

**IN THE HIGH COURT AT CALCUTTA  
IN THE CIRCUIT BENCH AT JALPAIGURI**

**CRIMINAL APPELLATE JURISDICTION**

Present:

**The Hon'ble Justice Joymalya Bagchi**

And

**The Hon'ble Justice Subhendu Samanta**

**Death Reference No. 1 of 2019**

**THE STATE OF WEST BENGAL**

**...APPELLANT**

**Vs.**

**SAHADEB BARMAN & ORS.**

**...RESPONDENTS**

**With**

**C.R.A. 12 of 2019  
(CRAN 1 of 2020)**

**SAHADEB BARMAN & ORS.**

**...APPELLANTS**

**Vs.**

**THE STATE OF WEST BENGAL**

**...RESPONDENT**

For the Appellants

: Mr. Sabir Ahmed, Adv.  
Mr. Hillol Saha Podder, Adv.  
Ms. Mousumi Das, Adv.

For the State

: Mr. Aditi Shankar Chakraborty, Id. APP  
Mr. Sourav Ganguly, Adv.  
Mr. Kallol Nag, Adv.

Heard on : 01.03.2023, 02.03.2023, 03.03.2023 &  
09.03.2023

Judgment on : 10.03.2023

**Joymalya Bagchi, J.:-**

1. Death reference and criminal appeal have arisen out of the judgment and order dated 25.06.2019 and 29.06.2019 passed by learned Additional Sessions Judge, 1<sup>st</sup> Court, Siliguri, Darjeeling in Sessions Case No. 01(01) of 2016 corresponding to Sessions Trial No. 08 of 2016 convicting the appellants for commission of offence punishable under sections 302/392/411 of the Indian Penal Code read with section 34 of the Indian Penal Code and sentenced them to death.

**Prosecution Case:-**

2. Prosecution case levelled against the appellants is as follows:-  
One Pradip Bardhan and his wife Dipti Bardhan and their son Prasenjit Bardhan used to reside at Lelinpur, Shibmandir under Matigara Police Station. Renovation work was going on in their house for sometime. One and half months prior to the incident, one Mithun Malakar (P.W. 8) was entrusted with furniture work in the house. He commissioned the work through the appellants. Painting work was also going on in the house. On 15.09.2015 around 9-9:30 a.m., one Biswajit Mondal (P.W. 5) heard the painters were crying "*something has happened, something has happened*".

He rushed to the house of Pradip. He found the dead bodies of Dipti and Prasenjit in the sitting room on the ground floor. Reshmi Sen (P.W. 1), married daughter of Pradip was informed. She rushed to the spot. She found the dead bodies of her mother and brother in the sitting room of the ground floor. She also found the dead body of her father in the bathroom of the first floor. She found rope marks around the neck of her mother. She also found a coconut rope tied around the face and neck of her father and a bed sheet was fastened around her brother's neck. She became senseless. Police arrived at the spot. Upon regaining her senses, Reshmi lodged written complaint which resulted in registration of Matigara Police Station Case No. 580/15 dated 15.09.2015 under section 302 IPC.

3. In the course of investigation, it came to light that a Micromax mobile set belonging to Prasenjit and two mobile sets, i.e., a Samsung mobile set with touch screen and a Samsung mobile set with keypad belonging to Pradip had been stolen. Almirah in the house had been broken and gold ornaments and cash were missing. Investigating officer, Nitesh Lama (P.W. 28) tracked the SIM cards of Pradip Bardhan and Prasenjit Bardhan. SIM card numbers of Pradip were 9232693297 and 9932902053 (which was used by Dipti). SIM card number of Prasenjit was 8145186839.

4. In the course of investigation, investigation officer (P.W. 28) tracked the International Mobile Equipment Identity number ('IMEI' for short) of the hand sets in which the aforesaid SIM cards had been used. He

noted that the SIM card of Pradip Bardhan i.e. 9232693297 was used in the mobile hand set bearing IMEI No. 355681050920873 (shown as IMEI No. 355681050920870 in CDRs). Another SIM card bearing No. 8159929187 was also used in the said handset on 14.09.2015 at 22:47:54 hours. The subsequent SIM card was registered in the name of one Sahadeb Barman of Tarijot. It may be pertinent to note one of the stolen mobile phones of Pradip Bardhan bore IMEI No. 355681050920873.

5. On 17.09.2015, P.W. 28 conducted raid in the residence of Sahadeb Barman. He recovered three mobile phones as follows:-

- i. 01 (one) Samsung Mobile phone having Model No. GT-C 3303i and IMEI No. 3563631/04/190911/6 with battery and without SIM card;
- ii. 01 (one) Hitech Mobile phone having IMEI No. 911402250241383 and 911402250241391 with battery and one SIM card of Airtel having No. 8159929187;
- iii. 01 (one) Hitech Mobile phone (X-105) having IMEI Nos. 911342000623847 and 9113420001126345 with battery and a SIM card of Vodafone company.

6. Thereafter, raid was held in the house of Dipu Sutradhar. He recovered the following mobile phones:-

- i. 01 (one) Mobile phone of Micromax company having Model No. A106 and IMEI Nos. 911391305054885 and 911391305555386 with one battery without SIM card;
- ii. 01 (one) Mobile phone of Samsung, Model No. GT C 33221, IMEI Nos. 355681/05/092087/3 and

355683/05/092087/9 with battery and without SIM card.

7. Then P.W. 28 went to the residence of Chiranjit Modak and recovered the following articles:-

- i. 01 (one) ATM Card of State Bank of India bearing Card No. 6220180018400204048 in the name of Pradip Kumar Bardhan;
- ii. 01 (one) ATM Card of Central Bank of India bearing Card No. 4622442504302781 duly signed by Pradip Kumar Bardhan;
- iii. 01 (one) Passbook of Uttar Banga Kshetriya Bank Account of Pradip Kumar Bardhan and Dipti Bardhan;
- iv. 01 (One) Passbook of SBI in the name of Pradip Kumar Bardhan having Account No. 30801137158;
- v. 02 (two) numbers of gold bangles;
- vi. Loha badhano with gold;
- vii. 01 (one) pair of gold ear ring;
- viii. 01 (one) gold ring;
- ix. Cash Rs. 13,000/- (thirteen thousand only).

8. During interrogation, accused persons made disclosure statements which were recorded as Exhibits – 31, 32 and 33 respectively. Pursuant to their disclosure statements, on 23.09.2015 the following ornaments were recovered from the residence of Dipu Sutradhar:-

- i. 01 (two) pair of golden colour ear rings (likely to be gold);
- ii. 02 (two) golden rings;
- iii. 01 (one) pair of white coloured with golden rimp bangles;
- iv. 01 (one) pair of red colour bangle.

