REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 255-256 OF 2018

BHAGCHANDRA ...APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH ...RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. The appellant has approached this Court, being aggrieved by the judgment and order dated 19th December 2017, passed by the Division Bench of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 1684 of 2017, thereby dismissing the appeal preferred by the appellant challenging the judgment and order passed by the Second Additional Sessions Judge (hereinafter referred to as the "trial judge") dated 4th April 2017, vide which the

appellant was convicted for the offences punishable under Section 302 read with Section 201 and Section 506-B of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC"). The trial judge had awarded death sentence to the appellant for the offences punishable under Section 302 of the IPC (3 counts) and 7 years' rigorous imprisonment each for the offences punishable under Sections 201 and 506-B of the IPC respectively. The trial judge has also made a reference being CRRFC No. 03 of 2017 to the High Court under Section 366 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") for confirmation of death penalty. Vide impugned judgment and order, the High Court confirmed the death penalty.

2. The prosecution story in brief, is thus:

Appellant-Bhagchandra is the real brother of deceased Thakur Das and deceased Devki Prasad. Deceased Akhilesh was the son of deceased Devki Prasad and as such, the nephew of the appellant. PW-1-Kiran Patel is the wife of deceased Devki Prasad. PW-2-Urmila and PW-3-Kamlesh are

the daughter and son of deceased Devki Prasad and Kiran Patel (PW-1).

3. Deceased Devki Prasad resided in village Pur along with his brother deceased Thakur Das, his wife PW-1-Kiran Patel, daughter PW-2-Urmila, sons PW-3-Kamlesh, deceased Akhilesh, and Kisiyabai, mother of the appellant.

4. It is the prosecution case that on the fateful early morning of 11th October 2015 at around 05.00-05.30 am, complainant-Kiran Patel (PW-1) had gone to attend the call of nature. While returning, she saw the appellant armed with an axe getting out of her house. It is the prosecution case that there was previous enmity between the appellant on one hand and deceased Thakur Das and deceased Devki Prasad on the other. She therefore suspected some foul play. Immediately after entering the house, she saw Thakur Das lying dead smeared with blood and his neck was detached from the body. In the courtyard, she also found her son Akhilesh lying dead. It is the prosecution case that deceased Devki Prasad had gone to his field in the night so as to guard the crops. Suspecting something might be done to him, PW-

1 rushed towards the field which was nearby the house. She saw the appellant assaulting her husband Devki Prasad with an axe. She tried to stop the appellant but he threatened to kill her. In the meanwhile, the relatives and the neighbours had gathered at the spot.

5. Immediately after the incident, a First Information Report (hereinafter referred to as "FIR") came to be registered on the basis of the oral complaint given by Kiran Patel (PW-1), in the Police Station, Maharajpur. After investigation, charge-sheet came to be filed before the concerned court which committed the case to the Sessions Judge.

6. The trial judge framed charges against the appellant under Sections 302 (3 counts), 201 and 506 Part-II of the IPC. The appellant denied all the charges and claimed that he was falsely implicated by Kiran Patel (PW-1) to grab the property.

7. At the conclusion of the trial, the trial judge found the appellant guilty of committing the offences he was charged with and as such, awarded sentences as stated hereinabove. The trial court also made a Reference being CRRFC No. 03 of

2017 to the High Court for confirmation of the capital punishment awarded by it.

8. Being aggrieved by the judgment of conviction and sentence passed by the trial court, the appellant preferred an appeal being Criminal Appeal No. 1684 of 2017 before the High Court. The High Court dismissed the appeal and confirmed the death penalty awarded by the trial court. Being aggrieved thereby, the present appeal.

9. We have heard Shri N. Hariharan, learned Senior Counsel, appearing on behalf of the appellant and Smt. Swarupama Chaturvedi, learned Assistant Advocate General, appearing on behalf of the respondent-State.

10. Shri Hariharan would submit that the entire case against the appellant is a fabricated one and has been framed at the instance of Kiran Patel (PW-1). The learned Senior Counsel submitted that the evidence as placed on record by the prosecution does not establish the guilt of the accused-appellant beyond reasonable doubt.

