

**IN THE HIGH COURT AT CALCUTTA
IN THE CIRCUIT BENCH
AT JALPAIGURI
CRIMINAL APPELLATE JURISDICTION**

Present:-

**The Hon'ble Justice Shampa Sarkar
and
The Hon'ble Justice Smita Das De**

D.R. 01 of 2025

**State of West Bengal
vs.
Lal Singh Oraon**

For the Convict	: Mr. Sourav Ganguly, Adv. Mr. Abhishek Sarkar, Adv.
For the State/Appellant	: Mr. Aditi Shankar Chakraborty (Erstwhile APP) Mr. Aniruddha Biswas, Adv.
Reserved for Judgment on	: 14.08.2026
Judgment pronounced	: 14.10.2026

Shampa Sarkar J. :-

1. Death reference 01 of 2025 arises out of a judgment of conviction dated January 30, 2025 and order of sentence dated February 4, 2025, passed by the learned Additional Sessions Judge, 3rd Court, Jalpaiguri in connection with Sessions Case No. 202 of 2023, Sessions Trial No. 1 (12) of 2024, arising out of Nagarakata Police Station Case No. 45 of 2023, dated March 27, 2023 under Sections 302 and 309 of the Indian Penal Code.
2. The accused was found guilty of the offences punishable under Section 302 and Section 309 of the Indian Penal Code 1860 (in short IPC)

and was accordingly convicted under Section 235(2) of the Code of Criminal Procedure, 1973 (in short CrPC) for the said charge. By order dated February 4, 2025 the accused was sentenced to death for commission of offence under Section 302 of the IPC and was directed to be hanged by the neck till death, subject to confirmation of the High Court, Calcutta. The accused was sentenced to suffer rigorous imprisonment for one year for the offence punishable under Section 309 of the IPC. The accused did not prefer any appeal.

3. The accused was represented by learned Advocate Mr. Ganguly who appeared before us and prayed for acquittal on the ground that, the conviction and the death sentence were totally based on circumstantial evidence and extra-judicial confession. He submitted that, extrajudicial confession was a weak piece of evidence, and as such, the accused could not have been awarded death penalty.

4. Asserting the discrepancies in the oral testimony of the witnesses with regard to the time of the incident, Mr. Ganguly submitted that PW1, PW2 and PW3 had deposed that the incident took place on March 26, 2023, whereas the other PWs deposed that the incident occurred on March 27, 2023. The written complaint was lodged 24 hours after the date of the incident. The inquest report also indicated that the inquest was held on March 27, 2023, i.e., 24 hours after the incident. There was no explanation with regard to such delay. According to Mr. Ganguly, the first information report filed by the PW1 was not a spontaneous and prompt information to the police authorities. The same was a concocted version, that was

developed later, in order to support the prosecution case. Similar discrepancy was pointed out in the inquest report. Learned Advocate submitted that the inquest was held at 7.30 am, of March 27, 2023, whereas the FIR was lodged at 9.15 am on the same day. Such difference in time made the prosecution case unreliable. PW13, i.e., the investigating officer (IO), had stated in his cross examination that he had started the inquest after receiving the information of the complaint lodged by PW1. Therefore, the inquest could not be held at 7:30 am. The contradictions went to the very root of the prosecution case and rendered the prosecution case unbelievable. The evidence of the IO lacked credibility. Admittedly, there were no eyewitnesses. The prosecution case was based on the FIR lodged by Budhni Oraon, the PW1. She was the mother-in-law of the accused. She lodged the FIR on the basis of information received from the neighbours. She was a related witness. The neighbours received information from the PW4, brother of the accused, who had allegedly informed the persons in the locality about the incident. He was also a related witness. The defence contended that, the chain could not be completed. The narration of the incident by the PWs were based on hearsay evidence. The incident could not be connected to the accused. The inquest report did not mention the murder weapon. The forensic reports were inconclusive. The witnesses narrated the incident and culpability of the accused, in a parrot like manner before the trial court. The reaction of PW4 to the incident was suspicious. Although PW4 contended that the accused had confessed to him about killing his wife and daughter, PW 4 did not raise any hue and cry. He did not either inform the police or any other family member. He went and hid in his friend's house

for two hours and later told the villagers and Chunilal i.e., PW 6. The abnormal behaviour of the PW4, made his testimony unbelievable. The accused was connected to the crime on the basis of extrajudicial confession made to PW4, who was not a reliable witness.

5. Mr. Ganguly pointed out the missing links in the investigation. Relying on the oral testimony of the doctor, who treated the accused i.e., PW9, Mr. Ganguly submitted that, the doctor had clearly stated that the injuries on the accused could have been caused by scuffling. Thus, the fact that someone else had attacked the accused and murdered his family members, could not be ruled out. The medical evidence pointed towards a scuffling between the accused and outsiders. The accused also mentioned that two persons knocked at the door, they entered the room, stabbed the accused and killed the wife and child. This aspect was not looked into by the learned trial court. Thus, the investigation was shrouded in doubt. He further submitted that, PW4 was residing in the same house as the accused and his family. The house was separated only by a tin wall. It was a strange coincidence that PW4 could hear only the gagging sound made by the accused after the accused had stabbed himself, but he could not hear any noise when the accused had brutally murdered his wife and child. Thus, the version of PW4 as to the circumstances leading to his entry into the place of occurrence (PO) and the confession of the accused was unconvincing. Although the murder weapon was sent for forensic examination, the blood sample had disintegrated. The weapon could not be connected to the crime. The identification of the blood group on the “Sando Genji” matched with the blood group of the accused. The accused was admittedly injured. The blood

group on the murder weapon could not be identified and connected to the deceased. Thus, the forensic evidence did not in any way support the prosecution case. The story of self-inflicted injury by the accused was the concocted version of the PW4. The prosecution case was run on basis of the version of the PW4, but the evidence on record was against the claim of PW4 of entering the PO just after the incident. In the proceeding under Section 313 of the CrPC, questions were mechanically put to the accused, but the points to be taken against the accused were not put to him. The prosecution failed to prove that the accused had committed the offence beyond reasonable doubt. According to Mr. Ganguly, this was a case for acquittal. Reliance was placed on the decision of the Hon'ble Apex Court in ***Digamber Vaishnav and Anr. vs State of Chhattisgarh*** reported in **(2019) 4 SCC 522** to submit that only circumstance of last seen would not complete the chain.

6. Learned Advocate submitted that, when two views were possible, the view should be in favour of acquittal. In the absence of any eyewitness and in view of the break in the chain of evidence, the conviction should be set aside. The same was based on surmise and conjecture. The presence of the accused at the crime scene was sought to be proved by the testimony of PW4. The narration of PW4 was repeated by the other witnesses in a parrot like manner. The theory of last seen together did not complete the chain in this case. The entire conviction was on the basis of a hypothesis of guilt of the accused. The prosecution could not either establish motive or criminal intent on the part of the accused. Lastly, it was submitted that the offence did not fall under the rarest of rare category, warranting imposition of death

sentence. The learned trial Judge did not call for the report from the correctional home. This failure was contrary to the decision of the Hon'ble Apex court in the matter of ***Manoj and Ors. vs State of Madhya Pradesh*** reported in **(2023) 2 SCC 353**.

7. According to learned Advocate, the learned Judge failed to apply the legal principles relating to imposition of death sentence. The learned Judge proceeded on the basis that marriage was an institution based on love, affection, mutual respect and trust. The same required a higher level of dedication and compassion from the husband. The wife, as the "Ardhangini", entered the matrimonial home with hope, expectation, love and dream. She sacrificed her comfort and security at her paternal home. Thus, most stringent punishment should be imposed to the care giver and the person who was supposed to enjoy a place of trust and respect. The learned Judge further held that a child was to be looked after by the father. Instead, the father was the most dangerous enemy who brutally killed her. According to Mr Ganguly, those were not adequate reasons for awarding death penalty.

8. Mr Chakraborty, the then learned APP submitted that murder had taken place within the four walls of the bedroom. The prosecution proved the presence of the accused at the PO. PW 1, PW 3 and PW5 had deposed that, on receiving information of the incident, they went to the house of the accused (PO) and found that the victims were lying dead on a pool of blood. The accused was also present in the room with a bleeding injury on his abdomen. PW 4, was the brother of the accused. He stated in his oral testimony that on the fateful night of 26th March 2023, he woke up at

around 3:30 am upon hearing the gagging sound of his brother (accused) and he found the accused had murdered his wife and minor daughter and was standing in the room after causing self-inflicted injury on his stomach with a knife. From the deposition of PW 4, it was evident that that PW 4 was the only natural witness who last saw the victims alive in the company of the accused.