The gold ornaments were identified by Reshmi Sen during T.I. parade before Judicial Magistrate (P.W. 26).

9. In conclusion of investigation, charge-sheet was filed against the appellants. Charges were framed under sections 392/411/3021/109/34 IPC against the appellants. They pleaded not guilty and claimed to be tried.

10. During trial, prosecution examined 28 witnesses and exhibited a number of documents. Defence of the appellants is one of innocence and false implication.

11. In conclusion of trial, trial Judge by the impugned judgment and order convicted the appellants and sentenced them to death. Hence, the present appeal and reference for confirmation of death sentence.

**Prosecution evidence:-**

**a) Detection of the bodies and registration of FIR:-**

12. P.W. 5, Biswajit Mondal is a neighbour of Pradip Bardhan. On 15.09.2015 at 9:30 a.m., he heard the painters in the house of Pradip Bardhan crying "*something has happened, something has happened*". He went to the house of Pradip Bardhan. On entering the house, he found dead bodies of Dipti and Prasenjit in the sitting room. Reshmi (P.W. 1) daughter of Pradip was informed over mobile phone. She alongwith her husband Amaresh Sen (P.W. 21) came to the house.

13. Other neighbours, namely, Ranjit Kumar Dey (P.W. 3) and Pinki Mondal (P.W. 6) have corroborated P.W. 5. They also stated painting and furniture work had been undertaken in the house of Pradip Bardhan.

14. P.W. 1, Reshmi Sen is the married daughter of Pradip Bardhan and the de-facto complainant. On 15.09.2015, she received information over mobile phone that her parents and brother had been murdered. Hearing the news, she went to her parental home and found the dead bodies of her mother and brother in the sitting room of the ground floor. Body of her father was lying in the bathroom of the first floor. She found rope mark around the neck of her mother. Father's face was tied with coconut rope. Paint had been poured on his body. Bed sheet was found fastened around her brother's neck. For sometime renovation was going on in the house. Paint work and wood work were in progress. Almirah of the house was broken. Seeing this horrible sight, she became senseless. Subsequently, she lodged written complaint which was treated as FIR. Gold ornaments and cash were missing. Mobile phones belonging to the deceased were also missing. She deposed she had identified the gold ornaments before Magistrate. In Court, she again identified her mother's ornaments. She also identified the Micromax mobile phone (Mat Exhibit - I) as belonging to her brother. She also identified the Samsung touch screen mobile phone and Samsung keypad mobile phone (Mat Exhibits - III and IV)

as that of her father. Her husband Amaresh Sen (P.W. 21) corroborated her version and proved his signature on the inquest report.

15. Other relations of Pradip Bardhan also came to the spot. They are his brother Ashok Bardhan (P.W. 2), Tarun Dey (P.W. 22) and nephew Dipankar Roy (P.W. 23). P.Ws. 22 and 23 proved their signatures on the inquest report.

**b) Inquest and post mortem:-**

16. P.W. 17, ASI, Ranada Prasad Sarkar held inquest over the dead bodies of Pradip Bardhan, Dipti Bardhan and Prasenjit Bardhan. He proved the inquest report (Exhibits – 7, 8 and 9). After inquest the bodies were sent for post mortem examination.

17. P.W. 18, Dr. Rajib Prasad held post mortem examination over the dead bodies at North Bengal Medical College & Hospital. He opined that the deaths were caused due to strangulation by ligature, ante mortem and homicidal in nature. He exhibited the post mortem reports and which were marked as Exhibit – 10, 11 and 12.

**c) Presence of the appellants at the place of occurrence:-**

18. P.W. 8, Mithun Malakar deposed he is a contractor. One and half months prior to September' 15, Pradip Bardhan had entrusted him to make furniture in his house. He utilised the services of the appellants. He made wooden doors for the bedroom of Pradip Bardhan. After making the furniture the appellants went to the house of Pradip to set the doors. He



further deposed appellants were separately entrusted to make other furniture, i.e., wooden doors in the bathroom of Pradip. In cross-examination, he stated he did not have trade licence and none other than the appellants worked under him.

19. P.W. 9, Durlav Chakraborty is a resident of the locality. On 14.09.2015 around 8-8:30 p.m., he was returning from the house of one Subal. It was drizzling. He saw the appellants face to face when they came out of the house of Pradip Bardhan. On that day, street lights were switched on. On an earlier occasion he had seen one of the appellants i.e. Sahadeb in the house of Pradip. In cross-examination, he stated he had not attended in T.I. parade. He was an active politician and had contested the panchayat election.

20. These two witnesses probabalise the presence of the appellants at the residence of Pradip Bardhan in the night of 14.09.2015.

**d) Recovery of stolen articles :-**

21. P.W. 12, Manas Kr. Das was posted at Matigara Police Station. On 17.09.2015 at 6/6:30 p.m. he accompanied police to the residence of Sahadeb Barman. He deposed two mobile phones were recovered. He proved his signature on the seizure list. He identified the mobile phones in Court. On the same day at 10/10:20 a.m., he along with police went to the residence of Dipu Sutradhar. Two mobile hand sets were recovered. He signed on the seizure list. He identified the mobile handsets. He was also

present when police recovered ATM cards, passbooks and gold ornaments from the residence of Chiranjit Modak. He proved his signature on the seizure list. He identified the recovered items. In cross-examination, he stated he was going to his friend's place when he learned police had come to the house of Dipu and had arrested him.

22. P.W. 13, Goutam Singha is a driver of the vehicle which was used by the police to carry out raid in the house of Chiranjit Modak. He was present at the time of raid. He proved his signature on the seizure list. He also identified the seized items.

23. P.W. 25, Md. Khalilur Rahman is a resident of Tarijot. He was present when police recovered the stolen articles from the house of Sahadeb and Dipu. He further deposed he was present when police made further recoveries on 23.09.2015 from the residence of Dipu. He proved his signature on the seizure lists. He further deposed Md. Hamidul (P.W. 24) was present at the time of recovery on 23.09.2015 and had put his LTI on the seizure memo. In cross-examination, he stated his son is an accused in a POCSO case registered at Matigara Police Station. Officer-in-charge promised him he would release his son and as per instruction he deposed in Court.

24. P.W. 24, Md. Hamidul is a witness to the recovery of golden ornaments on 23.09.2015 pursuant to the leading statement of the

appellants from the house of Dipu. He stated he put his LTI on the seizure list.

