

Reserved on 21.12.2021

Delivered on 22.02.2022

**Court No. - 1**

**Case :-** CAPITAL SENTENCE No. - 1 of 2000

**Appellant :-** State of U.P.

**Respondent :-** Krishna Murari alias Murli and others

**Counsel for Appellant :-** From Addl.Session Judge,G.A.,Shitla Prasad Tripathi,Shiv Ganesh Singh,Umesh Pratap Singh

**Counsel for Respondent :-** G.A.,Anuj

Pandey,I.D.Shukla,S.K.Merotra

**Connected with**

**Case :-** CRIMINAL APPEAL No. - 14 of 2000

**Appellant :-** Krishna Murari and 3 others

**Respondent :-** State of U.P.

**Counsel for Appellant :-** Smt.S.Bala,Shailesh Tiwari

**Counsel for Respondent :-** G.A.,A.R.Siddiqui

**With**

**Case :-** CRIMINAL APPEAL No. - 25 of 2000

**Appellant :-** Raghav Ram Verma

**Respondent :-** State of U.P.

**Counsel for Appellant :-** From Jail,Shitla Prasad Tripathi,Umesh Pratap Singh

**Counsel for Respondent :-** G.A.

**With**

**Case :-** CRIMINAL APPEAL No. - 26 of 2000

**Appellant :-** Krishna Murari Verma alias Murli

**Respondent :-** State of U.P.

**Counsel for Appellant :-** From Jail,Smt. Sarojini Bala

**Counsel for Respondent :-** G.A.

**With**

**Case :-** CRIMINAL APPEAL No. - 27 of 2000

**Appellant :-** Kashi Ram Verma

**Respondent :-** State of U.P.

**Counsel for Appellant :-** From Jail,Shitla Prasad Tripathi,Smt. Sarojini Bala,Umesh Pratap Singh

**Counsel for Respondent :-** G.A.

**With**

**[ 2 ]**

**Case :-** CRIMINAL APPEAL No. - 28 of 2000

**Appellant :-** Ram Milan Verma

**Respondent :-** State of U.P.

**Counsel for Appellant :-** From Jail, Shitla Prasad Tripathi, Umesh Pratap Singh

**Counsel for Respondent :-** G.A.

**With**

**Case :-** CRIMINAL REVISION No. - 14 of 2000

**Revisionist :-** Rama Kant Verma

**Opposite Party :-** Ram Kripal Verma & Others

**Counsel for Revisionist :-** A.R. Siddiqui

**Counsel for Opposite Party :-** Govt. Advocate, Dinesh Chandra, Om Prakash

**Hon'ble Ramesh Sinha, J.**

**Hon'ble Vivek Varma, J.**

**(The judgment is pronounced in terms of Chapter VII Sub-rule (2) of Rule (1) of the Allahabad High Court Rules, 1952 by Hon'ble Ramesh Sinha, J.)**

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

**(A) INTRODUCTION**

- (1) The six accused persons, namely, **Krishna Murari Verma alias Murli, Kashi Ram Verma, Raghav Ram Verma, Ram Milan Verma, Ram Kripal Verma and Ram Tilak Verma,** were tried by the X Additional District & Sessions Judge, Faizabad in Sessions Trial No. 85 of 1995 : *State Vs. Krishna Murari and others*, arising out of Case Crime No. 156 of 1994, under Sections 148, 302, 120B I.P.C., Police Station Tarun, District Faizabad.
- (2) Vide judgment and order dated 21.12.1999, X Additional District & Sessions Judge, Faizabad, while acquitting accused

**[ 3 ]**

Ram Tilak Verma and Ram Kripal Verma of the charge of offence punishable under Section 120-B I.P.C, convicted and sentenced other accused persons, namely, Krishna Murari Verma alias Murli, Kashi Ram Verma, Raghav Ram Verma and Ram Milan Verma in the manner as stated hereinbelow :-

- “(i) Under Section 302 I.P.C. read with Section 149 I.P.C. to be hanged separately till they are dead ; and
- (ii) Under Section 148 I.P.C. to undergo imprisonment for one year R.I.”

(3) Aggrieved by the aforesaid judgment and order of their conviction and sentence, four accused persons, namely, Krishna Murari Verma alias Murli, Kashi Ram Verma, Raghav Ram Verma and Ram Milan Verma, have preferred, in this Court, four separate criminal appeals, bearing Nos. 25 of 2000, 26 of 2000, 27 of 2000 and 28 of 2000, respectively, from jail and Criminal Appeal No. 14 of 2000 through their counsels, whereas informant/revisionist Rama Kant Verma has filed Criminal Revision No. 14 of 2000 against the judgment and order dated 21.12.1999 of acquittal of Ram Kripal Verma and Ram Tilak Verma.

(4) Capital Sentence Reference No. 1 of 2000 arises out of the Reference made by the learned trial Court under Section 366 (1) of the Code of Criminal Procedure, 1973 to this Court for confirmation of the death sentence of four convicts/appellants

[ 4 ]

Krishna Murari Verma alias Murli, Kashi Ram Verma , Raghav Ram Verma and Ram Milan Verma.

- (5) Since the above-captioned capital sentence reference, appeals and revision arise out of a common factual matrix and impugned judgment dated 21.12.1999, we are disposing them of by this judgment.
- (6) It is pertinent to mention here that vide judgment and order dated 21.12.2000, a Co-ordinate Bench of this Court, while dismissing the criminal revision no. 14 of 2000 preferred by the informant Rama Kant Verma and rejecting the Reference, allowed the above-mentioned criminal appeals preferred by convicts/appellants.
- (7) Feeling aggrieved by the aforesaid judgment and order dated 21.12.2000, informant Rama Kant Verma and the State had preferred Criminal Appeal Nos. 934-939 of 2001 : *Rama Kant Verma Vs. State of U.P. and others* and Criminal Appeal Nos. 1202-1206 of 2001, respectively, before the Hon'ble Supreme Court and the Hon'ble Supreme Court, vide judgment and order dated 02.12.2008, allowed the aforesaid criminal appeals and remitted the matter to the High Court for hearing the cases afresh and dispose them of in accordance with law.

**(B) FACTS**

- (8) In the intervening night of 10/11.11.1994, at about 02:30 a.m., informant Rama Kant Verma and his cousin Girish Chandra

[ 5 ]

Verma son of Ram Naresh Verma were sleeping in the room of the Tube-well by closing the door of it. His grand-father Shri Sukai Verma son of Pachu and his uncle Shri Ram Naresh Verma son of Sri Sukai Verma were sleeping under the Chhappar (thatch) near the tube-well and his another uncle Shri Ram Dev Verma son of Shri Sukai Verma was sleeping under the southern Chhappar (thatch). His younger brother Uma Kant Verma (P.W.2) was sleeping inside the Saria for looking after the cattle.

His grand-father (Sukai Verma) and his uncle (Ram Naresh Verma) raised alarm and asked for help, then, he (Rama Kant Verma) and his cousin (Girish Chandra Verma) came out of the tube-well room after opening its door and saw that Krishna Murari Verma alias Murlu son of Ram Jagat Verma, Kashi Ram Verma son of Tidi Verma armed with Gandasa and Raghav Ram Verma son of Nanhaku, Ram Milan Verma son of Ram Awadh armed with Banka, and 2-3 other persons, who had muffled/covered their faces by means of cloth, were beating and cutting the head of his grand-father Sukhai Verma and his uncle Ram Naresh Verma with Gandasa and Banka.

Ram Dev, another uncle of the informant, was sleeping south of the tube-well under the Chhappar. Rama Kant (P.W.1), Uma Kant (P.W.2) and Girish (deceased) tried to rescue the deceased persons, but the assailants attacked Girish (deceased) and Ram Dev (deceased) also with their weapons. Rama Kant (P.W.1)

**[ 6 ]**

and Uma Kant (P.W.2) escaped and ran into the field of sugarcane and also they raised alarm. It was night time 2.30 a.m. on 11.11.1994 (in intervening night of 10th and 11th November, 1984). Due to their cries and alarm, Ram Tej, father of informant, and several villagers came with lathis and torches. The assailants ran away towards the south.

It was further alleged that the four appellants were seen and identified by Rama Kant (PW 1), Uma Kant (PW 2), Ram Tej and villagers in the light of the torches and the electric light. It was also alleged that litigation regarding land had been going on between the victims and appellant Krishna Murari alias Murli. The cattle of Krishna Murari were sent to Ram Kripal ten days before the occurrence and he had also sent his family out of the village to his wife's house in another village. Rama Kant further alleged that in the morning Daljeet Singh (PW3), Jaising Mau and Hari Om (PW4) told him that on 10.11.94 at 9.00 p.m. the appellants were seen by them, consuming non-vegetarian food alongwith Ram Tilak and Ram Kripal at the shop of Ram Kripal. Rama Kant therefore, alleged his suspicion against Ram Kripal and Ram Tilak as the persons who were instrumental in the commission of this crime conspiring with the appellants. All four victims had died instantaneously on the spot. Then in the morning, the informant scribed his F.I.R. (Exhibit Ka-1). Along with Manik Ram Verma , Munna Lal Verma, one other person and the informant P.W.1 (Rama Kant

[ 7 ]

Verma ) proceeded to Police Station Tarun, where he lodged his F.I.R.

- (9) The evidence of H.C. Ram Harsh Yadava P.W. 12 shows that on 11.11.1994, he was posted as Head Moharrir at Police Station Tarun. On the basis of the written report of Rama Kant Verma (P.W.1), he registered the F.I.R. and prepared the chik F.I.R on 11.11.1994 at 06:30 a.m. and on its basis, Case Crime No. 156 of 1994, under Sections 147, 148, 149, 302, 120B I.P.C. was registered against the accused persons Krishna Murari alias Murali, Kashi Ram Verma, Raghav Ram Verma, Ram Milan, Ram Kripal Verma and Ram Tilak Verma at police station Tarun, district Faizabad.
- (10) It is pertinent to mention that a perusal of the chik F.I.R. also shows that the distance between the place of incident and the police station was 6 kilometres.
- (11) The investigation of the case was entrusted to the Station Officer of the Police Station Tarun, namely, Sudhakar Pandey (PW 10), who, in his examination-in-chief, had deposed before the trial Court that on 11.11.1994, he was posted as Station Officer at Police Station Tarun and case crime no. 156 of 1994 was registered on 11.11.1994, at 06:30 a.m. in his absence and at the time of registering the case, he was busy in his duty at Ayodhya in "चौदह कोसी परिक्रमा" and on receiving information of this case, he reached Police Station Tarun and obtained a copy

[ 8 ]

of the FIR and other relevant papers from the Police Station and reached the spot of occurrence in village Barauli at about 9.00 a.m., wherein he found that SSI Sri Ramjirai, police station Bikarpur, SI Riaz Khan of P.S, Haiderganj, and SI Sifate Haider (PW13) of Police Station Tarun were already reached there along with other police personnel. Thereafter, he directed S.I. Riaz Khan to get the inquest proceedings of the deceased Sukai Verma and Ram Naresh and S.I. Sifate Haider (P.W.13) to get the inquest proceedings of the deceased Ram Dev and Girish Chandra Verma. On his direction and under his supervision, the inquest reports of the deceased Sukai Verma, Ram Naresh, Ram Dev and Girish Chandra Verma were prepared by them. After that, the dead bodies were sealed in a separate clothes and sent the dead bodies for post mortem examination to Faizabad by Constable Ramjeet Rawat and Constable Chandra Prakash Singh. He prepared the duplicate C.D. of Panchayatnama. Thereafter, he took down the statements of Rama Kant Verma (P.W.1), Uma Kant Verma (P.W.2), Manik Lal Verma (P.W.7) and Munna Lal Verma (P.W. 8). He, thereafter, inspected the place of occurrence at the instance of the witnesses of fact and prepared the site map (Ext. Ka 6). He found the dead body of Sukai on a Cot upon which कथरी and चद्दर were sheeting and one रजाई was also there, on which stained blood of the deceased was present and blood was splattered on the wall at the head of the cot. After scratching the blood stained brick of the wall, he sealed it in a separate

**[ 9 ]**

container and cloth was sealed in a separate container and prepared its recovery memo (Ext. Ka.7).

Similarly, the dead body of Ram Naresh Verma was on a cot with an Angocha, a Kathri, a Chadar, another coloured chadar and one bush-shirt stained with blood. There were stains of blood on the wall and the memo (Ex Ka 8) thereof was also prepared and articles with blood on walls were sealed separately.

In the same manner, dead body of Ramdev was found on the Cot with kathri, chadar, banyan and gamchha stained with blood, and blood was also found on the ground near the Cot. These articles were sealed and blood stained and sample earth were taken and sealed them separately and recovery memo (Ex.Ka9) was prepared by him. The bedding consisting of Kathri, Rajai and two chadars and Tehmad of deceased Girish was found on the cot stained with blood.

The dead body of Girish was found in a pit (gaddha) where his blood had also fallen. Blood stained and plain earth were taken into possession and were sealed separately by the I.O. and memo of this and other articles were prepared (Ext. Ka 10). Then statements of witnesses of recovery were taken down.