9. There was no delay in recording of the statement of the witnesses. At that relevant point the accused did not raise any objection. It was urged that the prosecution succeeded in establishing the circumstances, from which an inference could be drawn regarding the existence of certain facts. The accused failed to discharge his burden of proving the facts which were especially within his knowledge. Section 106 of the Evidence Act provided that, when any fact was especially within the knowledge of any person, the burden of proving that fact was upon him. In this case, what actually transpired inside the bedroom (PO) was definitely within the knowledge of the accused.

10. Mr Chakraborty further submitted that Section 106 of the Evidence Act was designed to meet certain exceptional cases. Whenever it was impossible for the prosecution to establish facts which were especially within the knowledge of the accused and which the accused could prove without any difficulty or disproportionate difficulty, the burden would shift on the accused. In this case, the prosecution succeeded in establishing the facts relating to the presence of the accused at the PO and he was last seen at the PO with the victims alive. Thus, the court could draw an appropriate inference. When a case rested on circumstantial evidence, if the accused

failed to offer a reasonable explanation in discharge of the burden placed on him by virtue of Section 106 of the Evidence Act, such failure would provide an additional link in the chain of circumstances.

11. Reliance was placed on the decision of the ***State of Madhya Pradesh vs Balveer Singh*** reported in ***(2025) 8 SCC 545***.

12. According to learned APP, the prosecution was able to establish the last seen together theory. The other witnesses and the PW 4 confirmed the presence of the accused at the place of occurrence with a self-inflicted injury. These facts were neither disputed by the defence, nor could the defence defeat the credibility of the witnesses through cross-examination. The prosecution was able to establish the fundamental facts which were necessary to activate Section 106 of the Evidence Act. Initially, the accused did not make any attempt to discharge the burden. It was only during his examination under Section 313 of the CrPC, that the accused made an attempt to introduce a story that two persons entered the room, stabbed him and killed his wife and daughter. However, he declined to examine witnesses in support of his contentions. Such statement did not have any evidentiary value. With regard to the extra-judicial confession, it was submitted that PW 3, 4 and 5 stated in their oral testimony that the accused told them that he had killed his wife and daughter. Although extra-judicial confession was a weak piece of evidence, but in this case the confession was voluntary, truthful and was corroborated by other circumstances. The statement could be safely relied upon for the purpose of conviction. The accused made his first extra-judicial confession to his brother, Pannalal Oraon, (PW 4). He was the first to discover the bodies in the bed room. He

was in a position of trust. PW 3 was a relative and PW5 was a neighbour. They also were in a position of trust. The voluntariness in the confession could be discerned from the circumstances. After murdering his wife and child, the accused tried to end his life. At the moment of pain and distress, he confessed his guilt.

13. PW 7, i.e., the medical officer posted at Sulkapara Rural Hospital, examined the injuries of the accused and had confirmed that the accused himself had disclosed that he had caused the injury upon himself by attempting to commit suicide. Such confession was also voluntary and natural.

14. PW 9 and PW 10 stated that, as per the bed-head ticket sheet of the hospital, the injury on the accused was suicidal.

15. PW 12, the doctor who conducted the autopsy confirmed that the injuries on the deceased persons were ante-mortem and homicidal in nature. According to him, the injury could be caused by a sharp-cutting weapon like and axe/‘tangi’. The axe was marked as material exhibit No. 1, without any objection. It was submitted that the witnesses were all rustic tea garden labourers. They were uneducated, and as such, any discrepancy with regard to time of the occurrence should be treated as minor. Reliance was placed on the decision of ***State of UP vs Krishan Master*** reported in ***(2010) 12 SCC 324 and Others***. The Hon'ble Apex Court had propounded the basic principles for appreciation of evidence of a rustic witness. It was held that the evidence of a rustic witness should be appreciated as a whole. Every detail of the incident, the manner in which the incident happened, could not be remembered due to lapse of time.

16. It was further submitted that, the alleged discrepancy which the defence tried to point out with regard to the time, in the inquest report and the FIR, was not fatal. The inquest report was not a substantive piece of evidence. Reliance was placed on the decision of ***Munshi Prasad and Ors. vs State of Bihar reported in 2002 (1) SCC 351***. He submitted that, the question of the benefit of doubt going in favour of the accused, did not arise. In the instant case, the defence could not bring out any alternative version which would be sufficient to draw the confidence of the court. Neither through the cross-examination of the prosecution witnesses, nor by adducing evidence, could the defence bring out a believable and reliable version.

17. With regard to the conduct of the PW 4, it was submitted by the learned APP that, human reactions to a crime varied from person to person. Different witnesses reacted differently under fearful situations. Some would become speechless, some would start wailing, while others would run away from the scene. There were also some who would come forward with courage and conviction and believe that the wrong should be punished. Thus, there could never be a set pattern or uniform rule for human reaction. The reaction had to be appreciated in the context of the given facts and circumstances of the case. In this case, PW 4 being the brother, after discovering that his brother (accused) had killed the daughter and the wife and had tried to also kill himself, would naturally be scared. Thus, PW4 went to a trusted person i.e., Domna (PW5) for advice and protection at the wee hours of the morning. Early in the morning, after dawn, he informed the neighbours and Chunilal, i.e., PW6, who was another trusted person.

Although fingerprint analysis on the murder weapon was not done, non-examination of the fingerprint was a lapse on the part of the investigation. Such omission was not sufficient to acquit the accused, when the circumstances strongly indicated that the accused was guilty of the offence.

18. It was submitted that the injuries on the body of the accused, which the doctor opined could have been caused due to scuffling, may have occurred when the victim (wife) tried to resist. Such statement of the doctor was not adequate to hold that other persons or dacoits had come to the PO and committed the murder. No evidence was led on such issue by the defence. The serology report which indicated that the blood sample had disintegrated, did not enure to the benefit of the accused. Lastly, from the examination under Section 313 CrPC, it would be clear that the accused was given ample opportunity by the learned Judge to explain the incriminating circumstances, but he preferred not to explain the same. Totality of the evidence adduced by the prosecution distinctly proved the charges against the accused beyond reasonable doubt. The conviction was justified. With regard to the sentence, it was submitted that the accused had murdered his wife and minor child in a calculated and cold-blooded manner. Such heinous crime shook the conscience of the society and that of the learned Judge. The crime was against humanity as a whole. It was committed by a person who was in the most trusted position. Thus, it was a rarest of rare case which justified death penalty. Death penalty could also be awarded on the basis of circumstantial evidence. Learned APP prayed for confirmation of the death sentence.

19. Before dealing with the submissions, we first discuss the facts. The brief facts of the prosecution case were that, one Budhni Oraon lodged a written complaint before the IC, Nagrakata Police Station on March 27, 2023 stating that, at about 6 am that morning, she received news that her son-in-law, Lal Singh Oraon (accused) had murdered her daughter Sakhi Oraon, aged about 26 years, and granddaughter Mamata Oraon, aged about 18 months. After receiving such information, Budhni Oraon went to the house of Lal Singh Oraon and saw her daughter and granddaughter lying dead on a pool of blood, on the bed. She found Lal Singh standing at the PO, with a self-inflicted injury from an attempt to commit suicide. The accused was taken to the hospital for treatment.

20. On the basis of the said written complaint, IC, Nagrakata Police Station started Nagrakata Police Station Case Number 45 of 2023, dated March 27, 2023, under Section 302 and 309 of the Indian Penal Code. The investigation was entrusted to SI, Jyotish Chandra Barman, After taking up the investigation, the IO visited the PO, prepared a sketch map of the place along with its index, recorded the statements of the defacto-complainant, Budhni Oraon, and other available witnesses under Section 161 of the CrPC. The offending weapon and other articles were seized from the PO in the presence of witnesses. The accused was arrested under arrest memo dated March 28, 2023 and was forwarded to the Chief Judicial Magistrate, Jalpaiguri, who took him into custody and passed other necessary orders.

21. Upon completion of the investigation, the IO submitted a charge-sheet on December 19, 2024, against the accused. The Chief Judicial Magistrate committed the case to the court of the learned Sessions Judge, Jalpaiguri on

June 27, 2023, and the case was registered as Sessions Case No. 202 of 2023. In course of trial, the prosecution examined 14 witnesses and exhibited 23 documents. In addition to that, material exhibits were placed by the prosecution. The accused did not examine any witness.

22. We now proceed to deal with the first contention of Mr. Ganguly that, There was discrepancy with regard to the time and date of occurrence. PW 1, 2, and 3 had specifically stated that the incident took place on 26 March 2023, whereas the other PWs had stated that the incident took place on March 27, 2023. According to the defence, the gap between the time of occurrence, the time of the registration of the F.I.R. and the time when the inquest was held, remained unexplained. The inquest report has been marked as Exhibit 2/1. We find from the contents of the inquest report and the evidence of the IO (PW13) that instruction was received by the IO from the I.C. of the police station at 7:30 am on March 27, 2023 that a murder had taken place. The IO reached Line Number 8 of Looksan Tea Estate and he came to know from the neighbours who had assembled at the PO, that the accused had killed both his wife and child on the previous night and he also attempted to commit suicide.