**e) Identification of gold ornaments:-**

25. P.W. 26, Suparna Sarkar is the Judicial Magistrate who conducted T.I. parade in respect of the stolen gold ornaments. She deposed Reshmi Sen (P.W. 1) identified the gold ornaments as that of her mother. She further deposed the seized ornaments had been mixed with other similar ornaments. He proved the T.I. report (Exhibit – 26).

**f) Investigating personnel:-**

26. P.W. 27, Dipanjan Das was the Officer-in-Charge of Matigara Police Station. He received the written complaint from P.W. 1. He drew up the formal FIR and endorsed the aforesaid case to Nitesh Lama (P.W. 28).

27. P.W. 28, Nitesh Lama is the investigation officer. He proceeded to the place of occurrence. He saw a number of persons assembled in front of the house of Pradip Bardhan. The house was a two-storied building. He found two dead bodies lying in the ground floor. The relations identified them as Dipti Bardhan and Prasenjit Bardhan. He found ligature marks around the necks of the bodies. He found another dead body lying in the first floor. There was paint splattered on the body. The body was identified as Pradip Bardhan. He found a coconut rope tied around the face and neck. He also found a bed sheet tied round the neck of Prasenjit Bardhan. Inquest was held over the bodies. He requisitioned dog squad. P.W. 4

(Soumen Talukdar) came with a trained dog who sniffed the place of occurrence. The dog ran towards Balasan river but could not proceed thereafter. He seized two sealed envelopes containing hair from P.W. 17 who had prepared inquest. He collected mobile SIM card numbers of the three mobile sets which had been stolen. SIM card number of Pradip Bardhan was 9232693297. Another SIM card bearing No. 9932902053 standing in the name of Pradip was used by his wife Dipti. SIM card belonging to Prasenjit Bardhan was 8145186839. These relations gave him the aforesaid numbers. He sent requisition to Additional Commissioner of Police to supply CDRs of the three mobile numbers as well as tracking reports. The requisition dated 15.09.2015 was marked as Exhibit – 14.

28. During investigation he ascertained that SIM card No. 8159929187 was used in a mobile handset having IMEI No. 355681050920870. The said SIM card was used in the same mobile handset on 15.09.2015 thrice, firstly on 10:51:22, secondly on 10:51:30 and thirdly on 10:51:39.

29. On 17.09.2015 he recovered three mobile phones from the residence of Sahadeb Barman. He also recovered two mobile sets from the residence of Dipu Sutradhar. It may not be out of place to note one of the handsets recovered from Dipu was a Samsung mobile handset bearing No. 355681/05/092087/3 (i.e. 355681050920870 as per CDRs) (refer to Exhibit – 15) belonging to Pradip Bardhan which was used by Sahadeb

through and his SIM card No. 8159929187. He recovered ATM cards, passbooks and gold ornaments from Chiranjit Modak. He proved his signature on the seizure list. He identified the requisition in Court. He arrested the accused persons. During interrogation, they made disclosure statements. Pursuant to the said disclosure statement dated 23.09.2015 recovery of remaining gold ornaments were found from the house of Dipu. He applied for T.I. parade of the gold ornaments. Reshmi Sen (P.W. 1) identified the articles before Judicial Magistrate (P.W. 26). He submitted charge-sheet. On prayer of the prosecution under section 311 Cr.P.C., nodal officers of service provided, namely, Bharti Airtel Ltd. and BSNL were examined.

30. P.W. 19, Arijit Das is the nodal officer of Bharti Airtel Ltd. He deposed in response to query made by the investigating officer with regard to CDRs and SDRs of mobile phone Nos. 9232693297, 9932902053, 8159929187, 8170932402 and 9800139071. The following information were supplied:-

CDRs of the MSISDN 9232693297, 9932902053, 8159929187, 8170932402 and 9800139071 from 01.09.2015 to 18.09.2015.  
SDRs of the mobile number –

<b>MSISDN</b>	<b>NAME</b>	<b>ADDRESS</b>	<b>PIN</b>	<b>C/O</b>	<b>ACT_DATE</b>
9232693297	Pradip Bardhan	Lelinpur Matigara Siliguri West Bengal		Pradyut	30.10.2013
9932902053	Pradip Bardhan	Lelinpur Matigara Siliguri West Bengal	Null	Pradyut Bardhan	23.08.2007

8159929187	Sahadeb Barman	60 Tarijot Jitu Matigara West Bengal	734011	Gyanendr anath Barman	08.03.2015
8170932402	Munna Gupta	Netajinagar Siliguri Siliguri West Bengal	734001	Gaurakhp rasad	12.04.2014
9800139071	Akli Begam	Dak Banglo Mal Malbazar West Bengal	735221	Torsal Husen	22.10.2013

31. He proved certificate under section 65B of the Evidence Act. He proved the CDRs with regard to SIM card Nos. 9232693297, 9932902053, 8159929187, 8170932402 and 9800139071 as Exhibits – 15, 16, 17, 18 and 19 respectively. He proved the Consumer Application Number of Pradip Bardhan for the SIM card Nos. 9232693297 and 9932902053 as Exhibits – 20 and 21. He proved Consumer Application Number of Sahadeb in respect of SIM card No. 8159929187. He further examined P.W. 19 to explain the discrepancy in the last digit of the IMEI number of each hand set as bearing on the hand set vis-a-vis CDRs. He proved Exhibit – 35 which is self-explanatory and set out hereinunder:-

*“With respect to your query/ concern on the above subject, the explanation with regard to our system is mentioned below.*

**1. Format of IMEI** (meaning International Mobile Equipment Identity number is a unique number associated with every mobile phone as its identity)

**|---8---|-----6----|----1---|**

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**| TAC | SNR | Spare/Check |**

**2. Element description:**

*TAC: Type Allocation Code. It's length is 8 Digits*

*SNR: Serial Number id an individual serial number uniquely identifying each equipment with the TAC. It's length is 6 Digit.*

**3. Spare Digit/ Check Digit**

*Every IMEI (14 Digit) is complemented by a check digit (15<sup>th</sup> Digit). The check digit is not a part of digits transmitted when IMEI is checked. The check digit/Spare Digit is intended to avoid manual transmission errors and it shall be set to zero, when transmitted by the MS.*

**4. So when Mobile Station finishes access process, the system stores IMEI as TAC+SNR+0, which will be written into Call Data Record i.e. CDR.**

*Hence the last digit of IMEI, reflecting in the CDR and actual displaying will be different. Hope the necessary information will suffice your query.”*

32. P.W. 20, Dipak Bhattacharjee is the nodal officer of BSNL Ltd. He proved the Consumer Application Number of Prasenjit Bardhan with regard to SIM card No. 8145186839 (Exhibit – 24) and the CDRs of the said SIM card (Exhibit – 25).

