IN THE HIGH COURT OF JUDICATURE AT PATNA
DEATH REFERENCE No.1 of 2018

Arising Out of PS. Case No.-140 Year-2015 Thana- SULTANGANJ District- Bhagalpur

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The State Of Bihar

... ... Petitioner/s

Versus

Niranjan @ Alakh Deo Kumar, Son of Shiv Narayan Pd. Sah, Resident of Village- Balua Ghat Road, Sultanganj, P.S.- Sultanganj, District- Bhagalpur.

... ... Respondent/s

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with

CRIMINAL APPEAL (DB) No. 491 of 2018

Arising Out of PS. Case No.-140 Year-2015 Thana- SULTANGANJ District- Bhagalpur

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Niranjan @ Alakh Deo Kumar, Son of Shiv Narayan Pd. Sah, Resident of Village- Balua Ghat Road, Sultanganj, P.S.- Sultanganj, District- Bhagalpur.

... ... Appellant/s

Versus

The State Of Bihar ... ... Respondent/s

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Appearance :
(In DEATH REFERENCE No. 1 of 2018)
For the Petitioner/s :
For the Respondent/s :
(In CRIMINAL APPEAL (DB) No. 491 of 2018)
For the Appellant/s : Mr. Sharda Nand Mishra, Advocate
Mr. Deepak Kumar, Advocate
Mr. Rajiv Ranjan, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE S. KUMAR

CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-11-2020

Allegedly in the night intervening 23rd-24th June 2015,

accused Niranjan @ Alakhdeo Kumar (hereinafter referred to as Niranjan) and accused Birendra Kumar (hereinafter referred to as Birendra) murdered Smt. Rekha Devi and her two daughters, namely, Ms. Komal Kumari and Ms. Anshu Kumari. As such both of them were charged for committing offences under Section 302/34 of the Indian Penal Code. The Trial Court, vide judgment dated 18th January 2018 passed in Sessions Trial No.632 of 2015, found the Prosecution not to have established its case against accused Birendra and as such acquitted him. But, however, found sufficient evidence, though not direct but circumstantial, against accused Niranjan and convicted him for committing an offence punishable under Section 302 of the Indian Penal Code. Considering the gravity of the crime**,** accused Niranjan was awarded sentence of death, to be hanged by the neck till death, along with a fine of Rs.20,000/-, in default thereof, to undergo simple imprisonment for a period of one month.

2. The Death Reference No.01 of 2018 titled as The State of Bihar Versus Niranjan @ Alakhdeo Kumar is for confirmation of such sentence.

3. The Prosecution, as recorded vide order dated 07th July 2020, has already made known the intent of not filing an

appeal against the judgment of acquittal of Birendra. Also, the complainant has not preferred any appeal.

4. Independently, Niranjan has filed an appeal being Cr. App (DB) No.491 of 2018 titled as Niranjan @ Alakh Deo Kumar Versus The State of Bihar, challenging the conviction and sentence against him. As such, both these matters are being heard and disposed of vide common judgment.

5. It is the case of Prosecution that in the early hours of the night intervening 23rd-24th June 2015 (sometime at about 00:05 am), through the telephone, the police got information of a multiple murder which took place in Village- Kushwaha Tola, Balu Ghat Road, Sultanganj, Bihar. The Police Party headed by Binod Kumar Jha (P.W.9), Sub-Inspector of Police, Sultanganj Police Station reached the spot. Learning that murder had taken place inside a house which was bolted from inside, he broke open the main door, and upon entering found three dead bodies lying at different locations. The incident was brought to the notice of superior officers, as such Senior officers, including the Senior Superintendent of Police, who on reaching the spot directed him to continue with the investigation.

6. This Officer got the dead bodies identified and prepared inquest reports dated 24th June 2015 (Exts.5, 5/A and

5/B). With the completion of the spot investigation, he sent the dead bodies for conducting a postmortem. He recovered the incriminating materials, including blood-stained clothes of accused Birendra, and recorded his disclosure statement, dated 24th June 2015 (Ext-6). Accused Birendra was arrested from his house situated near the spot of crime, and accused Niranjan was arrested soon thereafter.

7. The same day i.e. 24th June 2015, Pankaj Sah (P.W.1), brother of the deceased Rekha Devi, got lodged a complaint dated 24th June 2015(Ext-1) revealing the complicity of both the accused in the crime, and the motive of the murder as property of Rekha Devi.

8. Deceased Rekha Devi was married to Ajay Sah, resident of Kushwaha Tola, Balu Ghat Road, Sultanganj and had three children (two daughters, namely Komal Kumari and Anshu Kumari (both victims) and one son Manish Kumar). After the death of Ajay Sah in the year 2013, Niranjan, who was also Ajay Sah's maternal cousin, started residing with her as her husband. Eying her property, i.e. the house where she was living, the accused committed the crime.

9. Here only we may highlight the mutually contradictory stand emerging on record through the testimonies

of the witnesses. On the one hand, the close relatives of the deceased want the Court to believe that in the morning of 24th June 2015, through a newspaper, they learned that Niranjan had committed the crime, which fact was confirmed by the villagers, who also further confirmed the motive and named the other assailant to be Birendra. On the other hand, the suggested case of the Prosecution put to another witness (P.W.11), close relative of the accused, indicates complicity of only accused Birendra, with no role ascribed to accused Niranjan, who had an extremely cordial relationship with deceased Rekha Devi.

10. In contradiction, the Investigating Officer has deposed that it was his investigation which led to the identity of the assailant firstly Birendra, who vide his confessional statement confessed having alone committed the crime and later on accused Niranjan.

11. We may clarify that accused Niranjan in his statement under Section 313 Cr.P.C. denied all this.

12. Identity of all the deceased, in any event, stands established by the Investigating Officer, Binod Kumar Jha (P.W.9), who prepared the inquest reports, dated 24th June 2015, (Ext.5, Ext.- 5A and Ext.-5B), and sent the dead bodies for postmortem, which was conducted by Dr. Rajiv Ranjan

(P.W.10) who vide his reports dated 24th June 2015 (Ext.8; Ext.8/1; and Ext.8/2). He opined the cause of death of all the deceased to be hemorrhage and shock.

13. P.W.10 proved the postmortem report (Ext.8) of Rekha Devi, and opined the said deceased to have suffered eleven multiple wounds of different sizes on the vital parts of her body. Six incised punctured wounds were measuring ¾" to ½" x ¼" on the chest; three incised punctured wounds ¾" to ½"x ¼" on the abdominal part; one incised punctured wound measuring 5" x ½" x muscle deep on the left forehead and one incised punctured wound ½" x ¼" x muscle deep on the left arm.

14. He has also proved the postmortem report, Ext.8/1, of deceased Komal Kumari opining that she suffered the following injuries on her body - one incised punctured wound 1" x ½" x bone deep on the inner canthus of the left eye with a piece of a knife; five incised wound 1" to ½" x ½" x muscle deep on left forearm; four incised wound 1" to ½" x 1/4" x muscle deep on neck; five incised wound 1" to ½" x ¼" leading to chest cavity on the chest wall with the right lung sharply pierced; eight incised wound 1" to ½" x ¼" leading to the abdominal cavity on abdominal wall with the liver and stomach

sharply pierced; four incised wounds 1" to ½" x ½" x muscle deep on the back.

15. He further proved the postmortem report, Ext. 8/2, of deceased Anshu Kumari who suffered the following injuries on her body - Nine incised punctured wounds 1" to ½" x ½" leading to chest cavity on the left side of back; seven incised punctured wounds ½" to ¼" x ½" leading to chest cavity on the right side of the back with both lungs sharply pierced and the chamber of heart empty.

16. Injuries sustained by all the deceased are antemortem, and grievous and dangerous to life in the ordinary course of nature as also simple in nature.

17. To establish the charges, in all, Prosecution has examined 11 witnesses, which can be divided into five sets.

(i) Close Relatives of the deceased.

Pankaj Kumar Sao (P.W.1), Rajesh Kumar (P.W.2), Shekhar Sah (P.W.3), Sanjay Sah (P.W.4) and Anita Devi (P.W.5) belong to the maternal side of the deceased Rekha Devi. They are her brothers, uncle and sister.

(ii) Close Relative of the accused.

Arun Sao (P.W.11) is the cousin of the accused who resides in the house adjoining to the spot of the crime. He has

not supported the Prosecution and was declared hostile.

(iii) Independent Witnesses

Mukesh Yadav (P.W.6) and Dipak Kumar Sah (P.W.7) are independent witnesses and residents of the village where the crime took place. They have not supported the Prosecution and were declared hostile. However, they are not related to the crime.

(iv) Expert/Formal Witness

Pappo Pd. Gupta @ Papoo Sah (P.W.8) is a formal witness to the inquest reports, Ext.-2, Ext.-2/A and Ext.-2/B. Dr. Rajiv Ranjan (P.W.10) is an independent expert witness who conducted the postmortem.

(v) Investigating Officer

Binod Kumar Jha (P.W.9) is the Investigating Officer.