11. The learned Senior Counsel submitted that firstly, the time of the incident as shown by the prosecution is itself doubtful. He submitted that the Post-Mortem Report of all the three deceased persons would show that semi-digested food was found in the stomach of the deceased persons. He therefore submitted that the death would have occurred around 3-4 hours after their last meal. He submitted that from the evidence brought on record, it would show that deceased Devki Prasad had left for the field at around 09.00 pm. He submitted that therefore the deceased must have taken their meal at around 09.00 pm. As such, the death has occurred between 12.00 midnight and 01.00 am.

12. He further submitted that there are material contradictions in the testimonies of PW-1-Kiran Patel, PW-2-Urmila and PW-3-Kamlesh. He submitted that even the conduct of PW-1 is unnatural. She has stated that, while going to answer the call of nature, she had put a latch to close the door of the house. He submitted that normally a person would not do such an act. He further submitted that the evidence of PW-7-Rakesh Vishwakarma is totally

unnatural. From the evidence of PW-7, it is clear that though he has witnessed the incident, he has not informed the same to the police, who were very much available in the village. He has only informed PW-6-Kamlesh Patel s/o Gulabchandra Patel (for the sake of convenience, hereinafter referred to as "Kamlesh-II"). He submitted that it is clear that PW-7 is an introduced witness.

13. Shri Hariharan further submitted that the prosecution has withheld the most important witness i.e. Kisiyabai, mother of deceased Thakur Das and Devki Prasad as well as the appellant, though her statement was recorded under Section 161 Cr.P.C. He submitted that since the prosecution has withheld an important witness, an adverse inference needs to be drawn against the prosecution. The learned Senior Counsel, in this respect, relies on the judgment of this Court in the case of ***Pratap Singh and Another v. State of Madhya Pradesh***[1].

14. The learned Senior Counsel submitted that the so-called recovery of axe on the memorandum of appellant

1 **(2005) 13 SCC 624**

under Section 27 of the Indian Evidence Act, 1872 (hereinafter referred to as the "Evidence Act") is also of no relevance. He submitted that firstly, the Serology Report does not support the prosecution case. He submitted that the recovery on memorandum would be relevant only if the prosecution is in a position to establish that the article recovered was used in the crime. He submitted that apart from the Serology Report not supporting the prosecution case, the said axe has not been put to any of the witnesses to establish that it was the same weapon which was used in the crime.

15. Shri Hariharan would submit that the trial court as well as the High Court has not considered the evidence in its correct perspective. He submitted that the evidence has been considered in a totally erroneous manner. He submitted that though this Court is exercising the jurisdiction under Article 136 of the Constitution of India, since the matter pertains to death penalty, it is necessary that this Court should reappreciate the entire evidence. He relies on the judgments of this Court in the cases of ***Mohammed Ajmal Mohammad***

Amir Kasab alias Abu Mujahid v. State of Maharashtra[2], ***Dayanidhi Bisoi v. State of Orissa***[3] and ***Mohd. Arif alias Ashfaq v. Registrar, Supreme Court of India and Others***[4].

16. Shri Hariharan, in the alternative, submitted that in no circumstances, the death penalty was warranted in the facts of the present case. He submitted that firstly, the trial court has imposed the death penalty on the same day on which the conviction was recorded. He submitted that a sufficient period of time between the order of conviction and the sentence ought to have been given to the appellant so that the appellant would have availed of his right to point out the aggravating and mitigating circumstances. He further submitted that the courts below have also failed to take into consideration that the accused was not a hardened criminal. The accused did not have any criminal antecedents and it was his first crime. He further submitted that the trial court as well as the High Court has not taken into consideration

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2 **(2012) 9 SCC 1**
3 **(2003) 9 SCC 310**
4 **(2014) 9 SCC 737**

the possibility of the appellant being reformed. It is therefore submitted that the death penalty is not warranted at all in the facts and circumstances of the present case.