**Circumstances relied by the prosecution:-**

33. Analysis of the evidence on record shows that prosecution case is based on circumstantial evidence. Prosecution relies on the following circumstances to prove its case:-

- (a) *Appellants are carpenters. They used to visit the house of Pradip Bardhan for fitting the furniture made by them;*
- (b) *On 14.09.2015 at 8/8:30 p.m. they were seen coming out of the house of Pradip Bardhan. On the next day, i.e., 15.09.2015 at 9-9:30 a.m. Pradip Bardhan, his wife Dipti Bardhan and their son*

*Prasenjit Bardhan were found dead in their house. They had ligature marks around their necks.*

- (c) Two mobile phones belonging to Pradip Bardhan and one belonging to Prasenjit, golden ornaments of Dipti Bardhan and cash were found missing;*
- (d) Post mortem doctor opined the victims had died due to strangulation by ligature, ante mortem and homicidal in nature;*
- (e) CDRs collected during investigation show SIM card No. 8159929187 belonging to Sahadeb Barman was used in the mobile hand set bearing IMEI No. 355681050920873 belonging to Pradip Bardhan on 14.09.2015 at 22:47:54 hours and on 15.09.2015 on three occasions;*
- (f) On 17.09.2015 two Samsung mobile sets belonging to Pradip Bardhan one of which bore IMEI No. 355681050920873 and another Micromax mobile phone belonging to Prasenjit Bardhan, some of the golden ornaments, ATM cards and passbooks of the deceaseds were recovered from the residences of Sahadeb Barman, Dipu Sutradhar and Chiranjit Modak;*
- (g) Pursuant to the disclosure statements of the appellants, on 23.09.2015 the remaining gold ornaments were recovered from the house of Dipu Sutradhar;*



- (h) *No explanation was offered by the appellants who were found in possession of the stolen articles soon after their murder.*

**Arguments by the defence:-**

34. Mr. Ahmed for the appellants submitted that the prosecution case has not been proved beyond doubt for the following reasons:-

- (a) *Role of the painters who were working in the house of Pradip Bardhan had not been investigated;*
- (b) *No investigation was made with regard to the identity of the tuft of hair recovered from the hands of the deceased;*
- (c) *FIR is ante timed. P.W. 1 did not disclose theft of mobile phones, gold ornaments etc. either in the FIR or in her subsequent statement;*
- (d) *P.Ws. 8 and 9 are unreliable witnesses. No trade licence of P.W. 8 was produced. P.W. 9 did not attend TI parade. Hence, his identification of the appellants during trial is unreliable;*
- (e) *Recovery of stolen articles is doubtful. Independent witness (P.W. 25) to the recovery is tutored by police. P.W. 25 admitted his son was facing a POCSO case and had been compelled to depose in favour of prosecution. P.W. 24 is also an unreliable witness. P.Ws. 12 and 13 are associated with the police and are interested witnesses;*
- (f) *Though disclosure statements were alleged to have been made on 17.09.2015, there is inordinate delay of about six days, i.e., 23.09.2015 in the second recovery;*

(g) *No TI parade was held with regard to the stolen mobile phones. There is delay in holding TI parade with regard to stolen gold ornaments.*

*Identification of the stolen articles is faulty;*

(h) *There is a time gap between the recovery of stolen articles and the murder. Hence, recovery of articles cannot be presumptive evidence of murder;*

(i) *CDRs exhibited in the case do not establish link between the appellants and the crime.*

He relied on various authorities in support of his submission.

35. On the other hand, Mr. Chakraborty, learned APP with Mr. Ganguly submits the prosecution has proved all the incriminating circumstances beyond doubt. The said circumstances establish a complete chain and unerringly point to the guilt of the appellants.

**Findings:-**

**(i) Registration of FIR:-**

36. Learned Counsel for the appellants submitted FIR is ante timed. As per Reshmi (P.W. 1) she heard about the incident between 10:30 to 11:00 a.m. Thereafter, she came to the spot. But the FIR was registered at 10:30 a.m. Hence, the document is ante timed. I find that the variation between the time quoted by P.W. 1 in her deposition in Court and the registration of FIR is minimal. P.W. 5 stated around 9:30 a.m. he heard the painters cry out in the house of Pradip. Thereafter, Reshmi (daughter of

Pradip) was informed over mobile phone. Within 15 minutes Reshmi with her husband Amaresh arrived at the spot. Reshmi became senseless. Upon regaining her senses, she lodged FIR. Circumstances leading to the lodging of FIR have been proved beyond doubt. Death of Pradip Bardhan, his wife Dipti and son Prasenjit in the house is not disputed. Under such circumstances, slight variation with regard to the time of arrival of P.W. 1 at the place of occurrence and the registration of FIR is inconsequential and does not improbabilise the prosecution case.

**(ii) Non-disclosure of the stolen articles by Reshmi (P.W. 1):-**

37. P.W. 1 deposed on 15.09.2015 she received phone call about the unfortunate death of her parents and brother. She rushed to the spot. Seeing their bodies she was overwhelmed and became senseless. Upon regaining her senses, she lodged FIR. In Court, she deposed that the almirah had been broken. Gold ornaments of her mother and cash was missing. Three mobile phones were also missing. Failure to disclose these facts in the FIR may be attributed to the distraught state of mind of a daughter who had seen the brutal end of her parents and brother. Her subsequent statement was also recorded soon thereafter. Omission in the aforesaid statement with regard to the theft in the household is due to her disturbed state of mind. On the other hand, investigating officer (P.W. 28) deposed relations of the deceaseds informed him about the theft in the

household. They also informed the mobile numbers of the deceaseds. This clearly establishes that the factum of theft had been brought to the notice to the investigating agency soon after the incident and does not militate against the credibility of the prosecution case.

**(iii) Presence of the appellants at the place of occurrence:-**

38. P.W. 1 claimed renovation work was going on in the house of her father Pradip Bardhan. Paint work and furniture work were in progress. P.W. 8 stated one and half months prior to September' 15, he was engaged by Pradip for making doors in the bedroom. He entrusted the work to the appellants. After the doors were made, the appellants visited the house of Pradip to fix the doors. Referring to the deposition of P.W. 8 and the neighbours of Pradip Bardhan, Mr. Ahmed contends only paint work was going on in the house of Pradip. A deeper scrutiny of P.W. 8's evidence would give a different picture. P.W. 8 had deposed after fixing the doors, Pradip had separately entrusted the appellants the job of making doors in his bathroom. This establishes the continuous association of the appellants with Pradip and probabalises their presence at the place of occurrence on the fateful day. P.W. 8 appears to be a petty middleman. Failure on his part to produce trade licence cannot render his version improbable.