23. Thus, the contention of Mr. Ganguly that the I.O. reached the place of occurrence before the investigation commenced is not correct. The case was reported by Budhni Oraon, PW 1 at 9:15 AM on 27th March 2023, investigation commenced at 9:45 and the inquest report was prepared later. It appears from the oral testimony of the PWs and the GD entries that, before Budhni Oraon had filed the F.I.R., the neighbours had already come to know about the incident from the PW 4 and other witnesses. The police

had already received information in this regard. G.D. entry was made, and the said G.D. entry was marked as an exhibit.

24. Initially, a U.D. case had been started. Thereafter, on the basis of the written complaint of Budhni Oraon, the formal F.I.R. was registered. The descriptions of the corpses lying in the room, the description of the wounds sustained by the victims, and the injury on the accused which had been mentioned in the inquest report were corroborated by the oral testimony of the witnesses and also by medical evidence. The relevant portion of the inquest report of Sakhi Oraon with regard to the nature of injuries sustained, is quoted below:-

“During the course of investigation, I, accompanied by C/1383 Sudhin Kr. Roy, have been engaged in preparing the inquest report of the corpse of the deceased Sakhi Oraon in Presence of the relatives of the deceased. The corpse is found lying in bleeding condition on the bed (cot) of her bedroom in a dorsal position while her head is positioned towards the east and legs towards the west. Height is approximately 4ft. 6 inches, complexion black, eyes are closed, mouth is open, hands are in folded condition. Hair is black, long, untied and disorderly. It is found that on the face there is deep mark of wound on the right side of the eye, on the left jaw there is deep mark of wound, on the right side of the back portion of the head there is a deep mark of wound. Besides that mark of an old burn injury is found on the right arm of the deceased, The wearing apparels of the deceased are white (this portion could not be translated as the same had been received in torn condition) and yellow pyjamas, red panty and this portion could not be translated as the same had been received in torn condition) printed pink bra. It is found that the bed of the deceased and all of her wearing apparels are drenched with blood.

I have come to learn from the present witnesses that the deceased Sakhi Oraon and her husband Lal Singh Oraon have two children. Both of them used to quarrel and tussle with each other for a long period of time. Both of them were drunkards. Sakhi Oraon was a Garden labourer but Lal Singh Oraon had no fixed job. Some times he would go outside to work. Familial unrest and tussle had taken place between them for the last two days. At the last night also at approximately 6:30 p.m. a quarrel had taken place between the couple. In the morning I came to learn that Lal Singh Oraon had killed his wife by dealing blows on her head with axe and knife and killed her eighteen months old kid as well.

Whatever may be the reason behind the death of the deceased, to ascertain the actual reason behind the death, the corpse has been sent to the Morgue of Sadar Hospital, Jalpaiguri along with all relevant papers through C/1383 Sudhin Kr. Roy.”

25. At the time of inquest, the I.O. was informed by the neighbours, that the accused and the deceased (wife) used to quarrel. There was unrest and continuous tussle in the house and on the previous evening at around 6:30 pm the couple had a quarrel. The relevant portion of the inquest report of the infant, is quoted below:-

“I have found the corpse in bleeding condition on the bed (cot) along with her mother. Height is approximately 2 ft. There is small hair on the head and only a black-white printed half pant is worn by her. Eyes and mouth are closed hands and legs are in folded condition. Along the nose on the forehead of the kid deep mark of wound has been found. I have learnt from the present witnesses that Lal Singh Oraon has two children. One is 4 years old and the other is of 18 months. Lal Singh Oraon and his wife Sakhi Oraon used to quarrel and tussle with each other on familial issues occasionally for a long period of time. The deceased Sakhi Oraon was a Garden labourer but Lal Singh had no fixed job. Sometimes he would go outside to work. Quarrel and tussle had been taking place between them for the last two days. Lal Singh Oraon and his wife deceased Sakhi Oraon would often consume alcohol. At the last night (26.03.2023) Lal Singh Oraon had drunk a lot and got involved in quarrel and tussle with his wife. In the morning I came to learn that Lal Singh Oraon had killed his wife and eighteen months old little daughter with axe and knife.”

26. The inquest report also indicates that the accused was in the habit of drinking and he used to fight with his wife over money. The inquest report stood corroborated by medical evidence and by the oral evidence of the witnesses. The post-mortem reports of the wife and the child indicated the same nature of injuries.

27. In the post-mortem report of the wife, the opinion of the medical officer was follows:-

“One penetrating wound of 0.5"x0.5"x1" placed over right zygomatic region. One laceration of 1.5"x1"xbone placed over right occipital

region. On dissection, fracture of right sided zygomatic and occipital bone. Subdural haematoma and subarachnoid haemorrhage present in all over the brain.

No other injuries except those are noted above, could have been detected even after careful dissection and examination with help of magnifying hand lens.

No foreign body detected.

OPINION OF THE MEDICAL OFFICER AS TO THE CAUSE OF DEATH

Death was due to the effects of the injuries as noted above- Ante mortem and homicide in nature.”

In the post-mortem report of the child, the opinion of the medical officer as follows:-

“One penetrating wound of 0.5"x 0.5"x1" placed over glabella of frontal bone. On dissection, fracture of left temporal bone. Scalp haematoma present on left temporal region. Subdural haematoma and subarachnoid haemorrhage present in all over the brain.

No other injuries except those are noted above, could have been detected even after careful dissection and examination with help of magnifying hand lens.

No foreign body detected

OPINION OF THE MEDICAL OFFICER AS TO THE CAUSE OF DEATH

Death was due to the effects of the injuries as noted above- Ante-mortem and homicide in nature.”

28. Thus, the post mortem reports and inquest reports corroborate each other. The seizure list indicates that the seizure took place on 27th March 2023 at 11:25 hours. We do not find any questionable circumstance in the manner in which the inquest was held. The F.I.R. was registered at 9:45 hours, and the incident was reported at 9:15 hours. The seizure took place thereafter. The description of the seized articles are quoted below:-

“DESCRIPTION OF SEIZED ARTICLES

(1) Blood stain collected from PO in a cotton, both deceased 1) Sakhi Oraon and 2) Mamta Oraon.

(2) One 'Axe' measuring about 6½ inch length, Head circumference about 6.2 inch and borrowing direction 3.3 inch and having bamboo handle measuring 36 inch approx with blood stain

(3) One sharp cutting weapon (knife) measuring about 16 inch (illegible) in length and having a wooden handle measuring 6 inch approx with blood stain

(4) One red and ghia colored printed bed sheet.

(5) One red blue and pink blanket with blood stain

(6) One pillow with blood stain in Blue and Yellow colour.

During search of the PO in presence of side noted witnesses all the above article found inside the bed room of the deceased (i.e. house of accd. Lal Sing Oraon) at 8 No. Line Looksan T.G, Nagrakata PS.

(Seized the articles as alamat property of the case)”

“ DESCRIPTION OF SEIZED ARTICLES

(1) One contener contained PM blood of deceased Sakhi Oraon (26 F) W/o Lal Singh Oraon of Looksan T.G 08 No. Line P.S Nagra Kata, Dist. Jalpaiguri

(2) One plastic contener contained PM blood of deceased Mamta Oraon (F-18 month) D/o Lal Sing Oraon of Do.

(3) One kid's black and white colour half pant of deceased Mamta Oraon. D/o Lal Sing Oraon.

(4) One yellow colour leggings of deceased Saki Oran

(5) One Pink colour panty of deceased Sakhi Oran

(6) One pink colour Bra of deceased Sakhi Oran

(7) One white and blue coloured Kurti of deceased Sakhi Oraon.

(Seized the articles as alamat property of the case)”

29. The axe and the knife were recovered from the PO. The axe was marked as material exhibit and was proved to be the murder weapon. The knife was proved to be the weapon with which the accused had caused injury upon his abdomen. The seizure list was proved. No objection was raised.

30. Whether the axe could cause the injuries and death of the victims or not, had been answered in the affirmative by the doctor, PW12, in his oral testimony. Thus, the contention of Mr. Ganguly that as the axe was not mentioned in the inquest report, the same could not be connected to the murder, stands negated. Neither any question nor any suggestion had been put to the I.O. in the cross-examination with regard to the contention of the defence that the murder weapon had not been recovered from the PO. With

regard to the date of the incident, PW 1 had deposed that the date of the incident, was March 26, 2023. She had come to know from her neighbours at 6 am of the next morning i.e., 27th March 2023, that her daughter and grandchild had been killed by the accused with the aid of an axe. Upon hearing about the incident she rushed to the house of her daughter and found her son-in-law (accused) standing at the door. When she entered the room after pushing the accused, she saw that her daughter and grandchild were lying in a pool of blood. The accused also had a bleeding injury on his stomach. She inquired about the incident from the accused, but he did not answer. She saw the axe under the cot where her daughter and her grand daughter were lying. No contradiction could be extracted from PW1 in her cross-examination.