Also, documentary evidence on record can be categorized as under:

Documentary Evidence

1.) **Ext. 1 & Ext. 1/A** Written information/complaint of Pankaj Kumar Sah and signature of Rajesh Sah (P.W.2) on the written information respectively; 2.) **Ext. 1/B** registration of P.S. Case No. 140/15; 3.) **Ext. 2**, **Ext. 2/A**&**Ext. 2/B** Signature of Pappu Sah (P.W.8) on the Inquest Reports of Rekha Devi,

Komal Kumari & Anshu Kumari respectively; 4.) **Ext. 3** Formal FIR; 5.) **Ext. 4** Seizure List; 6.) **Ext. 5, 5/A & 5/B** Inquest Reports of Rekha Devi, Komal Kumari & Anshu Kumari respectively; 7.) **Ext. 6** Confessional Statement of accused Birendra Kumar (with objection); 8.) **Ext. 7** Charge-sheet no. 148/15 dated 20th September 2015; 9.) **Ext. 8, Ext. 8/1 & Ext. 8/2** Postmortem Reports 10.) **Ext. 9** FSL Report No. 1615/15 dated 28th February 2017; 11.) **Ext. 9/1** Serological Report; 12.) **Ext. 10, Ext. 10/1 & Ext. 10/2** Carbon copies of dead body challans of the deceased; 13.) **Ext. 11** Command Order to Chowkidars Nankeshwar Paswan, Indradeo Tanti & Shamim Khan to take the dead bodies for postmortem; 14.) **Ext. 12** Forensic Science Laboratory sample collection memo mentioning details of samples collected (with objection)

Material Exhibits

Mat. Ext. I Cream/yellow coloured pant; 2. **Mat. Ext. II** Asmani (sky) vest; 3. **Mat. Ext. III** Knife without handle (with objection); 4. **Mat. Ext. IV** Blue handle knife; 5. **Mat. Ext. V** Chhilni used for peeling vegetables; 6. **Mat. Ext. VI, VII, VIII** Pieces of the bandage (with objection)

Evidence of Witnesses

18. To establish the guilt of the appellant, the

Prosecution heavily relies upon the testimonies of the first set of witnesses, i.e. P.W.s 1 to 5. A conjoint reading of their testimonies unfurls the following facts: (a) None is a witness to the incident. Thus, Prosecution is required to establish its case by way of circumstantial evidence; (b) Deceased Rekha Devi was married to Ajay Sah who died in the year 2013; (c) From the wedlock three children, namely two daughters Komal Kumari and Anshu Kumari (both deceased) and one son Manish Kumar (not examined) were born; (d) Rekha Devi owned no property, either inherited or independently acquired; (e) Niranjan was living with the deceased and used to threaten Rekha Devi for property, however, no complaint be it of whatsoever nature, was ever filed by any party, nor any acts of atrocities attributed to accused Niranjan brought to the notice of any one of the relatives/neighbours/members of the community; (f) parties hail from the lowest strata of the society; (g) witnesses are illiterate and rustic villagers; (h) motive of the crime is to grab the property i.e. the house where the deceased used to reside. Though there is no documentary proof of the ownership or possession of the house/ property, they admit the same to have been given by the parents of Niranjan.

Discussion on Circumstantial Evidence

19. It remains trite law that in judicial proceedings, the crime is proved by means of production of evidence, which is either oral or documentary. Evidence can subsequently be either direct or circumstantial. In a case, which primarily relies upon circumstantial evidence, the motive in a crime serves attains greater significance.

20. For a conviction to be based on circumstantial evidence, a Constitution Bench of the Hon'ble Apex Court in **Raghav Prapanna Tripathi v. State of Uttar Pradesh (1963) 3 SCR 239** held that:

> "38. ...Thus what we have to see is whether taking the totality of circumstances which are held to have been proved against the appellants it can be said that the case established against the appellants i.e. the facts established are inconsistent with the innocence of the appellants and inconsistent with explanation other than of guilt. ..."
>
> (emphasis supplied)

21. Herein, the Court (in paragraph 60) also cited other decisions including the case of **Govinda v. State of Mysore AIR 1960 SC 29**, holding that the circumstances from which conclusion of guilt has to be drawn, should be conclusive and there must be a chain of evidence so as not to leave any ground consistent with the innocence of the accused and show within

all human probabilities that act is done by the accused.

22.This was further crisply summarized in **Chandmal v. State of Rajasthan (1976) 1 SCC 621** where the Court held that:

> "14. It is well settled that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests. Firstly, the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established. Secondly, these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. Thirdly, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. That is to say, the circumstances should be incapable of explanation on any reasonable hypothesis save that of the accused's guilt."
> (emphasis supplied)

23. In the case of **Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116**, the Court has laid down the golden principles of the standard of proof required in a case sought to be established on circumstantial evidence. The Hon'ble Apex Court had relied on the decisions of **Hanumant v. State of M.P., AIR 1952 SC 343** and **Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793** to highlight the same. These are as follows:

a) The circumstances from which the conclusion of

guilt is to be drawn should be fully established.

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

c) The circumstances should be of a conclusive nature and tendency.

d) They should exclude every possible hypothesis except the one to be proved.

e) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

24. The Hon'ble Apex Court in the case of **Gargi v. State of Haryana (2019)9 SCC 738** reiterated its findings on the meaning of circumstantial evidence as:

> "18.5. Thus, circumstantial evidence, in the context of a crime, essentially means such facts and surrounding factors which do point towards the complicity of the charged accused; and then, chain of circumstances means such unquestionable linking of the facts and the surrounding factors that they establish only the guilt of the charged accused beyond reasonable doubt, while ruling out any other theory or possibility or hypothesis."

25. In this case, the Hon'ble Apex Court also took note, of as a word of caution, of the exception that needs to be kept in mind by the decision-maker in relying upon circumstantial evidence. It notes that not all circumstantial evidence may lead towards the complicity of one accused, sometimes it may mislead or false clues may be laid by the accused to shift the suspicion on another.

26. It is in this background the Court proceeds to appreciate the testimonies of the witnesses, which examination obviously, has to be in accordance with the settled principles of law. Are the testimonies inspiring in confidence? Are any material contradictions rendering the witnesses to be unbelievable? Are the variations in the testimonies simple which the Court can ignore? Do the testimonies, hearsay in nature, fully establish the prosecution case beyond a reasonable doubt?

27. As the evidence would unfurl, we find, there is neither any witness to the incident nor is there any scientific evidence, even remotely linking, much less establishing, the involvement of accused Niranjan to the crime.

28. In so far as oral evidence is concerned, the

prosecution case solely rests upon three sets of witnesses- (a) the relatives of deceased Rekha Devi (P.W.1-5); (b) solitary statement of the police officer, the Investigating Officer (P.W.9) (c) Solitary statement of a relative of the accused (P.W.11).

29. One common thread in the testimonies of the first set of witnesses, who live at a distant place, is the factum of having acquired knowledge of the crime only through a daily newspaper. All these witnesses have deposed that in the early hours of 24th June 2015, after reading the newspaper reporting the incident, they learnt about the crime as also the name of the assailant, i.e., Niranjan. Here only it is observed that the said document, i.e. newspaper has not seen the light of the day. It is not placed on record. It gains significance given the undisputed delay in registration of the FIR. The FIR was only registered the morning after the incident, with a 12 hours or so delay, and only upon P.W. 1 submitting the written complaint. Therefore, these witnesses to be mutually contradicting and their version renders the Prosecution story highly doubtful, in any event impeaching their credit. For if the newspaper reported the incident as also disclosed the name of the assailant, then obviously it falsifies the deposition of the Police Officer of his

investigation leading to the criminal, rendering the genesis of the prosecution case to be false and materially contradicted in terms of the prosecution case set up in the charge sheet. Police carried the investigation in the night intervening 23-24th June 2015, by which time the newspaper stood published and circulated. And it is also not the case of the Police that their investigation lead to the publication of the news item.

Appreciation of Witness Testimonies

30. Chapter X of the Indian Evidence Act, 1872 lays down the statutory provisions on examination of witnesses. Section 137 and 138 of the Act lay down that every witness ought to first be examined by the party who calls him (examination-in-chief), then be cross-examined by the adverse party (cross-examination) and then if required, be re-examined by the party who called him.

31. The standard rule of appreciation of, and weight to be given to witness testimonies is that the statements of the witness must inspire the confidence of the Court. However, there exists no rigid rules on the level of corroboration required to inspire the confidence of the Court. In the Constitution Bench decision of the Hon'ble Apex Court in **State of Bihar v.**

Basawan Singh 1959 SCR 195, the Court while discussing the evidentiary value of a testimony of accomplice, interested and partisan witnesses, clarified that as a general rule on the assessment of witness evidence, no rigid formula can or should be laid down on the level of corroboration necessary to inspire confidence in the testimony of the witness.

32. Generally, the veracity of the testimony of a witness is tested on the credibility of the witness and the truthfulness of their statement. The truthfulness of the statement can be determined in cross-examination by putting to the witness, their own previous statements or the testimonies of other witnesses. The credibility of a witness ought to be assessed by the Court by reading the statement as a whole, scrutinizing it against discrepancies and inconsistencies that go against the general tenor of the evidence given by the witness.

33. Cross-examination of the witness is a tool in the hands of the parties to test and establish the truthfulness of the statement. Section 145 of the Act provides for parties to use the previous statement given by the witness in writing to contradict them in cross-examination. In **Tahsildar Singh v. State of U.P. 1959 Supp (2) SCR 875**, a 6-judge bench of the Hon'ble Apex Court held that the purpose of cross-examination was to test the

veracity of the statement made by the witness and impeach their credit. The Court also went ahead to state that not only was it a duty of the accused to shake the credit of the witness, it was also a duty of the Court to satisfy itself that the statements are reliable. However, holding that laying down a hard and fast rule on how this is to be ensured would be dangerous.

34. In the case of **Kartar Singh v. State of Punjab (1994) 3 SCC 569** a Constitution Bench of the Hon'ble Apex Court upheld that cross-examination was the 'acid-test' of the truthfulness of the statement made by a witness:

> "278. ...It is jurisprudence of law that cross-examination is an acid-test of truthfulness of the statement made by a witness on oath in examination-in-chief, the object of which are:
> (1) to destroy and weaken the evidentiary value of the witness of this adversary;
> (2) to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party;
> (3) to show that the witness is unworthy of belief by impeaching the credit of said witness;
> and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character."
> (emphasis supplied)

35. On the question of credibility of witness statements, the Hon'ble Apex Court in **State of U.P. v. M.K. Anthony (1985) 1 SCC 505** held that:

> "10.While appreciating the evidence of a witness,

> the approach must be whether evidence of the witness read as a whole appears to ring the truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmaries pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating Officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. ..."
>
> (emphasis supplied)

36. The Court has time and again held that trivial and minor contradictions in witness statements are bound to happen, and would generally not affect the credibility of a witness. However, contradictions having a material dimension, that go to the root of the matter would discredit the evidence/testimony. [**Leela Ram v. State of Haryana (1999) 9 SCC 525**, **State of UP v. Krishna Master (2010) 12 SCC 324**, **Vinod Kumar v. State of Haryana (2015) 3 SCC 138**].

