persistent monetary demand raised by Kamlakar andby his refusal to hand over custody of children. Moreover, Kamlakar used to humiliate the accused as an convict and for these reasons the accused has committed murder of Kamlakar, as well as others.

85. In this regard the prosecution has relied on the evidence of PW 3 Keshav – brother of deceased Kamlakar. He has stated that in above background both the children of accused were staying with Kamlakar. It is his evidence, that after release from jail, on and

often the accused used to visit the house of Kamlakar. The accused was asking Kamlakar for return of custody of his children, but, the later refused, as the children were studying and accused has no place to reside. PW 3- Keshav stated that on the said issue there use to be frequent dispute between the accused and Kamlakar.

86. In order to strengthen the said evidence, prosecution also relied on the evidence of PW 7 -Lata, who was relative and neighbour of Kamlakar. It has come in her evidence that the deceased Kamlakar had borne legal expenses for accused while in jail. Kamlakar was asking for return of money and on that count, there was dispute in between them. Likewise PW 8 – Bhushan, who is also relative and neighbour has also something to say about the motive. It is his evidence that in the year 2017, the accused was released from jail. Initially he was staying in the house of Kamlakar. On 08.06.2018 accused met him and said that Kamlakar was demanding Rs.5000/- per month for maintaining his children, so also insisting him [accused] to mutate his 2 acres of land in the name of Kamlakar's wife – Archana, who is sister of the accused. He

deposed that accused also told him that Kamlakar was harassing him by frequent calls for monetary demand, therefore, the accused left the house of Kamlakar and went to reside elsewhere.

87. Precisely it emerges from the evidence that the accused was annoyed with Kamlakar, since the later was raising monetary demand for maintenance of his two children, asking to transfer his land and also declined to hand over custody of the children. Though the defence has denied said evidence, however, we see no reason to disbelieve their version especially on the background that during absence of accused [while in jail], admittedly Kamlakar has maintained two children of the accused. Kamlakar was residing in a small house consisting of three rooms i.e. bed room, kitchen and living room, with his own family as well as two children of accused. Kamlakar was doing a small time job for his survival. It is evident that financial position of Kamlakar was ordinary, therefore, it is quote probable for him to ask money from the accused to maintain the children. It has come in the evidence of PW 8 -Bhushan that the accused was staying in a rented room of PW 5 Ramesh Giripunje.

Thus, there is every possibility of Kamlakar denying to hand over custody since the children were taking education and accused had no place to reside. Therefore, we see no reason to discard the consistent and probable evidence. It is to be remembered that there cannot be direct evidence on motive, but, upon circumstances, logical inference is to be drawn.

88. The learned defence Counsel would submit that the evidence on the point of motive is inconsistent, therefore, unworthy of credit. It is submitted that PW 3- Keshav has stated the motive as denial to hand over the custody of children by Kamlakar on account of education and no place of residence. However, PW 7- Lata and PW 8- Bhushan stated the reason that Kamlakar was demanding money which he spent on the children of the accused and towards legal expenses. According to the defence, these witnesses have stated different motive and therefore, it is not reliable. We are not inclined to accept said submission since the motive may be manifold. Admittedly both the children of accused were in the custody of Kamlakar and he had borne their expenses during the stay of accused

in jail. Moreover, Kamlakar was the only kin who has looked after the legal expenses while accused was in jail. In the circumstances, both the reason are probable. Some witness may know one reason of dispute, whilst the other may know the rest. Therefore, it cannot be said that since witnesses have stated different motive, their evidence is unreliable. Rather as a cumulative effect, through the evidence of three witnesses overwhelming motive has come on record. Conjoint reading of their evidence speaks about more than one reason of dispute i.e. Kamlakar's refusal to handover custody of the children, his monetary demand for maintaining the children. In the circumstances, the prosecution has succeeded in establishing the motive.

89. There are no set parameters about adequacy of motive. Always it differs from person to person, as to how one would react in adverse circumstances. If there is a motive in doing an act, then adequacy of the motive is not in all cases necessary. Human mind is a mystery, one cannot predict as to how he would behave or react, and thus, there can be no standard formula to that extent. The

prosecution evidence is sufficient to unfold the motive for accused to have a serious grudge against Kamlakar.

90. The defence has also argued that even if it is assumed that the accused had a motive to eliminate Kamlakar, but, there was no motive for him to kill the rest. As a matter of fact, one cannot expect a full proof explanation from the prosecution for the things which are within the special knowledge of the accused himself. It requires to be noted that most of the family members were slept in the small bedroom. Possibility cannot be ruled out that while assaulting Kamlakar, the rest may have got awakened, and to make them silent, the same treatment was given to them. We are merely expressing it as one of the possibility, however, there may be variety of reason which are within the knowledge of the accused, therefore, it is not necessary for the prosecution to establish full proof motive to kill all the deceased.

91. We may refer to the decision of Supreme Court in case of **Ajitsingh Harnamsingh Gujral .vrs. State of Maharashtra – [2011] 14**

SCC 401, wherein it has been observed that the motive is relevant but, not *sine qua non* for recording conviction. In said decision it has been observed that, motive is important in cases of circumstantial evidence but, that does not mean that in all cases of circumstantial evidence, if the prosecution has been unable to satisfactorily prove a motive its case must fail. It all depends on the facts and circumstances of the case. As to what motivated the accused to commit this gruesome and ghastly act is impossible for the court to say because the court cannot enter into the mind of a human being and find out his motive. The court can only speculate. However, in case at hand the prosecution has succeeded in establishing the motive which is significant one.

FALSE PLEA OF ALIBI.

92. The accused has made a faint attempt to state that at the time of incident he was working at Ludhiyana as a security guard. Meaning thereby the accused took a plea of alibi, which is relevant in terms of Section 11 of the Evidence Act. During entire trial no suggestion was put to either of the witness that at the relevant time

the accused was not staying at Nagpur, but, was at Ludhiyana. At the fag end of the trial while recording statement under Section 313 of the Code, the accused stated that though he was on duty at Ludhiyana, Punjab, however, he has been falsely implicated. It is not denied that the accused came to be arrested from a chawl on 22.06.2018 from Ludhiyana in the State of Punjab. The accused has not led evidence or shown circumstances in support of the plea of alibi. Though the burden to prove alibi is not as heavy as the burden lies on the prosecution to prove the guilt, but, plea of alibi is tobe established with certainty. The standard to prove alibi would be something more than mere preponderance of probabilities which would convince the judicial mind.