39. It is also contended neighbour have not mentioned about furniture work in the house of Pradip. It is common knowledge furnitures

are prepared at the work shop and fitted inside the house. That is why neighbours may have failed to notice the wood work in the house while commenting on the paint work going on the outside of the house.

40. P.W. 8 probalilises the version of P.W. 9 who had seen the appellants leave the residence of Pradip Bardhan on 14.09.2015 at 8/8:30 p.m. P.W. 9 deposed he was returning from the house of one Subal. As there was a drizzle, he had taken shelter. In the street light he came face to face with the appellants. He also deposed he had seen one of the appellants, i.e., Sahadeb in the house of Pradip earlier.

41. Mr. Ahmed scathingly criticised P.W. 9 on the ground that he had identified the appellants for the first time in Court. No TI parade had been conducted. P.W. 9 had seen the appellants fleetingly in the street light. Hence, his identification ought not to be relied upon.

42. Failure to hold TI parade by itself would not render the identification of a witness in Court inadmissible. Identification in Court is substantive evidence. In absence of earlier identification during investigation, identification in Court is a weak piece of evidence which would require corroboration. In **George And Others vs. State of Kerala And Another**<sup>1</sup> the Apex Court held as follows:

*“25. ... the law is well settled that identification of an accused in court is the substantive evidence of the person identifying and his earlier identification in a TI parade corroborates the same. In other words, want of evidence*

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<sup>1</sup> (1998) 4 SCC 605

*of earlier identification in a TI parade does not affect the admissibility of the evidence of identification in court.*

**29.** *... though not fatal, absence of the corroborative evidence of prior identification in a TI parade makes the substantive evidence of identification in court after a long lapse of time a weak piece of evidence and no reliance can be placed upon it unless sufficiently and satisfactorily corroborated by other evidence.”*

43. Similarly, in ***Dana Yadav Alias Dahu And Others vs. State of Bihar***<sup>2</sup> the Apex Court reiterated same proposition and held as follows:-

**“38. \*\*\***

(a) \*\*\* \*\*\* \*\*\*

(b) \*\*\* \*\*\* \*\*\*

(c) *Evidence of identification of an accused in court by a witness is substantive evidence whereas that of identification in test identification parade is, though a primary evidence but not substantive one, and the same can be used only to corroborate identification of the accused by a witness in court.*

(d) \*\*\* \*\*\* \*\*\*

(e) *Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form the basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law.”*

(Emphasis supplied)

44. It may not be out of place to note that identification of witnesses in Court after seven years without TI parade examination was found reliable

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<sup>2</sup> (2002) 7 SCC 295

in ***Jayakumar vs. State of Kerala***<sup>3</sup>. Reference may also be made to ***State of Karnataka vs. Deja K. Shetty***<sup>4</sup>.

45. Let me examine whether the identification of P.W. 9 in Court is supported by other corroborative evidence. P.W. 9 claimed he had seen one of the appellants, i.e., Sahadeb in the house of Pradip Bardhan earlier. P.W. 8 corroborates such fact. The said witness deposed that the appellants had gone to the house of Pradip earlier in connection to furniture work. This corroborates the version of P.W. 9 that he had seen Sahadeb earlier in the house of Pradip.

46. It is contended P.W. 9 did not disclose this fact before police. No question was put to the investigating officer (P.W. 28) whether he had enquired from P.W. 9 wherein he had seen the appellants earlier. It is common knowledge statements recorded by police during investigation are cryptic. They do not advert to all issues. Judged from this perspective, P.W. 9's deposition that he had seen Sahadeb earlier cannot be discarded particularly when it finds corroboration from P.W. 8 that the appellants used to visit the house of Pradip Bardhan.

47. Presence of P.W. 9 at the place of occurrence is also natural. He is a neighbour and an active politician. He was returning home and had taken shelter due to rain. A street lamp was switched on. He saw the appellants in the light of the street lamp. Though he may have seen them for a short

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<sup>3</sup> (2011) 15 SCC 279

<sup>4</sup> 1993 Supp (1) SCC 141 (Para 8)

time, he could recognise the appellants as he had seen one of them in the house of Pradip Bardhan earlier.

48. Thus, presence of the appellants at the residence of Pradip Bardhan in the night of 14.09.2015 has been proved.

49. Furthermore, the identification of the appellants by P.W. 9 in Court is corroborated by the other incriminating circumstance i.e. the recovery of stolen articles from their possession soon after the incident.

**(iv) Recovery of stolen articles:-**

50. Investigating officer (P.W. 28) deposed the relations gave out the mobile numbers of the deceaseds. SIM card of Pradip Bardhan was 9232693297. He had another SIM card bearing No. 9932902053 which was used by his wife. SIM card of Prasenjit Bardhan was 8145186839. During investigation, P.W. 28 found Pradip's SIM card i.e., 9232693297 had been used in a mobile handset bearing No. 355681050920870 till 14.09.2015 at 12:11:36 hours. He noticed a different SIM card bearing No. 8159929187 was used in the said handset on 14.09.2015 at 22:47:54 hours i.e. 12:47:55 p.m and thereafter on 15.09.2015 at 10:51:22, 10:31:30 and 10:51:39 hours. Investigation also revealed the owner of the SIM card was one Sahadeb Barman of Tarijot. Accordingly, raid was conducted in the house of Sahadeb and three mobile phones (one of Samsung and two Hitachi mobile phones) were recovered. Thereafter, one Mircomax phone



and one Samsung phone bearing IMEI No. 355681050920873 was recovered from the residence of Dipu Sutradhar. From the residence of Chiranjit Modak ATM cards, passbooks, gold ornaments and cash of Rs. 13,000/- was recovered.

51. Recoveries were made from the residence of Sahadeb and Dipu in the presence of P.Ws. 12 and 25. P.W. 12 deposed he went to the residence of Sahadeb with police at 6/6:30 a.m. He was present at the time of recovery. He proved his signature on the seizure list. At 10/10:20 a.m. he was also present with the police when recovery was made from the residence of Dipu. He proved his signature on the seizure list. P.W. 12 has remained unshaken during cross-examination. Minor variation in the manner which he reached the house of Dipu Sutrdhar does not affect the prosecution case with regard to his presence at the place of occurrence.

52. The other witness is P.W. 25, an independent witness. He is a resident of Tarijot and deposed he was present at the time of recovery in the house of Sahadeb and Dipu. His deposition has been challenged on the ground that his son was accused in a POCSO case and he had admitted as per desire of police. Even if one discounts P.W. 25, recoveries from Sahadeb, Dipu have been proved through P.W. 12 and the investigating officer (P.W. 28).