37. In **Bhagwan Jagannath v. State of Maharashtra (2016) 10 SCC 537**, the Hon'ble Apex Court summarized the principles for the appreciation of the credibility of a witness where there are discrepancies or infirmaries in the statement:

> "19.While appreciating the evidence of a witness, the Court has to assess whether read as a whole, it is truthful. In doing so, the Court has to keep in mind the deficiencies, drawbacks and infirmaries to find out whether such discrepancies shake the truthfulness. ...Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the Court may reject the evidence. ...The Court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted."

38. In the backdrop above, we discuss the testimonies of the witnesses.

39. Pankaj Kumar Sao (P.W.1), brother of the deceased, has deposed that his sister Rekha Devi was married to Ajay Sah and from the wedlock, three children, namely two daughters Komal Kumari and Anshu Kumari and one son Manish Kumar were born. After the death of Ajay Sah, Rekha Devi started living with Alakdhdeo, her husband's cousin brother (*Mamera Bhai*) who used to threaten of killing Rekha Devi and her two daughters. He acquired knowledge of death and the assailant through a newspaper, whereafter by getting a petition (complaint) prepared from Gautam, his nephew (*Bhagina*), filed the same at the Sultanganj Police Station. Along with him, his brothers, Rajesh Kumar (P.W.2) and Sanjay Sah (P.W.4) and sister Anita Devi (P.W.5) signed the same.

40. However, in the cross-examination part of his testimony, he admits (a) not to have lodged any complaint of the previous alleged threats meted out by accused Niranjan; (b) that the parents of accused Niranjan had given the house where deceased Rekha Devi was residing.

41. It is not the prosecution case that the said accused had desired the house to be transferred in his name.

42. We find Rajesh Kumar (P.W.2) also to have made a similar statement on the issue of acquiring knowledge of the crime. But then, there is one major contradiction in his testimony, for according to him, it was he who had read the newspaper ‘daily Hindustan’ at a Tea Stall at about 7 am and at that time, his brother Sanjay (P.W.4) and Pankaj (P.W.1) amongst all other relatives were at home, and he who went home and informed them of the incident.

43. Shekhar Sah (P.W.3) who is the uncle of the deceased Rekha Devi, has yet another explanation on acquiring knowledge of the crime. He states that an alarm was raised in the village that "three persons" had been murdered in the house situated at Sultanganj. The "persons" who read the news informed the names of the deceased. Who are these “three persons” or the “persons”, he does not name. Also, he does not

name Pankaj Sah (P.W.1) and Rajesh Sah (P.W.2) to have informed him of the incident.

44. To the contrary, Sanjay Sah (P.W.4) states that it was his friend Manoj who had read the newspaper and informed him of the crime at about 6:00 am.

45. But the most contradictory version is that of Anita Devi (P.W.5) who emphatically states that it was she who had seen the newspaper reporting the incident of murder of Rekha Devi. She herself informed all the family members of such fact.

46. On first brush, this contradiction about acquiring knowledge of crime appears to be insignificant or inconsequential, but as we further discuss their testimonies, would find it not to be so.

47. Pankaj Kumar Sao (P.W.1) states that it was his nephew (*Bhagina)* Gautam who had scribed the complaint (Ext.-1) which was lodged with the Police. Rajesh Kumar (P.W.2) corroborates such fact. However, the scribe i.e. Gautam Kumar was not examined.

48. Undisputedly, the first set of witnesses live in Bhagalpur, a place distant from Sultanganj, the village of the crime. At best, these witnesses would have had knowledge of previous conduct of the accused, but not that of the identity of

the assailant or how the crime took place.

49. In the backdrop above testimonies of these witnesses on the previous alleged acts of cruelty and assault attributed to accused Niranjan is rendered doubtful. Significantly, none of the witnesses attributes any prior hostility and atrocity to accused Birendra. If that were so, then how could they suspect him of having committed the crime?

50. The relatives have indicated the motive of crime to be the property of the deceased Rekha Devi over which the accused had an evil eye. Even here, there is a contradiction, which may be minor. Pankaj Kumar Sao (P.W.1) mentions such property to be the property, i.e. the house where the deceased was residing. Rajesh Kumar (P.W.2) talks of the house, land and money. He also mentions that Rekha Devi used to tell him of assaults committed by Niranjan on her over the phone. Shekhar Sah (P.W.3) simply mentions property, and Sanjay Sah (P.W.4) is absolutely silent on this aspect. Significantly, none have described the property. Significantly, Pankaj Kumar Sao (P.W.1) admits the house to be given to the deceased by the parents of the accused Niranjan. If that were so, then what was a dispute? These witnesses state the accused to be living with the deceased in the very same house.

Motive of the accused arising from witness statements

51. Section 8 of the Evidence Act provides that:

> "8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto."

52. The Hon'ble Apex Court in their decision in the case of **Jarnail Singh v. State of Haryana**, **1993 Supp (3) SCC 91** has held that motive behind a crime is a relevant fact and the Prosecution is normally charged with adducing evidence in respect thereof. In cases where the Prosecution is not able to establish a motive behind the alleged crime, it assumes importance, especially in cases where the Prosecution rests on circumstantial evidence or on witnesses who have an inimical background. The relevant extracts are as follows:

> "8. But at the same time it must be impressed that motive behind a crime is a relevant fact and normally Prosecution is expected to adduce evidence in respect thereof. In cases where Prosecution is not able to establish a motive behind the alleged crime it assumes importance

> especially in cases where the Prosecution rests on circumstantial evidence or on witnesses who have an inimical background. Proof of motive on the part of the accused persons to commit an offence satisfies the judicial mind about the likelihood of the authorship but in its absence it is only proper on the part of the Court to have a deeper search."

53. More recently, in the case of **Pawan v. State of Haryana, (2017) 4 SCC 140**, the Hon'ble Apex Court has reiterated the relevance of motive and its importance in a criminal trial. The Court has explicitly recognized the importance of a motive in the instance where the accused are named on suspicion by witness testimonies, though such a reason is not necessarily required to be proved. Failure to establish a motive does not nullify the entire case of the Prosecution; it merely impleads the Court to scrutinize the other evidence like witness testimony with greater care.

54. The case of **Nizam v. State of Rajasthan, (2016) 1 SCC 550,** the Hon'ble Apex Court has held that even if the Prosecution can prove its case on the issue of motive, it is only a corroborative piece of evidence lending assurance to the Prosecution's case and reiterated that in the absence of establishing a motive the entire case is not nullified.

55. The principle that emerges from the aforementioned decisions is that motive is merely a corroborative or supporting

piece of evidence. Also, the determination of guilt of the accused cannot be based solely on motive proved.

56. We do not find a version of these witnesses on the motive to be inspiring confidence. Save, and except for the oral version of the witnesses, which also are uninspiring, there is nothing on record to establish prior animosity, altercation or assault on the part of the accused Niranjan. We have already noticed that the description of the property varies from witness to witness. These are not mere exaggerations but variations and contradictions. That apart, no independent witness from the locality or society has been examined to corroborate the factum. The acts of assault allegedly narrated by the deceased to Rajesh Kumar (P.W.2) on the phone are also not corroborated by any evidence, be it oral or documentary. The witness does not remember the phone number of the deceased, despite having spoken to her for more than 10-20 times. None of the relatives brought the matter to the notice of anyone else, and Pankaj Kumar Sao (P.W.1) admits the property was given to the deceased Rekha Devi by the parents of accused Niranjan.

57. Above all, the theory of motive appears to be an afterthought. It is in any case illogical, for with the elimination of all the deceased persons, Niranjan could not have become

the exclusive owner of the property, as Manish, son of the deceased Rekha Devi, undisputedly and admittedly is alive, and to whom no harm was sought to be caused by the accused. Most significantly, there is nothing on record to establish ownership of the house. And the reference to other properties/assets/moveable/immovable, the averments is absolutely vague and unspecific.

58. However, what in crucial impeaching their credit is their other version of acquiring knowledge of the incident.

59. It has come in the testimony of Rajesh Kumar (P.W.2), that a tempo was hired in which all the members of the family travelled to Sultanganj.

60. What did these witnesses do there next is to be examined.

61. Pankaj Sah (P.W.1) states that he lodged the complaint with the Police. He is silent as to whether he visited the Police Station or the spot of crime.

62. Rajesh Kumar (P.W.2) categorically states that “we did not go to the house of *Didi* at any time" and that "he did not get any opportunity to see the dead bodies". Further, he stayed at the police station till 2–3 pm where his statement was recorded. Shekhar Sah (P.W.3) also states that he went to the

police station and saw the dead bodies only at the *Ghat* (here '*Ghat*' means the cremation ground at Bhagalpur) and that Police never recorded his statement.

63. The version of Sanjay Sah (P.W.4) is to similar effect.

64. But their version stands materially contradicted by Anita Devi (P.W.5) who emphatically states that on learning about the incident from the newspaper, the family members by travelling in a tempo to Sultanganj, straightway went to the house of deceased Rekha Devi, where 10-5 persons were present. However, since no police officer was present there, they went to police Station Sultanganj, where the Police interrogated and inquired whom they suspected to have committed the crime, to which she pointed the finger at the accused.

65. She is categorical that at 7 am she read about the incident in the newspaper and at 9 am informed the family member. This was at their native place Bhagalpur. Also, within one and a half hours, they reached Sultanganj. Meaning thereby that Police had completed the investigation and taken away the bodies before 10.30 am. Noticeable, her statement about timing stands materially contradicted by other witnesses. Sanjay Sah

(P.W.4) states that "we reached Sultanganj at 8 am"; Rajesh Kumar (P.W.2) says that "we reached Sultanganj at 9 am" and Shekhar Sah (P.W.3) states that "we reached Sultanganj Police Station at 8–8:30 am". On this issue, Pankaj Kumar Sao (P.W.1) is categorical that he learnt about the incident after reading the newspaper at 8 am, which was at Bhagalpur. The complaint submitted by P.W.1 has been recorded at 09:05 am. The discrepancies and contradictions in the timelines given by the witnesses becomes very relevant considering that they stand to disprove the entire story that the Niranjan was made an accused only at 09:40 am after the complaint (Ext. 1) naming him as accused was filed by P.W.1. Further, Inquest Reports, Ext. 5, 5/A and Ext. 5/B, refer the timing at 2:05 am/2:20 am/2:40 am on 24th June 2015, and as per postmortem report, the postmortem was conducted between 1:30 pm to 1:50 pm on 24th June 2015. A conjoint reading of depositions of P.W.s 2 to 5 reveals that funeral took place the same day and Sanjay Sah (P.W.4) is categorical about such timing to be 5 pm.