93. The learned defence Counsel would submit that failure of the accused to furnish explanation of the incriminating circumstance is no ground to draw adverse inference against him. In this regard, reliance is placed on the decision of the Supreme Court in case of **Raj Kumar Singh @ Raju .vrs. State of Rajasthan – [2013] 5 SCC 722.** Particularly our attention has been invited to paragraph no.30 of the

decision, which reads below :

> *"30. In a criminal trial, the purpose of examining the accused person under Section 313 Cr.PC is to meet the requirement of the principles of natural justice i.e. audi alteram partem. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation. In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete. No mattr how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused and to seek his explanation as regards the incriminating material that has surfaced against him. The circumstances which are not put to the accused in his examination under Section 313 CrPC, cannot be used against him and have to be excluded from consideration."*

94. Besides that it has been argued that adverse inference can only be drawn against the accused if the incriminating material stands fully established, based on circumstantial evidence. It is a settled law that statement of accused under Section 313 of the Code simplicitor cannot normally be made for conviction, but, such a statement, if is in the line of prosecution case, it may reduce the

heavy onus of the prosecution to some extent. Herein, it is not a case that some of the incriminating material has not been put to the accused to obtain his explanation. By and large, the accused has denied the entire prosecution case. He has not explained the adverse material at the first possible opportunity and in particular, at the fag end has merely stated that at the relevant time he was at Ludhiyana. We may note that he did not took a specific plea of alibi, nor led evidence to that effect. In true sense in a bid to deny the guilt, he tried to explain that he was at Ludhiyana, that too without corroborative material. We are aware that the standard of proof to establish the defence of alibi is not as high, as the onus lies on the prosecution, but, the accused is obliged to bring the material to establish alibi which shall be something more than mere preponderance of probability. Herein, besides a stray statement, there is nothing on record to establish the defence of alibi, therefore, this is also one additional circumstances which works against the accused.

95. Apart from the defence of alibi, we have also considered

the probability of the story narrated by the accused in defence. According to the defence, the accused was serving in Ludhiyana, as a security guard. We must remember that the accused after going to Ludhiyana has sold his mobile phone to one Shri Yadav. During the course of investigation on the basis of IMEI number, the police have traced the mobile from said Yadav, who in turn has shown the residence of accused, which led to his arrest. In natural course, if the accused was genuinely serving at Ludhiyana, he must have left his phone number or address with his relatives. In case of murder or death of his own child and sister, certainly he would have rushed from Ludhiyana to see the matter, but, on the contrary he took precaution that nobody shall know his whereabouts. The said act on the part of the accused itself shows his complicity that after committing murder, he went absconding, obviously to escape from the clutches of law.

96. Besides a stray statement that he was in Punjab,there is no other material to support said contention. The accused has not explained as to where he was serving at Ludhiyana at the relevant

time, which he could have disclosed, apart from producing documentary evidence to that effect. On the other hand, there is consistent evidence of PW 9 Sanjay, PW 10- Pushpa, PW 15 Anil about the presence of the accused on the spot on the date of the incident. Moreover, the prosecution has examined PW 19- Vithal Lakhe, who was running a saloon in the Kharbi area. It is his evidence that on 10.06.2018 around 10 to 11 a.m. the accused came to his whop for shaving. He deposed that at the relevant time the accused was wearing T-shirt and jeans pant. The witness knows the accused since he was residing in the house of Giripunje on rental basis. Evidence of this witness also corroborates to the extent of presence of accused at Nagpur on the fateful day. Therefore, it is apparent that only to save the skin, an after thought plea of alibi was attempted at the fag end of the trial. In our view raising of false plea of alibi is also one another circumstances against the accused.

IMMEDIATE SUBSEQUENT CONDUCT AND ABSCONDENCE.

97. It is the prosecution case that the gruesome act of committing 5 murders occurred on the intervening night of

10.06.2018 to 11.06.2018. It has come in the evidence that after occurrence, the police were in search of the accused, but, he was untraceable. The police tried to procure CCTV footage from the railway station, a probable place of escape, however, the footage was not saved beyond 7 days. During investigation the police have placed the IMEI number of mobile of accused on tracking. It is the evidence of PW 29 Police Inspector Kiran that on 19.06.2018, the mobile of accused was switched on at Ludhiyana, Punjab having sim card no. 9876202616. As per directions of superiors on 20.06.2018 PW 29 Police Inspector Kiran went to Ludhiyana with the police party. Mobile phone of accused having sim card No. 9876202616 was found in custody of one Tatasingh Thakur resident of Pawanlal Chawl, Shanti Nagar, Goespura area, Ludhiyana.

98 On enquiry with Tatasingh it was revealed that he has purchased the said mobile phone from the accused for Rs.700/-. Tatasingh also disclosed that the seller of the mobile i.e. accused is residing in the nearby chawl. Tatasingh has identified the accused on the basis of photograph shown by the police and led the police

party with panch to the concerned room where the accused was found. The police have seized the mobile phone, took the accused in custody and brought him back to Nagpur. Panchnama [Exh.182] was carried to that effect. On 22.06.2018 the accused was formally arrested at Nagpur.

99. The above episode pertaining to subsequent immedaite conduct of the accused is quite relevant which exposes the guilty mind. Though the accused made a faint attempt to say that he was at Ludhiyana for his job, however, the said attempt without material is totally unacceptable. Had it been the fact that the accused was staying at Ludhiyana for job, then there was no reason for him to conceal his place of abode. Notably none of the relatives or known person were informed about his whereabouts. In normal course he would have informed the persons generally known to him that he was serving at Ludhiyana and staying at particular place. Rather no one was even aware that the accused was at Ludhiyana which falsifies his stand that he was at Ludhiyana for the purpose of job.

100. Looking the matter from one another angle, notably the accused has even sold his mobile, obviously for the purpose of concealing his presence by avoiding tracking through mobile. The said circumstances also accentuates the logical conclusion that in order to escape from the police, which he was expecting to arrive, he tried to take precaution by selling the mobile. The said conduct of the accused of immediately going underground is an additional circumstance to connect the culpability on his part.

LAPSES IN INVESTIGATION.

101. The learned defence Counsel has pointed towards certain lapses of investigation. He would submit that though it is the prosecution case, that PW 9- Sanjay had telephonic conversation with Kamlakar on earlier night at the behest of the accused, however, CDR was not collected. Secondly it is argued that the seized crowbar was not sent for lifting finger prints. The prosecution has not examined Tatasingh, who was the medium for the police to trace the accused and mobile was allegedly sold to him by the accused. The police have not seized blood stained clothes of two

minor eye witnesses. True, there may be some shortfalls in the process of investigation, but, the question arose whether they are of decisive nature. It is well settled that mere minor lapses in the process of investigation if does not affect the core case of prosecution, they are of no significance, nor accused can claim benefit thereof. The defective investigation must be such to cast reasonable doubt on the prosecution case, otherwise, benefit cannot be given to the accused on such procedural lapses.

102. The learned defence Counsel has tried to gain advantage from the decision of Supreme Court in case of **Rajesh and another .vrs. State of Madhya Pradesh – 2023 SCC Online SC 1202.** We do concede that there are certain lapses on the part of the investigating agency, but, it largely depends on the facts whether such lapses goes to the root of the case making the entire case doubtful. In series of decisions it has been observed that on the basis of lapses in investigation, the guilty shall not be allowed to walk freely on mere technicalities. Though the investigation could have been made in better way in the area we have discussed above, but,

the investigation as regards to the core issue is unblemished which has established the chain of circumstances firmly without leaving loop holes.

OTHER SUBMISSION OF DISCLOSURE OF PLACES.