31. The axe was wrapped in white paper and sealed with a gala. The same was opened in the presence of learned Advocate Somabrata Mukherjee, and was marked as material exhibit No.1 upon being identified by the, PW 1. We do not find any discrepancy with regard to the time and the date of the incident, from the evidence of PW 1.

32. PW 4 stated that at 3:30 am of 27th March 2023 (as per the English calendar) he discovered that the victims were lying on a pool of blood and the accused was standing in the same room with self-inflicted bodily injury. If we go by the Indian calendar, the date of the incident was the night of 26th March 2023. The F.I.R. was registered stating March 27, 2023 as the date of the incident presumably because the police authorities followed the English calendar, i.e., 3:30 am was the next morning.

33. Under such circumstances, the case made out by the defence before us that there was a gap between the time of occurrence and the reporting, which rendered the prosecution case incredible because of the unexplained delay, cannot be accepted. No contradiction could be extracted from PW 4 in his cross-examination.

34. A slight mistake in the description of the injury in the testimony of PW1 i.e., a cut mark on the throat, cannot be a ground to hold that her testimony lacked credibility and reliability. A rustic witness who was asked to recall a brutal incident in which her son-in-law killed her daughter and her granddaughter, might not be able to narrate each and every fact with clarity and precision. Moreover, human memory fades. Recounting such incident was also traumatic for PW 1.

35. Reference is made to the decision of ***State of UP vs Krishan Master (supra)***. The relevant portion is quoted below:-

“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.

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.

25. When the respondents were firing from their respective firearms, the High Court should not have expected PW 1 Jhabbulal to mention description of the whole episode which had happened in a few minutes. The rustic witnesses cannot be expected to have an exact sense of time and so cannot be expected to lay down with precision the chain of events. In the instant case, this Court is of the firm opinion that the High Court gravely erred in not accepting evidence of PW 1 Jhabbulal. Jhabbulal being a rustic witness is not expected to always have an alert mind and so have an idea of direction, area and distance with precision from which he had witnessed the incident.”

36. PW 2, the sister of the accused and the scribe, deposed that the incident took place on March 26, 2023. She also stated that on March 25, 2023, there was a quarrel between the couple. That PW4 had seen the victims lying in a pool of blood and the accused standing near the door, at the PO. He was gagging from the self-inflicted injuries. PW4 informed them about the incident. She rushed to the PO and found the mother and the child lying dead on a pool of blood, and the accused was standing by the side of the door. He was gagging with pain. All the neighbours had assembled in the courtyard of the PO. She deposed that the complaint was written by her at the instance of Budhni Oraon (PW1). She had read over and explained the contents to PW1. The signature of the scribe was marked as Exhibit 1/1. She also stated that PW1 had put her LTI on the complaint in her presence. The Exhibit 1, accordingly, was identified. In the cross-examination, no contradictory statement could be extracted. From the deposition of PW 3 (uncle), who was a signatory to the seizure list and the inquest report, we find the same narration. Although the said witness mentioned the date and time of the receipt of information from PW4 at 6 am

of March 26, 2023, but the defence cannot take advantage of such statement, inasmuch as, at best, the incorrect recalling of the date can be attributed to the memory lapse of a man of 70 years who was trying to recollect an incident which occurred two years ago. Again, a rustic witness's evidence has to be weighed as a whole, and minor omissions, or slips, or mistakes or failure to recollect the exact time and date should not demolish the evidence as a whole.

37. PW3 also deposed in the same tone as the other witnesses with regard to what had happened after he heard about the incident from PW4. He went to the house of the accused and he found that a lot of people had assembled there. He went into the room and he found the accused standing near the door and the wife and the child were lying on a pool of blood. On being asked, the accused told him that he had murdered his wife and daughter. He found the accused had an injury. He further deposed that when the police came to the spot and the inquest was held, he was present during such inquest. He had signed both the inquest reports. His signatures were marked as exhibits upon identification. He also deposed that the seizure had taken place in his presence, and the police had seized the axe in his presence. He signed the seizure lists as well. He identified his signature in the seizure lists. He identified material exhibit 1, i.e., the axe.

38. PW 4 is the brother of the accused, to whom the accused had made an extra-judicial confession. From his oral testimony we find that the accused told the PW4 that he killed his daughter and wife. The PW 4 lived in the same compound. The PW 4 lived in a kutchra room, and the accused with his

family lived in a pucca room. The rooms were separated by a small portion of the courtyard. The relevant portions of his deposition are quoted below:-

“Sakhi Oraon used to work in the tea garden. I also work in the tea garden. Lal Singh Oraon had no job. The nick name of the daughter of Lal Singh Oraon is Bullu. The daughter is aged about three years.

Sakhi Oraon and her daughter were murdered by Lal Singh Oraon. On the fateful night I took my meal and slept in my room and Lal Singh Oraon, Sakhi Oraon and their minor daughter were in their pucca room. I wake up at 03:00 a.m. after hearing gagging of Lal Singh and then I pressed the door of Lal Singh Oraon. After entering into the room I found that Lal Singh Oraon murdered his wife Sakhi and his minor daughter and was standing in the room by causing self inflicted y injury on his stomach by a knife. I saw the dead body of Sakhi and his daughter on - the cot.

I asked Lal Singh Oraon why did you murder your wife and daughter. In reply he told 'maina bibi, bachcha ko maar diya. Hearing statement I fled away from there out of fear and went to the house of Domna. I narrated the incident to Domana. Domna prevented me to go back to my house as it was very early morning. Domna, thereafter, took me to the house of Chunilal. In the morning myself, Domna and Chunilal went to our house and went inside the room of Lal Singh Oraon. Chunilal phoned police.

On the fateful night I took meal outside and came back to my house. Adjacent to our house, the house of Poly Oraon is situated. The house of Domna is ten minutes away on foot from my house. There are many houses in between the house of Domna and my house. The door of the house of Lal Singh Oraon was not bolted from inside. I did not take Lal Singh Oraon to hospital to save his life. I did not ring police after seeing the dead body in the room of Lal Singh Oraon. My parents are dead. Myself, Domna and Chunilal returned back to our house at 06:00 a.m. approximately. Many people assembled there before our arrival.

Police also arrived at that time. Long ago my brother Lal Singh Oraon went to Sikkim for work. He did not go to Bangalore for work.”

39. He deposed that he woke up at 3 am after hearing a gagging sound.

He pressed open the door of the room (PO), and after entering the room he found that the accused had murdered his wife and child, and was standing in the room after causing an inquiry to himself. The bodies of the victims were found on the cot. When he asked the accused what he had done, the

accused confessed that he had killed his wife and child. Upon hearing such the same he fled from the PO and went to the house of Domna i.e., PW5. He narrated the incident to Domna, but Domna prevented him from going back to the house as it was dark. Early in the morning Domna took him to Chunilal i.e., PW6. Domna and Chunilal went to the PO with PW4. Chunilal called the police. He further deposed that he saw the 'axe' in the house, which had bloodstains. He also identified the 'tangi' (axe). From the trend of the cross-examination, we do not find that any contradiction or contrary statement could be extracted from the PW4. His testimony was consistent, and unshaken.

40. Although the defence suggested to the PW4 that he could not have entered the room, PW4 answered that the door was not bolted from inside. PW4 stated that, by the time he, Domna and Chunilal returned to the house at 6 am, people had already gathered at the PO. This fact was corroborated by the oral evidence of PW 2 and PW 3. The relationship between the couple was strained. Such fact surfaced from the oral testimony of all these witnesses. The fact that the couple had a drinking habit and would fight over money, is also available from the testimony of the witnesses who were either relatives or neighbours.

41. With regard to the reaction of PW4, we are of the view that witnesses react differently to given situations. The behaviour of PW4 was not so abnormal, that his version should be discarded. Delayed reporting to the relatives and the fact that he did not go straight to the police, can be attributed to fear and confusion. PW4 was the younger brother of the accused. He happened to discover that his brother had murdered his wife

and the child, and had tried to kill himself. For the PW4 to seek the comfort of a trusted person instead of directly reporting to the police, cannot render his testimony unreliable. Although the conviction could not have been based solely on the version of PW4 and the extra-judicial confession, but all the witnesses who went to the PO found that the victims were lying dead on a pool of blood with severe injuries and the accused was standing with injuries upon himself. The testimony of PW4, stood corroborated. All the witnesses deposed in the same manner, with regard to the nature of the injuries, the placement of the bodies on the cot and the place where the accused was standing. When all the relatives and neighbours came to know about the incident, they assembled at the PO. All of them had seen the victims and the accused in the same condition. The accused also confessed to some of those witnesses.