66. If the inquest reports were prepared between 2:05 am, and 2:40 am on 24th June 2015, then how is it that same day, the postmortem was got conducted and the dead bodies handed over for cremation? How far the Hospital has not come

on record.

67. Here, only we may take note of the testimony of Mukesh Yadav (P.W.6) and Dipak Kumar Sah (P.W.7). Both of them have not supported the Prosecution. They were declared hostile, however, were not confronted with their previous statements recorded during the course of the investigation. Why so, is not clear from the record. Be that as it may, Prosecution has not suggested anything to these witnesses about the investigation of crime.

Testimony of Hostile Witnesses

68. It is also settled position of law that the entire testimony of the hostile witness need not be discarded. The deposition of the hostile witness to the extent that it supports the case of the Prosecution can be relied upon. [**Bhagwan Singh v. State of Haryana (1976) 1 SCC 389**, **Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1**, **Veer Singh v. State of U.P. (2014) 2 SCC 455**, **Manoj Suryavanshi v. State of Chattisgarh (2020) 4 SCC 451**].

69. Further, in the case of **Sat Paul v. Delhi Admn (1976) 1 SCC 727**, the Court has held that just because a witness turns hostile, their entire testimony cannot be wiped

out. The Court must consider whether as a result of cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in part of the testimony. Where the judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness as a whole, with due care and caution and in light of other evidence on record, act on that part of the testimony, which he finds creditworthy. To the extent the version is found to be truthful and dependable, the same can be accepted. [Also, reiterated in **Kujji v. State of M.P. (1991) 3 SCC 627**: **Radha Mohan Singh v. State of U.P. (2006) 2 SCC 450**: **Yakub Abdul Memon v. State of Maharashtra (2013) 13 SCC 1**].

70. In **Krishna Chand v. State of Delhi (2016) 3 SCC 108**, the Hon'ble Apex Court laid discussion on the appreciation of statement of a hostile witness, in terms of the contradiction of statement with the statement given to the Police. The Court held that Section 137 and 145 of the Evidence Act was not only useful in cross-examination to discredit a witness, but also equally important to elicit an admission of facts which would help build the case of the cross-examiner. The Court followed the case of **V.K. Mishra v. State of Uttrakhand (2015) 9 SCC**

588, discussing the manner in which contradictions in witness statements from the previous statement made to the Police ought to be dealt with so as to prove the previous statement made. The Court observed that:

> "19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating Officer is examined in the Court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating Officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the Court cannot suo moto make use of statements to Police

> not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction."
>
> (emphasis supplied)

71. There is yet another witness of the locality, i.e. namely Pappo Pd. Gupta @ Pappu Sah (P.W.8), who is a signatory to the inquest reports, but even he has not deposed anything about - (a) the investigation carried out by the Police on the spot; (b) the time when Police reached the spot of crime and sent the dead bodies for postmortem; (c) relations between the deceased Rekha Devi and accused Niranjan was not cordial; (d) history of previous assaults; (e) his harbouring any doubt of involvement of any of the accused in crime; or (f) accused Niranjan had any evil eye on the property of deceased Rekha Devi.

72. In this backdrop, let us now examine as to what the remaining witness, i.e. the Investigating Officer, Binod Kumar Jha(P.W.9) has stated on all the aspects.

73. He states that A.S.P. (Probationer) Rakesh Kumar, the then Officer in charge of the Police Station telephonically received information about the crime. This was at 00.05 am on 24th June 2015. Immediately, he himself, heading the police party proceeded to the spot when they found the door of the

house to be bolted from inside and T.V. on as they could hear the sound; blood appeared to be flowing on the street. In the presence of Arun Sao (P.W.11), Rajesh Kumar and Santosh Kumar and others, the police party broke open the door and saw three dead bodies lying at different places which were sent for postmortem. Formal FIR was registered the next morning on the basis of written statement of Pankaj Kumar Sao (P.W.1). During the investigation he recorded the statements of the informant, Pankaj Sah, (P.W.1), Sanjay Sah (P.W.4), Shekhar Sah (P.W.3), Anita Devi (P.W.5), Dipak Sah (P.W.7) and Mukesh Yadav (P.W.6). He clarifies that senior-level officers, i.e. Sr. S. P. Dy. S.P. and Circle Officer reached the spot on whose asking he conducted the investigation. Significantly, none of the other police officers stands examined in Court, and the reason is unexplainable. This has a direct bearing on the case. The genesis of the prosecution case stands shattered. Perhaps they could have revealed the truth of the events which took place on the spot.

74. This Officer admits that after preparation of inquest reports, a dog squad was called and inspection carried out at 10 am, but what is the outcome thereof, he does not disclose. Why so? The record does not reveal.

75. Also, he himself suspected role of only accused Birendra in the alleged crime, whom he arrested at 8.55 am when certain blood-stained clothes were taken into possession vide Material Exts. I & II. He admits that initially, he did not suspect the role of Niranjan whom he later on arrested at 9:40 am. The only basis for this seems to be the written complaint of Pankaj Sah (P.W.1.) This version does not appear to be inspiring confidence. For prior thereto, Police had no information of his complicity in the crime. None from the neighbourhood pointed any finger of suspicion towards him. Also, no incriminatory material linking him to the crime appeared to be on the spot. Further, confessional statement Ext.- 6 of accused Birendra recorded at 1:45 pm (13:45) also did not ascribe any role of murder to Niranjan. Significantly, formal FIR was registered at 12:30 pm. The delay remains unexplained. We find the events which took place on the spot are not narrated truthfully by the relatives, both of the deceased and the accused.

76. We may observe that there is no confessional statement of accused Niranjan and when we peruse the confessional statement of Birendra, we find that it reveals that he alone committed the crime and not accused Niranjan. We

clarify that we have referred to such statement only for satisfying our conscience in examining complicity of the present appellant in the crime.

77. At this juncture, we shall deal with the contents of the complaint, Ext.-1, leading to the registration of the FIR. The informant, Pankaj Kumar Sao (P.W.1) states that after the death of Ajay Sah, Niranjan started living with deceased Rekha Devi. He used to assault her over the issue of property, which issue was brought to the notice of others. Though Niranjan was counselled, but both he and Birendra did not pay any heed. In the early hours of 24th June 2015, he read the news item that Rekha Devi and her daughters had been murdered by Niranjan. The family travelled from Bhagalpur to Sultanganj, where, from the villagers, they learnt that with the intent to grab the property of Rekha Devi and also for she refused to give money, both the accused committed the crime.

78. This further renders the prosecution case to be absolutely false much less doubtful. Either the independent witness i.e. family members of the deceased or the Police Officer are telling lies. In fact, who is telling the truth is not clear. If the name of the assailants stood published in the newspaper, then obviously testimony of Binod Kumar Jha

(P.W.9), the Investigation Officer, of having conducted the investigation in the manner in which he has deposed is false. As per the testimony of P.W.9 police party did not suspect the role of Birendra much less Niranjan till the time of their arrest. It was only when blood-stained garments were recovered, and the police officer suspected the role of accused Birendra. What really is the truth, unfortunately, Prosecution has not been able to establish.

79. If the contents of the complaint are true, then why is that Police did not produce the newspaper for corroborating such fact? Why is it that Police waited for the complaint to be lodged and FIR registered only at 12.30 pm? Why is that Police did not record the FIR after the arrest of Birendra which was at 8.55 am? Why is that no FIR was registered with the arrest of Niranjan which was at 9.40 am? Why no statement of other police officers associated during the investigation was recorded? After all, police station, as revealed in the testimony of P.W.7 and document Ext.-3, was just at a distance 1 ½ km from the spot crime. Why is that no disclosure /confessional statement of accused Niranjan was recorded? Why is it that no scientific investigation to corroborate complicity of the accused was got carried out? Where are the statements of the

independent witnesses, which the Police Officer admits to having recorded? Why is it that there is no recovery of the weapon of offence? Why no recovery of the weapon of offence is shown to have been recorded by this witness? After all, only one weapon of the offence was handed over by the doctor to the Police. Is it not the case of the Police that more than one weapon was used by the accused of committing the crime? Why no independent witness of the locality was examined by the Police during the course of the investigation? or examined in the Court as a witness? For, after all, he admits the presence of the neighbours on the spot of crime. In paragraph 33 of his deposition, the Police Officer admits the complainant party to have reached the spot much after the arrest of Birendra.

80. It is in this backdrop, even the examination of the scribe of the complaint was necessary more so for establishing the issue of previous incidents of assault.

81. Most significantly, Gautam, who was adolescent being a material witness was not examined, is not evident from the record as to why this was so. He alone could have corroborated the version narrated in the complaint, particularly when maternal witness Sanjay Sah (P.W.4) has categorically deposed that "he cannot say how Rekha Devi died".

82. It is nobody's case that the accused are an influential person or had threatened or won over, or intimidated the witnesses, or none came forward to cooperate, or were siding with the accused, or refused to depose.