On the same day, he searched for the accused persons but they were not present at their homes. When he returned from

[ 10 ]

there, an information was received from an informer and on this information, he arrested accused Kashi Ram Verma, Raghava Ram and Ram Tilak on the same day and recorded their statements. He was, after that, transferred from Tarun P.S, on 13.11.94.

In his cross-examination, P.W.10 has deposed before the trial Court that firstly, he came to the police station from Ayodhya at 08:40 a.m. and reached the place of occurrence at 08:55 a.m. He did not record the statement at the police station and when he reached the place of occurrence, S.I. who was present there, was asked by him to do panchayatnama. Approximately, three hours have taken for preparation of panchayatnama. After completing panchayatnama, he prepared the duplicate C.D. of panchayatnama, recorded the statements of the witnesses and prepared the site plan. About 3:00 p.m., he has prepared the site plan. Thereafter, he prepared the recovery memo as deposed in his examination-in-chief. He stayed at the place of occurrence till 05:00 p.m. and sent the dead bodies for post-mortem at 12:15 p.m. by a tractor. Along with the dead bodies of the deceased, some persons were also gone. He restrained the informant and his brother. The informant and his brother were along with him at the time of inspection of the place of occurrence. He found the dead bodies of the deceased, except deceased Girish on the cot. He also found the blood beneath one cot but he did not find any blood beneath the other

[ 11 ]

Cot. He did not find any blood in the field. He denied the suggestion that he falsely implicated the accused persons on the dictate of the informant.

P.W.10 has further deposed in his cross-examination that he did not mention the distance from the place of incident to police station, F.I.R. number and weapon of assault in the panchayatnama but he mentioned only case crime number in the Panchayatnama. He further deposed that on 11.11.1994, he recovered a live cartridge of 315 bore during the inspection of the place of occurrence near the cot of Sukai and he took it and prepared recovery memo (Ext. Ka. 38), in which the signatures of witnesses Ram Shanker and Manik Ram were taken.

- (12) The evidence of P.W.13 S.I. Sidne Haider shows that on 11.11.1994, he was posted as II officer at police station Tarun District Faizabad. Before the incident i.e. 08.11.1994, he was busy in his duty at Ayodhya in "चौदह कोसी परिक्रमा" and on 11.11.1994, he received information of this case and on receiving it, he reached the Police Station Tarun, from where he reached the place of occurrence village Barauli, Police Station Tarun, wherein police personnel of police station Haiderganj and police station Bikapur and other employees were present at the place of occurrence. At that time, Sri Riyaz Khan had prepared the panchayatnama of the deceased Sukhai and Ram Naresh. SO Sudhakar Pandey had also reached there and on his direction, he prepared the panchayatnama of accused Ram Dev

[ 12 ]

and Girish Chandra. He filled the panchayatnama of the deceased Ram Dev at 09:00 a.m. and thereafter, sealed the dead body of deceased Ram Dev in a cloth and prepared the document in this regard (Ext. Ka.18). On the dead body of the deceased Ram Dev, one blood stained dhoti and a wrist watch on the left hand were present. Thereafter, he prepared the photograph of the deceased Ram Dev (Ext. Ka. 20). Subsequently, he conducted the panchayatnama of the deceased Girish Verma. He started to conduct the panchayatnama of the deceased Girish Verma on 11.11.1994 at 10:40 a.m. On the dead body of the deceased Girish Verma, he found a sweater, on which blood was present. One bushart and a underwear were also present on the dead body of the deceased Girish Verma. He thereafter sealed the dead body of the deceased Girish Verma in a cloth and prepared the documents in this regard. After completion of all formalities, the dead bodies of the deceased were sent for post-mortem along with Constable Ram Deen and Chandra Prakash.

In cross-examination, P.W.13 has stated that while conducting Panchayatnama, he did not write the number of chik FIR regarding the incident nor wrote thereon the titled "State vs. Whose". He further deposed that while filling panchayatnama, he did not give the description of the used weapon. In the panchayatnama, the distance from the place of occurrence to the police station has not been mentioned, for

[ 13 ]

which he did not state any reason. He did not find any mud or clay on the body of the deceased Girish and if it is found, the same would have been written in the Panchayatnama.

- (13) The evidence of P.W.14-Constable Ram Narayan Pandey shows that he was posted along with S.I. Riyaz Khan at police station Haiderganj in 1996-97. He had seen S.I. Riyaz Khan for reading and writing and he knows his handwriting and signature very well. Ext. Ka. 25 form no. 13 is in his handwriting and his signature. S.I. Riyaz Khan died on 08.01.1997. The sample seal (Ext. Ka.26) is in the handwriting and signature of Sri Riyaz Khan. Photo lash (Ext. Ka.27), Ext. Ka. 28 and Ext. Ka. 29 are in the handwriting and signature of late Riyaz Khan. Panchayatnama (Ext. Ka 30) is in the handwriting and signature of Late Riyaz Khan. The sample seal of deceased Sukai Verma (Ext. ka. 31) is in the handwriting and signature of late Riyaz Khan. Photo lash of the deceased Sukai (Ext. Ka.32) and letters to CMO (Ext. Ka. 32 and 33) are in the handwriting and signature of Late Riyaz Khan.
- (14) After transfer of S.I. Sudhakar Pandey (P.W.10) from police station Tarun, the investigation was conducted by his successor Ashutosh Sharma (PW 11), who arrested Ram Milan and recorded the statements of remaining witnesses and then submitted charge-sheet (Ext. Ka.15) against the six named persons.

[ 14 ]

In cross-examination, P.W. 11 has deposed that he took the investigation of the case on 14.11.1994.

(15) Going backward, the post-mortem of the dead bodies of deceased Ram Dev, Ram Naresh, Sukhai and Girish was conducted on 12.11.1994, at 11:00 a.m., 11:45 a.m., 12:30 p.m. and 01:00 p.m., respectively, in District Hospital, Faizabad by Dr. O. P .Khattri (PW-9), who found the ante-mortem injuries on their person as enumerated hereinbelow :-

**“Ante-mortem injuries of the deceased Ram Dev, aged 65 years :-**

1. Abraded contusion 4 cm x 1 cm on the right side fore-head 6 cm away from the eye-brow.
2. Abraded contusion 4 cm x 1.5 cm on the right side forehead 1 to 1½ cm below injury no.1.
3. Incised wound 7 cm x 3 cm bone on the right side of face at the root of the nose upto right ear. Clear cut margins.
4. Incised wound 14 cm x 4 cm x bone deep on right side face 1 1/2 cm away from injury no.3 on left side of face. Bone cut. Parellel to injury no.3 from left to right. Clear cut margins. Bone cut.
5. Incised wound 6 cm x 1 cm x bone deep on right side of face 1 cm below injujry no.4.
6. Incised wound 7 cm x 2 cm x bone deep on right side of face 1 cm below injury no.5. Jaw fractured.

[ 15 ]

7. Incised wound 7 cm x 1.5 cm x muscle deep on the upper left side Neck 4 cm below the jaw. Spindle shaped. Clear cut margins.
8. Incised wound 7 cm x 1.5 cm x muscle deep on right side Neck parallel to injury no.7 and 1.5 cm below injury no.7.
9. Stab wound 2 cm x 1 cm x lungs deep on right side clavicle clear cut margins. Bone fractured. Going downwards
10. Incised wound 7 cm x 7 cm x bone deep on the right shoulder. Humerus bone fractured.
11. Incised wound 10 cm x 1 cm x bone deep on left fore-arm. Bone clear cut underneath.
12. Incised wound 1.5 cm x 1 cm x bone deep on the left fore-arm 1 cm above injury no.11.
13. Incised wound 1.5 cm x 1 cm x muscle deep above 1 cm from injury no.12.
14. Incised wound 1 cm x 0.5 cm x muscle deep left hand, 1 cm above injury no.13.
15. Incised wound 4 cm x 1 cm x bone deep on right fore-arm. Bone underneath clear cut. Wound was on the back of the upper part of the forearm.”

As per the opinion of Dr. O.P. Khattri (P.W.9), deceased Ram Dev died due to shock and haemorrhage on account of ante-mortem injuries.

**“Ante-mortem injuries of deceased Ram Naresh, aged 55 years**

[ 16 ]

1. Incised wound 8 cm x 1 cm x bone deep on left side head 5 cm from ear. Spindle shaped. Clear cut margins.
2. Incised wound 14 cm x 2.5 cm x bone deep on left side head 1 cm above the eye brow. Spindle shaped.
3. Incised wound 1 cm x 2 cm on left side of head 2 cm below injury no.2.
4. Incised wound 8 cm x 1 cm x bone deep left side face 2 cm above the middle of jaw. Vertically.
5. Incised wound 17 cm x 2.5 cm x muscle deep left side Neck in the middle. Blood vessel and trachea cut.
6. Incised wound 16 cm x 4 cm x muscle deep on left side Neck. 2.5 cm below injury no.5.
7. Incised wound 6 cm x 2 cm x bone deep lower fore-arm (right). Bone underneath cut.
8. Incised wound 4 cm x 1.5 cm x muscle deep on right hand 2 cm below injury no.7.
9. Incised wound 4 cm x 1 cm x bone deep left fore-arm 4 cm above the joint of wrist.
10. Incised wound 5 cm x 4 cm x bone deep left wrist.
11. Incised wound 5 cm x 1.5 cm x bone deep left hand.
12. Incised wound 4 cm x 1 cm left hand. 1.5 cm below injury no.11.

[ 17 ]

13. Incised wound 3 cm x 1.5 cm x bone deep left hand 2 cm below injury no.11

As per the opinion of Dr. O.P. Khattri (P.W.9), deceased Ram Naresh died due to shock and haemorrhage on account of ante-mortem injuries.

**“Ante-mortem injuries of deceased Sukhai, aged 80 years**

1. Incised wound 23 cm x 7 cm x bone deep on right side of neck starting from the upper lip to the back of Neck. All bones cervical vertebrae cut.
2. Incised wound 6 cm x 3 cm x bone deep right fore-head 3 cm above the right eye brow.
3. Incised wound 8 cm x 3 cm x muscle deep on right side face. Extending from the middle of nose upto right ear below 4 cm. Margins clear cut. Spindle shape.
4. Incised wound 4 cm x 1 cm x bone deep on right fore-head. Rt. Clavicle, Right side 2<sup>nd</sup> to 7<sup>th</sup> ribs fractured. Membrances of Lungs torn. Right lung cut 7 cm x 4 cm.

As per the opinion of Dr. O.P. Khattri (P.W.9), deceased Sukhai died due to shock and haemorrhage on account of ante-mortem injuries.

**“Ante-mortem injuries of deceased Girish, aged 18 years**

1. Incised wound 14 cm x 8 cm x muscle deep on back of head 7 cm above the 7<sup>th</sup> cervical bone. Brain matter was coming out.

[ 18 ]

2. Incised wound 10 cm x 1.5 cm x bone deep on left side of head 7 cm above the left ear. Spindle shape.
3. Incised wound 5 cm x 2 cm x bone deep lower part of left fore-arm. There was cut of bone 2 cm above the ulna bone.
4. Incised wound 2 cm x 1 cm x muscle deep front of left hand.
5. Incised wound 3 cm x 1 cm x muscle deep front of left hand.
6. 3 incised wounds 10 cm x 7 cm on right shoulder. The biggest wound being 6 cm x 1 cm and smallest 2 cm x 1 cm x skin deep.
7. Incised wound 2.5 cm x 2 cm muscle deep on right upper arm 3 cm below injury no.6.
8. Incised wound 2.5 cm x 2 cm x bone deep right upper arm 4 cm above the elbow.
9. Incised wound 4 cm x 0.1 cm x muscle deep on right fore-arm 6 cm away from the elbow.
10. Incised wound 4 cm x 1.5 cm x muscle deep on right fore-arm on inferior side 4 cm above the elbow.
11. Several incised wounds in an area of 10 cm x 6 cm exterior of right hand skin deep. Smallest 2 cm x 1 cm x skin.
12. Incised wound 7 cm x 4 cm x muscle deep on right palm.
13. Incised wound 4 cm x 2 cm x bone deep right palm.

[ 19 ]

14. Incised wound 4 cm x 2 cm x bone deep right palm upto index finger.

15. Incised wound 7 cm x 3 cm x bone deep left knee exterior side.

As per the opinion of Dr. O.P. Khattri (P.W.9), deceased Girish died due to shock and haemorrhage on account of ante-mortem injuries.