42. PW 5 Domna Munda, is the person to whom PW4 had rushed to, after discovery of the incident and his brother's confession. He corroborated the testimony of PW4 and stated as follows:-

"In the wedlock of Sakhi Oraon and Lal Singh Oraon, two children were born. Sakhi Oraon and her daughter were murdered by Lal Singh Oraon. The elder brother of Lal Singh Oraon, namely, Pannalal Oraon came to my house at about 03:00 a.m on a night about two years ago. He stated to me that his brother Lal Singh Oraon murdered his wife and daughter. After hearing this, myself, along with Pannalal went to the house of Chunilal. He also narrated the incident to Chunilal. In the morning, at about 6/7 a.m. we went to the house of Lal Singh Oraon. We found many persons assembled in the house of Lal Singh Oraon. We went inside the room of Lal Singh Oraon and found Sakhi Oraon and her daughter lying dead. Lal Singh Oraon was present in the room. Lal Singh Oraon stated to us that he murdered his wife and daughter. Lal Singh Oraon also tried to commit suicide but failed. After that we came out from that room. Lal Singh Oraon had no work in the tea garden. His wife Sakhi Oraon used to work in the tea garden. As I heard that Lal Singh Oraon demanded money

from his wife to take liquor but his wife refused to pay the money for which he murdered his wife and daughter.”

43. The testimony of witnesses were consistent, and the last seen together theory had been adequately proved. Chunilal Munda, PW 6, also deposed as follows:

“On 26.03.2023, Pannalal Oraon and Domna Munda came to my house when I was sleeping. In the morning when I came out from my house, I heard the incident from the villagers where Pannalal and Domna were also present. Pannalal that time told me that his brother Lal Singh Oraon murdered his wife and daughter. Then I went to the house of Lal Singh Oraon and saw that Sakhi and her daughter were lying dead on the cot. I also met Lal Singh Oraon inside the room. I found injury on his stomach which was tied by cloth (handkerchief). I came out from the room and informed the police. Lal Singh Oraon had no work in the tea garden. Sakhi had work in the tea garden. I cannot say why Lal Singh Oraon murdered his wife and daughter as it is their family matter.”

44. PW 7, the government doctor who treated the accused corroborated that the injury was self-inflicted and that the accused had himself informed the doctor about his actions.

45. PW 8 was the police officer who was posted as a constable in the concerned police station at the relevant point of time. He corroborated what was stated by the I.O. in the inquest report, ie, around 7 am the I.O. received a call from the police station about the incident, and he went to the place of occurrence thereafter. The contents of the inquest report have been corroborated by the testimony of such witness. Failure to recall the exact nature of injury in the cross-examination, does not demolish his oral evidence.

46. The I.C. PW 11 proved the formal F.I.R. The PW 12 proved the post-mortem report and deposed that the nature of the injury could be caused by the axe. The I.O. was examined as PW 13 and his deposition which is quoted

below, will clearly indicate that the discrepancy with regard to the time of the inquest and information given to the police, stood explained.

“I am SI of Police, presently posted at Dhupguri P.S. as SI of Police.

On 27.03.2023 I was posted at Nagrakata P.S., /alpaiguri as SI of Police.

On 26.03.2023 at night I was on duty at RT Mobile Van. Constable Sushen Chandra Barman and Constable Prasenjit Roy were also on duty with me. We were on duty on the basis of G.D. This is the certified to be true copy of said G.D. being G.D. Entry No.1102, dated 26.03.2023 at 21:55 hours. Let the certified to be true copy of G.D. be marked as Exbt.13. This is the command certificate No.830/23, dated 26.03.2023 issued by the Nagrakata P.S. with regard to our duty. Let the Command certificate be marked as Exbt.14.

In the morning of 27.03.2023 while I was on duty, I received a phone call from the I.C. of Nagrakata P.S. and I was directed to visit immediately 8 number line of Looksun Tea Garden where murder was reportedly occurred. The said information was diarized in the G.D. book vide G. D. Entry No.1112, dated 27.03.2023 at 07:00 hours. This is the certified to be true copy of extract of G. D. Book. Let the extract be marked as Exbt.15.

After passing the information to me, I.C. Nagrakata P.S. left the P.S. for 8 number line of Looksum Tea Garden vide G. D. Entry No.1113, dated 27.03.2023. This is the certified to be true copy of the said G. D. Let the same be marked as Exbt.16.

I reached to the P.O. and after sometime I.C. Nagrakata P.S. also reached there. After reaching to the P.O. I found in the bedroom of Lal Singh Oraon that two dead bodies, namely, Sakhi Oraon and Mamta Oraon lying on the cot. Under the instruction of I.C. Nagrakata P.S. I held inquest of two dead bodies separately. These are the said two inquests.

This is the inquest report of Sakhi Oraon in connection with U. D. Case No. 16A/2023, dated 27.03.2023. This is the carbon copy of inquest report prepared and signed by me in presence of witness, namely, Amit Oraon. Let the inquest report of Sakhi Oraon be marked as Exbt.2/1.

This is the inquest report of Mamta Oraon in connection with U. D. Case No. 16B/2023, dated 27.03.2023. This is the carbon copy of inquest report prepared and signed by me in presence of witness, namely, Amit Oraon. Let the inquest report of Mamta Oraon be marked as Exbt.3/1.

I held inquest inside the bedroom of accused Lal Singh Oraon.

After inquest I prepared dead body challan entrusting Constable Sudhir Kumar Roy to take the dead body for postmortem examination. These are two separate dead body challans. Let the same be marked as Exbt.17 and Exbt.18 respectively.

Constable Sudhir Kumar Roy is unable to attend the court as his collar bone is fractured.

Thereafter, FIR was lodged by Budhni Oraon. A G. D. was entered being GDE No.1122, dated 27.03.2023 at 09:15 hours. On the basis of written complaint of Budhni Oraon, Nagrakata P.S. Case No.45 of 2023, dated 27.03.2023 under Section 302/309 of the Indian Penal Code. This is the certified to be true copy of G.D.E. No.1122, dated 27.03.2023. Let the same be marked as Exbt.19.

This is the FIR lodged by Budhni Oraon (Exbt.1/1 is identified). This is the formal FIR by which I was entrusted to investigate the case (Exbt.10 is identified).

After taking up investigation of the case, I visited the P.O. and prepared rough sketch map with index. This is the said rough sketch map with index prepared and signed by me in two sheets. Let the rough sketch map with index be marked as Exbt.20. I examined the available witnesses and recorded their statements under Section 161 of the Cr.P.C.

I seized blood stained bed sheet, axe, one sharp cutting knife, blood stained wearing apparels of the deceased, pillow and other articles under proper seizure list, in presence of witnesses, namely, Amit Oraon and Hiralal Oraon. Witnesses signed on the seizure list in my presence. Seizure list was written and signed by me. Let the seizure list be marked as Exbt.4/1. The seized alamat were entered in the P.S. property register by P.R No.49/23.

Thereafter, I prepared another seizure list dated 27.03.2023 at 19:15 hours at P.S. compound. I seized the articles from Con. Sudhir Kumar Roy in presence of witness Cons. Sushen Ch. Barman and Md. Mofijuddin. This is the said seizure list. Let the same be marked as Exbt.6/1. Seized alamat were entered into property register vide No.50/23 of P.S. Malkhana, This is another seizure list dated 11.04.2023 by which I seized blood stained ash coloured ganjee with red coloured border of the accused Lal Singh Oraon. I prepared the seizure list in presence of witnesses, namely, PSI Subrata Sarkar and Pannalal Oraon. Pannalal Oraon put ITI in my presence. Let the seizure list be marked as Exbt.21.”

47. With regard to the extra-judicial confession, PW4 as the brother of the victim enjoyed a place of trust. The confession was made at the place of occurrence and just after the accused had committed the offence. PW4 enjoyed a place of trust. The exact words uttered during such confession were also borne out by the oral testimony of PW4. The prosecution had proved the factum of confession and the reason why the accused would be in a position to repose confidence in the person to whom he had made the extra-judicial confession. On account of the natural relationship, the

accused could approach his own brother. The confession was voluntary and was not under any threat, inducement, coercion, or pressure or for a promise of benefit. The truthfulness and reliability of the confession had been proved by the oral testimony of all the witnesses and the medical evidence.