103. It is the prosecution case that after arrest, the accused expressed his willingness to show the place where he has committed murder of Kamlakar and others. He also expressed willingness to show the place where he has thrown the crowbar, which was used in commission of crime. The accused also expressed to show his rented room where he has kept blood stained clothes worn by him at the time of occurrence. The police have prepared memorandum panchnama Exh.56 to that effect.

104. It has come in the evidence of PW 16 – Anil [panch witness] that the said memorandum was made in his presence for which the panchnama was drawn. He deposed that the accused led them to the house of Kamlakar to show the crime scene. Accused has also shown the place where the crowbar was kept and also took

them to his rented room where clothes were concealed. Accordingly the place of murder, place of weapon and place where his clothes were kept were shown, of which panchnama Exh.57 was drawn. Though PW 16 Panch Anil stated that in his presence the accused has took out the blood stained clothes from his rented house, however, the said statement appears to have been made out of over enthusiasm. Evidence of PW 25 Police Inspector Salunke, speaks that as per memorandum statement the accused has shown three places i.e. place where murders were committed, where crowbar was thrown and the place where he had concealed the blood stained clothes at his rented room.

105. While criticizing the evidence of discovery under Section 27 of the Evidence Act, our attention has been drawn to the decision of Supreme Court in case of **Ramanand @ Nandlal Bharti .vrs. State of Uttar Pradesh - 2022 SCC Online SC 1396,** wherein the discovery of a fact on the basis of information received from the accused has been discarded. Referring the settled position of law in the field, the Court observed that the related evidence is unreliable. Moreover,

there is no nexus which is purely a factual inference.

106. The learned defence Counsel took us through the memorandum of statement of accused which contains a statement amounting to confession. In this regard, relying on the decision of Supreme Court in case of **Venkatesh @ Chandra and another .vrs. State of Karnataka – 2022 SCC Online SC 765**, it has been argued that inadmissible portion, if incorporated in the memorandum and seizure, it is a direct tendency to influence and prejudice the mind of the Court. In said decision, the Supreme Court has deprecated the practice of incorporating confessional inadmissible portion in the panchnama. True in the disclosure statement made as regards to showing the place of occurrence, place where the weapon was kept and the place where blood stained clothes were hidden. Inadmissible portion was mentioned. Any how we are not inclined to accept said evidence for variety of reasons, which we have dealt above, therefore, the said decision is of no assistance to the defence.

107. This takes us to consider the evidentiary value of above

exercise done by the investigating agency. The said memorandum statement was recorded on 25.06.2018, which was followed by showing respective place on the very day. It is the prosecution case itself that on 11.06.2018, in the morning around 7 a.m. the police reached to the spot, seen dead bodies as well as seized the crowbar lying in the courtyard. Moreover, it is also the case of prosecution that on 15.06.2018 in presence of the panch witness blood stained clothes of accused were seized from his rented room. The places which the accused has allegedly shown were well within the knowledge of the police party. Dead bodies were already lifted, crowbar and clothes were also seized. Already above places were known to the police and thus in our view it was an exercise in futility having no evidentiary value.

MODUS OPERANDI.

108. The learned A.P.P. would submit that in past the accused similarly committed murder of his wife by assaulting at head by wooden leg of a cot. He would submit that in same manner the accused has killed 5 persons by hitting at head by a hard object. To

substantiate said contention, the learned Addl.P.P. has produced on record copy of the judgment rendered by the trial Court in Sessions Case No. 459/2014, in which the accused was tried and convicted for committing murder of his wife. Since the accused was acquitted by this Court in Criminal Appeal No. 491/2015, we are not inclined to consider said aspect.

109. Since the accused was unrepresented, Advocate D.V. Chauhan, from the panel of Legal Aid was appointed to defend the accused. Always right to get proper legal assistance plays a crucial role in adversarial legal system, since access to Advocate's skill and knowledge is necessary to accord the accused an ample opportunity to meet the case of the prosecution. Shri Chauhan, is having a long standing experience of 24 years in criminal matters to his credit and is having mastery, on law and facts. By the time Shri Chauhan, Advocate has been appointed as a Government Pleader at this Nagpur Bench of the Bombay High Court. In short care has been taken to provide competent Advocate from the panel of legal aid who is one of the efficient lawyer of this bar. He has argued the

matter with all the niceties and had made every endeavor to convince the innocence of the accused by citing various precedents.

PROVED CIRCUMSTANCES.

110. The above discussion lead us to hold that the prosecution has firmly succeeded in establishing the guilt of the accused beyond reasonable doubt by making out the following circumstances.

[1] Last seen evidence.
[2] Seizure of weapon.
[3] Seizure of blood stained clothes.
[4] Seizure of motorcycle.
[5] Failure to give explaination.
[6] Motive
[7] False plea of alib.
[8] Immediate subsequent conduct and abscondance .

111. We have tested all the circumstances on the set parameters laid down by the Supreme Court in above referred case of **Sharad Sarda.** The above circumstances have been fully established by the prosecution by leading cogent and reliable evidence. These circumstances are of conclusive nature, which

establishes and completes the chain right from the procurement of weapon by the accused, his present at the crucial time at the scene of offence, immediate abscondance and direct nexus of accused with the crime by detecting blood stains of deceased on his clothes and the traces of accused in the form of his motorcycle at the place of occurrence. The prosecution has also established strong motive for the accused to commit murder. The chain of circumstances is fully complete leaving no loop hole to entertain the possibility of intervention by any third party. Rather the chain of event is so intact that it excludes every possible hypothesis about the innocence of the accused. The above circumstances unerringly points out the only irresistible conclusion that the accused is the author of the crime. The prosecution evidence is credible, trustworthy, fully reliable, which is far above than the set standards of burden of proof. In other words, the prosecution has succeeded in proving the guilt of the accused beyond reasonable doubt.

APPROPRIATE SENTENCE.

112. The last issue that arises for consideration is the seminal,

question of sentence. Punishment should be proportionate to the offender's culpability and the crime. This takes us to the delicate issue about imposition of appropriate punishment commensurate to the atrocities committed by the accused. The trial Court for well founded reasons held that the offence is of such kind that it falls in the exceptional category of 'Rarest of Rare case" warranting capital punishment. The trial Court in compliance of the mandate of Section 235[2] of the Code, heard the accused on the point of sentence. The trial Court has considered the guiding factors laid down by the Supreme Court in its various decisions while imposing exceptional punishment. In particular taken into account the broad parameters laid down by the Supreme Court in **Macchi Singh's** case**.** The trial Court has applied crime test as well as, criminal test in view of the decision of the Supreme Court in case of **Shankar Khade**. On careful scrutiny of the aggravated and mitigating circumstances, the trial Curt has formed an opinion that it is an exceptional case deserves for imposition of death penalty.