(16) It is significant to mention here that Dr. O.P. Khattri (P.W.9) in his deposition before the trial Court had reiterated the aforesaid cause of death of deceased Ram Dev, Ram Naresh, Sukhai and Girish and deposed that on 12.11.1994 when he was posted as Medical Officer in District Hospital, he conducted the post-mortem of the dead bodies of the deceased Ram Dev, Ram Naresh, Sukhai and Girish, which were brought by Constable Chandra Prakash and Ramdeen Rawat of police station Tarun in sealed clothes. He deposed that on internal examination of the dead body of deceased Ram Dev, he found that the right clavicle 4 ribs (3 to 7) on right side chest were fractured; lung was cut; semi-digest food was present in the stomach; and faecal matter was in intestines. On internal examination of the dead body of the deceased Ram Naresh, he found that left clavicle was fractured; right side ribs (3<sup>rd</sup> to 6<sup>th</sup>) were fractured; both bones of right hand were fractured; semi-digested food was in the stomach; faecal matter was also in intestines. On internal examination of dead body of deceased Sukhai, he found that right clavicle, right side 2<sup>nd</sup> to 7<sup>th</sup> ribs were fractured;

[ 20 ]

membrances of lungs were torned; right lung cut 7 cm x 4 cm; semi digested food and faecal matter was found in stomach and intestines. On internal examination of dead body of deceased Girish, he found that occipital bone back side fractured upto 3 inches; brain matter was coming out; semi digested food and faecal matter were found present.

- (17) The case was committed to the Court of Sessions by the learned Chief Judicial Magistrate, Faizabad, where the accused Krishna Murari alias Murli, Kashi Ram Verma , Raghava Ram Verma , Ram Milan were charged for offence punishable under Sections 302, 149, 148 I.P.C. and against accused persons Ram Kripal Verma and Ram Tilak Verma were charged under Section 120-B I.P.C. They pleaded not guilty to the charges and claimed to be tried. Their defence was of denial.
- (18) During trial, in all, the prosecution examined fourteen witnesses, namely, P.W. 1-Rama Kant Verma, who is the informant; P.W.2 Uma Kant Verma, who is the brother of the informant; P.W.3 Daljeet Singh, P.W.4 Hari Om Singh, P.W.5 Amar Jeet Singh, P.W.6 Mithai Lal, P.W.7 Manik Ram, and P.W.8 Munna Lal, who were examined to prove the factum of occurrence and the circumstances; P.W.9 Dr. O.P. Khattri, who conducted the post-mortem of the dead bodies of four persons; P.W.10 Sudhakar Pandey and P.W. 11 Ashutosh Sharma, who were the Investigating Officers of the case; P.W.12 Ram Harsh Yadava, who was the Head Moharrir and was examined to

[ 21 ]

prove FIR and GD; and P.W.13 Sibte Haider and P.W.14 Ram Narain Pandey, who were examined to prove the inquest reports of the four persons. In defence, Head Constable Nahar Singh of the C.B.C.I.D. Dog Squad Head Quarter, Lucknow was examined as D.W.1.

- (19) We would first like to deal with the evidence of informant Rama Kant Verma P.W.1. Since in paragraph-8, we have set out the prosecution story primarily on the basis of recitals contained in his examination-in-chief, for the sake of brevity, the same is not reiterated. P.W.1 Rama Kant Verma had deposed before the trial Court that the incident is of intervening night of 10/11.11.1994 at about 02:30 a.m. He was sleeping in Tubewell's room. Alongwith him, his cousin Girish Chandra Verma was also sleeping. They were sleeping after closing the door of the tubewell room from inside. The name of the father of Girish Chandra Verma is Ram Naresh Verma. His grand-father Sukai and his uncle Ram Naresh were sleeping under the Chhappar on separate cots on the west side of the tube-well. Ram Dev Verma was sleeping under the Chhappar situated on the south-west side of the tube-well. His brother Uma Kant Verma (P.W2) was sleeping on the cot in the west of the Sariya on the way (rasta) adjacent to the Chhappar where Ram Naresh, Sukhai were sleeping. His uncle Sukhai and Ram Naresh raised alarm बचाओ बचाओ (*save, save*). On hearing this, he and his brother Girish awoke and saw on opening the door

[ 22 ]

that Krishna Murari @ Murlu son of Ram Jagat and Kashi Ram son of Tidi armed with Gandasa, and Raghav Ram son of Nanku and Ram Milan son of Ram Awadh armed with Banka were cutting his uncle and grand-father. Besides these, 2-3 other persons who had covered their faces by cloth were also cutting his uncle and his grand-father with Gandasa (halberds). They (Girish and Rama Kant Verma) raised the alarm and ran to save their lives. Then, all the appellants had also assaulted his brother Girish. Thereafter, Ram Dev Verma was assaulted by these assailants with Gandasa (halberds) and Banka. He, thereafter, ran towards the northern side of tubewell in the sugarcane field to save his life and his brother Uma Kant Verma ran into the field adjacent to the Sariya by raising alarm. The electricity is available to his tubewell. On a branch of 'Neem' tree situated in the south-west of the tubewell, electricity bulb was burning and on its south direction of a branch of another Neem tree, electricity bulb was burning. He saw the occurrence in the light of electricity bulb and identified the accused persons very well. Thereafter, on hearing the alarm, his father Ram Tej, Manik Ram (PW7), Munna Lal (PW 8), Lallan Prasad Tiwari, Babu Lal Harijan and others came with Lathi and torch. On arriving of these witnesses, all the accused ran towards south direction. On account of the assault of these accused persons, his uncle Ram Naresh Verma, his grand-father Sukai, Ram Dev and his brother Girish Chandra Verma died instantaneously.

Before the incident i.e. since 1990, civil litigation of land was going on between the father of Krishna Murari, namely, Ram Jag and his family members Ram Dev, Ram Tej, Ram Naresh. He did not go to lodge the FIR in the night due to fear. In the morning, when he was going to Police Station Tarun on a bicycle along with P.W. 7- Manik Ram, P.W. 8-Munna Lal Verma and one another person, then, on the way, Daljeet Singh Master (P.W.3) of village Jaisingh Mau and Hari Om Singh (P.W.4) of village Tikri met him, then, he narrated the whole incident happened at home to them, thereupon, they told him that last evening at about 9 PM in the night, at the shop of Ram Kripal Verma in Lal Ganj Bazar, he had seen Ram Tilak Verma alongwith Krishna Murari and 2-3 other persons were consuming non-vegetarian food. On their information, he was convinced that Ram Tilak Verma, Ram Kripal Verma, Krishna Murari took the food and committed the murder of his family members. He wrote the written report of the incident at Tarun Bazar, reached the Police Station Tarun at about 6:30 a.m. and handed over the written report to the Munshi. It was marked as Ext. Ka. 1.

Amar Jeet Singh and Mithai Lal came to his residence after 3-6 days of occurrence. They told him that in the night of occurrence, they had also heard alarm coming from Barauli and on hearing it, they were standing near their house. After some time, they had seen that Ram Tilak and Ram Kripal armed with

[ 24 ]

Gandasa and Banka, respectively, were coming from Barauli and blood was in their hands and weapons. On lighting the torch, they (Ram Tilak and Ram Kripal) asked who were there, then, they (Amarjeet Singh and Mithai Lal) hid by fear.

Mithai Lal Verma (PW 6) and Amar Jeet Singh (PW 5) were the residents of village Balli Kripal Pur and Amar Jeet is also his distant relation. They had come to his place for mourning. Thereafter, he went to Police Station Turun and told these facts to the Inspector but the Inspector told him that he had already taken the statements of Mithai Lal (P.W.6) and Amar Jeet Singh (P.W.5). Accused had a gang and they all are clever, on account of which, Manik Ram, Munna Lal, Babulal Harijan, Daljit Singh, Amarjeet and Mithai Lal got scared by the accused persons and met them.

In cross-examination, P.W.1-Rama Kant Verma had deposed before the trial Court that he had orally stated the Inspector about the factum as stated by witness Amarjeet and Mithai Lal. The witnesses Amarjeet and Mithai Lal came to his residence after 5-6 days of the incident. He further deposed that he did not remember whether Amarjeet and Mithai Lal were coming at his house on the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> day of the incident. He further deposed that he did not recognize Ram Kripal Verma and Ram Tilak Verma at the time of occurring the incident, because of which, he did not name them in the FIR. During the incident, he did not sustain any injury. His brother Uma Kant

[ 25 ]

Verma was also not assaulted by the accused persons. During the incident, witnesses Manik Ram, Munna Lal, Babulal Harijan and his father Ram Tej were not assaulted by the accused persons.

P.W.1 has further deposed that he knew accused Ram Tila prior to the incident as he was a Master of Junior High School situated at Vankatta. Before the incident, he had no enmity with accused Ram Tilak. He also knows accused Ram Kripal prior to the incident and he had no enmity with the accused Ram Kripal prior to the incident. Accused Ram Tilak was arrested on the date of incident. He also deposed that in the examination-in-chief, though he had stated that the accused persons are having a gang and they are clever, this fact was not stated to the Inspector and the reasons for not saying this to Inspector have not been stated.

P.W.1 has also stated that he did not remember as to whether the night of the incident had moonlight or darkness but it was slightly cold. He did not remember whether electricity light is prevailing at the shop of Ram Kripal or near the shop of Ram Kripal. P.W.1 has further deposed that he saw the shop where Daljeet Singh, on the date of incident, had narrated the factum at Lalganj Bazar but he did not remember whether there was light or not. He had seen the house of witness Amarjeet. He did not see the house of witness Mithai Lal and accused Ram Tilak but he knows that they are the residents of village Kripalpur. He never went to the house of Ram Tilak. He did not tell whether

[ 26 ]

any person of his family went to the house of Ram Tilak or not. He had listened that gangster case was going on in the Court against Ram Kripal. The Inspector recorded his statement at his residence after panchayatnama. He went from house at 05:00 a.m. for lodging the report. When he left the house, the sun was not coming out. When he went to lodge the report, there was neither light nor dark. He was going on a cycle for lodging the report. 12-15 minutes were taken for reaching the place from home where he met with witness Daljeet Singh. Thereafter, he talked with Daljeet Singh for about 10-12 minutes. Witnesses Daljeet Singh and Hari Om Singh were met on the way and told him about accused Ram Tilak and Ram Kripal. These witnesses did not come with him to the police station for lodging the report. After talking with them for 10-12 minutes, he moved forward. The facts, which Daljeet Singh and Hari Om Singh stated, were not noted by him. 25-30 minutes had taken for writing the written report. 20-25 minutes had taken for reaching Tarun from the place where he met with Daljeet. A bench was lying in a shop of Tarun Bazar, upon which he sat and wrote down the report. At the time of writing report, Manik Ram, Munna Lal and one person were present there. Witnesses Manik Ram and Munna Lal did not see the incident. He reached the police station at 06:30 p.m.

P.W.1 had also stated that when he came from the police station, the police were already present at the place of occurrence.

[ 27 ]

The Inspector had reached the place of occurrence at about 09:00-09:45 a.m. The dead bodies of the four deceased persons were sent for post-mortem between 2:30 p.m-3:00 p.m.

P.W.1 has stated that he saw the accused persons running away. He further stated the villagers did not see the accused persons running away and none of the villagers had told him that they saw Ram Tilak and Ram Kripal running away. On the night of incident, he was having torch but he did not remember whether it was written in the FIR. Thereafter, FIR was read, then, P.W.1 has stated that he did not say any reason as to why the factum that he was having torch, was not written in the F.I.R. In the statement recorded under Section 161 Cr.P.C., the factum that he was having torch on the night of incident, has not been written. He has also stated that he did not tell whether his brother Uma Kant was having torch on the night of incident. Though he showed the torch to the Inspector but he did not tell as to whether the Inspector has written it or not. There is no record concerning the recovery memo of his torch or the torch of his brother Uma Kant.

P.W.1 had also stated that two electricity bulbs hanging and lighting on the branches of two neem trees, have not been written in the FIR. He did not explain why this fact has not been written in the FIR. The electricity bulb was lighting at the tube-well but if this fact has not been written in the FIR, he could not tell the reason. He did not think it appropriate to mention the names of

[ 28 ]

the person(s), who was carrying the torches at the time of the incident as he thought that these were small things. They did not recognize the accused, who covered their faces with cloth, at the time of incident. He also deposed that his brother Uma Kant, his father Ram Tej and witnesses of his village did not tell him that they saw accused Ram Tilak and Ram Kripal at the time of incident, until submission of charge-sheet. He further stated that his house was situated at the distance of about 200-250 meters from the place of occurrence in the middle of village on the western side. In the said house, women of his family were sleeping and no male member of the family was sleeping there at the time of incident. He had two tubewells; one is at the place of the incident; and the other is situated in the outskirts of his village. The distance between the two tubewells is 400 meter. His father was sleeping on the second tubewell and he did not sleep on the tubewell situated at the place of occurrence. The tubewell, which is situated at the place of occurrence, was in the name of Sukhai and second tubewell was in the name of Ram Dev. There was only field in the surrounding of the place of occurrence and there was no residential area there. The residential area is started by moving 70 metre on foot on western-northern side from the place of occurrence. In the middle of this residential area, his house is situated. After the incident, about 50-100 persons were gathered there and they all reached at the place of occurrence at about 03:00 am- 03:45 am. In his village, about 50-55 houses were built and the population of his village was about 250 people. When the

[ 29 ]

accused persons fled away from the place of occurrence, villagers were coming with lathis and torches.