83. We may report the timeline of the occurrence of events emanating from the testimony of the P.W.9 as follows:(i) **12:05 am** information phone call to the police station; (ii) **12**:**05 am** He went to the place of occurrence with ASP and armed forces– raised the alarm and broke the front door; (iii) The information of the incident was given to S.S.P., Dy. S.P., Law and order and Senior Dy. Collector from the place of occurrence; (iv) **After 1:30 but before 2:05 am** SSP, Dy SP and Senior Dy Collector reached the place of occurrence and directed him to prepare inquest report & investigate (did not start investigation before receiving the order); (v) **2:05 am** prepared Rekha Devi's inquest report; (vi) **2:20 am** prepared Komal Devi's inquest report; (vii) **2:40 am** prepared Anshu Kumari's inquest report; (viii) Took statements of Pappu Sah, Arun Sah and Niranjan (later on made accused); (ix) **7:30 am** Sent chowkidar and SI Jagjiwan Ram to take bodies for postmortem; (x) **8:45 am** Searched house of Birendra and prepared search cum seizure list (case no. 140/15 written on

this only later); (xi) **8:55 am** arrested accused Birendra; (xii) **9:05 am** written application of informant Pankaj Sah was received and case no. 140/15 was registered; (xiii) **9:40 am** Accused Niranjan was arrested; (xiv) **10:00 am** F.S.L. Team and Dog Squad arrived; (xv) **1:45 pm** Confessional Statement of accused Birendra recorded.

84. Certain missing links and uncorroborated information surface in the statement of the Binod Kumar Jha (P.W.9), which are significant and important, rendering his testimony to be unworthy of credence. The name of the person who gave the information to the Police at the first instance was never brought on record. The ASP who received the information, and accompanied him to the place of occurrence, and assisted with the investigation on the spot neither gave a statement nor was he examined as a witness, creating a lacuna of evidence of a crucial spot witness. No pictures of the locked doors or the blood-stained earth or the crime scene have come on the record. Senior Police functionaries neither named nor examined. We do not understand why the assistance of the dog squad was ever required in this case.

85. Further, Section 154 of the Code of Criminal Procedure, 1973, (hereinafter referred to the Code) provides the

procedure to be followed for the information received regarding cognizable cases. It provides that the information received by the police officer shall be reduced in writing and recorded in the relevant book as prescribed by the State Government. Ideally, the information received over the phone call made to the Police should have featured in the registration of the FIR. However, suspiciously, only after about 12 hours into the investigation, after inquest report filed, statements were taken, and the first accused arrested, did the case come to be registered, and that too only on information of the same submitted by a third party, Pankaj Kumar P.W.1. As discussed above, this non-filing of the FIR for hours during which investigation was undertaken remains unexplained. In light of this, the testimony of P.W.9 fails to inspire confidence. In fact, renders the witnesses not worthy of credence.

Procedure to be followed for investigation/ Fault and lapses in the investigation

86. It must be further emphasized that the role of the Investigating Officer is crucial not only throughout the process of the investigation but starts from when information about the offence is brought to their notice. It is imperative that for crimes such as murder, the Investigating Officer take

cognizance of the offence at the earliest and initiate the process of investigation promptly. The benefit arising from a faulty investigation accrues in favour of the accused and has the potential to lead to a great travesty of justice for the rights of the victim. Therefore, it becomes essential that the investigation be conducted with the utmost regard for the procedure to be followed.

87. In the instant case, the first and glaring lapse in the procedure by the Investigating Officer was the non-filing of FIR at the time of obtaining information of the cognizable offence and carrying out investigation in the interim, and only registering FIR based on information given 12 hours after the crime and investigation into the crime had taken place.

88. The importance of duly lodging the FIR and the role of the IO has been highlighted by a Constitution Bench of the Hon'ble Apex Court in **Lalita Kumari v. Govt of U.P.(2014) 2 SCC 1** as under:

> **"**93. The object sought to be achieved by registering the earliest information as FIR is inter alia twofold: one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment, etc.
>
> [...]

96. The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice-delivery system but also to ensure "judicial oversight". Section 157(1) deploys the word "forthwith". Thus, any information received under Section 154(1) or otherwise has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the knowledge of the investigating agency but also to the subordinate judiciary.

97. The Code contemplates two kinds of FIRs: the duly signed FIR under Section 154(1) is by the informant to the Officer concerned at the police station. The second kind of FIR could be which is registered by the Police itself on any information received or other than by way of an informant [Section 157(1)] and even this information has to be duly recorded and the copy should be sent to the Magistrate forthwith. The registration of FIR either on the basis of the information furnished by the informant under Section 154(1) of the Code or otherwise under Section 157(1) of the Code is obligatory. The obligation to register FIR has inherent advantages:

97.1. (*a*) It is the first step to "access to justice" for a victim.
97.2. (*b*) It upholds the "rule of law" inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.
97.3. (*c*) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.
97.4. (*d*) It leads to less manipulation in criminal cases and lessens incidents of "antedated" FIR or deliberately delayed FIR."

(emphasis supplied)

89. The Hon'ble Apex Court in this case also

emphasizes the need for the investigating agency to document every action of theirs under the Code, in order to keep a check on their power and to ensure that the investigation is not maligned in any manner. It observed that:

> "94. Principles of democracy and liberty demand a regular and efficient check on police powers. One way of keeping check on authorities with such powers is by documenting every action of theirs. Accordingly, under the Code, actions of the Police, etc. are provided to be written and documented. For example, in case of arrest under Section 41(1)(*b*) of the Code, the arrest memo along with the grounds has to be in writing mandatorily; under Section 55 of the Code, if an officer is deputed to make an arrest, then the superior Officer has to write down and record the offence, etc. for which the person is to be arrested; under Section 91 of the Code, a written order has to be passed by the Officer concerned to seek documents; under Section 160 of the Code, a written notice has to be issued to the witness so that he can be called for recording of his/her statement, seizure memo/panchnama has to be drawn for every article seized, etc.
>
> 95. The Police is required to maintain several records including case diary as provided under Section 172 of the Code, General Diary as provided under Section 44 of the Police Act, etc. which helps in documenting every information collected, spot visited and all the actions of the police officers so that their activities can be documented. Moreover, every information received relating to commission of a non-cognizable offence also has to be registered under Section 155 of the Code."

90. On every count, in the instant case, the Investigating Officer (P.W.9) has defaulted. Certain other Jurisprudential issues on the object of investigation and fair

trial, duty of the trial court to interfere in order to pry out the truth, etc. ought to be discussed at this juncture.

91. The right to fair trial flows from the constitutional guarantee under Article 21 of the Constitution. This principle has been upheld by the Hon'ble Apex Court time and again, including by a Constitutional Bench in **State of Punjab v, Baldev Singh (1999) 6 SCC 172**, **Lalita Kumari v. Govt of U.P. (2014) 2 SCC 1, Anita Kushwaha v. Pushap Sudan (2016) 8 SCC 509** and recent judgment of **Mohan Lal v. State of Punjab, (2018) 17 SCC 627** among others.

92. In the case of **National Human Rights Commission v. State of Gujarat (2009) 6 SCC 767,** the Court elaborated the principles of fair trial. It held that it must be kept in mind that a crime is a public wrong which violates public rights and duties, thus a fair trial has to balance the interests of all stakeholders, i.e. the accused, victim and society as a whole. It, therefore, observed that:

> "35**.** The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice--often referred to as the duty to vindicate and uphold the 'majesty of

the law'...”

93. Further, in the case of **Ankush Maruti Shinde v. State of Maharashtra, (2019) 15 SCC 470,** the Court emphasized that fair trial includes fair investigation. In this context, the role of the Police and the investigating agency was upheld to be to search for truth and to ensure that the offenders are brought to justice. The Court stated that:

> "10. The role of the Police is to be one for protection of life, liberty and property of citizens, that investigation of offences being one of its foremost duties. That the aim of investigation is ultimately to search for truth and to bring the offender to book. It has to be uppermost kept in mind that impartial and truthful investigation is imperative. It is judiciously acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India.
> [...]
> 10.2. The criminal justice administration system in India places human rights and dignity for human rights at a much higher pedestal and the accused is presumed to be innocent till proven guilty. The alleged accused is entitled to fair and true investigation and fair trial and the Prosecution is expected to play a balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India."
> (emphasis supplied)

94. Flowing from the object of investigation, the role of

the I.O. is to work towards uncovering the truth, so as meet the ends of justice.

95. In the case of **State of Bihar v. PP Sharma 1992 Supp (1) SCC 222,** the role of the IO in dispensing justice has been discussed, the Hon'ble Apex Court observed that:

> "47. The investigating Officer is the arm of the law and plays a pivotal role in the dispensation of criminal justice and maintenance of law and order. The police investigation is, therefore, the foundation stone on which the whole edifice of criminal trial rests - an error in the chain of investigation may result in miscarriage of justice and the Prosecution entails (*sic*) with acquittal. The duty of the investigating Officer, therefore, is to ascertain facts, to extract truth from half truth or garbled version, connecting the chain of events. Investigation is a tardy and tedious process. Enough power, therefore, has been given to the police officer in the area of investigatory process, granting him or her great latitude to exercise his discretionary power to make a successful investigation. It is by his action that law becomes an actual positive force. ...His/her primary focus is on the solution of the crime by intensive investigation. It is his duty to ferret out the truth. Laborious hard work and attention to the details, ability to sort through mountainous information, recognized behavioral patters and above all, to co-ordinate the efforts of different people associated with various elements of crime and the case, are essential..."
>
> (emphasis supplied)

96. In this light the Court has also held that the role of the investigating agency and the Prosecution is to act in an honest manner and not only to get a conviction by hook or

crook. This principle has also been reiterated by the Hon'ble Apex Court in the case of **Babubhai v. State of Gujarat (2010) 12 SCC 254**:

> "32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer 'is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth."

97. Further, it has been held in **Sheila Sebastian v. R Jawaharaj (2018) 7 SCC 582** that the investigator must b diligent enough to ensure that there is no miscarriage of justic due to latches and lapses in his duty:

> "29. This case on hand is a classic example of poo Prosecution and shabby investigation whic resulted in acquittal of the accused. Th investigating Officer is expected to be diligen while discharging his duties. He has to be fai transparent and his only endeavor should be to fin out the truth. ...The latches in the lopside investigation goes to the root of the matter and fata to the case of the Prosecution. If this is th coordination between the Prosecution and th investigation agency, every criminal case tend t end up in acquittal. ... It is the duty of th

> investigating Officer, Prosecution, as well as th courts to ensure that full and material facts an evidence are brought on record, so that there is n scope for miscarriage of justice."