113. In cases where the death penalty is one of the alternative

provided by the statute, there shall be effective hearing on the point of sentence in compliance with Section 235[2]of the Code. The record indicates that on 01.04.2023, the trial Court has declared that the prosecution has succeeded in proving the charge namely accused has committed murder of 5 persons namely – Kamlakar, Archana, Vedanti, Krishna @ Ganu and Mirabai , and thus, he has been guilty for the offence punishable under Section 302 of the Indian Penal Code. After recording such a finding, the trial Court has called certain information from the prosecution in the context of deciding the nature of punishment. For ready reference we have extracted relevant paragraph no.208 of the decision of trial Court which reads as below :

> *"208. As per the directions given by the Hon'ble Supreme Court in Manoj Vs. State of Madhya Pradesh, (2023)2 SCC 353 and Sundar @ Sundarrajan Vs. State by Inspector of Police MANU/SC/0282/2023, the prosecution shall furnish information on the following aspects as well as material and circumstances for and against the possibility of reformation and rehabilitation of the accused.*
>
> *(i) Age;*
> *(ii) Early family background (siblings, protection of*

parents, any history of violence or neglect);

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

(iv) Type and level of education of the accused;

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

(vi) Criminal antecedents (details of the offence and whether convicted, sentence served, if any);

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

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

(ix) Any other relevant information.

114. Besides that, the trial Court has called the report from the Jail Superintendent, Nagpur Central Prison about the conduct and behaviour of the accused in jail, work done [if any], activities he has involved, his medical record and other related factors. The trial Court has postponed the proceeding after 10 days i.e. 11.04.2023 for hearing the accused on the point of sentence. To our mind, the trial Court has duly complied with the legal requirement of Section 235[2] of the Code.

115. It reveals from the impugned judgment that on

10.04.2023, once again the trial Court has appraised the punishment prescribed for the proved offence to the accused and called upon him to make submission on the point of sentence. It reveals from the order that the accused did not submit anything on the point of sentence, but, feigned innocence. He was repeatedly asked to state the mitigating circumstances, but, he stated that he may be sentenced to "**Death".** However, the learned Advocate appearing for the accused would submit that, after acquittal from the charge of murder of his wife, the accused tried to rebuilt his life and reconnecting himself in the society by working as a security guard. Since he was denied custody of his children and was stigmatized as a convict, he went under frustration which had a psychological impact. It was submitted before the trial Court that the accused had no intention to commit the crime, therefore, urged for leniency.

116. The another submission of the defence is that in cases where the guilt is proved, but, there is lingering possibility of accused alone committing the offence, the death penalty is unjustifiable. To substantiate said contention, reliance is placed on the decision of

Supreme Court in case of **Ashok Debbarma @ Achak Dabbarma .vrs. State of Tripura – [2014] 4 SC 747**. In the said decision the requirement of standard of proof in criminal cases is considered. On facts it was held that there was some doubt as to whether the appellant [accused] alone would have executed the entire crime, which as evident the handiwork of large group of people. Having regard to the said special feature arising a little bit of doubt, the Supreme Court has commuted the capital punishment into imprisonment of life. Considering the nature of occurrence in the present case, we have sufficiently discussed above that the accused was the only person who was the author of taking lives of 5 innocent persons and thus being different facts, the above decision will not render any assistance to the defence in claiming alteration of sentence.

117. In support of confirmation of the punishment of death penalty, the learned Addl.P.P. has relied on the decisions of the Supreme Court in cases of -

[1] Narayan Chetanram Chaudhary .vrs. State of Maharashtra

– [2000] 8 SCC 457.

[2] Mahesh Ram Narain and others .vrs. State of M.P. - [1987] 3 SCC 80.

[3] Sudam Jadhav .vrs. State of Maharashtra – [2011] 7 SCC 125.

[4] Jaikumar .vrs. State of M.P. - [1999] 5 SCC 1.

[5] Purushottam Dashrath Borate .vrs. State of Maharashtra – [2015] 6 SCC 652.

[6] Mulla and another .vrs. State of U.P. - [2010] 3 SCC 508.

[7] Rajiv @ Ram Chandra .vrs. State of Rajasthan – [1996] 2 SCC 175.

[8] State of U.P. .vrs. Sattan @ Satyendra and others - 2009 AIR SCW 2378.

[9] Sandesh @ sainath Kailash Abhang .vrs. State of Maharashtra – 2013 AIR SCW 108.

[10] Kishori .vrs. State of Delhi - 1999 [1] SCC 148.

[11] Ram Singh .vrs. Sonia and others – AIR 2007 SC 1218.

[12] B.A. Umesh .vrs. High Court of Karnataka – 2011 [3] SCC 85.

[13] Govind Swami .vrs. State of TN – [1998] 4 SCC 531.

We have gone though the above decisions and noted the principles laid therein. We may hasten to add that always precedents would serve as a guiding factor, but, the Courts have to decide the quantum

and nature of punishment depending on peculiar facts of the case.

118. While concluding the submissions, the learned defence Counsel would submit that though 5 innocent have lost their lives, the Court shall not be get influenced by the multiple deaths. In other words he would submit that one shall not be punished by only considering the aggravated meaning to moral conviction. In support he has relied on the decision of Supreme Court in case of **Rahul .vrs. State of Delhi – AIR 2022 SC 5661.** We do agree that there cannot be a moral conviction only on the basis of gravity of crime, but, the quality of evidence and all related factors are is important. Our idea regarding the requirement of proof are crystal clear. In above part we have considered the worth of evidence and on merits recorded a finding of guilt without being influenced by the multiple deaths, society outcry or otherwise.

119. Mr. D.V.Chauhan, the learned defence Counsel emphasized that multiple deaths is not a sure criteria to reach to award capital punishment. It is submitted that number of deaths is

one of the parameter, but, Court should not lay much emphasis on said factor while deciding the nature of punishment. Relying on the decision of Supreme court in case of **Prakash Dhawal Khairnar [Patil] .vrs. State of Maharashtra – [2002] 2 SCC 35,** it is submitted that it was a case of accused committing murder of six family members, still the Supreme Court has commuted the sentence to life imprisonment with a restriction that there shall be no remission for atleast 20 years of imprisonment. True, it was a case of accused committing murder of his own kins including mother, totaling 6 family members. While assessing the nature of punishment, the Court has taken into account the variety of factors that the accused has no criminal tendency, he was working as a scientific assistant, and he was under frustration. Besides that the Court noted from the confessional statement that the accused has repentance of his act. Considering totality of circumstances, the Supreme Court has commuted the sentence of death penalty into life imprisonment with a restriction on remission.

120. It is well known that no two criminal cases can be identical. Each case has its own peculiarities. We cannot use

mathematical formula while awarding punishment, which is a very delicate aspect of the case. We are not deciding the nature of punishment only on the ground of multiple deaths of family members. We are assessing the nature of punishment on set parameters delineated in different decisions of Supreme Court. We are considering the mitigating circumstances and aggravated circumstances, using rarest of rare test and considering over all relevant factors which we deem have some relevance in awarding punishment. In substance, without getting influenced by the adjudication made by the Supreme Court in different context, we are independently undertaking the exercise of deciding the nature of punishment on the facts of the case in hand.