53. P.W. 13 was the driver of the vehicle who took the police to the house of Chiranjit. He deposed he was present at the time of raid. He proved and signed signature on the seizure list and identified articles.

54. Apart from being present at the time of recovery neither P.W. 12 nor P.W. 13 was involved in the investigation of the case. They have remained unshaken during cross-examination. They had no animosity against the appellants. Under such circumstances, merely because they were associated with police, their evidence cannot be discarded with regard to recovery.

55. Hence, I hold that the recovery of mobile phones, gold ornaments, ATM cards, passbooks and cash belonging to the deceaseds on 17.09.2015 from the residences of Sahadeb, Dipu and Chiranjit has been proved beyond doubt.

56. Second tranche of recovery which was made on 23.09.2015. P.W. 28 claimed on 17.09.2015 appellants were arrested. They made disclosure statements. Pursuant to the statements, another set of gold ornaments were recovered from the residence of Dipu on 23.09.2015. Recovery was witnessed by P.Ws. 24 and 25. The aforesaid recovery had been made 6 days after the disclosure statements of the appellants. There is no explanation for the delay. It is also unclear why inspite of conducting search in the house of Dipu on 17.09.2015 the remaining gold ornaments had not been recovered. Hence, I take the subsequent recoveries made on

23.09.2015 from the house of Dipu with a pinch of salt. Be that as it may, this does not affect the credibility of the recoveries made from the appellants soon after the murder on 17.09.2015.

**(v) Identification of the stolen articles:-**

57. P.W. 1 has identified the mobile phones i.e. two Samsung phones and one Micromax phone as that of her father Pradip and brother Prasenjit respectively. Micromax mobile phone was marked as Material Exhibit – II. Samsung touch screen phone and the Samsung key pad phone were marked as Material Exhibits – III & IV respectively. She identified the three phones in Court from amongst the five phones which had been seized during investigation. It is argued no TI Parade was conducted with regard to the phones. This lapse is of little consequence. CDRs of the SIM Card bearing No. 9232693297 (belonging to Pradip Bardhan) from 01.09.2015 to 18.09.2015 show that the mobile handset bearing IMEI No. 355681050920870 had been used by him regularly till on 14.09.2015. One of the recovered handsets being a Samsung phone bore the same IMEI No. 355681050920873. Exhibit – 35 proved by the nodal officer of Airtel (PW19) clarifies that the last digit in 15 digit IMEI number of a mobile phone is replaced by the digit ‘zero’ in CDRs. The aforesaid evidence clearly establishes that the mobile phone bearing IMEI No. 355681050920873 (shown as 355681050920870 in CDRs) belonged to Pradip Bardhan and

had been used by him regularly till 14.09.2015. Thereafter, SIM Card bearing No. 8159929187 standing in the name of Sahadeb Barman was inserted in the said mobile handset and was used by Sahadeb on 14.09.2015 at 22:47:54 hours and on three occasions on 15.09.2015. Finally, the said mobile set was recovered from the residence of Dipu on 17.09.2015. Hence, identification of the mobile phones by PW1 is corroborated by other evidence on record and proves beyond doubt that the recovered phones belonged to his father Pradip and brother Prasenjit.

58. P.W. 1 also identified the gold ornaments of her mother in the course of TI parade as well as in court. P.W. 26, TI parade Magistrate deposed the gold ornaments were mixed with similar ornaments. P.W. 1 attended the TI parade and identified the seized ornaments as that of her mother. P.W. 26 proved the TI parade report (Exhibit - 26). In addition thereto, P.W. 21 identified the stolen gold ornaments in court.

59. It is contended there is delay of more than two months in holding TI parade. There is no identifiable marks in the gold ornaments. PW1 is the daughter of the deceased Dipti who owned the ornaments. Being her daughter she was the best witness to identify the ornaments. She was aware of the ornaments belonging to her mother and had seen the ornaments at close range. In this backdrop, her ability to identify such ornaments cannot be doubted. Though not mentioned in the FIR, theft of the gold ornaments had promptly come to light on the day of incident. Soon

thereafter, the ornaments were recovered from the appellants. They were identified by the daughter of the deceased both during TI parade as well as in court. Nothing has come on record to show she had been shown the seized ornaments earlier. Hence, delay in holding TI parade by itself cannot be a ground to reject her identification. Identification of the stolen articles have been duly proved.

**(vi) Murder and theft were committed in the course of same transaction:-**

60. Evidence on record including the medical evidence would show that the deceaseds were strangled to death in the night of 14.09.2015. Their bodies were recovered in the morning of 15.09.2015. CDR of SIM card no. 9232693297 of Pradip was used in his Samsung mobile handset bearing IMEI No. 355681050920873 till 12:11:36 hours. On 14.09.2015 at 22:47:54 hours. SIM card bearing No. 8159929187 belonging to Sahadeb Barman was used in the aforesaid handset. Thereafter, it was again used on three occasions on 15.09.2015 at 10:51:22, 10:51:30 and 10:51:39 respectively. Within two days stolen mobile phones, some of the gold ornaments of Dipti, ATM cards and passbooks of the deceaseds were recovered from the residences of the appellants. Even if one discounts the subsequent recovery on 23.09.2015, the use of the mobile handset belonging to Pradip Bardhan at 14.09.2015 at 22:47:54 hours by Sahadeb clearly establishes that immediately after murdering the victims Sahadeb and his associates were in possession of the mobile phone. The close and

proximate nexus between the murder and the use of the stolen property by the appellants is established beyond doubt.

61. In ***Baiju alias Bharosa vs. State of Madhya Pradesh***<sup>5</sup> the Apex Court after discussing a plethora of decisions held recovery of articles belonging to the deceased may also lead to a presumption of murder in appropriate cases. Relevant factors to be taken to consider in this regard were enumerated as follows:-

*“14. ... The question whether a presumption should be drawn under Illustration (a) of Section 114 of the Evidence Act is a matter which depends on the evidence and the circumstances of each case. Thus the nature of the stolen article, the manner of its acquisition by the owner, the nature of the evidence about its identification, the manner in which it was dealt with by the appellant, the place and the circumstances of its recovery, the length of the intervening period, the ability or otherwise of the appellant to explain his possession, are factors which have to be taken into consideration in arriving at a decision.”*

62. Similar view was taken in ***Mohan Lal And Another vs. Ajit Singh And Another***<sup>6</sup>.

63. From the evidence on record it is unequivocally established that the murder occurred in the night of 14.09.2015. Immediately thereafter at 22:47 hours, one of the appellants i.e. Sahadeb had used the mobile phone of Pradip Bardhan bearing IMEI No. 355681050920873. Within two days the three mobile phones, gold ornaments and other stolen articles of the

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<sup>5</sup> (1978) 1 SCC 588

<sup>6</sup> AIR 1978 SC 1183

deceaseds were recovered from the appellants. This proves beyond doubt that the murder and theft were committed in the course of same transaction. No explanation is forthcoming from the appellants justifying their possession of the stolen articles of the deceaseds immediately after the murder. Under such circumstances, unexplained possession of the stolen articles by the appellants immediately after the incident would be presumptive evidence of murder. In addition thereto, these irrefutable circumstances are corroborated by P.W. 9 who saw the appellants coming out of the residence of Pradip Bardhan in the night of 14.09.2015. The chain of circumstances is complete and unerringly point to the guilt of the appellants.