Duty/role of Prosecution

98. In a criminal trial the Prosecution and defence play an equally important role in ensuring justice for all concerned parties, the accused, the victim and the society. The primary requirement to meet this requirement is to ensure fairness in proceedings and that all relevant facts and circumstances are brought to the attention of the Court. The Hon'ble Apex Court in the case of **Ankush Maruti Shinde v. State of Maharashtra, (2019) 15 SCC 470**, has provided an overview of the role of these parties in a criminal trial. The Court has distinguished the duty of the Police, the Investigating Officer and the Prosecution, and observed as follows:

> "10. …The role of the Police is to be one for protection of life, liberty and property of citizens, that investigation of offences being one of its foremost duties. That the aim of investigation is ultimately to search for truth and to bring the offender to book.
> "10.1. …it is the duty of the Prosecution to ensure fairness in the proceedings and also to ensure that all relevant facts and circumstances are brought to the notice of the Court for just determination of the truth so that due justice prevails. It is the responsibility of the investigating agency to ensure that every investigation is fair and does not erode the

> freedom of an individual, except in accordance with law…
> 10.2. …The alleged accused is entitled to fair and true investigation and fair trial and the Prosecution is expected to play a balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law…"
> (emphasis supplied)

99. The Court in the case of **Ankush Maruti Shinde (supra)** refers to its decision in the case of **Darya Singh v. State of Punjab, AIR 1965 SC 328**, to elucidate that the Prosecution ought to act fairly and not deceive the Court by not bringing the courts attention to evidence that does not support its own case. The Court observed as follows:

> "10.4. Even in a case where the Public Prosecutor did not examine the witnesses who might have supported the accused, this Court in **Darya Singh v. State of Punjab** has observed that the Prosecution must act fairly and honestly and must never adopt the device of keeping back from the Court only because the evidence is likely to go against the prosecution case. It is further observed that it is the duty of the Prosecution to assist the Court in reaching to a proper conclusion in regard to the case which is brought before it for trial…"

100. The duty of the Prosecution is therefore not to get a conviction by hook or by crook. Rather, they must act in an honest manner and bring the courts attention to every piece of evidence if it does not support the story of the Prosecution, which in the instant case is absolutely lacking.

101. This takes us to the testimony of the third set of witnesses, namely Arun Sao (P.W.11), who is a cousin of accused Niranjan. He has not supported the Prosecution, was declared hostile and cross-examined by the public prosecutor. Detailed legal position on appreciation of the testimony of hostile witnesses has already been discussed above.

102. Importantly what we notice in the cross-examination part of the testimony of the witness is the Prosecution introducing yet another story, totally bellying and contradicting the version of P.Ws. 1, 2 and 3 of accused Niranjan having any eye on the property of the deceased Rekha Devi or his complicity in the crime. As per this witness, the villain is accused Birendra alone. Accused Niranjan is absolutely innocent. (as such we do not read it in evidence]. Even though this witness was not confronted with his previous statement, but Police have tried to establish that all was not well between Birendra and Niranjan and that they used to quarrel with each other, seeking partition of the property, which the family members opposed. Their mother sensed Rekha Devi was prompting Niranjan to have the property partitioned. It was Birendra who had threatened Rekha Devi of killing her. In the evening of 23rd June 2015, sometime at 6–7 pm there was a

dispute between the two brothers, i.e. Birendra and Niranjan on the issue of raising a wall/partition within the property. At about 11.30 pm, even though the sound of T.V. was coming at full volume, Rekha Devi did not open the door of her house. Hence Niranjan entered the house through the property of this witness. There he saw the dead bodies smeared with blood and started crying. He took out Niranjan through his house and informed the Police, whereafter Police came, and after breaking open, the door entered the house.

103. If such testimony is to be believed, then Niranjan is absolutely innocent, insofar as the commission of the crime of murder is concerned. But then this material circumstance has not been put to him in his statement under Section 313 Cr. P.C. yet another reason for us not to rely thereupon.

104. Section 313 of the Code gives the Trial Court power of examination of the accused before the Court. Under this section, the accused is given an opportunity to explain any circumstance appearing in the evidence against him.

105. This opportunity given to the accused has been held to be part of a fair trial. In the **State of Maharashtra v. Sukhdev Singh (1992) 3 SCC 700**, the Hon'ble Apex Court held that it is the duty of the Trial Court to make the benefit of

Section 313 available to the accused:

> "50. Section 313 of the Code is a statutory provision and embodies the fundamental principle of fairness based on the maxim audi alterum partem. It is trite law that the attention of the accused must be specifically invited to inculpatory pieces of evidence or circumstances laid on record with a view to giving him an opportunity to offer an explanation if he chooses to do so. The section imposes a heavy duty on the Court to take great care to ensure that the incriminating circumstances are put to the accused and his response solicited. The words "shall question him" clearly bring out the mandatory character of the clause and cast an imperative duty on Court and confer a corresponding right on the accused to an opportunity to offer his explanation for such incriminating material appearing against him. ...Therefore, no matter how weak or scanty the prosecution evidence is in regard to a certain incriminating material, it is the duty of the Court to examine the accused and seek his explanation thereon."
>
> (emphasis supplied)

106. In the case of **Basavaraj R Patil v. State of Karnataka (2000) 8 SCC 740**, the Hon'ble Apex Court further explained the obligation of the Trial Courts vis-a-vis Section 313 of the Code, by observing that:

> "20. ...The word 'may' in clause (a) of sub-section (1) in Section 313 of the Code indicates, without any doubt, that even if the Court does not put any question under that clause the accused cannot raise any grievance for it. But if the Court fails to put the needed question under clause (b) of the sub-section it would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity

> to explain, can be used against him. It is now well settled that a circumstance about which the accused was not asked to explain cannot be used against him."
>
> (emphasis supplied)

107. In **Lallu Manji v. State of Jharkhand (2003) 2 SCC 401**, the Hon'ble Apex Court stated that where opportunity under Section 313 of the Code was not afforded to the accused, the incriminating pieces of evidence available in prosecution evidence could not be relied on for the purpose of recording the conviction of the accused persons. In **Naval Kishore Singh v. State of Bihar (2004) 7 SCC 502**, while upholding that Section 313 constituted a part of fair trial of the accused, the Court held that the High Court could very well remit the case to the Sessions Court for proper examination. This has also been held in **Raj Kumar Singh v. State of Rajasthan (2013) 5 SCC 722**, **Nav Singh v. State of Haryana (2015) 1 SCC 496**.

108. Most recently, a three-judge bench of the Hon'ble Apex Court in **Maheshwar Tigga v. State of Jharkhand (2020) SCC OnLine SC 779** has held that:

> "9. It stands well settled that circumstances not put to the accused under Section 313 Cr.P.C. cannot be used against him, and must be excluded from consideration. In a criminal trial, the importance of questions put to an accused is the basic principles of natural justice as it provides

> him with the opportunity not only to furnish his defense, but also to explain the incriminating circumstances against him.

109. In **Parminder Kaur v. State of Punjab 2020 SCC Online SC605**, the Hon'ble Apex Court has gone as far to state, in relation of Section 313 of the Code, that:

> "21. ...Such opportunity is a valuable right of the accused to seek justice and defend oneself. Failure of the trial court to fairly apply its mind and consider defence, could endanger the conviction itself. ..."

110. However, it is clarified that the accused in not per se entitled for acquittal on ground of non-compliance with mandatory provision of Section 313. The accused must show that some was caused or likely to be caused to him from the error or omission in compliance with the provisions of the Code. The non-compliance with Section 313 would vitiate the trial if material prejudice were caused to the accused. Where important incriminating circumstances were not put to the accused during examination under Section 313, it was held that the prosecution could not place reliance on the piece of evidence. [**Kuldip Singh v. State of Delhi (2003) 12 SCC 528, Paramjeet Singh v. State of Uttarakhand (2010) 10 SCC 439, Nav Singh v. State of Haryana (2015) 1 SCC 496, Yogesh Singh v. Mahabeer Singh (2017) 11 SCC 195**]

111. In a criminal trial, another is the role of the Court of trial and the trial judge itself that are essential factors in realization of justice. The Hon'ble Apex Court in the case of **Ram Chander v. State of Haryana (1981) 3 SCC 191,** put a question to itself on the role of a judge in a criminal trial. The Court observed the following:

> "2. …there is an unfortunate tendency for a Judge presiding over a trial to assume the role of a referee or an umpire… If a criminal court is to be an effective instrument in dispensing justice, the presiding Judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth."

112. The Court recognized that the wide powers available to it ought to be used to actively participate in the trial to extract the truth and protect the weak and the innocent. Further, the Court cautioned that the Court should not to step into the role of the prosecution, however, went further from the observations made by Lord Denning in **Jones v. National Coal Board, (1957) 2 All ER 155,** to opine as follows:

> "3. … The Court, the prosecution and the defence must work as a team whose goal is justice, a team whose captain is the judge. The Judge, "like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous, encourage the timid, conspire with the young, flatter and (*sic* the) old."

113. These observations of the Hon'ble Apex Court on the role of a trial judge have been reiterated in the case of **State of Rajasthan v. Ani, (1997) 6 SCC 1621.** In this case, the Court held, yet again, that it was within the power of the trial Court to put questions to the witnesses and other parties at any point during the trial, for ascertaining truth. The observations are extracted as follows:

> "12. A Judge is expected to actively participate in the trial, elicit necessary materials from witnesses in the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit *truth*. The corollary of it is that if a Judge felt that a witness has committed an error or a slip it is the duty of the Judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence-collecting process… It is a useful exercise for trial Judge to remain active and alert so that errors can be minimised."

114. Moreover, the Apex court has reiterated in the case of **Bharati Tamang v. Union of India (2013) 15 SCC 578** (at paragraph 44) that the duty of the Court is to ensure that prosecution and the investigating agency is reminded of its responsibility and discharges its function responsibly to

effectively ensure that the perpetrators of a crime are duly punished.