121. On the point of imposition of punishment, the defence also relied on the decision of the Supreme Court in case of **Shankar Kisanrao Khade .vs. State of Maharashtra – [2013] 5 SCC 546.** It is a case of rape and murder. Considering the catena of decisions and the factual scenario, the death penalty was converted into imprisonment for life. We may reiterate that on the basis of given

facts of each case the Court has to take a call as to what would be the appropriate punishment for the proved act.

122. The defence has relied on the decision of Supreme Court in case of **Manoharan .vrs. State by Inspector of Police – [2019] 7 SCC 716,** which is also a case relating to sexual assault by gang committing murder of 10 years old girl and causing her brutal death. Considering various decisions in the field, the death penalty was confirmed, however, one of the Hon'ble Judge has expressed his distinguishing opinion holding that the accused does not fall in the category of rarest and rare case. We may again say that the decision was based on the facts of said case.

123. In case of **Santosh Kumar Satishbhushan Bariyar vs. State of Maharashtra (2009) 6 SCC 498,** the Supreme Court has held that the nature, motive, impact of crime, culpability, quality of evidence, socio economic circumstances, impossibility of rehabilitation are some of the factors, the Court may take into consideration while dealing with such cases. True, each and every factor carries

importance while deciding the nature of punishment.

124. The learned defence Counsel Mr. D.V.Chauhan, would submit that when the conviction is based on circumstantial evidence, ordinarily death penalty shall not be awarded. In support of said contention, he drew our attention to paragraph nos. 17 and 18 of the decision of Supreme Court in in case of **Rajendra Pralhadrao Wasnik .vrs. State of Maharashtra – [2019] 12 SCC 460,** which are reproduced hereinbelow.

> *"17. We now consider the cases cited before us by learned Counsel for the parties on the award of death sentence based on circumstantial evidence.*
>
> *18. In Bishnu Prasad Sinha v. State of Assam15 this Court effectively accepted the proposition in paragraph 55 of the Report that ordinarily death penalty would not be awarded if the connection is proved by circumstantial evidence, coupled with some other factors that are advantageous to the convict. It was held as follows:*
>
> > *"55. The question which remains is as to what punishment should be awarded. Ordinarily, this Court, having regard to the nature of the offence, would not have differed with the opinion of the learned Sessions Judge as also the High Court in this behalf, but it must be borne in mind that the*

> *appellants are convicted only on the basis of the circumstantial evidence. There are authorities for the proposition that if the evidence is proved by circumstantial evidence, ordinarily, death penalty would not be awarded. Moreover, Appellant 1 showed his remorse and repentance even in his statement under Section 313 of the Code of Criminal Procedure. He accepted his guilt."*

125. In case at hand, though the prosecution endeavored to establish the guilt on ocular as well as circumstantial evidence, we hold that the evidence of child witnesses is not free from doubt. On the basis of various circumstances which are firmly established we held that the guilt is proved beyond reasonable doubt. In other words, we are recording a finding of guilt on the basis of circumstantial evidence and thus, the question posed before us is whether death penalty can be awarded. In above decision it has been expressed that ordinarily death penalty shall not be awarded in cases of circumstantial evidence. However, we do not see any mandate of the Court that if case is based on circumstantial evidence, Court shall not award capital punishment. True the word "ordinarily" expressed by the Court connotes that it an ordinary

course, but, if special circumstances are made out, the Court can impose capital punishment if the fact deserves so. While deciding the nature of punishment we have also considered the above shed which bears relevance.

126. While claiming commutation of sentence the defence has relied on the decision of this Court in case of **State of Maharashtra .vrs. Baburao Ukandu Sangerao – 2023 SCC Online Bom 1945.** It was a case of rape with brutal murder of a young girl barely of 6 years of age. Taking into account the gravity and mitigating circumstances therein, this Court arrived on a conclusion that the case does not falls into the category of rarest of rare case resulting into commutation of sentence with a rider of limiting the period of remission.

127. Likewise, reliance is placed on the decision of Supreme Court in case of **Manoj and others .vrs. State of Madhya Pradesh – [2023] 2 SCC 353**, wherein also in case of robbery with murder of three persons, the sentence of three accused was commuted to

imprisonment for life for minimum term of 25 years. In said decision, the Supreme Court has expressed that there is no uniform sentencing policy, but, having regard to the line of earlier pronouncements coupled with the factual scenario has converted the death penalty into life imprisonment. We may reiterate that those decisions are restricted to the facts of the case which cannot be applied in different context. Certainly we have to decide the nature and quantum of punishment purely on the facts of this case with the assistance of the guiding principles laid down by the Supreme Court in various decisions which we have referred.

128. In case of **Swami Shraddanand .vrs. State of Karnataka – [2008] 13 SCC 767**, the issue of awarding capital punishment again fell for consideration by virtue of dissenting opinion expressed by the two Judges of the Supreme Court. In said decision, the Supreme Court has taken a review of the earlier decisions in the field, particularly case of **Bachan Singh, Macchi Singh**, and principles laid therein. It is expressed that there may be some cases where the Court may find that the case just falls short of rarest of rare category,

and may feel some what reluctance in endorsing death sentence. But, at the same time, having regard to the nature of crime, the Court may strongly feel that a sentence of life imprisonment would be grossly disproportionate and inadequate. Facing such situation, it is ruled that there can be third category of sentence of life imprisonment without remission in befitting cases.

129. Recently, in case of **Ravinder Singh vs. State of Govt. of NCT of Delhi (2023) AIR (SC) 2220,** the same issue was dealt by the Supreme Court and ruled that the High Courts are empowered to impose a modified punishment without remission through out, or for specified period. Therefore, undoubtedly, Constitutional Courts can always exercise the power to impose a modified or fixed-term sentence by directing that a life sentence shall be of a fixed period of more than 14 years. Certainly, the exercise of said power shall be restricted to grave cases. While deciding the nature of punishment, we have kept in our mind the third option made open to the Court.

130. Before going to the facts of this case, it would be

advantageous to have a quick look to the different parameters and guiding factors laid down by the Supreme Court in the field. Undeniably, no case of this kind is complete without reference of the decision of Supreme Court in cases of **Bachan Singh versus State of Punjab, (1980) 2 SCC 684** and **Macchi Singh .vrs. State of Punjab – [1983] 3 SCC 470,** to which we are coming later.

131. In case of **Deepak Rai .vrs. State of Bihar, (2013) 10 SCC 421,** the Supreme Court noticed the shift in sentencing policy after elucidating the perceptible difference between Section 367(5) of the Code of Criminal Procedure, 1898 and Section 354(3) of the present Code enacted in 1973. The Supreme Court has extensively referred to case law on the subject of death penalty and quoted the following passage from **Bachan Singh (supra)** interpreting Section 354(3) of the Code :-

> *"(a) The normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. The court can depart from that rule and impose the sentence of death only if there are special reasons for doing so. Such reasons must be recorded in writing before imposing the death sentence.*

(b) While considering the question of sentence to be imposed for the offence of murder under Section 302 of the Penal Code, the court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence."