P.W.1 had stated that at the time of incident, he and his brother Uma Kant hid in a field of sugarcane and both of them were hiding at different places in the field of sugarcane. The sugarcane field is situated at 5-6 steps north side from the place of occurrence. Both of them were not burning their torches and only they raised alarm 'Save save'. His brother Uma Kant hid at a distance of 6-7 steps where he hid.

P.W.1 had further stated that he, his brother Uma Kant and his cousin brother Girish went to the tubewell at about 09:00-09:45 p.m. after taking dinner from his house and others Sukai, Ram Naresh, Ramdev and Ram Tej went to the tubewell at about 10:45 p.m. After 5-6 minutes, Ram Tej went to another tubewell. His grandfather Sukai, uncle Ram Naresh and uncle Ram Dev were murdered on the cots, whereas Girish was killed outside the tubewell's pit and thrown into the pit. Girish was not killed on Cot. Girish was killed outside the tubewell.

- (20) P.W 2 Uma Kant Verma, the brother of P.W.1, also stated that the incident is of the night of 10.11.1994 at 2:30 p.m. He was sleeping in front of Sariya on the way (rasta) adjacent to the Chhappar. On the western side of Sariya, there is a field of sugarcane. His Chhappar of ओसारा is adjacent to eastern side of his Sariya. The way, upon which he was sleeping, was in

[ 30 ]

between the Sariya and Chhappar towards north-south. This way (rasta) leads up to the northern chak road. In the east of the Sariya, there is his Osara having two rooms in which chaff/straw and grains are being kept. On that night, his uncle Ram Naresh and grand-father Sukai were sleeping on the separate Cots in that Osara (ओसारा). There is tube-well on the east side of Osara, and in between a Rasta runs which also leads to the chak-road. On the night of incident, his brother Rama Kant and his cousin Girish Chandra Verma were sleeping inside the tube-well, whereas in the south of Chhappar, which also belonging to him, his grand-father Ram Dev was sleeping. There is a neem tree in the western side of his tubewell. On the date of incident, one electricity bulb was burning on the branch of the neem tree connected with tube-well. In the south direction of the Chappar, in which his grand-father Ram Dev was sleeping, there is an open ground and thereafter, his chappar is there. The eastern side of this chappar, there is a neem tree. On the date of incident, an electricity bulb was burning in a branch of the tree, which was also connected to the tubewell.

This incident is of intervening night of about 02:30 a.m. He heard the noise of बचाओं बचाओ (save-save) and on hearing this noise, he woke up. This noise was of his uncle Ram Naresh and his grand-father Sukai. On woke up, he saw that appellants Krishna Murari and Kashi Ram armed with Gandasa and

[ 31 ]

Raghava Ram and Ram Milan armed with Banka were causing hurt to his grand-father Sukai and his uncle Ram Naresh and apart from them, there were 2-3 other persons also who had covered their faces. They were also causing hurt to Ram Naresh and Sukai. At that time, his brother Rama Kant and his cousin Girish came out of the room of tubewell. They all raised alarm. Thereafter, the said accused persons ran towards his brother Rama Kant and cousin Girish for assaulting and started assaulting. In the western-southern side of the tubewell of Girish, Ram Dev was sleeping and they all ran for assaulting and started assaulting. Thereafter, he (P.W.2) and Rama Kant (P.W.1) ran towards north in the sugar-cane field by raising alarm and hiding in the sugarcane. On raising alarm and hearing noise, his father Tej Ram Verma, Manik Ram. Munna Lal, Lallan Prasad Tewari, Babu Lal and other persons of his village came with lathi and torch whereupon the accused ran towards south. On the assault of the accused, his uncle Ram Naresh, his grand-father Sukai, Ram Dev and cousin Girish Chandra Verma died on spot.

Prior to the incident i.e. since 1990, litigation of land is going on in between Krishna Murari and his family. There was enmity in respect of land, on account of which, the accused persons killed the members of his family, which was seen and recognized by him in the light of the electricity bulb very well. On account of fear, FIR of the incident was not lodged in the

[ 32 ]

night, however, his brother went to lodge the FIR at about 5 A.M. in the morning. Accused persons Krishna Murari, Kashi Ram, Raghav Ram and Ram Milan belong to his village. In the morning after the occurrence, he came to know that Krishna Murari had shifted his cattle to Ram Kripal's house and his family members are also not in the house. This incident had occurred in connivance with Ram Kripal. Ram Kripal has talking terms with Krishna Murari and they are friends. A gangster case is going on against Ram Kripal. Accused persons had a gang.

In his cross-examination, P.W.2 stated that after the incident, all the family members were gathered and talked to each other regarding the incident. He did not remember whether the conversation with regard to lodging the report took place amongst them or not. However, a conversation took place between his brother and family members with regard to lodging of a report against whom. The conversation about lodging the report against Krishna Murari, Kashi Ram, Ram Milan and Raghav took place and not against any other persons. He did not remember whether conversation about lodging the report against Ram Kripal and Ram Tilak happened or not.

P.W.2 has further deposed that his uncle Ram Dev was killed on the cot. Accused had assaulted Ram Dev for about 1/2-1 minute. When his grandfather and uncle were assaulted, Girish and Rama Kant had came out from the tubewell room.

[ 33 ]

His grandfather and his uncle were assaulted at a distance of 5-7 steps from the tubewell. After coming out from tubewell room, they ran towards the field of sugarcane and not standing there. He also ran towards the field of sugarcane but he ran in other way. When Sukai and Ram Naresh were beaten, they ran towards the field of sugarcane. After hiding themselves in the field of sugarcane, how much time the accused stayed at the place of the incident, he did not tell because nothing was visible from the field of sugarcane.

P.W.2 had further deposed that his brother was going on by a cycle to lodge the report. He did not remember whether any person along with his brother went to lodge the report or not. The accused who involved in the incident did not hide their faces. Accused came to the place of incident silently and they did not challenge anyone.

P.W.2 had further stated that the Inspector had seen the place where he was sleeping and at the time of performing the Panchayatnama of the deceased, he was present there. At the time of Panchayatnama, he told the Inspector about the electricity bulb burning at the time of incident. When the police came to the place of incident in the morning, witnesses Munni Lal, Manik Ram, Munna Lal, Babu Lal and his brother Rama Kant were present. He stated the weapons of assault used in the commission of crime to the Inspector during investigation. He further stated that at the time of the incident,

[ 34 ]

Sukai, Ram Dev, Ram Naresh, Girish, Rama Kant and Uma Kant were sleeping at the same tubewell, whereas Ram Tej was sleeping at the second tubewell which is situated at a distance of 15 meters from the place of occurrence. In the house situated in the village, only women were sleeping and not a single man was sleeping there. He also stated that ten minutes would take to reach from his house to tubewell. He has stated to the Inspector about burning of electricity bulbs at two places hanging on neem trees and if it is not written in his statement, he cannot tell the reason for not writing the same in his statement. Neither he nor his brother was having a torch at the time of incident. Except the light of electricity bulb, there was no other source of light.

- (21) P.W. 3-Daljeet Singh had deposed before the trial Court that he knows Rama Kant of Barauli village and four members of his family were killed prior to 2½- 3 years in the night. On the next day of the incident, he did not meet Rama Kant in the morning. However, he had gone to his house only the next day in the morning on knowing the incident where 40 - 50 persons were coming and going. He further stated that he did not tell Rama Kant that prior to one day of the incident, Ram Kripal, Ram Tilak and Krishna Murari were present at the shop of Ram Kripal. He has also not told to Rama Kant that he and Hari Om Singh were staying in

[ 35 ]

front of the shop of Ram Kripal for filling air in his motorcycle.

In his cross-examination, Ram Kripal had a fair price shop on the road of Lalganj Market. When he went to the house of Rama Kant in the morning, then the Inspectors and Police were present there and at that time, the Inspector had neither interrogated him nor recorded his statement. Thereafter, statement recorded under Section 161 Cr.P.C. by the Inspector was narrated to him (P.W.3), then, he stated that he never made any such statement. He further stated that he did not know about the incident nor the accused person(s) involved in the incident.

- (22) P.W.4-Hari Om Singh also deposed before the trial Court that he is the resident of village Tikari, Police Station Tarun, District Faizabad. Before the incident, he was doing the work of Jeevan Bima Nigam Ltd. He knows Rama Kant Verma of Barauli village and the incident of killing the family members of Rama Kant was happened in the year 1994 and for this he had knowledge. After the night of incident, he was going to Sultanpur in the morning and when he reached his house, four persons were enjoying the bone fire sitting beneath Chapper situated in front of his house; name of such persons did not remember by him; they had stated him about killing of four persons of the family of Rama Kant; and at that time, it was

[ 36 ]

about 05:00 a.m. After knowing this incident, he went to Sultanpur and when he reached Jaisingh Mau village, then, Daljeet Singh Master met him there. On seeing Daljeet Singh Master, he stayed there, then, Daljeet Singh Master had also told him the hearing about this occurrence. When he and Daljeet Master were talking to each other, at that moment, Rama Kant and 2-3 other persons had met him and told about the occurrence. Daljeet Singh Master had informed that a day before Krishna Murari etc were sitting at the shop of Ram Kripal and were talking. He has also told him that when he was returning at 09:00 p.m. in the night from Faizabad, he also saw that 3-4 persons were sitting at the shop of Ram Kripa but he did not know who were sitting there. No other person was sitting on his motorcycle. Master Daljeet was talking to some person just near the shop of Ram Kripal. He stayed there on account of filling the air in his motorcycle. The filling of air shop was at a distance of 5-6 latha in front of the road and shop of Krishna Murari. He went to the air filling shop but the shop was closed. Thereafter, he returned from there and on the way, Master Daljeet Singh met him, he told him that he was returning from Faizabad. Thereafter, they went to their house. He had not gone to the shop of Ram Kripal. He did not see Ram Kripal, Krishna Murari and Ram Tilak at the shop of Ram Kripal.

[ 37 ]

In his cross-examination, P.W.4 stated that when he reached Rama Kant's tubewell where the incident occurred, Master Daljeet was present. First of all, the Inspector interrogated Daljeet Singh and thereafter the Inspector interrogated him. Ram Kripal is the friend of Krishna Murari and both of them were often seen roaming around on a motorcycle. He further deposed that before the incident, he did the insurance of Rama Kant and one of his brothers. He denied the suggestion that on account of relation with Rama Kant, he has been made the witness in the instant case.

- (23) PW5 Amar Jeet has deposed that he did not meet any one at about 3 a.m. on that morning and he came to know about this incident only in the morning when Ram Sumer had told the incident.

In his cross-examination, P.W.5 has deposed that he is the relative of Rama Kant. He came to know about the murder of family members of Rama Kant at about 08:00 a.m. He reached at the house of Rama Kant at about 09:00 a.m. He was stayed at the house of Rama Kant for about one hour and at that time, he did not know as to who had killed the family members of Rama Kant. Within an hour, someone told him there who had killed them.

[ 38 ]

- (24) P.W.6-Mithai Lal had deposed before the trial Court that he did not hear any noise at the time of occurrence from the place of occurrence.
- (25) PW.7 had deposed before the trial Court that he did not hear any noise at the time of occurrence and did not go to the tube-well room and did not see any one running.
- (26) PW.8 Munna Lal also deposed before the trial that he did not hear any noise and did not see any one running.

In his cross-examination, P.W.8 has deposed that on the night of incident, he was at his house in the village and about 05:30 a.m., news was spread in the village that family members of Rama Kant and Uma Kant were killed in the night by someone and the name of killer was not taken by anyone.

- (27) From the defence side, Head Constable Nahar Singh was examined as D.W.1. In his deposition, he has stated that on 11.11.1994, he was posted as Constable in the Dog Squad of C.B.C.I.D. Headquarter, Lucknow. On demand of the police of police station Tarun, District Faizabad in relation to Case Crime No. 156 of 1994, under Sections 302/120 I.P.C., he reached with dog at Faizabad at about 03:00 p.m. Thereafter, he reached at about 04:00 p.m. with local police at the place of occurrence, where dog Neera was given the smell of the mark of foot. On smelling, dog Neera went near the tubewell, took a round there and returned without success. He proved the

[ 39 ]

relevant entries and report in this respect Ext. Kha.1 and 2. He has further deposed that in cases where the accused are named in the FIR, there is no necessity to bring the dogs to trace the culprits. He stated that the dog squad is required only when the culprits have to be traced.

- (28) In the statement under Section 313 Cr.P.C., all the accused persons claimed to be innocent and denied the allegations levelled against them and stated that witnesses Rama Kant Verma and Uma Kant Verma had falsely implicated them on account of enmity.

Accused Krishna Murari alias Murli had stated in his statement under Section 313 Cr.P.C. that civil litigation was going on between him and the informant; unknown miscreants had killed the deceased in the night; no one had seen incident; when the son of the informant went to the place of the incident, then, he found that his family members were killed; and after that, on consultation and on account of enmity, he was falsely implicated in the case so that he would not pursue civil litigation.