115. Finally, the more a recent decision of the Hon'ble Apex Court sheds light on the duty of the Court during a trial. In the case of **State of Rajasthan v. Madan (2019) 13 SCC 653,** the Court has held that:

> "30**.** It is the duty of the Court to separate the grains from the chaff and to extract the truth from the mass of evidence…"

116. Given the aforementioned principles, it is settled that the trial court and the trial judge exercise considerable power during a trial. They are tasked with the duty of arriving at the truth by trying to discern the relevant and true information from all the over information that is available to them, which unfortunately was not so done in the present case.

117. Significantly, there is no scientific evidence linking the accused to the incident of crime. There is no opinion of fingerprint expert and no matching of the blood.

Documentary Evidence

118. After the detailed discussion on witness statements, we will now discuss our views on the documentary evidence on record. The prosecution is relying on three sets of documentary evidence - (1) the inquest reports Ext.5, 5/A &

5/B, (2) the post-mortem reports Ext.8, Ext. 8/1 & Ext. 8/2 and (3) the FSL report & serological report Ext. 9 & 9/1.

119. The inquest reports of the three deceased were filed between 2:00 am, and 2:45 am on 24th June 2015 and were signed by witnesses Arun Sao and Pappu Sao. On the same day, at 7:30 am, the bodies were sent for post-mortem. The post-mortem report subsequently was received on 24th June 2015. The reports concluded that the three victims died of haemorrhage and shock by multiple stab wounds. Dr. Rajiv Ranjan P.W.10 proved that post-mortem report authored by him and stated that the clothes and bodies of the deceased, as well as the blade found in the eye of Komal Kumari, were handed over to the chowkidar after conducting the post-mortem examination.

120. As per the prosecution story, the FSL team arrived at the scene of the crime at 10:00 am, and five items were seized from the scene of the crime - three pieces of bandage with a bloodstain on it (Mat. Ext. VI, VII, VIII), blue handle knife (Mat. Ext. IV) and the vegetable peeler (Mat. Ext. V) with a bloodstain on it, all of which were named as FSL No. 1615/15. These were handed over to the Investigating Officer, to be sent for FSL examination along with the deceased's

garments through proper channel. However, these items were sent for analysis to the FSL team only on 20th September 2015, three months after the date of the crime. No reason for such a delay has come on record. Further, the garments of the deceased were never collected and sent for comparison. It must also be noted that other material evidence such as the murder weapon blade without handle which was recovered from the eye of the deceased Komal Kumari was submitted to FSL examination, without any documentation entering the evidence into the record.

121. The FSL team too, has failed in ensuring any significant finding to aid the investigation.

122. Section 45 of the Indian Evidence Act states that the opinion of an expert is a relevant fact that must be considered by the Court while forming an opinion on the point of science. Forensic evidence plays a crucial role in supporting the prosecution's case. The value and importance of forensic evidence as a tool of investigation, especially in cases where circumstantial evidence forms the basis of the case has been discussed by the Hon'ble Apex Court in the case of Dharam Deo Yadav v. State of U.P. (2014) 5 SCC 509, certain important aspects of the discussion has been reproduced below:

> "27. The crime scene has to be scientifically dealt with without any error. In criminal cases, especially based on circumstantial evidence, forensic science plays a pivotal role, which may assist in establishing the element of crime, identifying the suspect, ascertaining the guilt or innocence of the accused. One of the major activities of the investigating officer at the crime scene is to make thorough search for potential evidence that have probative value in the crime..."

123. It further goes onto the discuss the value of scientific evidence in criminal investigations:

> "30. The criminal justice system in this country is at crossroads. Many a times, reliable, trustworthy, credible witnesses to the crime seldom come forward to depose before the Court and even the hardened criminals get away from the clutches of law. Even the reliable witnesses for the prosecution turn hostile due to intimidation, fear and host of other reasons. The investigating agency has, therefore, to look for other ways and means to improve the quality of investigation, which can only be through the collection of scientific evidence. In this age of science, we have to build legal foundations that are sound in science as well as in law. Practices and principles that served in the past, now people think, must give way to innovative and creative methods, if we want to save our criminal justice system. Emerging new types of crimes and their level of sophistication, the traditional methods and tools have become outdated, hence the necessity to strengthen the forensic science for crime detection. Oral evidence depends on several facts, like power of observation, humiliation, external influence, forgetfulness, etc. whereas forensic evidence is free from those infirmities. ..."
>
> (emphasis supplied)

124. The findings of the examiner merely pointing to the fact that 'human blood of group A' was found on the articles is of no consequence. An important question that comes to mind is why the FSL team did not collect sufficient forensic and DNA and fingerprint evidence of each of the deceased to link the accused to the scene of the crime, more so because weapons, including a knife and chhilni, which were possibly used to commit the crime were already seized. No evidence was taken by the FSL team that could provide any conclusive evidence as to the identity of the accused was taken. There was further undue delay by the FSL team since the FSL report was ready only on 21st March 2017, almost two years after the incident, and the only conclusion provided in this report was that the blood that was found at the scene of the crime was human blood of blood group A. The forensic evidence and conclusion provided by the FSL report and the serological report were not probed further, which led to a severe lacuna in the investigation.

125. It is also essential to note the severe oversight of the Investigating Officer in not collecting any other evidence and even documenting any evidence from the scene of the crime. Neither the blood sample of the deceased nor their

garments were collected.

126. No evidence on the fact of the accused Niranjan living in the same house, such as his clothes in the rooms etc. has come on the record. No evidence as to the number of entry points to the house and access to these entries has come on the record.

127. Seemingly, other than the witness statements of the relatives of the deceased P.W.1-5 which were taken in July 2015, there is also has been no further investigation into the case as no evidence collected from after the registration of FIR on 24th June 2015, has come on the record at all.

128. Although a confessional statement made to the police is inadmissible as evidence, it may still be noteworthy to observe that even this statement does not make out any role of the accused Niranjan in committing the murder. Birendra Kumar, in his confessional statement, stated that due to a property dispute on the issue of Rekha Devi and her family, he was incited to commit the murder. It goes into details of the manner in which he had committed the murder and gotten rid of the evidence. This brings forth another contradiction in the prosecution story since even the co-accused has not ascribed any role with respect to the murder to the accused Niranjan.

129. The discussion on the evidence on record highlights that the prosecution narrative is riddled with holes. The basis on which Niranjan was made accused is concocted.

130. The investigation is shoddy and full of gaps, and material facts are absent from the record.

131. With the motive itself disproved, the only fact established against accused Niranjan is his relationship with deceased Rekha. That there is no evidence to say that the relationship was non-consensual or abusive. The findings from the investigation are neither conclusive, nor do they inspire confidence in the prosecution story.

Findings returned by the Trial Court

132. We shall now discuss the findings returned by the Trial Court Judge in acquitting and convicting both of the accused persons.

133. He has held that investigation, shoddy in nature, cannot be a reason to disbelieve the prosecution case. Reference is with regard to non-preparation of the seizure memo of material Ext. III- knife without handle removed from the body of Komal Kumari, Material Ext.-IV Blue handle knife, Ext.-V *Chhilni* used for peeling vegetables and the reason

assigned is the report of Serological report Ext.-9/1 which showed traces of human blood on the said articles as also the inquest report Ext.-5/A and the opinion of the doctor (P.W.10) who took out material Ext.-3 from the body of the deceased.

134. Accused Niranjan was living with deceased Rekha Devi which fact, material in nature, stands established through the testimony of P.W.s1, 2, 3, 4, 5 and 11.

135. Even though there is a delay in lodging the FIR, but the same is not fatal; no independent witness could have deposed for want of reluctance, and only an inmate could have committed a crime.

136. The Trial Court has found the prosecution to have established the following circumstances against the accused Niranjan:

(a) Factum of murder of Rekha Devi and her daughters namely Komal Kumari and Anshu Kumari.

(b) The said accused wanted to usurp the property of the deceased.

(c) The said accused who is *Mamera Devar* (maternal brother-in-law of Rekha Devi) was living with the deceased persons.

(d) Weapons used for committing murders contained

human blood were recovered from the place of occurrence of crime, i.e. the house of the deceased Rekha Devi where the accused was also residing.

(e) Place of occurrence i.e. house of deceased Rekha Devi where from the dead bodies of all the three persons were recovered and weapons of offence seized stands duly proved.

(f) The door of the house where occurrence took place was closed from inside and T.V. running on full volume. Absence of the accused only casts shadow of doubt.

(g) Being an inmate of the house no cogent explanation is forthcoming explaining his absence or lodging FIR or reporting the incident to the police. As such in view of Section 106 of the Evidence Act and absence of any explanation in his statement under Section 313 Cr. P.C., guilt stands established by the prosecution.

137. Qua accused Birendra, Court found the prosecution to have raised a finger of strong suspicion, but in the absence of any eye witness from the place of occurrence of the incident or close proximity thereto, even though there was a recovery of blood-stained clothes of the said accused, there was no

clinching evidence linking him to the crime.

138. On the issue of the sentence, the Court after discussing the law laid down by the Hon'ble Apex Court in **Mukesh v. State of NCT of Delhi, (2017) 3 PLJR (SC) 248,** found the act committed to being extremely heinous, horrific and inhuman and in the absence of any mitigating circumstance, deserving no leniency, particularly when the "gravity of the incident depicts the hair rising beastly and unparalleled behavior" and that "infliction of dozens of sharp cutting injuries on the persons of the deceased females before their death had not only shocked the collective conscience but calls for the withdrawal of the protective arm of the community around the convict".

139. In our considered view, the Trial Judge totally failed to correctly appreciate the factual matrix and the testimonies of the witnesses; also appreciate and correctly apply the law. In fact, he misconstrued and misapplied them. We are dealing with a case of circumstantial evidence, and it is a cardinal principle of law, be the crime howsoever heinous, standing on its own legs, independently, the prosecution is required to establish its case beyond a reasonable doubt, linking the chain of circumstances by leading clear, cogent and

consistent evidence, pointing to the hypothesis of the guilt of the accused alone and none else.