132. In Bachan Singh's case (supra), the Supreme Court thus observed that special reasons means exceptional reasons founded on exceptionally grave circumstances relating to the crime and the criminal. Acknowledging, exceptional difficulty in classifying or making a catalogue of such extreme cases, for infinite unpredictable and unforeseeable factual variations exist, the Supreme Court exposited that relative weight has to be given to aggravating and mitigating circumstances. These two considerations are intertwined and not isolated. Broad illustrative guidelines were laid down emphasising that death penalty was an extreme penalty to be imposed only in rarest of rare crimes.

133. In case of **Machhi Singh .vrs. State of Punjab, (1983) 3 SCC 470,** the following five categories of crimes were delineated to possibly fall in this extreme category, but with the caution that the aforesaid factors were not inflexible, absolute or immutable, but were only indicators:-

> "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.
>
> 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-à-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course of 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 terrorise 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-à-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."

134. In case of **Ramnaresh .vrs. State of Chhattisgarh, (2012) 4 SCC 257**, the Supreme Court has observed that cumulative effect of aggravating and mitigating circumstances has to be considered and it may not be appropriate for the Court to give significance to one of the classes under a particular head, ignoring the classes under the other head for balance and equilibrium is required. The Court after analyzing aggravating and mitigating circumstances enunciated the principles :-

(1) The court has to apply the test to determine, if it was the "rarest of rare" case for imposition of a death sentence.
(2) In the opinion of the court, imposition of any other punishment i.e. life imprisonment would be completely inadequate and would not meet the ends of justice.
(3) Life imprisonment is the rule and death sentence is an exception.
(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations.
(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.

135. In the decision in case of **Shankar Kisanrao Khade vs. State of Maharashtra (2013) 5 SCC 546** the Supreme Court again surveyed a large number of cases on either side, that is, where the death sentence was upheld/awarded or where it was commuted; and pointed out the requirement of applying 'crime test', 'criminal test' and 'rarest of rare test'. The Supreme Court recounted, with reference to previous decisions, the aggravating circumstances (crime test) and the mitigating circumstances (criminal test) in paragraph 49 of the decision:

> *"49. In Bachan Singh and Machhi Singh cases, this Court laid down various principles for awarding sentence: (Rajendra Pralhadrao case, SCC pp. 47-48, para 33-*
>
> *"'Aggravating circumstances — (Crime test)*
> *(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 60 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 of the Code of Criminal Procedure.

(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 — (Criminal test)
(1) The manner and circumstances in and under which the offence was committed, for example, 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 behaviour 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 behaviour 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 preordained 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 eyewitness though the prosecution has brought home the guilt of the accused."

136. We may also recall the observations of the Supreme Court in case of **Rajendra Pralhadrao Wasnik vs. State of Maharashtra (2019) 12 SCC 460** in paragraphs 45 and 47, which read as follows :

"45. The law laid down by various decisions of this Court clearly and unequivocally mandates that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. This is one of the mandates of the "special reasons" requirement of Section 354(3) CrPC and ought not to be taken lightly since it involves snuffing out the life of a person. To effectuate this mandate, it is the obligation on the prosecution to prove to the court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated. This can be achieved by bringing

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

*** *** ***

47. Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be overemphasised. Until Bachan Singh (supra), the emphasis given by the courts was primarily on the nature of the crime, its brutality and severity. Bachan Singh placed the sentencing process into perspective and introduced the necessity of considering the reformation or rehabilitation of the convict. Despite the view expressed by the Constitution Bench, there have been several instances… where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in Sangeet Vs. State of Haryana (2013) 2 SCC 452. "In the sentencing process, both the crime and the criminal are equally important." Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and analyse this information is certainly not an easy task but must nevertheless be undertaken. The process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be

instances where the social reintegration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible."

137. Recently the Supreme Court in case of **Manoj Pratap Singh vs. State of Rajasthan (2022) 9 SCC 81**, after considering the earlier decisions, made certain observation which would help us in the nature of guiding factor. The relevant observations made in paragraphs 76, 77 and 80 read as follows :

"76. The Court also stated that 'special reasons' in the context of Section 354(3) CrPC would obviously mean 'exceptional reasons', meaning thereby, that the extreme penalty should be imposed only in extreme cases in the following terms: - (Bachan Singh vs.State of Punjab (1980) 2 SCC 684)

"161. ....The expression "special reasons" in the context of this provision, obviously means "exceptional reasons" founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal. Thus, the legislative policy now writ large and clear on the face of Section 354(3) is that on conviction for murder and other capital offences punishable in the alternative with death under the Penal Code, the extreme penalty should be imposed only in extreme cases."

77. After taking note of various circumstances projected before it, which could be of mitigating factors, and while observing that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction, the Court proceeded to uphold the constitutional validity of Section 354(3) CrPC, with the observations that the legislature had explicitly prioritised life imprisonment as the normal punishment and death penalty as being of exception, and with enunciation of rarest of rare doctrine in the following words: - (Bachan Singh vs.State of Punjab (1980) 2 SCC 684)

> *"209.....It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad 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."*
>
> *.....*

80. The Court also explained the relevant propositions of Bachan Singh (supra) and the pertinent queries for applying those propositions in the following terms: - (Macchi Singh v. State of Punjab (1983) 3 SCC 470)

> *"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 have 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.

39. In order to apply these guidelines inter alia the following questions may be asked and answered:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

40. If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."

138. Recently, Three Judge Bench decision of the Supreme Court in case of **Manoj and ors. Vs. State of Madhya Pradesh (2023) 2 SCC 353,** after taking a review of series of decisions in the field observed as below :

"223. The decades that followed, have witnessed a line of judgments in which this court has continually taken judicial notice of the incongruence in application of the 'rarest of rare' test enunciated in Bachan Singh, and therefore, tried to restrict imposition of the death penalty, in an attempt to strengthen a principled application of the same.

224. This aspect was dealt with extensively in Santosh

Kumar Satishbhushan Bariyar vs. State of Maharashtra (2009) 6 SCC 498 where the court articulated the test to be a two-step process to determine whether a case deserves the death sentence – firstly, that the case belongs to the 'rarest of rare' category, and secondly, that the option of life imprisonment would simply not suffice. For the first step, the aggravating and mitigating circumstances would have to be identified and considered equally. For the second test, the court had to consider whether the alternative of life imprisonment was unquestionably foreclosed as the sentencing aim of reformation was unachievable, for which the State must provide material.

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227. Recently, while considering a review petition, this court in Rajendra Pralhadrao Wasnik v. State of Maharashtra (2019) 12 SCC 460 held that Bachan Singh had intended the test to be 'probability' and not improbability, possibility or impossibility of reformation and rehabilitation as a mandate of Section 354(4) CrPC. The court analysed numerous earlier precedents, noting that evidence by the state on this has been sparse and limited, but was essential for the courts to measure the probability of reform, rehabilitation and reintegration. The court located this requirement in the right of the accused, who regardless of being ruthless, was entitled to a life of dignity, notwithstanding his crime. While this process is not easy, it was noted that the neither is the process of rehabilitation since it involves reintegration into society. When this is found to be not possible in certain cases, a longer duration of imprisonment was instead permissible.