17. Smt. Chaturvedi, on the contrary, submitted that both the courts below have rightly convicted the appellant and also awarded death penalty. She submitted that minor inconsistencies in the evidence of the witnesses should not be given much importance. She further submitted that when ocular evidence has been found by the court to be cogent, trustworthy and reliable, then some inconsistencies in the medical evidence would not be relevant. She relies on the judgment of this Court in the case of ***Krishnan and Another v. State represented by Inspector of Police***[5] to assert the said contention. She further submitted that merely because the Serology Report is not conclusive, it cannot be a ground to disbelieve the prosecution case. For the said proposition, she relies on the judgment of this Court in the case of ***R. Shaji v. State of Kerala***[6].

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5 **(2003) 7 SCC 56**
6 **(2013) 14 SCC 266**

18. Smt. Chaturvedi, in order to meet the challenge about the evidence of PW-7-Rakesh, submitted that the reaction of a witness to a situation may differ from person to person. She submitted that merely because PW-7-Rakesh has informed PW-6-Kamlesh first, which was prior to informing the police, it does not put a dent on his testimony. For this, she relies on the judgment of this Court in the case of ***Rammi alias Rameshwar v. State of Madhya Pradesh***[7].

19. She further submitted that taking into consideration the brutality of murder, wherein three blood relatives have been done away with for no fault of theirs, warrants no lesser penalty than the death penalty. She submitted that the necks of all the three persons were segregated due to the brutal attack and as such, the trial court has rightly awarded death penalty and the High Court has rightly confirmed the same. She relies on the judgment of this Court in the case of ***Ravi s/o Ashok Ghumare v. State of Maharashtra***[8].

20. Shri Hariharan, in rejoinder, submitted that in view of the law laid down by this Court, relevant material is required

7 **(1999) 8 SCC 649**
8 **(2019) 9 SCC 622**

to be placed before the court while considering as to whether the death penalty should be awarded or not. He submitted that accordingly, an affidavit of the close relatives of the appellant has been placed on record. He further submitted that the certificate from the prison authority is also placed on record which would show that the conduct of the appellant is satisfactory, not warranting death penalty.

21. With the assistance of the learned counsel for the parties, we have examined the materials placed on record.

22. PW-1-Kiran Patel is the wife of deceased Devki Prasad. She has stated in her evidence that on the date of the incident, at around 05.00 am, she had gone out to answer the call of nature. At that time, her brother-in-law Thakur Das, sons Akhilesh and Kamlesh, daughter Urmila and mother-in-law Kisiyabai were sleeping at home. When she returned after around 10 minutes, she saw appellant armed with an axe coming out of her house. She suspected some foul play. When she entered the house, she saw her brother-in-law Thakur Das lying dead in outer room. His neck was cut. When she came in the courtyard, she saw her son

Akhilesh dead, having injuries on his neck and head. She stated that her son Kamlesh and daughter Urmila had gone to the place of Gulab after seeing the appellant assaulting their uncle and brother. Both of them came and informed her that Thakur Das and Akhilesh were assaulted by the appellant. She suspected that the appellant had gone towards the field and therefore, she followed the appellant towards the field. She saw the appellant assaulting her husband Devki Prasad with the axe. When she tried to stop the accused from assaulting the deceased, the accused abused her and told her to go away and threatened her that she would also meet the same fate. She stated that when she was returning home, she saw PW-7-Rakesh. Thereafter, PW-4-Rammilan, PW-5-Khillu Patel and PW-6-Kamlesh-II also came. She has further stated in her evidence that deceased Thakur Das was residing with the appellant for 10 years. However, the appellant started demanding the land of Thakur Das and his tractor. As such, the appellant forced Thakur Das to leave his house. Thereafter, Thakur Das had started residing with the family of deceased Devki Prasad.

She has stated that the appellant thought that Thakur Das's property would come to the family of Devki Prasad and so, the appellant had assaulted and killed her brother-in-law, her husband and son. PW-1 has been cross-examined at length. However, in spite of lengthy cross-examination, her evidence insofar as the incident is concerned, has gone unchallenged.