Accused Raghava Ram Verma had stated in his statement under Section 313 Cr.P.C. that Uma Kant Verma, at page-8 of his statement before the trial court, has deposed that his brother Rama Kant Verma, on consultation with the family members in

[ 40 ]

the morning, lodged the report against him, Krishna Murari, Ram Milan and Kashi Ram.

Accused Kashi Ram has stated in his statement under Section 313 Cr.P.C. that Rama Kant Verma and Uma Kant Verma, after consultation with the family members, had falsely implicated him, Krishna Murari, Raghavaram and Ram Milan and witnesses had not given any evidence.

Accused Ram Tilak Verma has stated in his statement under Section 313 Cr.P.C. that there was no evidence against him.

Accused Ram Kripal Verma has stated in his statement under Section 313 Cr.P.C. that no circumstantial or oral evidence has been given against him by any witnesses and no witness has given against him direct evidence. At the time of the incident, he was the owner of fair price shop and sugarcane situated at Walikripalpur and on account of this reason, the police and other persons have falsely implicated them.

(29) The learned trial Court believed the evidence adduced by Rama Kant Verma (P.W.1) and Uma Kant Verma (P.W.2) and disbelieved the defense plea and convicted and sentenced Krishna Murari alias Murli, Raghava Ram, Kashi Ram and Ram Milan and acquitted Ram Kripal Verma and Ram Tilak Verma in the manner stated in paragraph-2.

(30) Hence, these appeals, revision and reference.

(C) CONVICTS/APPELLANTS' ARGUMENTS

(31) On behalf of the convicts/appellants, Shri Umesh Pratap Singh and Sri Shitla Prasad Tripathi, learned Counsel have argued that

(I) The FIR is ante-timed. According to him, FIR number, distance of police station from the place of occurrence, weapon of assault, title of the case have not been mentioned in the four Inquest Reports prepared by the two police officers under the supervision and direction of the Investigating Officer Sri Sudhakar Pandey (P.W.10) as is evident from the depositions of P.W.10-Sudhakar Pandey and P.W.13-Sifate Haider. Further, DW-1 Nahar Singh, Head Constable, C.B.C.I.D. Dog Squad, Lucknow has stated before the trial Court that on 11.11.1994, at about 11:00 p.m., a demand was made from Faizabad for Dog Squad and he reached Faizabad at 3:00 p.m. and after that, he reached the place of occurrence with sniffer dog Neera at about 04:00 p.m. He, thereafter, gave the sniffer dog the smell from the spot but the dog went upto the tube-well, took a round there and returned without success. D.W.1 had further stated that in cases where the accused are named in the FIR, there is no necessity to bring the dog to trace the culprits and dog squad is requisitioned only when the culprits have to be traced. In these backgrounds, his submission is that the FIR of the incident was not in existence from the time of inquest

[ 42 ]

report till the returning of sniffer dog from the place of occurrence as P.W.2-Uma Kant Verma, in his cross-examination, had categorically stated before the trial Court that after the incident, all the family members had gathered and talked to each other in respect of the incident and conversation took place with his brother to the family members in respect of lodging of report against whom person(s) and further P.W.2 has stated that a conversation was going on in respect of lodging report against Krishna Murari, Kashi Ram, Ram Milan and Raghav and not against other persons. In support of his submission, he has placed reliance upon the judgment of the Madras High Court in the case of **Micheal alias Nai Micheal Vs. State** passed in CrI. A. (MD) No. 178 of 2010 on 03.09.2010.

- (II) P.W.10-Sudhakar Pandey has deposed before the trial Court that he recorded the statements of witnesses Daljeet Singh and Hari Om Singh at the time of panchayatnama when they reached the place of occurrence and, whatever he found the evidence in the statements of Daljeet Singh and Hari Om Singh, on that basis he arrested Ram Tilak. In addition to that, there was no other evidence against Ram Tilak for arresting him, whereas as per the F.I.R., Ram Tilak was named accused, which establishes that the FIR is ante-timed.

(III) The entire case rests on the ocular testimony of P.W.1 and P.W.2, who are said to have witnessed the incident. Both of them are interested witnesses. The presence of P.W.1-Rama Kant Verma and P.W.2-Uma Kant Verma is highly doubtful. P.W.1, in his cross-examination, had deposed before the trial court that during the incident, no injury on his body of any types had occurred; his brother Uma Kant Verma did not sustain any type of injury during the incident by the accused persons; during incident, witnesses of the case Manik Ram, Munna Lal, Babu Lal Harijan and his father Ramtej were also not sustained any type of injury from the side of accused persons. According to him, P.W.2-Uma Kant, in his examination-in-chief, at one place, had stated that thereafter, the accused ran for assaulting his brother Rama Kant and his cousin Girish and assaulted them. Later on, P.W.2, in cross-examination, had stated that his brother Rama Kant was not assaulted. P.W.2, in cross-examination, has also stated before the trial Court that some persons were stayed whole night at the tubewell and some persons had gone from there; they did not try to go to the police station in the night with their assistance; Chaukidar neither came there nor he was called. He also stated that P.W.2-Uma Kant Verma had stated that though Ram Dev stood, he did not run, whereas P.W.1 had stated that Ram

[ 44 ]

Dev also stood from cot. P.W.2 had further stated that when his grand-father and his uncle were beaten, at that time, he and Girish (deceased) were coming out from tubewell and his uncle and grand-father was beaten at a distance of 5-7 steps from tubewell and after coming out from tubewell, they, while raising the alarm, ran towards the field of sugarcane and not standing there. P.W.1 has stated that accused persons while leaving Ram Naresh and Sukai, ran towards him and he, thereafter, ran towards the northern side. P.W.1 had later on stated that the accused ran towards Ram Dev and Girish. In these backgrounds, his submission is that the presence of P.W.1 and P.W.2 during the incident are doubtful and their statements are contradictory.

IV The medical evidence does not support the prosecution story. As per the statement of P.W.1, P.W.2 and the F.I.R., the incident was in the night of about 02:30 p.m. P.W.1 and P.W.2 have stated that deceased Girish after taking dinner at about 09:15 p.m. and other deceased at 10:15 p.m., came at the tubewell. P.W.9-Dr. O.P. Khatri has stated that half digested food was found in the stomach of the four deceased, which could be of three to four hours. His submission is that from the statements of P.W.1, P.W.2 and P.W.9, it transpires that all the deceased had eaten before 10:00 O'clock in the night and the maximum

[ 45 ]

time of three hours of the above meal is added to it, then, the incident will be around 01:00 a.m. in the night and if one hour survival time is excluded as stated by P.W.9, then, the incident took place at 12:00 O'clock in the night, which creates reasonable doubt the presence of P.W.1 and P.W.2 at the place of occurrence during the incident. In this regard, he has placed reliance upon the judgments of this Court passed by a Co-ordinate Bench of this Court in **Criminal Appeal No. 431 of 1990 : *Jaikaran and another Vs. State of U.P., decided on 15.05.2018.***

- V. While passing the impugned judgment, the learned trial Court has committed an error in adopting two separate parameters, by one way acquitted two accused persons, namely, Ram Tilak Verma and Ram Kripal Verma and by the other way, convicted and awarded the appellants capital sentence on the same set of facts and evidences. In this regard he has invited our attention towards the judgment of the Apex Court in **Criminal Appeal No. 434-436 of 2020 : *Jaikam Khan vs. The State of Uttar Pradesh, decided on 15.12.2021*** and has stated that the Apex Court in the aforesaid judgment held in para-81 about choosing between two or more possibilities, and preponderates of one over the other etc. He has also placed reliance upon the judgment of the Apex Court in

[ 46 ]

**Amar Singh Vs. The State (NCT of Delhi)** : Criminal Appeal No. 335 of 2015, decided on 12.10.2020.

VI The prosecution has failed to prove the motive of the appellants to commit the murders of the deceased but from the evidence of the prosecution, it is established that the informant P.W.1 Rama Kant Verma had falsely implicated the appellants in the instant case. The evidences of the prosecution show that a litigation was pending between the victims and one of the appellant, namely, Krishna Murari and there was no enmity with the other appellants and two acquitted persons, however, P.W.1 and P.W.2, in their cross-examination, has admitted the facts that there occurred some quarrel in between Ram Milan, appellants and prosecution witnesses with respect to the taking of water of the fields. It has also been admitted that motor of Raghav Ram had been stolen and in that theft case, Raghav Ram and Kashi Ram had made complained against Uma Kant Verma P.W.2 and in that case, police made inquiry and came to the residence of Uma Kant Verma and had left after inquiry without doing anything against Uma Kant Verma . According to him, these four appellants are not related closely or distantly to each other and there was no reason for these persons to have united to commit the murder of four persons in a pre-planned manner.

[ 47 ]

VII The beneficiary of the incident appears to be the prosecution side and not the appellants and two acquitted persons. He argued that Sukai had three sons, namely, Ram Naresh (deceased), Ram Dev (deceased), Ram Tej (father of P.W.1-Rama Kant Verma and P.W.2-Uma Kant Verma ) and Girish (deceased) is the son of Ram Naresh (deceased) Ram Dev (deceased) had three married daughters. Therefore, the property left by Sukai and his two deceased sons came to be vested in Ram Tej, father of P.W.1 and P.W.2.

VIII The statement recorded under Section 313 Cr.P.C. has not been considered by the trial Court. The investigation of the case is also tainted as weapon of assault has not been recovered by the Investigating Officer; statement under Section 161 Cr.P.C. of P.W.10 Sri Sudhakar Pandey and Constable Ram Harsh Yadav, who had scribed the chik F.I.R., has not been found in the case diary; father of P.W.1 has not been examined as prosecution witness while as per FIR he was eye-witness; no injury has been found on the person of P.W.1 and P.W.2; the prosecution has not explained the delay for sending G.D. before Circle Officer after three days; darkness found in the fields; no nearest villagers were examined by the Investigating Officer nor produced before the trial Court for his/her examination; recovery memo of bed sheets of

[ 48 ]

the cots of the deceased have not been examined by the Investigating Officer during trial proceedings nor produced.

IX Lastly, it has been argued that the appellants are more than 70 years old and are languishing in jail for more than 17 years without committing any offence, hence the impugned judgment is liable to be quashed.

**(D) RESPONDENT/STATE ARGUMENTS**

(32) On behalf of the State, Shri Vimal Kumar Srivastava, learned Government Advocate assisted by Shri Chandra Shekhar Pandey, learned Additional Government Advocate has argued that

I. Though the deceased are the family members of P.W.1 and P.W.2 and are related to each other, their testimony cannot be discarded merely because the relationship can never be a factor to affect the credibility of witnesses. His submission is that P.W.1 and P.W.2 have established their presence at the place and time of occurrence and their statements are trustworthy. In support of this contention, he has placed reliance upon **Yogesh Singh Vs. Mahabeer Singh** : (2017) 11 SCC 195, **Shio Shanekar Dubey Vs. State of Bihar** : (2019) 6 SCC 501, **Sudhakar alias Sudharshan Vs. State represented**

[ 49 ]

by the Inspector of Police, Sri Rangam Police Station  
Trichy, Tamil Nadu : (2018) 5 SCC 435.

- II. The failure of the prosecution to recover the weapon from the accused persons/appellants is not fatal to the prosecution case as the statements of eye-witnesses P.W.1 and P.W.2 have been clear and consistent while describing the sequence of events that had taken place on the day of the occurrence. There is no material discrepancy or contradiction in the statements of P.W.1 and P.W.2 as they had identified the appellants, who committed the murders of the deceased with Gandasa and Banka, which also corroborates with the medical evidence. In support of this assertion, he has placed reliance upon **Ram Singh Vs. State of Rajasthan** : (2012) 12 SCC 339.
- III. The statements of P.W.1 and P.W.2 show that appellants committed the murder of the four deceased persons in the night of 10.11.1994 at about 02:30 a.m. with Gandasa and Banka and the medical evidences have also supported the prosecution case. There is direct evidence against the appellants for murdering of the deceased. The trial Court has rightly discarded the plea of the appellants. His submission is that as the ocular testimony of P.W.1 and P.W.2 are reliable and trustworthy, it cannot be discarded only because of absence of motive. In this regard, he has

[ 50 ]

placed reliance upon the judgment of the Apex Court in **Bipin Kumar Mondal Vs. State of West Bengal** : (2010) 12 SCC 91.

IV. So far as the sentence is concerned, while placing reliance upon **Machhi Singh and others Vs. State of Punjab** : (1983) SCC 470, he argued that the trial Court has rightly sentenced the appellants for capital punishment as the prosecution has fully established that this case falls under the category of '*rarest of rare cases*'.

**(E) REVISIONIST/INFORMANT**

(33) None responds on behalf of the revisionist/informant nor learned Counsel for the respondents no. 1 and 2/acquitted persons in Criminal Revision No. 14 of 2000.