48. The confession was consistent with the facts. There were no material contradictions which would demolish such fact. The incriminating articles were recovered from the PO. The other corroborative circumstances proved the truthfulness and reliability of such extra-judicial confession. After the confession, the accused continued to remain in the place of occurrence and was gagging from the injury he had inflicted upon himself.

49. PW 3 and PW 4 withstood cross-examination. No such questions as to the falsity of their testimony had been put. The questions put to the witnesses in the cross-examination and the suggestions given, did not indicate that the defence tried to cast any doubt on the extra judicial confession. Defence failed to prove that the confession was recorded later and after due deliberation. The words attributed to the accused were not convincing. The Hon'ble Apex Court had held that, an extra-judicial confession could form the sole basis for conviction if it was found to be voluntary, truthful, and inspired confidence. The extra-judicial confession should not suffer from material discrepancies and inherent probabilities.

50. In the matter of ***Sahadevan and Another v. State of Tamil Nadu*** reported in **(2012) 6 SCC 403**, the Hon'ble Apex Court, after referring to various earlier judgments on the point, observed thus:

“16. Upon a proper analysis of the abovereferred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

- (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence.
- (iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- (vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

51. In the matter of ***Nikhil Chandra Mondal vs State of West Bengal*** decided in ***Criminal Appeal No. 2269 of 2010***, the Hon’ble Apex Court held as follows:-

“15. It is a settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It has further been held that it is well-settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. It has been held that there is no doubt that conviction can be based on extra-judicial confession, but in the very nature of things, it is a weak piece of evidence. Reliance in this respect could be placed on the judgment of this Court in the case of Sahadevan and Another v. State of Tamil Nadu reported in (2012) 6 SCC 403.”

52. In the matter of ***Chandrapal vs State of Chattisgarh*** reported in ***(2022) SCC Online SC 705***, the Hon’ble Apex Court held as follows:-

“**18.** At this juncture, it may be noted that as per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court

may take into consideration such confession as against such other person as well as against the person who makes such confession. However, this Court has consistently held that an extra-judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra-judicial confession. As held in *State of M.P. v. Paltan Mallah* [*State of M.P. v. Paltan Mallah*, (2005) 3 SCC 169 : 2005 SCC (Cri) 674] , the extra-judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra-judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra-judicial confession of the co-accused.

19. In *Sahadevan v. State of T.N.* [*Sahadevan v. State of T.N.*, (2012) 6 SCC 403 : (2012) 3 SCC (Cri) 146] , it was observed in para 14 as under : (SCC p. 410)

“14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.”

20. The said ratio was also reiterated and followed by this Court in *Jagroop Singh v. State of Punjab* [*Jagroop Singh v. State of Punjab*, (2012) 11 SCC 768 : (2013) 1 SCC (Cri) 1136] , *Sk. Yusuf v. State of W.B.* [*Sk. Yusuf v. State of W.B.*, (2011) 11 SCC 754 : (2011) 3 SCC (Cri) 620] and *Pancho v. State of Haryana* [*Pancho v. State of Haryana*, (2011) 10 SCC 165 : (2012) 1 SCC (Cri) 223] , wherein it has been specifically laid down that the extra-judicial confession is a weak evidence by itself and it has to be examined by the court with greater care and caution. It should be truthful and should inspire confidence. An extra-judicial confession attains greater credibility and evidentiary value if it is supported by chain of cogent circumstances and is further corroborated by other prosecution evidence.”

53. The naturalness in the disclosure, the voluntary manner in which the confession was made, the conduct of the PW 4 by informing his immediate friends and the neighbours soon after the incident, the corroboration from the medical evidence, recovery of the articles, presence of the accused at the

scene, and other the circumstances, complete the chain. The brother was not a stranger, but lived in the same compound, separated only by a courtyard. It would not be unnatural for the accused, to confess to his brother and disclose what had happened, immediately after the incident. The testimony of the PWs were found to be cogent, consistent, and free from material embellishments. The confession was made immediately after the occurrence, leaving little scope for fabrication or deliberation.

54. In order to prove the last seen together theory, prosecution had to establish that the deceased persons were last seen alive in the company of the accused. The time gap between the circumstance and the discovery of death was minimal. PW 4 was a reliable witness who testified that the victims were last seen in the company of the accused. The accused and family members went to sleep at night in their room (PO) and at about 3 am to 3.30 am, the PW4 discovered the wife and the child dead and the accused standing in the same room with self-inflicted injuries.

55. The foundational basis for the last seen together theory was established by the prosecution and the burden shifted on the accused to offer an explanation which was within his special knowledge. Section 106 of The Evidence Act is quoted below:-

“106. Burden of proving fact especially within knowledge.

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

56. The relevant portions of the decision of the Hon’ble Apex Court in the matter of **Balveer Singh (supra)** are quoted below:-

“**73.** Thus, in view of the above, the court must consider a case of circumstantial evidence in light of the aforesaid settled legal

propositions. In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.

(a) Incriminating circumstances emerging from the evidence on record

74. We take note of the following circumstances emerging from evidence on record:

74.1. The failure on the part of the respondent-accused in not explaining in any manner as to what had actually happened to his wife i.e. the deceased or how she died on the fateful night of the incident, more particularly when he did not dispute that he was in the company of his wife at the relevant point of time. Though the respondent-accused in his statement under Section 313CrPC admitted that at the time of the incident everyone was sleeping in the house, yet, surprisingly, he maintained a complete silence in regard to the cause of death of the deceased. At the cost of repetition, the relevant portion of the further statement of the accused is reproduced hereunder:

“Que. No. 32: This witness further states that you reached in the courtyard and bua was also sleeping in the courtyard at that time. What do you want to say?

Ans: All were sleeping in the house.”

74.2. The unnatural conduct of the respondent-accused in not informing the family members either about the death of their daughter or the cremation of her body, despite the fact that her family members were residing in the very same village.

74.3. The fact that the respondent-accused after clandestinely cremating the deceased's body fled away and could not be found either at the house or in the field where the body had been burnt as stated by PW 3 and PW 6, respectively, again raises suspicion about the cause of death of the deceased:

Prosecution Witness 3 — Bhoora alias Yashpal

“I saw the dead body burnt in the morning. The villagers did not create any ruckus and Balvir was not present there. Who burnt the dead body of Virendra Kumari, we do not know. Because we did not see it getting burnt.”

Prosecution Witness 6 — Rani

“When the police came home, no one from the house was there. My father had ran away, and so had my aunt. My grandfather had also run away. I was the only one there and my brother. And my old grandfather

was there. My mother's father-in-law, who is my grandfather was there.”

74.4. The suspicious circumstances under which the deceased died coupled with the fact that the accused had a fight with the deceased two to three days before the incident; their strained relationship and the accused frequently treating the deceased cruelly, as deposed by PW 3, PW 4, PW 5, and PW 6, respectively, further raise concerns and points towards the involvement of the respondent-accused in the alleged crime. This is corroborated by the certified copies of the maintenance case and the complaint lodged by the deceased, which were exhibited and read into evidence. The relevant observations made by the trial court in this regard are reproduced hereinbelow:

“22. PW 3 Bhoora has stated that Birender Kumari is his sister being the daughter of his maternal uncle. On the day of incident in the night he and his father were sleeping in their house upon which they had heard voices of Birender Kumari crying. [...] In the morning when he and his father got up then they came to know that Birender Kumari has died and that she has been burnt by the accused clandestinely in their fields itself. When he and his father and the entire village went to see then the dead body was burning which fact is confirmed by Bharat Singh also. [...] The accused used to harass and the motorcycle had not been given. He used to give beatings upon which the deceased used to come to him. Once the accused beat her very badly and did not give her anything to eat also. Upon which she had filed a case of maintenance in the JMFC Court, Kolaras of which the certified copy is Ext. P-8. The girl had been given beatings, the true copy of which report is Ext. P-9.

29. The accused had carried Birender Kumari to the fields in relation to which direct evidence has not come. It has come in the statement of Rani that the accused took her mother to the fields and Jatan had told that her mother had been taken for cremation. In the fields the deceased was cremated in the night which circumstance also goes against the accused. If the death of deceased Birender Kumari was of ordinary nature then what was the reason that in the night without informing the reason to the family of the deceased she was cremated in the night especially when prior to the incident itself the mutual relations of the accused and deceased were not good and according to Exts. P-8 & P-9 the case in relation to not giving beatings and maintenance had been filed by the deceased in the court. Another circumstance which indicates the involvement of the accused in the incident [...]

(emphasis supplied)

74.5. It is also not the case of the respondent-accused that the deceased was suffering from any ailment nor is there any evidence worth the name to suggest the possibility of her death occurring due to any health issue. Thus, in this regard, it was all the more important for the respondent-accused to explain in what circumstances and in what manner his wife suddenly died on the fateful night of the incident.