23. PW-2-Urmila was about 11-12 years old at the time of incident. After putting preliminary questions to her, the trial judge found that she was capable of understanding the questions and answering the same and as such, her statement was recorded without administering oath to her.

24. She stated that on the day of the incident, after her mother went to answer the call of nature, she was doing the household work. She heard the sound of '*dham dham*' and thought that it might be a dog's sound. She went towards the place from where the sound was coming and saw that the appellant was assaulting the deceased with an axe. Her brother Akhilesh was sleeping in the courtyard. She tried to wake him up but he did not get up. The appellant came to

the courtyard along with the axe and started assaulting Akhilesh. She got frightened and therefore went to PW-6-Kamlesh-II's house. Her brother Kamlesh (PW-3) had also woken up. He also tried to wake Akhilesh up but he did not get up. The appellant tried to catch hold of Kamlesh (PW-3) too, however, Kamlesh (PW-3) ran away with Urmila to Kamlesh-II's house. She further stated that thereafter, her mother came. She informed about the incident to her mother. Thereafter, her mother went to the field. She stated that her mother saw the appellant assaulting the deceased. Thereafter, her mother came home and started shouting and raising hue and cry. As such, PW-6-Kamlesh-II and PW-4-Rammilan came there. The said child witness has also been thoroughly cross-examined. However, her evidence insofar as the main incident is concerned, has gone unchallenged. Similar is the evidence of PW-3-Kamlesh who was aged 12-13 years at the time of the incident.

25. It will be thus clear from the evidence of PW-1-Kiran Patel, that she has personally witnessed the appellant assaulting deceased Devki Prasad. It will be further clear

from the evidence of PW-2-Urmila and PW-3-Kamlesh that they have personally witnessed the appellant assaulting deceased Thakur Das and deceased Akhilesh. The evidence of these three witnesses would also reveal that immediately after PW-1 came from field, she was informed by PW-2 and PW-3 about the assault by the appellant on Thakur Das and Akhilesh. The testimony of these three witnesses is duly corroborated by the other witnesses. PW-4-Rammilan is the son of Shyambihari. Shyambihari is another brother of deceased Thakur Das, deceased Devki Prasad and appellant Bhagchandra. He has stated in his deposition that on the date of incident when he was going out at around 5.30 am, his aunt Kiran Patel was shouting *maar dala*, *maar dala*. When he went near his aunt Kiran Patel, he saw that inside the house, Thakur Das and Akhilesh were lying dead. When he went to the field, he saw Devki Prasad lying dead in front of the tractor. He stated that Kiran informed him about the incident. This witness had accompanied PW-1 to the Police Station for lodging the report. This witness has also undergone lengthy cross-examination. Nothing damaging

has come on record in the cross-examination. This witness would be in a sense a neutral witness inasmuch as his relation with both, the appellant and the deceased, is of the same degree. PW-1 had immediately disclosed about the incident to him and he had accompanied her to lodge the FIR.

26. Similar is the testimony of PW-5-Khillu Patel.

27. PW-6-Kamlesh-II is also related to the witnesses, deceased and the appellant. He stated that on the date of the incident at around 04.00 am, he had gone to answer the call of nature. While returning, he received a message on his mobile and in that light, he saw the appellant running towards him. On him questioning the appellant as to what he was doing there, the appellant said, "I thought that you are Thakur Das". At that time, the appellant was having an axe with him. Thereafter, PW-6 came home and was resting. At around 05.00-05.30 am, the children of Devki Prasad namely Urmila (PW-2) and Akhilesh (PW-3) came to him. Both were frightened and told him that Bhagchandra uncle had hacked Thakur Das and Akhilesh with the axe. He

further stated that he too was afraid as he was alone and could not do anything. He stated that in the meantime, Kiran *Bhabhi* had come and informed about the incident.