64. Authorities relied on by the appellants are factually distinguishable.

65. In ***Tulsiram Kanu vs. State***<sup>7</sup> the recovery of stolen gold ornaments was made five months after the incident. Owing to the time gap between the murder and recovery of stolen articles, the Apex Court on facts refused to come to a finding that the murder and theft were committed in the course of same transaction.

66. Similarly in ***Sanwat Khan and Anr. vs. State of Rajashtan***<sup>8</sup> a time gap of about two weeks between the murder and recovery did not persuade the Court to draw a presumption of murder. However, the Court quoted

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<sup>7</sup> AIR 1954 SC 1

<sup>8</sup> (1952) 2 SCC 641

with approval in the event of murder and theft were committed in the course of same transaction, unexplained and possession of stolen property may lead to presumptive evidence of murder.

67. In ***State of Rajasthan vs. Talevar And Another***<sup>9</sup> noting the nature of property i.e., cash and other articles which are easily transferable and the time gap between the death and recovery i.e. between two weeks and a month the Apex Court refused to draw an inference that murder and theft were part of the same transaction.

68. In ***Sonu alias Sunil vs. State of Madhya Pradesh***<sup>10</sup> mobile phone recovered from the accused had not been proved to be that of the deceased. The numbers of the two phones were different.

69. In ***Limbaji And Other vs. State of Maharashtra***<sup>11</sup> as well as in ***Brajendrasingh vs. State of Madhya Pradesh***<sup>12</sup> the prosecution case was based on recovery of stolen articles alone. On the contrary, the present case is founded not only on the prompt recovery of stolen articles but the ocular version of a witness (P.W. 9) who saw the appellants leaving the residence of the deceaseds on the date of occurrence.

70. In ***Hatti Singh vs. State of Haryana***<sup>13</sup> there was dispute with regard to the identification of the dead body which had been recovered after 14 days. 'Last seen together' theory had also not been believed. Reliance on

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<sup>9</sup> (2011) 11 SCC 666

<sup>10</sup> 2020 SCC OnLine SC 473

<sup>11</sup> (2001) 10 SCC 340

<sup>12</sup> (2012) 4 SCC 289

<sup>13</sup> (2007) 12 SCC 471



the recovery was found to be unjustified as co-accuseds had been acquitted. The cited case is clearly distinguishable from the present one.

71. Similarly, in ***Anjan Kumar Sharma And Others vs. State of Assam***<sup>14</sup> the Apex Court found it unsafe to convict the accused on the sole circumstance that he was last seen with the deceaseds. This case is also distinguishable on facts.

72. In ***Mustkeem @ Sirajuddin vs. State of Rajasthan***<sup>15</sup>, recovery memos were overwritten and recovery witnesses had turned hostile. Hence, recoveries were found doubtful. In this case, not only recoveries have been proved but use of the stolen mobile handset by one of the appellants has been established through unimpeachable electronic data.

73. On the other hand, in ***Kanti Lal vs. State of Rajasthan***<sup>16</sup> the Apex Court relied on recovery of stolen articles from the accuseds soon after the murder to convict them not only on the charge of dacoity but also murder.

**(vii) Deficiencies in investigation – not fatal :-**

74. It is incorrect to say no investigation was made with regard to the painters in the house. In cross, investigating officer (P.W. 28) stated painters were working in the house of Pradip Bardhan. They were interrogated and even one of them i.e. Sanjit Raj Dhaw was cited as a witness in the charge-sheet. However, it appears they were unable to throw

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<sup>14</sup> (2017) 14 SCC 359

<sup>15</sup> (2011) 11 SCC 724

<sup>16</sup> (2004) 10 SCC 113 (See Para 5)

any light about the murders. Accordingly, prosecution chose not to examine them. It is open to the prosecution to choose its witnesses to unfold its case. Nothing has come on record that withholding of the house painter cited as a witness in the charge-sheet has adversely affected the unfolding of the case.

75. Similarly, failure to conduct FSL examination of the tuft of hair found in the hand of the deceased is a remissness of investigation which does not impact the credibility of the incriminating circumstances proved against the appellants establishing their presence at the residence of Pradip in the night of 14.09.2015 and their possession and use of his mobile handset immediately thereafter leading to the irrefutable inference of guilt.

**Conclusion :-**

76. In the light of the aforesaid discussion, I am of the opinion the prosecution case against the appellants has been proved beyond doubt.

77. Conviction of the appellants under sections 302/392 IPC read with section 34 IPC is upheld.

**Death sentence :-**

78. Trial Court has imposed the irreversible sentence of death upon the appellants. To arrive at such conclusion, the Court relied upon the following aggravating circumstances:-

- i) Three persons one of whom is a lady and another a young man in his twenties were murdered;*

*ii) Murder was committed in a cold blooded and pre-planned manner without slightest provocation. It was a brutal one;*

*iii) Appellants did not suffer from acute financial crisis nor were they illiterate.*

79. In ***Bachan Singh vs. State of Punjab***<sup>17</sup> the Apex Court had illustratively enumerated aggravating and mitigating circumstances. Important mitigating circumstances emphasised therein are as follows:-

**“206. ...**

1) \*\*\* \*\*

2) \*\*\* \*\*

3) *The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.*

*(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.”*

80. Trial has singularly failed to address the aforesaid mitigating circumstances.

81. In ***Machhi Singh vs. State of Punjab***<sup>18</sup> the Apex Court had set out various categories of gruesome offences which may fall within the category of ‘rarest of rare’ cases attracting the death penalty. Even after it

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<sup>17</sup> (1980) 2 SCC 684

<sup>18</sup> (1983) 3 SCC 470

emphasised on the importance of individualised sentencing on a case to case basis :-

*“38. In this background the guidelines indicated in Bachan Singh case will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh case:*

*“(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.*

*(ii) Before opting for the death penalty the circumstances of the ‘offender’ also require to be taken into consideration along with the circumstances of the ‘crime’.*

*(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.*

*(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.*

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

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

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

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

82. The aforesaid observation in ***Machhi Singh*** (supra) would show merely because a case fell in one or more of the categories quoted therein, imposition of death penalty is not automatic. The Court must interrogate itself whether there is anything so 'uncommon' in the crime that it extinguishes the ameliorative plenitude of all mitigating circumstances. The alternate punishment of life imprisonment is wholly foreclosed.