75. The High Court whilst passing the impugned judgment and order [*Balveer Singh v. State of M.P.*, Criminal Appeal No. 524 of 2004, order dated 29-6-2010 (MP)] completely failed to advert to and refer to Section 106 of the Evidence Act, which was crucial in a case involving circumstantial evidence of such nature as aforementioned.

(iii) Principles of law governing the applicability of Section 106 of the Evidence Act

76. At this stage it would be apposite to refer to Section 106 of the Evidence Act, which states as under:

“106. Burden of proving fact especially within knowledge.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations:

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.”

77. Section 106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The word “especially” means facts that are or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in Section 106 of the Evidence Act. Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. Section 101 with its Illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible or at any rate disproportionately difficult for the prosecution to establish the facts which are, “especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience”.

78. In *Shambu Nath Mehra v. State of Ajmer* [*Shambu Nath Mehra v. State of Ajmer*, (1956) 1 SCC 337 : AIR 1956 SC 404] , this Court while considering the word “especially” employed in Section 106 of the Evidence Act speaking through Vivian Bose, J., observed as under: (SCC p. 341, para 11)

“11. ... The word “especially” stresses that it means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for

which he is tried. These cases are *Attygalle v. R.* [*Attygalle v. R.*, 1936 SCC OnLine PC 20 : AIR 1936 PC 169] and *Stephen Seneviratne v. R.* [*Stephen Seneviratne v. R.*, 1936 SCC OnLine PC 57 : (1936) 3 All ER 36] , All ER at p. 49.”

79. The aforesaid decision of *Shambu Nath* [*Shambu Nath Mehra v. State of Ajmer*, (1956) 1 SCC 337 : AIR 1956 SC 404] has been referred to and relied upon in *Nagendra Sah v. State of Bihar* [*Nagendra Sah v. State of Bihar*, (2021) 10 SCC 725 : (2022) 1 SCC (Cri) 127] , wherein this Court observed as under: (*Nagendra Sah case* [*Nagendra Sah v. State of Bihar*, (2021) 10 SCC 725 : (2022) 1 SCC (Cri) 127] , SCC pp. 734-35, paras 22-23)

“22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused.”

(emphasis supplied)

80. In *Tulshiram Sahadu Suryawanshi v. State of Maharashtra* [*Tulshiram Sahadu Suryawanshi v. State of Maharashtra*, (2012) 10 SCC 373 : (2013) 1 SCC (Cri) 193] , this Court observed as under: (SCC pp. 381-82, para 23)

“23 [Ed.: Para 23 corrected vide Official Corrigendum No. F.3/Ed.B.J./58/2012 dated 9-10-2012.] . It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable

inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. It is useful to quote the following observation in *State of W.B. v. Mir Mohammad Omar* [*State of W.B. v. Mir Mohammad Omar*, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] : (SCC p. 393, para 38)

‘38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In *Shambu Nath Mehra v. State of Ajmer* [*Shambu Nath Mehra v. State of Ajmer*, (1956) 1 SCC 337 : AIR 1956 SC 404] the learned Judge has stated the legal principle thus: (SCC OnLine SC para 9)

“9. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word “especially” stresses that. It means facts that are *pre-eminently* or *exceptionally* within his knowledge.””

(emphasis supplied)

81. In *Trimukh Maroti Kirkan v. State of Maharashtra* [*Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681 : (2007) 1 SCC (Cri) 80] , this Court was considering a similar case of homicidal death in the confines of the house. The following observations are considered relevant in the facts of the present case: (SCC pp. 690-91 & 694, paras 14-15 & 22)

“14. *If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions* [*Stirland v. Director of Public Prosecutions*, 1944 AC 315 (HL)] — quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh* [*State of Punjab v. Karnail Singh*, (2003) 11 SCC 271 : 2004 SCC (Cri) 135] .) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is*

upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

‘(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.’

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.”

(emphasis supplied)

82. The question of burden of proof, where some facts are within the personal knowledge of the accused, was examined by this Court in *State of W.B. v. Mir Mohammad Omar* [*State of W.B. v. Mir Mohammad Omar*, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] . In this case, the assailants forcibly dragged the deceased from the house where he was taking shelter on account of the fear of the accused, and took him away at about 2.30 in the night. The next day in the morning, his mangled body was found lying in the hospital. The trial court convicted the accused under Section 364 read with Section 34IPC, and sentenced them to ten years' rigorous imprisonment. The accused preferred an appeal against their conviction before the High Court and the State also filed an appeal challenging the acquittal of the accused for the charge of murder. The accused had not given any explanation as to what happened to the deceased after he was abducted by them. The Sessions Judge, after referring to the law on circumstantial evidence, had observed that there was a missing link in the chain of evidence after the deceased was last seen together with the accused persons, and the discovery of the dead body in the hospital, and concluded that the prosecution had failed to establish the charge of murder against the accused persons beyond reasonable doubt.”

57. Failure of the investigating agency to collect fingerprints from the weapon is a relevant circumstance, but such failure did not automatically destroy the prosecution case. The omission may reflect an investigative lapse, but every defect in the investigation would not necessarily enure to the benefit of the accused or render the prosecution case doubtful.

58. The court had to examine whether the evidence available on record, independent of such omissions, formed a complete and cogent chain of circumstances pointing towards the guilt of the accused. The weapon was recovered from the place of occurrence. The place was not accessible to others. The accused was present at the scene all through. The victims were last seen with the accused. An immediate and voluntary extra-judicial confession was made to a brother, who was a person of trust. Medical evidence was consistent with the prosecution case. The self-inflicted injury of the accused had been proved, and there was no plausible explanation from the accused with regard to what actually happened in the room that night, after the family went to sleep, although such fact would be specifically within the knowledge of the accused.

59. Thus, even in the absence of the fingerprint, the accused can be linked to the commission of the offence. A defective investigation cannot be a ground for acquittal if the substantive evidence inspires confidence.

60. In the matter of ***State of Karnataka vs K. Yarappa Reddy*** reported in ***(1999) 8 SCC 715***, the Hon'ble Apex Court held as follows:-

“19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the investigating officer in conducting investigation

or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.

21. The trial court cannot overlook the reality that an investigating officer comes to the Court for giving evidence after conducting investigation in many other cases also in the meanwhile. Evidence-giving process should not bog down to memory tests of witnesses. An investigating officer must answer the questions in court, as far as possible, only with reference to what he had recorded during investigation. Such records are the contemporaneous entries made by him and hence for refreshing his memory it is always advisable that he looks into those records before answering any question.

61. In the matter of ***Dhanaj Singh@Shera and Ors. vs State of Punjab***

reported in **(2004) 3 SCC 654**, the Hon'ble Apex Court held as follows:-

"4. In reply, learned counsel for the State submitted that faulty investigation cannot be a ground to affect the credibility of the eyewitnesses. It is a fairly settled position in law that when witnesses are branded as partisan or inimical, their evidence has to be analysed with care and scrutiny. That has been done in the present case and both the trial court and the High Court have found the evidence to be credible. Even if the investigation was faulty, both the trial court and the High Court have acted only in the permissible way i.e. to weigh the evidence carefully and come to an independent conclusion. As rightly noted by the High Court, the investigation seems to be slipshod. The highly improbable stand that the complainant and his relatives killed the deceased who was their close relative can hardly be accepted even with a pinch of salt. Though the deceased and the complainant had criminal track records, that per se will not affect the evidence of witnesses if it is otherwise credible and cogent. Both the trial court and the High Court after analysing the evidence found it to be credible, cogent

and trustworthy. The plea that the primary duty to investigate the evidence is that of the police and when the police has given a clean chit, that should prima facie be accepted, is clearly without substance.

5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See *Karnel Singh v. State of M.P.* [(1995) 5 SCC 518 : 1995 SCC (Cri) 977])

6. In *Paras Yadav v. State of Bihar* [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not, the contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

7. As was observed in *Ram Bihari Yadav v. State of Bihar* [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view was again reiterated in *Amar Singh v. Balwinder Singh* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] . As noted in *Amar Singh case* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] it would have been certainly better if the firearms were sent to the Forensic Test Laboratory for comparison. But the report of the ballistic expert would be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eyewitnesses corroborated by the medical evidence fully establishes the prosecution version, failure or omission or negligence on the part of the IO cannot affect the credibility of the prosecution version.

8. The stand of the appellants relates essentially to acceptability of evidence. Even if the investigation is defective, in view of the legal principles set out above, that pales into insignificance when ocular testimony is found credible and cogent. Further effect of non-examination of weapons of assault or the pellets, etc. in the background of defective investigation has been considered in *Amar Singh case* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] . In the case at hand, no crack in the evidence of the vital witnesses can be noticed.”