28. It could thus be seen that all these witnesses establish the presence of each other. PW-1-Kiran Patel stated about the presence of PW-4-Rammilan, PW-5-Khillu Patel and PW-6-Kamlesh-II and about them immediately coming to the spot and her informing them about the incident. PWs 4, 5 and 6 corroborated the testimony of PW-1 in that aspect. PW-2-Urmila and PW-3-Kamlesh stated about witnessing the incident of appellant assaulting deceased Thakur Das and Akhilesh, and running towards the house of Kamlesh-II and informing him about the same. PW-6 too corroborated this version of PWs 1, 2 and 3.

29. Insofar as the evidence of PW-7-Rakesh is concerned, we find that the conduct of the said witness appears to be somewhat unnatural. He stated that after witnessing the incident, he had gone to another village on motorcycle to see his friend. From there, he had gone to the Hospital at Maharajpur. After that, he came home at around 10.00-

10.30 am. Though, the police were present in the village, he did not inform them about the incident. On his own, he stated that he had informed Kamlesh-II about the incident. We therefore find that it will not be appropriate to rely on his testimony. However, even if the testimony of PW-7 is eschewed, we find that the ocular testimonies of PWs 1 to 6 establish the case of the prosecution beyond reasonable doubt that it is the appellant who had assaulted the deceased persons.

30. No doubt that there are minor discrepancies in the evidence of these PWs. It will be relevant to refer to the following observations of this Court in the case of ***State of Uttar Pradesh v. Krishna Master and Others***[9]:-

> **"15.** Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. ***While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities***

9 **(2010) 12 SCC 324**

pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

16. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details. ***Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/Trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to***

insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.

17. ***In the deposition of witnesses, there are always normal discrepancies, howsoever honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life.*** It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. ***Therefore, it is the duty of the court to separate falsehood from the truth. In sifting the evidence, the court has to attempt to separate the chaff from the grains in every case*** and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eyewitnesses examined in this case proves the prosecution case."

[**emphasis supplied**]

31. It could thus be seen that what is required to be considered is whether the evidence of the witness read as a whole appears to have a ring of truth. It has been held that minor discrepancies on trivial matters not touching the core

of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, would not ordinarily permit rejection of the evidence as a whole. It has been held that the prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. What is important is to see as to whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. It has been held that there are always normal discrepancies due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence. It is the duty of the court to separate falsehood from the truth in every case.

32. Applying these principles, we are of the view that the minor discrepancies in the evidence of the prosecution witnesses are not of such a nature which would persuade this Court to disbelieve their testimonies. It is further to be noted that the witnesses are rustic villagers and some inconsistencies in their depositions are bound to be there.

33. In this respect, it will be apposite to refer to the following observations of this Court in the case of ***Krishna Master*** (supra):

> **"23.** The record of the case shows that this witness Jhabbulal was cross-examined at great length. He was subjected to gruelling cross-examination which runs into 31 pages. The first and firm impression which one gathers on reading the testimony of this witness is that he is a rustic witness. A rustic witness, who is subjected to fatiguing, taxing and tiring cross-examination for days together, is bound to get confused and make some inconsistent statements. Some discrepancies are bound to take place if a witness is cross-examined at length for days together. Therefore, the discrepancies noticed in the evidence of a rustic witness who is subjected to gruelling cross-examination should not be blown out of proportion. To do so is to ignore hard realities of village life and give undeserved benefit to the accused who have perpetrated heinous crime.
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> **24.** The basic principle of appreciation of evidence of a rustic witness who is not educated and comes from a poor strata of society is that the evidence of such a witness should be appreciated as a whole. The rustic witness as compared to an educated witness is not expected to remember every small detail of the incident and the manner in which the incident had happened more particularly when his evidence is recorded after a lapse of time. Further, a witness is bound to face shock of the untimely death of his near relative(s). Therefore, the court must keep in mind all these relevant factors while appreciating evidence of a rustic witness."