However, learned Government Advocate appearing on behalf of the State has stated that no appeal against the acquittal of Ram Kripal and Ram Tilak have been filed on behalf of the State. His submission is that the trial Court, after appreciating the evidence on record, has rightly acquitted Ram Kripal and Ram Tilak as the charge against them is only of conspiracy for committing murders, which the prosecution has not proved.

**(F) DISCUSSION/ANALYSIS**

(34) We have heard Sri Umesh Pratap Singh and Sri Shitla Prasad Tiwari, learned Counsel appearing on behalf of the

[ 51 ]

convicts/appellants, Sri Vimal Kumar Srivastava, learned Government Advocate assisted by Sri Chandra Shekhar Pandey, learned Additional Government Advocate for the State/respondent at length and have carefully gone through the impugned judgment and order of conviction and sentence passed by the learned trial Court. We have also re-appreciated the entire evidence on record, particularly the depositions of PW1 Rama Kant Verma and PW2 Uma Kant Verma. We have also considered the ante-mortem injuries found on four deceased persons.

- (35) It would become manifest from the aforesaid that the learned trial Court has based the conviction of appellants and acquittal of Ram Tilak Verma and Ram Kripal Verma on the ocular testimony of the informant Rama Kant Verma PW-1 and Uma Kant Verma PW-2, who are the family members of the deceased. Submission of learned Counsel for the convicts/appellants that the testimonies of P.W.1 and P.W.2 cannot be relied upon as they are interested and family members of the deceased and further their presence at the place of occurrence is doubtful.
- (36) Undisputedly, both P.W.1-Rama Kant Verma and P.W.2-Uma Kant Verma, who are eye-witnesses, are family members of the deceased. It is settled law that merely because the witnesses are interested and related witnesses, it cannot be a ground to disbelieve their testimony. However, the testimony of such

witnesses has to be scrutinized with due care and caution and upon scrutiny of the evidence of such witnesses, if the Court is satisfied that the evidence is creditworthy, then, there is no bar on the Court in relying on such witness. (See **Dalbir Kaur Vs. State of Punjab** : (1976) 4 SCC 158, **Piara Singh and others Vs. State of Punjab** : (1977) 4 SCC 452, **Anil Phukan Vs. State of Assam** : (1993) 3 SCC 282, **Sudhkar alias Sudharshan Vs. State Represented by the Inspector of Police, Sri Rangam Police Station Trichy, Tamil Nadu** : (2018) 5 SCC 435, **Sheo Shankar Dubey Vs. State of Bihar** : (2019) 6 SCC 501.

- (37) In **Kartik Malhar Vs. State of Bihar** : (1996) 1 SCC 614, the Apex Court has held that a close relative who is a very natural witness cannot be regarded as an interested witness. Paras-15 and 16 of the report are reproduced as under :-

"15. As to the contention raised on behalf of the appellant that the witness was the widow of the deceased and was, therefore, highly interested and her statement be discarded, we may observe that a close relative who is a natural witness regarded as an interested witness. The term "interested" postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason. In **Dalbir Kaur and Others v. State of Punjab**, (1976) 4 SCC 158, it has been observed as under :

*"Moreover a close relative who is a very natural witness cannot be regarded as an interested, witness. The term 'interested' postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason. Such is not the case here,"*

In **Dalip Singh v. State of Punjab**, AIR (1953) SC 364, it has laid down as under :

*"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often but forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."*

- (38) Thus, it will be necessary to scrutinize the evidence of P.W.1-Rama Kant Verma and P.W.2-Uma Kant Verma with more care, caution and circumspection.
- (39) It transpires from the depositions of P.W.1-Rama Kant Verma that all four convicts/appellants and 2-3 unknown persons who covered their faces came to the tubewell of the informant's family in the intervention night of 10/11.11.1994 at 02:30 p.m. According to him, at that time, he was sleeping along with his cousin brother Girish Chandra Verma inside the tube-well room by shutting its door; his uncle Ram Naresh (father of Girish Chandra Verma) and his grand-father Sukai were sleeping on separate cots under the Chhappar situated in the direction of west of tube-well; another uncle Ram Dev was sleeping under the Chhappar situated on South side of the tube-well; and his

[ 54 ]

brother Uma Kant (P.W.2) was sleeping west side of Sariya on the way (rasta), which is adjacent to the Chhappar where Ram Naresh and Sukai were sleeping. According to him, on the alarm of his grand-father Sukai and his uncle Ram Naresh बचाओ-बचाओ (save save), he (P.W.1) and his cousin brother awoke and opened the door of tubewell and saw that Krishna Murari alias Murli and Kashi Ram armed with Gandasa and Raghav Ram and Ram Milan armed with Banka were causing hurt to Ram Naresh and Sukai and 2-3 persons who had covered their faces by means of cloth were causing hurt to them by means of Banka and Gandasa both. On seeing this, he and his cousin brother Girish raised alarm. They ran to help his grand-father Sukai and cousin Ram Naresh, whereupon all the appellants started causing hurt to Girish and thereafter the appellants caused hurt to Ram Dev by means of Gandasa and Banka. After that, he ran inside the northern side of sugarcane field whereas his brother Uma Kant Verma (P.W.2) ran into the field, which is adjacent to Sariya and is towards north. According to him, the electricity bulb was burning on the Neem tree situated south-west of the tube-well. There was another neem tree on which also electricity bulb was hanging and was burning. He saw the occurrence in the light of the electricity bulb and identified the four appellants. On alarm, Ram Tej, Manik Ram (P.W.7), Munna Lal (P.W.8), Lallan Prasad Tiwari, Babu Lal Harijan and several villagers came armed with lathies and with torches. Thereafter, all the appellants/miscreants ran

[ 55 ]

away towards south. All the four injured persons died on the spot due to injuries. He further stated that he did not go to lodge the FIR immediately due to fear in the night. In the morning, he went to police station Tarun on a bicycle along with P.W.7 Manik Ram, P.W.8 Munna Lal Verma and one another person. While they were on their way to police station, then, Daljeet Singh (P.W.3) of village Jaisingh Mau and Hari Om Singh (P.W.4) of village Tikri told him that last evening at about 09:00 a.m., on the shop of Ram Kripal Verma in Lal Ganj Bazar, he had seen Ram Tilak Verma along with Krishna Verma and 2-3 other person taking non-vegetarian food. He stated that on this information, he was convinced that the conspiracy was hatched by Ram Tilak, Ram Kripal and Krishna Murari etc. to commit the murders. He reached the police station at 06:30 p.m. and handed over written report (Ext. Ka.1) to the police.

- (40) According to P.W.2-Uma Kant Verma, who is brother of P.W.1-Rama Kant Verma, at the time of the incident i.e. in the night of 10/11.11.1994. at about 02:30 a.m., he was sleeping in front of Sariya on the way (rasta) adjacent to the Chhappar and that in the western side of Sariya, there is a field of sugarcane and that his Chhappar of ओसारा is adjacent to eastern side of his Sariya. According to him, the way, he was sleeping, was in between the Sariya and Chhappar in north-south and that this way (rasta) leads up to the northern chak road. He has stated

[ 56 ]

that in the east of the Sariya, his Osara has two rooms in which chaff/straw and grains are being kept and on that night, his uncle Ram Naresh and grand-father Sukai were sleeping on the separate Cots in that Osara (ओसारा). There is tube-well east of Osara, and in between a Rasta runs which also leads to the chak road. He further stated that on the night of the incident, his brother Rama Kant and his cousin Girish Chandra Verma were sleeping inside the tube-well, whereas in the south of the Chhappar, which also belonged to him, his grand-father Ram Dev was sleeping. There is a neem tree in the western side of his tubewell. On the date of the incident, an electricity bulb was burning in a branch of the neem tree, which was connected with tube-well. In the south direction of the Chapper, in which his grand-father Ram Dev was sleeping, there is an open ground and thereafter, there is his chapper. The eastern side of this chapper, there is a neem tree. On the date of the incident, an electricity bulb was burning in a branch of the tree, which was also connected with the tubewell. He listened the noise of बचाओं बचाओ (save-save). On this noise, he woke up and saw that appellants Krishna Murari and Kashi Ram armed with Gandasa and Raghava Ram and Ram Milan armed with Banka were causing hurt to his grand-father Sukai and his uncle Ram Naresh and apart from them, there were 2-3 other persons also who had covered their faces. They were also causing hurt to Ram Naresh and Sukai. At that time, his brother Rama Kant and his cousin Girish came out of the room of tubewell. They

[ 57 ]

all raised alarm. Thereafter, the accused persons ran towards his brother Rama Kant and cousin Girish for assaulting and started assaulting. In the western-southern side of the tubewell of Girish, Ram Dev was sleeping and they all ran for assaulting and started assaulting. Thereafter, he (P.W.2) and Rama Kant (P.W.1) ran towards north in the sugar-cane field by raising alarm and hiding in the sugarcane. On alarm and noise, his father Tej Ram Verma, Manik Ram. Munna Lal, Lallan Prasad Tewari, Babu Lal and other persons of his village came with lathi and torch whereupon the accused ran towards south. On the assault of the accused, his uncle Ram Naresh, his grandfather Sukai, Ram Dev and cousin Girish Chandra Verma died on the spot.

- (41) Both P.W.1-Rama Kant Verma and P.W.2-Uma Kant Verma have stated that on the date of occurrence i.e. in the intervening night of 10.11.1994, at 02:30 a.m., Rama Kant Verma (P.W.1) was sleeping along with cousin Girish Chandra Verma (deceased) inside tube-well room after shutting its door; his uncle Ram Naresh Verma (deceased) and his grand-father Sukai (deceased) were sleeping under Chhappar on separate cots west of the tube-well; uncle Ram Dev (deceased) was sleeping under the chhappar south of the tube-well; and Uma Kant Verma (P.W.2) was sleeping west of the Sariya on the Rasta (way), which is adjacent to the chhappar where Ram Naresh (deceased), Sukai (deceased) were sleeping. Both these

[ 58 ]

witnesses i.e. P.W.1 and P.W.2 have further stated that appellants Krishna Murari alias Murlu and Kashi Ram were armed with Gandasa and appellants Raghava Ram and Ram Milan were armed with Banka. They all and 2-3 other persons who had covered their faces by means of cloth and armed with Banka and Gandasa were causing hurt to their uncle Ram Naresh (deceased) and their grand-father Sukai (deceased). They also stated that on seeing causing hurt, both Girish (deceased) and Rama Kant (P.W.1) raised alarm and ran to help Ram Naresh (deceased) and Sukai (deceased) and thereafter, all the appellants were causing hurt to Girish (deceased) by means of Gandasa and Banka and thereafter, they ran inside the sugarcane field. They also stated that they saw the incident in the light of electricity bulb, hanging in the branches of two Neem trees. They also stated that appellants and other assailants ran away, after assaulting Ram Naresh, Sukai, Ram Dev and Girish,.

- (42) We have gone through the evidence of Rama Kant Verma (P.W.1) and Uma Kant Verma (P.W.2) and find them to be wholly truthful witnesses. Since they have furnished the same manner of assault and while dealing with their evidence, we have found that their version in relation to the assault on the deceased is in consonance with medical evidence. Further, we find that they have explained their presence at the place of the

[ 59 ]

incident. They have stated that they were sleeping there on the date and time of the incident.

- (43) It is pertinent to mention that although P.W.1-Rama Kant Verma and P.W.2-Uma Kant Verma were extensively cross-examined, nothing could be extracted there from which could impair their credibility.
- (44) Earlier we have reproduced the ante-mortem injuries suffered by the deceased Ram Dev, Ram Naresh, Sukai and Girish and seen that Ram Dev sustained two abraded contusion on the right side forehead, twelve incised wounds on his face, neck, shoulder, fore-arms and one stab wound on lungs. His right clavicle, 4 ribs (3 to 7) on right side chest were found fractured; lung was also found cut; semi digested food was present in the stomach; faecal matter was present in the intestines.

The deceased Ram Naresh sustained thirteen incised wounds on head, face, neck, arms, wrist and hand. His left cervical was found fractured; Right side ribs (3 to 6<sup>th</sup>) were found fractured; semi-digested food was present in the stomach; faecal matter was also found in intestines.

The deceased Sukai sustained four incised wounds on neck and fore-head. His right clavicle and right side 2<sup>nd</sup> to 7<sup>th</sup> ribs were found fractured; membranes of lungs were torned; right lung 7 cm x 4 cm were cut; semi digested food and faecal matter was found in stomach and intestines.

The deceased Girish sustained fifteen incised wounds on the head, hand, palm, knee, index finger. His occipital bone back side was fractured upto 3 inches; brain matter was coming out; semi digested food and faecal matter were found present.