62. In the matter of *Upendra Khare vs the State of Madhya Pradesh* decided in ***Criminal Appeal No. 1937 of 2013***, the Hon'ble Apex Court held as follows:-

“**19.** This position was further reiterated by this Court in Mallikarjun v. State of Karnataka reported in (2019) 8 SCC 359, observing as under:

“23.....On behalf of the accused, the learned Senior Counsel contended that the evidence of PW 17 PSI as to the recovery of MO 1 dagger at the behest of Accused 1 is doubtful and when PWs 8 and 9 have turned hostile, no weight could be attached to the alleged recovery of MO 1 dagger. There is no merit in the contention that merely because the panch witnesses turned hostile, the recovery of the weapon would stand vitiated. It is fairly well settled that the evidence of the investigating officer can be relied upon to prove the recovery even when the panch witnesses turned hostile.....”

20. As the Trial Court acquitted the appellant of the charges under Sections 382 and 404 IPC by assigning justifiable reasons on appreciation of evidence as such it may not be necessary for us to consider this aspect of the matter. It is true that the investigation in the present matter is not up to the mark and it was expected of the investigating agency to conduct the investigation with more sensitivity as it was the case of four persons losing their lives. But merely the fact that the investigation was not up to the mark cannot be the reason for this Court to discard the other material evidence brought by the prosecution in support of its case, particularly, the evidence against the present appellant in the form of recovery of the phial of the injection at the instance of the present appellant supported by the postmortem report duly proved by substantial evidence of Dr. B.L. Gupta.”

63. In the matter of *C. Muniappan & Ors. vs State of Tamil Nadu* reported in ***(2010) 9 SCC 567*** decided in ***Criminal Appeal No. 1937 of 2013***, the Hon'ble Apex Court held as follows:-

“**55.** There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the

investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.”

64. There is no evidence on record which would indicate the presence of outsiders at the PO, who could commit the offence. Although a feeble attempt was made by the accused to explain the situation by mentioning two outsiders, such fact was not proved by leading evidence. Neither the conduct of the accused nor the chain of circumstances would lead the court to consider that there was any probability of outsiders entering the room and committing the offence. Thus, for the reasons above, we uphold the conviction.

65. With regard to the sentence, we are of the considered opinion that this was not a case of rarest of rare degree. The injuries suffered by the accused, according to evidence, was a self-inflicted. Such act of the accused shows that he may have felt remorse, after murdering his wife and child. The addictive habit of the accused, his unemployment, his continuous quarrel with his wife over money, were relevant factors which should have been looked into. It was not a planned murder, but committed in a rage, as the accused could not satisfy his craving for alcohol, as he had no money. His wife refused to give him money. From the evidence of the witnesses, it could

be ascertained that throughout the entire period, till he was taken to hospital, the accused was standing at the PO with his injury. He did not attempt to flee.

66. In *Machhi Singh and ors. vs State of Punjab* reported in (1983) 3 SCC 470, the Hon'ble Apex Court held as follows:-

“31. Having dealt with the appeals on merits from the standpoint of proof of guilt and validity or otherwise of the order of conviction, we now come face to face with the problem indicated when the curtain was lifted, namely, the application of the rarest-of-rare-cases rule to the facts of individual cases in the context of the relevant guidelines. Some reflections on the question of death penalty may appropriately be made before we tackle the said question in the perspective of the present group of appeals.

32. The reasons why the community as a whole does not endorse the humanistic approach reflected in “death sentence-in-no-case” doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of “reverence for life” principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent for those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by “killing” a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so “in rarest of rare cases” when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as for instance:

I. Manner of commission of murder

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

(i) when the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

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

II. Motive for commission of murder

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

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

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

(b) In cases of “bride burning” and what are known as “dowry deaths” or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. Magnitude of crime

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

V. Personality of victim of murder

38. In this background the guidelines indicated in *Bachan Singh case* [(1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636] 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* [(1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636] :

“(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."

67. These directions have since been reiterated with greater emphasis in ***Aman Singh & Anr. v. State of Bihar*** reported in **2026 INSC 424**, in which the Hon'ble Apex Court held that the report on aggravating and mitigating circumstances must, as a matter of course, be called for by the Trial Court, immediately upon conviction and prior to the determination of sentence. When that had not been done, it became the mandatory obligation of the High Court, at the very stage of admission of the death reference, to call for such material before proceeding further.

68. *Bachan Singh vs. State of Punjab* reported in **(1980) 2 SCC 684** required that a balance sheet of aggravating and mitigating circumstances should be drawn, with full weightage accorded to the latter, before the option of death could be exercised. In ***Ashok Debbarma v. State of Tripura*** reported in **(2014) 4 SCC 747**, it was further held that, in the event even a single circumstance genuinely favoured the accused, that circumstance alone may weigh decisively against imposition of the extreme penalty.

69. The learned Trial Judge failed to obtain the jail conduct report which was a serious error in sentencing. The relevant portions of ***Manoj and Ors.*** (*supra*) are quoted below:-

“249. To do this, the trial court must elicit information from the accused and the State, both. The State, must—for an offence carrying capital punishment—at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in *Bachan Singh* [*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] . Even for the other factors of (3) and (4)—an onus placed squarely on the State—conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison i.e. to evaluate the progress of the accused towards reformation, achieved during the incarceration period.

250. Next, the State, must in a *time-bound manner*, collect *additional* information pertaining to the accused. An illustrative, but not exhaustive list is as follows:

- (a) Age
- (b) Early family background (siblings, protection of parents, any history of violence or neglect)
- (c) Present family background (surviving family members, whether married, has children, etc.)
- (d) Type and level of education

- (e) Socio-economic background (including conditions of poverty or deprivation, if any)
- (f) Criminal antecedents (details of offence and whether convicted, sentence served, if any)
- (g) Income and the kind of employment (whether none, or temporary or permanent, etc.);
- (h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc.

This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.

251. Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e. Probation and Welfare Officer, Superintendent of Jail, etc.). If the appeal is heard after a long hiatus from the trial court's conviction, or High Court's confirmation, as the case may be — a fresh report (rather than the one used by the previous court) from the jail authorities is recommended, for a more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will further evidence the reformatory progress, and reveal post-conviction mental illness, if any.

252. It is pertinent to point out that this Court in *Anil v. State of Maharashtra* [*Anil v. State of Maharashtra*, (2014) 4 SCC 69 : (2014) 2 SCC (Cri) 266] has in fact directed criminal courts to call for additional material : (SCC p. 86, para 33)

“33. ... Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. We, therefore, direct that the criminal courts, while dealing with the offences like Section 302IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case.”

(emphasis supplied)

We hereby fully endorse and direct that this should be implemented uniformly, as further elaborated above, for conviction of offences that carry the possibility of death sentence.

70. The report from the jail authority which was taken by a co-ordinate Bench, shows that the accused did not have any criminal antecedent. The jail conduct report contained the opinion of the jail superintendent, which is quoted below:-

“He has the utmost probability of reform and he has never been related with any adverse activity in prison during his incarceration.”

71. The conduct of the accused who was in custody since April 15, 2023 had been satisfactory. The accused was undergoing psychiatric treatment from Jalpaiguri Govt. Medical College and Hospital. It had been opined by the Psychologist and the Superintendent, that he had a reasonable probability of reformation and rehabilitation. These were the mitigating factors which should have been looked into by the learned Single Judge before sentencing the accused to death.

72. We cannot agree with the reasoning of the learned trial judge for sentencing the accused to death. Marriage as an institution is undoubtedly sacred and an important social institution, but the relationship between husband and wife, or father and daughter, could not be the sole ground for holding that this was one of the rarest of rare cases in which the accused deserved to be hanged until death. Poverty, unemployment, craving for alcohol, inability to satisfy such craving due to refusal of the wife to give him money to drink, the socio-economic background, are the mitigating circumstances which persuade us to commute the death sentence. This was

not a cold blooded and premediated murder, which shook the collective conscience of the society. Prospect of reformation and rehabilitation cannot be ruled out.

73. Thus, we uphold the conviction, but do not confirm the death penalty and we commute the same to life imprisonment. The correctional home shall record the act of commutation of death penalty to life sentence as awarded by this judgment and order.

74. In view of the commutation of the death penalty, any warrant issued by the trial court stands modified in terms of this judgement.

75. Period of detention already undergone by the accused during investigation or trial or thereafter, shall be set off against the substantial punishment in accordance with the provisions of Section 428 of the Code of Criminal Procedure corresponding to Section 468 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

76. Let a copy of this judgment along with the Trial Court records be sent down to the Trial Court at once.

77. D.R 01 of 2025 is disposed of accordingly.

78. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

I Agree.

(Smita Das De, J.)

(Shampa Sarkar, J.)