34. It can thus be seen that this Court has held that in case of rustic witnesses, some inconsistencies and discrepancies are bound to be found. It has been held that the inconsistencies in the evidence of the witnesses should not be blown out of proportion. To do so is to ignore hard realities of village life and give undeserved benefit to the accused. It has been held that the evidence of such witnesses has to be appreciated as a whole. A rustic witness is not expected to remember every small detail of the incident and the manner in which the incident had happened. Further, a witness is bound to face shock of the untimely death of his near relatives. Upon perusal of the evidence of the witnesses as a whole, we are of the considered view that their evidence is cogent, reliable and trustworthy.

35. Having held that the ocular testimony of the witnesses establishes the guilt of the accused beyond reasonable doubt, we come to the other contentions of the appellant. Insofar as the contention of the appellant that the medical evidence does not support the prosecution case, it will be appropriate

to rely on the judgment of this Court in the case of ***Krishnan and Another*** (supra):-

> **"18.** The evidence of Dr Muthuswami (PW 7) and Dr Abbas Ali (PW 8) do not in any way run contrary to the ocular evidence. In any event, the ocular evidence being cogent, credible and trustworthy, minor variance, if any, with the medical evidence is not of any consequence.
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> **20.** Coming to the plea that the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant".
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> **21.** It is trite that where the eyewitnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eyewitnesses' account would require a careful independent assessment and evaluation for its credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the "credit" of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such

evidence becomes eligible to be put into the scales for a cumulative evaluation."

36. As already discussed hereinabove, the ocular evidence of the eye witnesses is cogent, reliable and trustworthy. Apart from that, the oral version in the testimonies of PWs 1, 2 and 3 is duly corroborated by the injuries as shown in the Post-Mortem Report of the deceased persons. Therefore, the contention in this regard is liable to be rejected.

37. The attack of the appellant is on the other circumstances like the recovery of the axe under Section 27 of the Evidence Act not being relevant, since the same not being established to be used in the offence nor in the Serology Report, etc.

38. Since the present case is a case of direct evidence, even if the prosecution has failed to prove the other incriminating circumstances beyond reasonable doubt, in our view, it will not have an effect on the prosecution case. In the present case, another factor that is to be noted is that immediately after the incident, FIR is lodged by PW-1 who was

accompanied by PW-4. The FIR fully corroborates the ocular evidence of prosecution witnesses.

39. In that view of the matter, we are of the considered view that even upon reappreciation of the evidence, it cannot be said that the trial court has committed an error in convicting the appellant and the High Court in confirming the same.

40. That leaves us with the question of sentence. We will have to consider as to whether the capital punishment in the present case is warranted or not.

41. Recently, this Court in the case of ***Mohd. Mannan alias Abdul Mannan v. State of Bihar***[10], after considering earlier judgments of this Court on the present issue in the cases of ***Bachan Singh v. State of Punjab***[11] and ***Machhi Singh and Others v. State of Punjab***[12], observed thus:-

> **"72.** The proposition of law which emerges from the judgments referred to above is itself death sentence cannot be imposed except in the rarest of rare cases, for which special reasons have to be recorded, as mandated in Section 354(3) of the Criminal Procedure Code. In deciding whether a case falls within the category of the rarest of rare,

10 **(2019) 16 SCC 584**
11 **(1980) 2 SCC 684**
12 **(1983) 3 SCC 470**

the brutality, and/or the gruesome and/or heinous nature of the crime is not the sole criterion. It is not just the crime which the Court is to take into consideration, but also the criminal, the state of his mind, his socio-economic background, etc. Awarding death sentence is an exception, and life imprisonment is the rule."