- (45) Dr. O.P. Khatri (P.W.9) opined that all the deceased died due to shock and haemorrhage as a result of ante-mortem injuries. According to him, the ante mortem injuries suffered by the deceased were sufficient in the ordinary course of nature to cause death. It has also been stated before the trial Court by P.W.9 that the deceased could have died on 11.11.1994 at 02:30 a.m.; incised wound was found on the lungs of the deceased Ram Dev; because of injury no.9, collar bone of the deceased Ram Dev was found fractured; injury no.9 of the deceased Ram Dev could be attributable by Banka; injuries no. 1 and 2 of Ram Dev could be attributable by banka or part of pool of Gandasa; and all the ante-mortem injuries sustained by other deceased persons could be attributable by Banka or Gandasa. P.W.9-Dr.O.P. Khatri was extensively cross-examined but nothing could be extracted there from which could impair credibility of the evidence of the eye-witnesses P.W.1-Rama Kant Verma and P.W.2-Uma Kant Verma. Both these witnesses have consistently stated that the deceased died on the spot as a consequence of the said injuries. Thus, we are of the considered view that there is no material discrepancy in the medical and

[ 61 ]

ocular evidence. There is no reason to interfere with the judgments of the trial Court on this ground.

- (46) In any event, it has been consistently held by the Apex Court that the evidentiary value of medical evidence is only corroborative and not conclusive and, hence, in case of a conflict between oral evidence and medical evidence, the former is to be preferred unless the medical evidence completely rules out the oral evidence. [See **Solanki Chimanbhai Ukabhai Vs. State of Gujarat**, (1983) 2 SCC 174; **Mani Ram Vs. State of Rajasthan**, 1993 Supp (3) SCC 18; **State of Haryana Vs. Bhagirath**, (1999) 5 SCC 96; **Dhirajbhai Gorakhbhai Nayak Vs. State of Gujarat**, (2003) 5 SCC 223; **Thaman Kumar Vs. State of U.T. of Chandigarh**, (2003) 6 SCC 380; **Krishnan Vs. State**, (2003) 7 SCC 56; **Khambam Raja Reddy & Anr. Vs. Public Prosecutor, High Court of A.P.**, (2006) 11 SCC 239; **State of U.P. Vs. Dinesh**, (2009) 11 SCC 566; **State of U.P. Vs. Hari Chand**, (2009) 13 SCC 542; **Abdul Sayeed Vs. State of M.P.**, (2010) 10 SCC 259 and **Bhajan Singh @ Harbhajan Singh & Ors. Vs. State**, 2011) 7 SCC 421].
- (47) In the present case, we do not find any major contradiction either in the evidence of the witnesses or any conflict in medical or ocular evidence that could tilt the balance in favour of the convicts/appellants. The minor improvements, embellishments etc. apart from being far yield of human

[ 62 ]

faculties are insignificant and ought to be ignored since the evidence of witnesses otherwise overwhelmingly corroborates each other in material particulars.

(48) It has been argued by the learned Counsel for the convicts/appellants that there was no immediate motive with the appellants to commit the murder of the deceased.

(49) However, the Trial Court found that there was sufficient motive with the accused persons/appellants to commit the murder of the deceased since 1990, litigation of land is going on between the family of the deceased and Krishna Murari. The long nursed feeling of hatred and the simmering enmity between the family of the deceased and the accused persons most likely manifested itself in the outburst of anger resulting in the murder of the deceased. We are not required to express any opinion on this point in the light of the evidence adduced by the direct witnesses to the incident.

(50) It is a settled legal proposition that even if the absence of motive, as alleged, is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, if there is direct trustworthy evidence of witnesses as to the commission of an offence, motive loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only on the ground

[ 63 ]

of absence of motive, if otherwise the evidence is worthy of reliance. [See **Hari Shankar Vs. State of U.P.**, (1996) 9 SCC 40; **Bikau Pandey & Ors. Vs. State of Bihar**, (2003) 12 SCC 616; **State of U.P. Vs. Kishanpal & Ors.**, (2008) 16 SCC 73; **Abu Thakir & Ors. Vs. State of Tamil Nadu**, (2010) 5 SCC 91 and **Bipin Kumar Mondal Vs. State of West Bengal**; (2010) 12 SCC 91].

- (51) The next submission of the Counsel for the appellants is that the Investigating Officer has not recovered any weapon of assault as alleged by the prosecution i.e. Gandasa and Banka. We feel no need to address this issue since it had already been validly discarded by the trial Court while convicting the appellants. In any case, it is an established proposition of law that mere non-recovery of weapon does not falsify the prosecution case where there is ample unimpeachable ocular evidence. (See **Lokhan Sao Vs. State of Bihar** : (2008) 16 SCC 73, **Abu Thakir Vs. State of T.N.** : (2010) 5 SCC 91, and **Bipin Kumar Mondal Vs. State of West Bengal** : (2010) 12 SCC 91.

- (52) The next line of contention of the learned Counsel for the appellants is that no independent witnesses were examined to prove the prosecution case even though as per the prosecution case itself, number of villagers came on the spot on hearing the hue and cry. We are not impressed by this submission in the light of the observations made by the Apex Court in **Darya**

**Singh Vs. State of Punjab** : AIR 1968 SC 328, wherein the

Apex Court has observed as under :-

“12. It is well-known that in villages where murders are committed as a result of factions existing in the village or in consequence of family feuds, independent villagers are generally reluctant to give evidence because they are afraid that giving evidence might invite the wrath of the assailants and might expose them to very serious risks. It is quite true that it is the duty of a citizen to assist the prosecution by giving evidence and helping the administration of criminal law to bring the offender to book, but it would be wholly unrealistic to suggest that if the prosecution is not able to bring independent witnesses to the Court because they are afraid to give evidence, that itself should be treated as an infirmity in the prosecution case so as to justify the defence contention that the evidence actually adduced should be disbelieved on that ground alone without examining its merits.”

- (53) Similarly, in **Raghubir Singh Vs. State of U.P.**, (1972) 3 SCC 79, the Apex Court has held that the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant multiplication of witnesses. In this connection, general reluctance of an average villager to appear as a witness and get himself involved in cases of rival village factions when tempers on both sides are running high, has to be borne in mind.
- (54) Further, in **Appabhai and Anr. Vs. State of Gujarat**, 1988 Supp (1) SCC 241, the Apex Court has observed that :

[ 65 ]

“Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused.”

- (55) The other submission of the learned Counsel for the appellants is that FIR number and distance of police station from the place of occurrence, which find mention in the FIR, have not been mentioned in the four Inquest Reports prepared by the two police officers under the supervision and direction of the Investigating Officer and therefore, his contention is that the FIR was not lodged at 06:30 a.m. but it was ante-timed. According to him, the special report was signed by the Circle Officer only on 15.11.1994 although it is sent allegedly on 12.11.1994 and received in the office on 14.11.1994, hence there is delay in sending the special report to the officer concerned. We are of the view that in any event, in the light of position of law examined above and the observation of the trial Court that it merely shows remissness on part of the Investigating Officer, it should not be treated as fatal to the

[ 66 ]

prosecution case, hence we are not inclined to disbelieve the prosecution story.

- (56) At this juncture, it would be relevant to mention that the Apex Court in a catena of decisions has held that although in terms of Section 157 Cr.P.C., the police officer concerned is required to forward a copy of the FIR to the Magistrate empowered to take cognizance of such offence, promptly and without undue delay, it cannot be laid down as a rule of universal application that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable and the trial stands vitiated. When there is positive evidence to the fact that the FIR was recorded without unreasonable delay and investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the Court, then in the absence of any prejudice to the accused, it cannot be concluded that the investigation was tainted and the prosecution story rendered unsupportable. [See **Pala Singh Vs. State of Punjab**, (1972) 2 SCC 640; **Sarwan Singh Vs. State of Punjab**, (1976) 4 SCC 369; **Anil Rai Vs. State of Bihar**, (2001) 7 SCC 318; **Munshi Prasad & Ors. Vs. State of Bihar**, (2002) 1 SCC 351; **Aqeel Ahmad Vs. State of U.P.**, (2008) 16 SCC 372; **Dharamveer Vs. State of U.P.**, (2010) 4 SCC 469; **Sandeep Vs. State of U.P.**, (2012) 6 SCC 107].

- (57) Further, the evidentiary value of the inquest report prepared under Section 174 of Cr.P.C. has also been long settled through

[ 67 ]

a series of judicial pronouncements of the Apex Court. It is well-established that inquest report is not a substantive piece of evidence and can only be looked into for testing the veracity of the witnesses of inquest. The object of preparing such report is merely to ascertain the apparent cause of death, namely, whether it is suicidal, homicidal, accidental or caused by animals or machinery etc. and stating in what manner, or by what weapon or instrument, the injuries on the body appear to have been inflicted. [See **Pedda Narayan Vs. State of A.P.**, (1975) 4 SCC 153; **Khujji Vs. State of M.P.**, (1991) 3 SCC 627; **Kuldip Singh Vs. State of Punjab**, 1992 Supp (3) SCC 1; **George and Ors. Vs. State of Kerala and Anr.**, (2008) 4 SCC 605; **Suresh Rai Vs. State of Bihar**, (2000) 4 SCC 84; **Amar Singh Vs. Balwinder Singh**, (2003) 2 SCC 518; **Radha Mohan Singh Vs. State of U.P.**, (2006) 2 SCC 450; **Sambhu Das Vs. State of Assam**, (2010) 10 SCC 374].

- (58) In the present case, it is not the case of the convicts/appellants that they have been prejudiced by the alleged delay in dispatch of the FIR to the nearest Magistrate competent to take cognizance of such offence. Moreover, in our opinion, the non-recording of certain relevant entries in the inquest report do not constitute a material defect so grave to throw out the prosecution story and the otherwise reliable testimonies of prosecution witnesses that have mostly remained uncontroverted.

- (59) The learned Counsel for the convicts/appellants has then tried to create a dent in the prosecution story by pointing out inconsistencies between ocular evidence and the medical evidence. However, we are not persuaded with this submission since the trial Court has categorically ruled that the medical evidence was consistent with the ocular evidence and we can safely say that to that extent, it corroborated the direct evidence proffered by the eye-witnesses.
- (60) At the cost of repetition, it would be relevant to mention that there is no material discrepancy in the medical and ocular evidence. There is no reason to interfere with the judgments of the trial Court on this ground.
- (61) For the reasons above, the evidence of P.W.1-Rama Kant Verma and P.W.2-Uma Kant Verma inspire confidence and their evidence squarely establishes the involvement of appellants Krishna Murari, Raghav Ram, Kashi Ram and Ram Milan in the incident. Therefore, we do not have any reservations in our minds that the learned trial Court acted correctly in convicting Krishna Murari, Raghav Ram, Kashi Ram and Ram Milan for the offence punishable under Section 302 read with Section 149 I.P.C. and Section 148 I.P.C.
- (62) So far as Criminal Revision No. 14 of 2000, which has been filed by the informant Rama Kant Verma (P.W.1) against the impugned judgment of acquittal of Ram Kripal and Ram Tilak,

[ 69 ]

is concerned, we find that P.W.1-Rama Kant Verma , in his cross-examination, has stated before the trial Court that he did not recognize Ram Kripal Verma and Ram Tilak Verma at the time of the incident, meaning thereby that the P.W.1-Rama Kant Verma did not see these two accused persons to commit the offence of murder of the deceased. The evidence on record reflects that the allegations levelled by the prosecution against these two persons are that they were conspiring to commit the offence of murder of the deceased on the basis of presumption that these two persons had taken non-vegetarian foods with the convicts/appellants in the bazar. Except for this, there is no evidence against these two persons to commit the offence of murder of the deceased.

- (63) On due consideration of the evidence on record, we are of the view that merely taking of non-vegetarian food with the appellants does not constitute conspiracy as the prosecution has failed to adduce any evidence which shows that on the conspiracy/instigation of Ram Kripal and Ram Tilak, appellants/convicts had committed the offence of murder of the deceased persons. Thus, the trial Court has rightly acquitted Ram Kripal and Ram Tilak and there is no illegality or infirmity in the impugned judgment with regard to acquitting Ram Kripal and Ram Tilak, hence Criminal Revision No. 14 of 2000 is liable to be dismissed.