83. Perusal of the aggravating circumstances quoted by the trial Judge indicates he was primarily swayed to impose death sentence on the ground three persons were murdered. The other observations with regard to pre-planned or brutal nature of the crime does not find support from the evidence on record. It is unclear whether the appellants had entered into a conspiracy and had come to the residence of Pradip with the intention to murder. On the other hand, it is more probable the common intention to murder had sprung up at the spot.

84. With regard to the gruesome nature of the crime it may be noted apart from the ligature marks other injuries on the deceaseds are nail scratches, abrasion or contusions. They may have been caused in the course of the skirmish when the appellants tried to decamp with the booty. Appellants do not appear to have carried weapons. Household articles

available at the spot e.g. bed sheet and coconut rope (used for painting purposes) were utilised as ligature. This improbabilises the conclusion that the murder was either pre-planned or gruesome. It was committed primarily out of fear of being detected. The conclusion of the trial Judge that the appellants did not come from humble background as one of them possessed mobile phone is also misconceived. Appellants were carpenters and came from a humble strata of society.

85. In a catena of cases, the Apex Court held number of deaths by itself cannot be a ground to infer the offence fell in the '*rarest of rare*' category justifying death penalty. In ***Gudda vs. State of M.P.***<sup>19</sup> (case involving murder of three persons including a pregnant lady and young child) and ***Ram Pal vs. State of U.P.***<sup>20</sup> (death of 21 persons) the Apex Court held number of deaths cannot be the sole criteria for awarding maximum sentence of death.

86. In ***Manoj And Others vs. State of Madhya Pradesh***<sup>21</sup> the accused had murdered his three minor children. His death sentence was converted to life imprisonment without remission for 25 years.

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<sup>19</sup> (2013) 16 SCC 596

<sup>20</sup> (2003) 7 SCC 141

<sup>21</sup> 2022 SCC OnLine SC 677

87. In **Vijay Kumar vs. State of Jammu & Kashmir**<sup>22</sup> murder of three children of the sister-in-law of the convict was not considered a 'rarest of rare' case justifying death penalty.

88. Similarly, in **Brajendrasingh** (supra) murder of wife and three minor children on the suspicion of wife's infidelity was not considered sufficient to impose death penalty.

89. In **Mulla And Another vs. State of Uttar Pradesh**<sup>23</sup> death sentence of convicts who murdered five persons was remitted to life imprisonment owing to their socio economic status.

90. Furthermore, none of the aggravating circumstances relied upon by the trial court would rule out the possibility of reformation and rehabilitation. The Court ignored the fact the appellants were first time offenders and had no criminal antecedents.

91. The trial Court misdirected itself and misconstrued the ratio in **Union of India (UOI) vs. V. Sriharan Alias Murugan And Ors.**<sup>24</sup> In the said case, the Constitution Bench had, inter alia, upheld the ratio in **Swamy Shraddananda (2) vs. State of Karnataka**<sup>25</sup> and affirmed the power of superior Courts to impose life sentence without remission after commuting death sentence. The wholesome object was to humanise death penology by evolving an alternative course of imposing life imprisonment without

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<sup>22</sup> (2019) 12 SCC 791

<sup>23</sup> (2010) 3 SCC 508

<sup>24</sup> (2016) 7 SCC 1

<sup>25</sup> (2008) 13 SCC 767

remission in borderline cases which may otherwise attract death sentence. This jurisprudential innovation had the twin advantage of reducing the propensity of courts to impose death penalty in hard cases on the one hand while ruling out the societal apprehension of recidivism on the other hand.

92. Trial Judge failed to appreciate the ratio in **Swamy Shraddananda (2)** (supra) and incorrectly applied the observations of *Fazal Ali, J.* in **Maru Ram vs. Union of India**<sup>26</sup> [as referred to **V. Sriharan** (supra)] i.e. “*where one person commits three murders it is illogical to plead for the criminal and to argue that his life should be spared, without at all considering what has happened to the victims and their family*” to the facts of the case. The said observation was made by *Fazal Ali, J.* while upholding the constitutional validity of death sentence. It cannot be interpreted to mean that in every case involving multiple murders, sentence of death is justified. On the other hand, the ratio in **V. Sriharan** (supra) emphasises the adoption of the alternate course of life imprisonment without remission which would take care of any apprehension of recidivism without extinguishing the life of another human being.

93. Presence of mitigating factors like lack of criminal antecedents play an important role to opt for a more humanistic approach of imposition of life imprisonment without remission. Appellants are first time offenders. Though the three persons have been murdered, evidence on record do not

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<sup>26</sup> (1981) 1 SCC 107



show appellants had come to the spot armed or the murders were pre-planned. They were carpenters who had committed robbery. To avoid detection they murdered the inmates. Nothing is placed on record on behalf of the State to show they are hardened criminals who have no possibility for reformation. Apprehension of premature release leading to recidivism may be addressed by imposing appropriate bar on remission powers of the executive.

94. Balancing the aggravating and mitigating factors in the present case, this Court is inclined to commute the death sentences imposed on the appellants and direct that they shall suffer rigorous imprisonment for life without remission for a period of thirty years and to pay a fine of Rs. 10,000/- each, in default, to suffer rigorous imprisonment for three years more for the offence punishable under section 302 IPC and shall suffer rigorous imprisonment for ten years and pay a fine of Rs. 10,000/- each, in default to suffer rigorous imprisonment for two years more for the offence punishable under section 392 IPC. Both the sentences shall run concurrently.

95. Death Reference No. 1 of 2019 and Criminal Appeal No. 12 of 2019 are, accordingly, disposed of.

96. In view of disposal of the appeal, connected application being CRAN 1 of 2020 also stands disposed of.

97. Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon them in terms of Section 428 of the Code of Criminal Procedure.

98. A copy of the judgment along with L.C.R. be sent down to the trial Court at once for necessary action.

99. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

I agree.

**(Subhendu Samanta, J.)**

**(Joymalya Bagchi, J.)**