42. This Bench, recently, in the case of ***Mofil Khan and Another v. The State of Jharkhand***[13] has observed thus:-

"**8.** One of the mitigating circumstances is the probability of the accused being reformed and rehabilitated. The State is under a duty to procure evidence to establish that there is no possibility of reformation and rehabilitation of the accused. Death sentence ought not to be imposed, save in the rarest of the rare cases when the alternative option of a lesser punishment is unquestionably foreclosed (See: *Bachan Singh v. State of Punjab* (1980) 2 SCC 684). To satisfy that the sentencing aim of reformation is unachievable, rendering life imprisonment completely futile, the Court will have to highlight clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigour when the Court focuses on the circumstances relating to the criminal, along with other circumstances (See: *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498). In *Rajendra Pralhadrao Wasnik v. State of Maharashtra* (2019) 12 SCC 460, this Court dealt with the review of a

13 **RP(Criminal) No. 641/2015 in Criminal Appeal No.1795/2009 dated 26.11.2021**

judgment of this Court confirming death sentence and observed as under:

> "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.""

43. In the present case, it is to be noted that the trial court had convicted the appellant and imposed death penalty on the very same day. From the judgment of the trial court, it does not appear that the appellant was given a meaningful time and a real opportunity of hearing on the question of

sentence. From the judgment of the trial court as well as the High Court, it does not appear that the courts below have drawn a balance sheet of mitigating and aggravating circumstances. The trial court as well as the High Court has only taken into consideration the crime but have not taken into consideration the criminal, his state of mind, his socio-economic background etc. At this juncture, it will be relevant to refer to the following observations of this Court in the case of ***Rajendra Pralhadrao Wasnik v. State of Maharashtra***[14]:-

> "**47.** Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be overemphasised. Until *Bachan Singh* [*Bachan Singh* v. *State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] , the emphasis given by the courts was primarily on the nature of the crime, its brutality and severity. *Bachan Singh* [*Bachan Singh* v. *State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] placed the sentencing process into perspective and introduced the necessity of considering the reformation or rehabilitation of the convict. Despite the view expressed by the Constitution Bench, there have been several instances, some of which have been pointed out in *Bariyar* [*Santosh Kumar Satishbhushan Bariyar* v. *State of Maharashtra*, (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150] and

14 **(2019) 12 SCC 460**

> in *Sangeet* v. *State of Haryana* [*Sangeet* v. *State of Haryana*, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in *Sangeet* [*Sangeet* v. *State of Haryana*, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] "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."

44. In view of the settled legal position, it is our bounden duty to take into consideration the probability of the accused being reformed and rehabilitated. It is also our duty to take into consideration not only the crime but also the criminal, his state of mind and his socio-economic conditions. The deceased as well as the appellant are rustic villagers. In a

property dispute, the appellant has got done away with two of his siblings and a nephew. The State has not placed on record any evidence to show that there is no possibility with respect to reformation or rehabilitation of the convict. The appellant has placed on record the affidavits of Prahalad Patel, son of appellant and Rajendra Patel, nephew of appellant and also the report of the Jail Superintendent, Central Jail, Jabalpur. The appellant comes from a rural and economically poor background. There are no criminal antecedents. The appellant cannot be said to be a hardened criminal. This is the first offence committed by the appellant, no doubt, a heinous one. The certificate issued by the Jail Superintendent shows that the conduct of the appellant during incarceration has been satisfactory. It cannot therefore be said that there is no possibility of the appellant being reformed and rehabilitated foreclosing the alternative option of a lesser sentence and making imposition of death sentence imperative.

45. We are therefore inclined to convert the sentence imposed on the appellant from death to life. However, taking

into consideration the gruesome murder of two of his siblings and one nephew, we are of the view that the appellant deserves rigorous imprisonment of 30 years.

46. Accordingly, the appeals are partly allowed. The conviction of the appellant for the offences punishable under Sections 302, 201 and 506-B of the IPC is affirmed. However, the death sentence awarded to the appellant is converted to life imprisonment for a period of 30 years.

47. Before we part with the judgment, we must appreciate the valuable assistance rendered by Shri N. Hariharan, learned Senior Counsel appearing on behalf of the appellant and Smt. Swarupama Chaturvedi, learned Assistant Advocate General appearing on behalf of the respondent-State.

.....J.
[L. NAGESWARA RAO]

.....J.
[B.R. GAVAI]

.....J.
[B.V. NAGARATHNA]

NEW DELHI;
DECEMBER 09, 2021.