- (64) Now, while upholding the conviction of the convicts/appellants, we proceed to consider the question of 'death sentence' awarded to them by the trial Court under Section 302 read with Section 149 IPC.
- (65) Capital punishment has been the subject-matter of great social and judicial discussion and catechism. From whatever point of view it is examined, one indisputable statement of law follows that it is neither possible nor prudent to state any universal form which apply to all the cases of criminology where capital punishment has been prescribed. Thus, the Court must examine each case on its facts, in the light of enunciated principles and before opting for the death penalty, the circumstances of the offender are also required to be taken into consideration along with the circumstances of the crime for the reason that life imprisonment is the rule and death sentence is an exception.
- (66) Before going into the legality and propriety of question of sentence imposed upon the convicts/appellants, it is profitable to look at the various decisions of the Apex Court in the matter. The decision in **Bachan Singh v. State of Punjab** reported in AIR 1980 SC 898 pronounced by the Constitutional Bench of the Hon'ble Apex Court stands first among the class making a detailed discussion after the amendment of Cr.P.C. in 1974. In this case, the Apex Court has held that provision of death penalty was an alternative punishment for murder and is not violative of Article 19 of the Constitution of India. Relevant

paragraphs of the said judgment are relevant and the same are reproduced herein below:-

"132. To sum up, the question whether or not death penalty serves any penological purpose is a difficult, complex and intractable issue. It has evoked strong, divergent views. For the purpose of testing the constitutionality of the impugned provision as to death penalty in Section 302 of the Penal Code on the ground of reasonableness in the light of Articles 19 and 21 of the Constitution, it is not necessary for us to express any categorical opinion, one way or the other, as to which of these two antithetical views, held by the Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion on this issue, is a ground among others, for rejecting the petitioners argument that retention of death penalty in the impugned provision, is totally devoid of reason and purpose. If, notwithstanding the view of the Abolitionists to the contrary, a very large segment of people, the world over, including sociologists, legislators, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of society, if in the perspective of prevailing crime conditions in India, contemporary public opinion channelized through the people's representatives in Parliament, has repeatedly in the last three decades, rejected all attempts, including the one made recently, to abolish or specifically restrict the area of death penalty, if death penalty is still a recognised legal sanction for murder or some types of murder in most of the civilised countries in the world, if the framers of the Indian Constitution were fully aware -- as we shall presently show they were -- of the existence of death penalty as punishment for murder, under the Indian Penal Code, if the 35th Report and subsequent reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code and the insertion of the new Sections 235 (2) and 354 (3) in that Code providing for presentence hearing and sentencing procedure on conviction for murder and other capital

[ 72 ]

offences were before the Parliament and presumably considered by it when in 1972-1973 it took up revision of the Code of 1898 and replaced it by the Code of Criminal Procedure, 1973, it is not possible to hold that the provision of death penalty as an alternative punishment for murder, in Section 302 of the Penal Code is unreasonable and not in the public interest. We would, therefore, conclude that the impugned provision in Section 302, violates neither the letter nor the ethos of Article 19.

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

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

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

(b) if the murder involves exceptional depravity; or

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

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

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

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the CrPC, 1973, or who had

[ 73 ]

rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.

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

204. Dr. Chitale has suggested these mitigating factors:

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

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

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

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

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

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

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

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

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

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

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

(67) In **Machhi Singh v. State of Punjab** reported in (1983) 3 SCC 470, the Hon'ble Supreme Court has made an attempt to cull out certain aggravating and mitigating circumstances and it has been held that it was only in 'rarest of rare' cases, when the

[ 75 ]

collective conscience of the community 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. In this judgment the Hon'ble Supreme Court has summarized the instances on which death sentence may be imposed, which reads thus:-

"38. xxxxxxxxxxxx

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

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

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

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

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

[ 76 ]

(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 herein above, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."

(Emphasis supplied)

(68) The issue again came up before Hon'ble Apex Court in **Ramnaresh & others v. State of Chhattisgarh** reported in (2012) 4 SCC 257, wherein the Hon'ble Supreme Court reiterated 13 aggravating and 7 mitigating circumstances as laid down in the case of Bachan Singh (supra) required to be taken into consideration while applying the doctrine of "rarest of rare" case. Relevant para of the same reads thus:-

"76. The law enunciated by this Court in its recent judgements, as already noticed, adds and elaborates the principles that were stated in the case of Bachan Singh (supra) and thereafter, in the case of Machhi Singh (supra). The aforesaid judgments, primarily dissect these principles into two different compartments - one being the "aggravating circumstances" while the other being the "mitigating circumstances". The Court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of

[ 77 ]

the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the Court. It will be appropriate for the Court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the Court as contemplated under Section 354 (3) of Cr.P.C.

Aggravating Circumstances:

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

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

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

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

(5) Hired killings.

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

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

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

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

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

[ 78 ]

and is inflicted with the crime by such a trusted person.

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

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

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

Mitigating Circumstances:

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

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

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

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

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

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

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

(69) In the matter of **Dharam Deo Yadav vs. State of UP** reported in (2014) 5 SCC 509, the Hon'ble Supreme Court has held thus:-

""36. We may now consider whether the case falls under the category of rarest of the rare case so as to award death sentence for which, as already held, in *Shankar Kisanrao Khade v. State of Maharashtra* (2013) 5 SCC 546 this Court laid down three tests, namely, Crime Test, Criminal Test and RR Test. So far as the present case is concerned, both the Crime Test and Criminal Test have been satisfied as against the accused. Learned counsel appearing for the accused, however, submitted that he had no previous criminal records and that apart from the circumstantial evidence, there is no eye-witness in the above case, and hence, the manner in which the crime was committed is not in evidence. Consequently, it was pointed out that it would not be possible for this Court to come to the conclusion that the crime was committed in a barbaric manner and, hence the instant case would not fall under the category of rarest of rare. We find some force in that contention.

Taking in consideration all aspects of the matter, we are of the view that, due to lack of any evidence with regard to the manner in which the crime was committed, the case will not fall under the category of rarest of rare case.

Consequently, we are inclined to commute the death sentence to life and award 20 years of rigorous imprisonment, over and above the period already undergone by the accused, without any remission, which, in our view, would meet the ends of justice."

(70) In **Kalu Khan v. State of Rajasthan** reported in (2015) 16 SCC 492, the Hon'ble Supreme Court has held that:-

"30. In *Mahesh Dhanaji Shinde v. State of Maharashtra*, the conviction of the

[ 80 ]

appellant-accused was upheld keeping in view that the circumstantial evidence pointed only in the direction of their guilt given that the modus operandi of the crime, homicidal death, identity of 9 of 10 victims, last seen theory and other incriminating circumstances were proved.

However, the Court has thought it fit to commute the sentence of death to imprisonment for life considering the age, socio-economic conditions, custodial behaviour of the appellant-accused persons and that the case was entirely based on circumstantial evidence. This Court has placed reliance on the observations in Sunil Dutt Sharma v. State (Govt. of NCT of Delhi) as follows: (Mahesh Dhanaji case, SCC p. 314, para 35)

"35. In a recent pronouncement in Sunil Dutt Sharma v. State (Govt. of NCT of Delhi), it has been observed by this Court that the principles of sentencing in our country are fairly well settled -- the difficulty is not in identifying such principles but lies in the application thereof. Such application, we may respectfully add, is a matter of judicial expertise and experience where judicial wisdom must search for an answer to the vexed question -- Whether the option of life sentence is unquestionably foreclosed? The unbiased and trained judicial mind free from all prejudices and notions is the only asset which would guide the Judge to reach the 'truth'."

(71) In the light of the above proposition of law, we are required to scrutinize the case in hand minutely to find out whether the case falls under the category of "*rarest of the rare case*", whether imposition of death penalty, which is an exception, would be the only appropriate and meaningful sentence and

[ 81 ]

whether imprisonment for life, which is the rule, would not be adequate and would not meet the ends of justice.

- (72) While awarding the death sentence to the appellants, the trial Court has drawn a conclusion that the appellants had committed the offence of murder of the deceased with pre-determined mind and pre-planned manner, hence the same comes in the category of 'rarest of rare cases'.
- (73) From a perusal of the above, it is clear that the special reasons assigned by the trial Court for awarding extreme penalty of death are that the murder was pre-meditated and pre-planned one, therefore, imposition of lesser sentence than that of death sentence, would not be adequate and appropriate. In these circumstances, the trial Court held that the balance-sheet of the aggravating and mitigating circumstances was heavily weighed against the appellants making it the rarest of rare cases and consequently awarded the death sentence.
- (74) But, having gone through the facts and circumstances of this case, we find that no evidence on record to establish that the convicts/ appellants committed pre-planned and pre-meditated murder of the deceased. At least, no such evidence has been led by the prosecution to establish this fact. It comes out that convicts/appellants were causing injuries to the deceased and when they were doing so, even the witnesses also reached

[ 82 ]

there, but that itself is not sufficient to hold that it is a pre-meditated or pre-planned murder.

- (75) It is true that the manner in which crime has been committed by the appellants by Gandasa and Banka blows, is brutal, cruel and gruesome, but there is absolutely no evidence to suggest as to what could be the reason for the appellants to commit the said offence. This could be because of frustration, mental stress or emotional disorder which would be the mitigating circumstances to be taken note of.
- (76) It is relevant to mention here that both the eye-witnesses P.W.1 and P.W.2 have stated that at the time of the incident, appellants Krishna Murari alias Murli and Kashi Ram were armed with Gandasa, whereas appellants Raghav Ram and Ram Milan were armed with Banka and apart from them, 2-3 other persons who had covered their faces by means of cloth were also having Banka and Gandasa. As per the prosecution story, all the persons above were causing hurt to the deceased with Banka and Gandasa, on account of which, four deceased persons died on the spot. As per the opinion of P.W.9 Dr. O.P. Khatri, ante-mortem injuries sustained the deceased could be attributable by Banka and Gandasa. But both Rama Kant Verma PW-1 and Uma Kant Verma PW-2 have not been able to specify who amongst appellants and 2-3 unknown persons who covered their faces with the cloth, were responsible for the fatal injuries suffered by the four deceased. P.W.1 and P.W.2 have failed to

[ 83 ]

narrate the specific role of assault of weapon by the appellants upon the deceased persons. Moreso, the appellants did not have criminal history.

(77) After considering the above facts and circumstances of the case,, we are of the view that the instant case does not fall in the category of '*rarest of rare cases*', warranting capital punishment. Hence, the death sentence awarded to the convicts/ appellants under Section 302 read with Section 149 of IPC is liable to be converted into life imprisonment.

(G) **CONCLUSION**

(78) In the result :-

(A) **Capital Sentence No. 01 of 2000 :-**

While affirming the conviction and sentence of the appellants for the offence punishable under Section 148 I.P.C. and the conviction of the appellants for the offence punishable under Section 302 read with Section 149 IPC, we set aside the 'sentence of death' awarded to the convicts by the trial Court by means of impugned judgment dated 21.12.1999 and direct that for the murder committed by the convicts **Krishna Murari alias Murli, Raghav Ram Verma, Kashi Ram Verma and Ram Milan Verma**, they are sentenced to life imprisonment instead of death sentence.

[ 84 ]

Appellants **Krishna Murari alias Murli, Raghav Ram Verma, Kashi Ram Verma** and **Ram Milan Verma** are in jail and shall serve out their sentence.

Subject to this alteration in the sentence, **Capital Sentence No.1 of 2000 is dismissed.**

**(B) Criminal Appeal No. 14 of 2000 :-**

The appeal is **partly allowed**. Although we maintain the conviction and sentence of appellants **Krishna Murari alias Murli, Raghav Ram Verma , Kashi Ram Verma** and **Ram Milan Verma** for the offence punishable under **Section 148 I.P.C.** and their conviction for the offence punishable under **Section 302 read with Section 149 I.P.C** but we set aside their sentence of death on the latter count and instead sentence them to imprisonment for life.

Appellants **Krishna Murari alias Murli, Raghav Ram Verma , Kashi Ram Verma** and **Ram Milan Verma** are in jail and shall serve out their sentence.

**(C) Criminal Appeal No. 25 of 2000:**

The appeal is **partly allowed**. Although we maintain the conviction and sentence of appellant **Raghav Ram Verma** for the offence punishable under **Section 148 I.P.C.** and his conviction for the offence punishable under **Section 302/149 I.P.C** but we set-aside his

[ 85 ]

sentence of death on the latter count and instead sentence him to imprisonment for life.

Appellant **Raghav Ram Verma** is in jail and shall serve out his sentence.

(D) **Criminal Appeal No. 26 of 2000**

The appeal is **partly allowed**. Although we maintain the conviction and sentence of appellant **Krishna Murari Verma alias Murli** for the offence punishable under **Section 148 I.P.C.** and his conviction for the offence punishable under **Section 302 read with Section 149 I.P.C** but we set aside his sentence of death on the latter count and instead sentence him to imprisonment for life.

Appellant **Krishna Murari Verma alias Murli** is in jail and shall serve out his sentence.

(E) **Criminal Appeal No. 27 of 2000**

The appeal is **partly allowed**. Although we maintain the conviction and sentence of appellant **Kashi Ram Verma** for the offence punishable under **Section 148 I.P.C.** and his conviction for the offence punishable under **Section 302/149 I.P.C** but we set aside his sentence of death on the latter count and instead sentence him to imprisonment for life.

[ 86 ]

Appellant **Kashi Ram Verma** is in jail and shall serve out his sentence.

(F) **Criminal Appeal No. 28 of 2000**

The appeal is **partly allowed**. Although we maintain the conviction and sentence of appellant **Ram Milan Verma** for the offence punishable under **Section 148 I.P.C.** and his conviction for the offence punishable under **Section 302 read with Section 149 I.P.C** but we set aside his sentence of death on the latter count and instead sentence him to imprisonment for life.

Appellant **Ram Milan Verma** is in jail and shall serve out his sentence.

(G) **Criminal Revision No. 14 of 2000**

The instant criminal revision preferred by Rama Kant Verma (informant) is **dismissed**.

(79) Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

(Vivek Varma , J.)

(Ramesh Sinha, J.)

**Order Date : 22<sup>nd</sup> February, 2022**

Ajit/-