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232. This court in Rajesh Kumar v. State (2011) 13 SCC 706

again reiterated that brutality in itself, was not enough to impose death sentence – the accused was convicted for murder of two children who offered no provocation or resistance to the brutal and inhuman fashion in which the accused committed the crime, however, it was held that due consideration to the mitigating circumstances of the criminal still had to be given. Evidence had to be placed on record by the State, demonstrating that he was beyond reform or rehabilitation, the absence of which was a mitigating circumstance in itself. The High Court had merely noted that he was a firsttime offender and had a family to take care of – which this court noted was a very narrow and myopic view on the mitigating circumstances.

233. Therefore, 'individualised, principled sentencing' – based on both the crime and criminal, with consideration of whether reform or rehabilitation is achievable (held to be 'probable' in Rajendra Pralhadrao Wasnik), and consequently whether the option of life imprisonment is unquestionably foreclosed – should be the only factor of 'commonality' that must be discernible from decisions relating to capital offences. With the creation of a new sentencing threshold in Swamy Shraddananda (2), and later affirmed by a constitution bench in Union of India v. V Sriharan (2016) 7 SCC 1, of life imprisonment without statutory remission (i.e., Article 72 and 161 of the Constitution are still applicable), yet another option exists, before imposition of death sentence. However, serious concern has been raised against this concept, as it was upheld by a narrow majority, and is left to be considered at an appropriate time.

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241. In Santosh Bariyar, making observations on nature of information to be collected at the pre-sentencing stage, this court further observed that

> *"56. At this stage, Bachan Singh [(1980) 2 SCC 684 informs the content of the sentencing hearing. The court must play a proactive role to record all relevant information at this stage. Some of the information relating to crime can be culled out from the phase prior to sentencing hearing. This information would include aspects relating to the nature, motive and impact of crime, culpability of convict, etc. Quality of evidence adduced is also a relevant factor. For instance, extent of reliance on circumstantial evidence or child witness plays an important role in the sentencing analysis. But what is sorely lacking, in most capital sentencing cases, is information relating to characteristics and socioeconomic background of the offender. This issue was also raised in the 48th Report of the Law Commission."*

139. Taking a clue and judicial trend in the field, we have revisited the facts of the case. We have broadly considered the aggravated and mitigating circumstances emerges from the facts of this case. We have also tested the possibility of reformation and considered each and every factor which bears relevance.

I - AGGRAVATED CIRCUMSTANCES.

1. Brutality of crime - The prosecution evidence unfolds that the accused has committed murder of five human beings who are none other then his own family members. The accused by repeatedly assaulting all of them, particularly attacking on head and face of the victims done to death. There is no evidence suggesting that while the accused did the murderous attack on 5 family members, he was suffering from serious mental or emotional disturbance or under duress he did the things, but, on the contrary it suggest that it was a calculated brutal act. Medical evidence discloses that the accused had dealt multiple blows by sharp as well as blunt side of the heavy iron crowbar. The inquest panchnama [Exh.175] indicates that the crowbar has pierced through the brain of deceased Kamlakar. The attack on deceased Vedanti and Krishna was with great force by crowbar penetrating deep into their head exposing brain matter. There were repeated blows at the head and fact of Archana, causing multiple injuries. The multiple lacerated wounds corresponding to internal injury discloses that it has shattered the skull of the deceased making them instant dead. The photographs at Exhs.73 to 85

demonstrates the severity and intensity of the attack and conveys loudly the brutality. We have no manner of doubt that with definite intention the accused did the act in brutal and cruel manner by inflicting repeated blows on the head and face of all the deceased.

2. Pre-mediated and pre-planned attack - It emerges from the evidence that few days before the occurrence, the accused had purchased a heavy iron crowbar having length of 3 feet. On the date of occurrence, he went to the house of the deceased with the crowbar and had concealed the same in flower bed in the compound with an intention to use the same at midnight. When everyone was in deep sleep, he brought the crowbar from the flowerbed and did the desired act with full conviction. It clearly evidences that the attack was totally pre-planned one. It is not the case that the incident had occurred as of sudden or on some momentary things on lost of control caused deaths. The evidence clearly suggests that the accused was of the firm view to eliminate Kamlakar for which he had brought the crowbar, concealed the same and in the midnight executed the plan. It was a well organized, pre-planned attack.

3. Absence of provocation - It is evident that the accused has executed the plan in a pre-planned manner. On the fateful night he went to the house of Kamlakar, after food when every one was in sleep, attacked all the family members. Apparently, there was no provocation on the part of either of the deceased, nor anything suggests that at the relevant time something happened which prompted the accused to kill them in anger. The evidence suggests that it was a cold blooded act as the accused feigned the normal things by taking food in the house of his sister and when everyone was in deep sleep, grabbed the opportunity of executing the plan. Rather the accused took care to choose midnight time so that no one can resist or intervene, and thus, it is a case where without any sort of incitement or provocation, the act was done.

4. Defenceless victims - The accused has committed murder of his sister Archana, aged 45 years, Archana's husband Kamlakar aged 53 years, daughter Vedanti, aged 15 years, Archana's mother-in-law Mirabai aged 70 years, and his own son Krishna [Ganu], aged 4

years. Except Kamlakar all were female, age old or minor children. At the relevant time all were in fast sleep, meaning thereby totally in defenceless position. Rather the accused choose the midnight time to avoid possible resistance from a male member i.e. Kamlakar. Particularly, victims were female, age old lady and defenceless minor innocent children.

5. Victims were close relatives - It is very disturbing that by giving complete go bye to the relationship, emotions, family bond, the accused had committed murder of his own sister, her family and particularly of his own child Krishna [Ganu]. The act of the accused was totally in disregard to the favours done by Kamlakar, Archana and their family. Archana and Kamlakar gave shelter to the minor children of accused namely Mitali and Krishna. In total disregard to the said obligation, the accused mercilessly killed the entire family members who had trust on him. The act of killing own kins and kith shows unkind, cruel and heartless nature.

6. Victims were female and minors - The accused has committed

murder of Archana, Mirabai and minors – Mitali and Krishna. While doing this barbaric act indiscriminately eliminated everyone despite gender, age, relationship. The range of killing was from 4 years old Krishna to 70 years old Mirabai . Though the father and brother are supposed to be a protector, but, for Krishna and Archana, the accused was proved to be a life taking devil.

7. Motive - It emerged that after release of accused from jail, Kamlakar was asking him to repay the money which he has incurred for maintaining children of accused. Kamlakar was also asking to repay legal expenses which he has borne for prosecuting the appeal against conviction, and was asking for transfer of land and humiliating him by saying to be a convict. Because of persistent manifold demand, the accused got annoyed and eliminated Kamlakar with determined intention. In the same act also killed 4 other innocent who possibly might have awakened while the first attack was made. In short the prosecution has established sufficient motive for commission of crime.

8. Abscondance - It is proved that on intervening night of 10.06.2018 to 11.06.2018 the accused has committed multiple murders and straightway ran away to Ludhiyana, Punjab State. The police have traced him from mobile EMIE number, which was also tried to vanish. The conduct of the accused of abscondence and going to a longer distance to avoid the process of law, is also one of the adverse circumstance.

9. Conduct in Jail - The trial Court as well as we have called the report from the Jail Superintendent to know about the conduct of the accused in jail. Post conviction while the accused was in Nagpur Central Prison, he has attempted to commit murder of a jail inmate namely Raju Verma by stone, for which an offence punishable under Section 307 of the Indian Penal Code was registered. Due to his conduct and behaviour, for security reasons he was shifted from Nagpur Central Prison to Yerwada Central Prison, Pune. Post conviction also there was no change in his behaviour and posed himself as a life threat to jail inmates.

10. Absence of repentance or remorse - After committing multiple murder, the accused ran away to Ludhiyana, Punjab though his sister, own son were lying dead and daughter Mitali became shelterless. Disregard to family ties he choose to go underground. While the accused was asked by the trial Court on sentence, [para 212 of the judgment of trial Court], by feigning innocence declined to say anything, rather he stated to the learned trial Judge that death penalty be awarded. The said arrogant approach of the accused and conduct with jail inmate shows that he has no remorse or repentance on his act.

11. Possibility of reformation - In true sense, there is no clear standard to ascertain about the future possibility of reformation. Certainly on the basis of all circumstances and post conduct, possibility of reformation is to be seen. We have taken survey of the entire episode. The accused in total disregard to humanity, gender, relations had committed 5 murders of his own kins. He has not even spared his minor son or minor niece. His behaviour was quite cruel, rude and in arrogant manner he stated to the trial Judge to impose

death penalty. Post conviction while in jail he made a murderous attack on jail inmate. These instances persuades us to hold that he is beyond improvement and there are no chances of reformation.

12. Evil to Society - The accused has committed murder of entire family of his sister, including his own son. It was a preplanned murder. Though initially the accused had motive to kill Kamlakar, however, his entire family was done to death. It shows that emotion or mercy has no place in the mind of the accused. In trial Court two family members i.e. Vedanti and Mitali gave evidence against the accused. In view of violent nature of accused, we perceive danger to their lives from the accused. Moreover, the cruel and merciless tendency is a danger for the society and thus, he is not fit to live in a civilized society.

II. - **MITIGATING CIRCUMSTANCES.**

The above being the aggravating circumstances, when we look for mitigating circumstances, there are none of substance we can find, there is no family left for the accused except his daughter.

He has infact destroyed family his sister and there is none available for the appellant to reform himself for. Hence, looked at from any angle, despite our attempts to find some mitigating factors or other, we are unable to do so. There was no extreme mental or physical disturbance or extreme provocation for the appellant to have committed the offence. There is nothing which could indicate that what he has done is as a result of any persistent harassment. There is no any particular justification moral or otherwise that could be given for such an offence.

140. Though the accused has not pleaded mitigating circumstances, however, we deem it our duty to find out whether there are any mitigating circumstances favouring to the accused. Before trial Court it was argued that the accused was of young age, his family ties, possibility of reformation. However, we are not inclined to accede the said submission as mitigating circumstances. Before the trial Court, the mother of accused has filed an affidavit showing family background from which it is apparent that mother is not living with him and he does not shoulder her responsibility. At

the time of commission of offence, the accused was 40 years of age and by the time, he is 45 to 46 years of age, thus, he cannot be termed as either young or old to gain sympathy. Keeping aside the brutal act of the accused we have tried to invent mitigating circumstances, but, we are unable to find which could favour the accused.

141. Close analysis of mitigating and aggravated circumstances and putting them in the scale, everything tilts against the accused. In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Justice demands that courts should impose punishment befitting the crime. The court must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

142. We may recall the decision in case of **State of M.P. vs. Munna Choubey & Anr. [(2005) 2 SCC 710],** wherein the Supreme

Court has observed as under :

> *"Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. This position was illuminatingly stated by this Court in Sevaka Perumal v. State of Tamil Naidu (1991 3 SCC 471."*

143. In case of **Purushottam Dashrath Borate .vrs. State of Maharashtra – [2015] 6 SCC 652,** the Supreme Court has made the following observations on the point of punishment.

> *"38. In our considered view, the "rarest of the rare" case exists when an accused would be a menace or, threat to and incompatible with harmony in the society. In a case where the accused does not act on provocation or on the spur of the moment, but meticulously executes a deliberate, cold-blooded and pre-planned crime, giving scant regard to the consequences of the same, the precarious balance in the sentencing policy evolved by our criminal jurisprudence would tilt heavily towards the death sentence. This Court is mindful of*

> *the settled principle that criminal law requires strict adherence to the rule of proportionality in awarding punishment, and the same must be in accordance with the culpability of the criminal act. Furthermore, this Court is also conscious to the effect, of not awarding just punishment, on the society."*

144. In the light of settled position of law and facts of this case, we summarize that the prosecution has succeeded in establishing that the accused has committed murder of his sister Archana, her husband Kamlakar, her daughter Vedanti, her mother-in-law Mirabai and of his own son Krishna in a pre-planned manner.

145. The offence committed by the accused was neither under duress nor on provocation and innocent lives have been snuffed out by him by violent indiscriminate assault. It was a cold-blooded, pre-planned murder. The act was extremely barbaric, cruel and brutal. The accused has killed his own sister, her family and more particularly his own child barely aged 4 years. The act was heartless, in total disregard to the human relationship. It has not only shocked

the judicial conscious, but, the conscious of the society.

146. It is a matter of indignation that women and innocent children were silenced in a brutal manner, while in sleep. The act of the accused has put a serious dent on family ties and relationship. Innocent children were made to meet the maker untimely despite their right to see the beautiful world. Two surviving children were made shelter-less despite no fault on their part.

147. The atrocity of the crime resulted in five deaths including children squarely makes out a case of exceptional category. Considering the manner of crime, past and post conduct, the accused is beyond reformation and rehabilitation. The accused would be a menace or threat to the society. In our considered view, the case undoubtedly falls in the 'Rarest of Rare' category warranting capital punishment.

148. We have thoughtfully considered the case from every possible angle, and firmly of the opinion that any other kind of punishment than death penalty would be totally disproportionate

and would amount to injustice. In the result, the reference made by the learned Sessions Judge in Criminal Confirmation Case No.2/2023, is answered in the affirmative. The death penalty imposed by the learned Sessions Judge for the offence punishable under Section 302 of the Indian Penal Code is confirmed. Consequently, the appeal of the accused is dismissed.

149. We place on record our appreciation for the valuable assistance rendered by the learned Addl. Public Prosecutor Mr.Doifode with Mr.Badar, A.P.P., Mr.D.V. Chauhan, the learned Counsel appointed for the appellant/accused, assisted by Mr. Jadhav, Advocate and Mr. Mohd. Ateeque, Advocate who has assisted the prosecution. We must note that the judgment of trial Court is well founded and well reasoned. Matters are accordingly disposed of in aforesaid terms.

150. The Registrar (Judicial) of this Court is directed to serve copy of this judgment on the accused through the concerned jail superintendent.

151. Fees of the appointed Counsel be paid as per Rules.

JUDGE **JUDGE**

Rgd.