140. The finding of fact returned by the Trial Judge, as noticed supra are based on mere presumption, if not surmises.

141. The Trial Court noticed the case to be of the nature of circumstantial evidence and the prosecution relying on the following factors- (1) factum of homicidal death proved through post mortem together with FSL and serological reports; (2) Niranjan was living with deceased Rekha established through witnesses; (3) he had a greedy eye on her property; (4) involvement of Birendra Kumar through the serological report of seized vest and jeans - although the blood group on the seized items was not the same as the crime scene, but in the absence of any explanation, reasonable suspicion of complicity in the murder proved against him but not proved on record; (5) failure of Niranjan to prefer an explanation of the circumstance of his silence after the commission of the crime, despite living with the deceased person, and of non-lodgment of FIR constituting an incriminating circumstance to which he remained silent, comprising an additional chain of circumstance against him.

142. To our reading this is based on the principle of

preponderance of probability and not beyond doubt, much less reasonable.

143. The Court then went onto their findings on issues, the first one being whether the death of the three deceased was homicidal, natural or accidental. We need not elaborate thereupon.

144. At this point, the Court discussed the objections raised by the defence on the marking of the material exhibits, and the non-preparation of seizure list at the time of collection of material by the FSL team, nor was the knife seized by doctor conducting post-mortem added to any seizure list, thereby raising a question on the veracity and admissibility of the FSL and serological reports.

145. However, we may observe that the Court found that Ext. 12, which was the sample collection memo, was proved as a seizure list by P.W.9, however, no formal seizure list of the materials collected at the scene of occurrence was added to the record. Relying upon **Yogesh Singh v. Mahabir Singh (2017) 11 SCC 195**, mere lapses in the investigation, could not itself be a ground for acquittal. On the basis of this principle, it held that despite no seizure list being prepared by the Investigating Officer, the material exhibits recovered from

the place of occurrence and the corroborating serological report would be admissible as evidence. That non-preparation of the seizure list was not a vital lapse on the basis of which the prosecution story could be disbelieved. Accordingly, on the basis of medical evidence and the FSL and serological evidence, the fact of homicidal death stood proved.

146. The second and the third issue the Court considered was whether accused Niranjan was living with the deceased Rekha Devi and had an eye on her property. To arrive at its finding on the issue, the Court delved into the testimony of P.W.1 Pankaj Sah, P.W.2, Rajesh Kumar, P.W.3 Shekhar Sah, and P.W.4 Sanjay Sah, who stated that Niranjan started living with the deceased Rekha Devi since the demise of Rekha Devi's husband. Also, he would threaten her, and they together come to mourn the death of their mother. Since the defence did not bring any evidence in rebuttal to falsify such allegations, such facts stood proved.

147. The Trial Court reasoned that from its findings, it could be safely presumed, taking strength from Section 114 of the Evidence Act that on the failure of repeated attempts to get the property of Rekha Devi transferred in his name and out of desperation and outburst of anger, Niranjan had committed the

murders of the three females.

148. A common issue arises in the appreciation of evidence by the Trial Court. The Court accepted the testimony of P.W.1 to P.W.5 on their face value, to be truthful, without testing the veracity of their statements. As discussed above, witness statements ought to be appreciated on (1) the credibility and (2) truthfulness of their statements. Each statement must inspire the confidence of the reader. For its finding on the two issues, the Trial Court has only relied on their assertions. The testimonies of P.W.1-5 are riddled with discrepancies, material contradictions and lapses. We need not repeat them.

149. It is also intriguing to note that the Trial Court takes cognizance of the fact that these witnesses, especially P.W.1 and P.W.2, are “downtrodden people” and that in their deposition, have stated that they cannot read and write. Yet, the court has failed to inquire as to how they read the newspaper report to become aware of the fact of murder. They may be villagers. But not illiterate, helpless, marginalized rustic villagers. Easily they could organize themselves and reach the spot of crime. They were neither threatened nor intimidated. Also feared none and were familiar with the process of law as such easily approached the police. The discrepancies in their

statements were before the Court. And it refused to apply its mind to the same.

150. The Court also placed great reliance on the fact that the defence is unable to disprove the allegations brought forth by the prosecution. To this extent, the Court has erred in non-appreciation of the cardinal rule of criminal law, which requires the prosecution to prove not only its case but also every fact and circumstance beyond a reasonable doubt. The burden is not on the defence to disprove but on the prosecution to prove. Principle of proving a fact beyond reasonable doubt stands fully ignored, bringing the conviction by propounding the principle of preponderance of probability.

151. Another fallacy that the analysis of the Court is suffering from is the use of the provision of the Evidence Act. Section 114 only allows the Court to presume facts which flow as a natural consequence of human nature. The Section cannot be stretched to altogether presume the guilt of the accused. The Trial Court in appreciation of circumstances accepted accused Niranjan living with the deceased, and that he had wanted to transfer the property to himself, as a proven fact. However, based on these facts, the Court has reached a finding on the guilt of the accused. We do not see how it can be presumed that

a person having a relationship with another and having greed over their property can be assumed in the common flow of things to murder them to grab their property without any other incriminating evidence against them. Finding on the guilt of a person cannot be presumed by a court. Also, the Trial Judge forgot the accused having denied living with Rekha Devi.

152. Section 50 of the Indian Evidence Act deals with the power of the Court to form an opinion with respect to the relationship of one person to another. The opinion of the Court can be based on express conduct, or on the basis of any person who as a member of the family or otherwise has special knowledge on the subject. The Hon'ble Apex Court this Section and observes that. It observes that:

> "6. ...On a plain reading of the Section it is quite clear that it deals with relevancy of a particular fact. It states in effect that when the Court has to form an opinion as to the relationship of one person to another the opinion expressed by conduct as to the existence of such relationship of any person who has special means of knowledge on the subject of that relationship is a relevant fact. The two illustrations appended to the Section clearly bring out the true scope and effect of the Section. It appears to us that the essential requirements of the Section are — (*1*) there must be a case where the Court has to form an opinion as to the relationship of one person to another; (*2*) in such a case, the opinion expressed by conduct as to the existence of such relationship is a relevant fact; (*3*) but the person whose opinion expressed by conduct is relevant must be a person who as a member of the

> family or otherwise has special means of knowledge on the particular subject of relationship; in other words, the person must fulfil the condition laid down in the latter part of the Section....Now, the "belief" or conviction may manifest itself in conduct or behaviour which indicates the existence of the belief or opinion. What the Section says is that such conduct or outward behaviour as evidence of the opinion held is relevant and may, therefore, be proved. We are of the view that the true scope and effect of Section 50 of the Evidence Act has been correctly and succinctly put in the following observations made in ***ChanduLalAgarwala*** **v.** ***KhalilarRahman*** **ILR (1942) 2 Cal 299**:
>
> "It is only 'opinion as expressed by conduct' which is made relevant. This is how the conduct comes in. The offered item of evidence is 'the conduct', but what is made admissible in evidence is 'the opinion', the opinion as expressed by such conduct. The offered item of evidence thus only moves the Court to an intermediate decision: its immediate effect is only to move the Court to see if this conduct establishes any 'opinion' of the person, whose conduct is in evidence, as to the relationship in question. In order to enable the Court to infer 'the opinion', the conduct must be of a tenor which cannot well be supposed to have been willed without the inner existence of the 'opinion'."
>
> When the conduct is of such a tenor, the Court only gets to a relevant piece of evidence, namely, *the opinion of a person*. It still remains for the Court to weigh such evidence and come to its own opinion as to *the factum probandum* — as to the relationship in question."
>
> (emphasis supplied)

153. Therefore, the Court can rely on statement of witnesses who are in a special position to know of the factum of relationship to form an opinion on the relation between two

parties. Even on this count the testimonies of the witnesses are uninspiring in confidence since there is nothing else on the record to corroborate this factum.

154. Section 106 of the Indian Evidence Act, 1872 provides for a shift of burden of proving a fact upon a person, where the fact/circumstance is within the special knowledge of the person. It is now settled law that in criminal trials, the accused's failure to give satisfactory explanation for an incriminating circumstance especially within its knowledge would become an additional link in the chain of circumstance against him. However the courts must be cognizance of the fact that Section 106 cannot and does not shift the burden of proof of the crime itself on another person. This remains the duty of the prosecution.

155. This was clarified by a Constitution Bench of the Hon'ble Apex Court in **Amba Lal v. Union of India (1961) 1 SCR 933**, where the Court stated that:

> "9. ...This Court in Shambu Nath Mehra v. State of Ajmer after considering the earlier Privy Council decisions on interpretation of Section 106 of the Evidence Act, observed at p. 204 thus:
>
> "The section cannot be used to undermine the well established rule of law that, save and except very exceptional class of case, the burden is on the prosecution and never shifts."

> If Section 106 of the Evidence Act is applied, then, by analogy, the fundamental principles of criminal jurisprudence must equally be invoked. If so, it follows that the onus to prove the case against the appellant is on the customs authority..."

156. It is trite law that cases of circumstantial evidence, Section 106 can be used to prove the fact not explained by the accused against him as an additional circumstance. In **Rajender v. State (NCT of Delhi) (2019) 10 SCC 623**, the Hon'ble Apex Court explained:

> "12.2.4. ...Particularly in cases resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, such failure by itself can provide an additional link in the chain of circumstances proved against him. This, however, does not mean that Section 106 shifts the burden of proof of a criminal trial on the accused. Such burden always rests on the prosecution. Section 106 only lays down the Rule that when the accused does not throw any light upon facts which are specially within his/her knowledge and which cannot support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce an explanation as an additional link which completes the chain of incriminating circumstances."
>
> (emphasis supplied)

157. This position that Section 106 cannot shift the burden of proof in a criminal trial away from the prosecution has been reiterated in numerous cases. Even when an accused does not throw light on the circumstances within his special knowledge, it would only be an additional link in the chain of

evidence against him. [**State of Rajasthan v. Kashi Ram (2006) 12 SCC 254**, **Babu v. State of T.N. (2013) 8 SCC 60**, **Ishwari Lal Yadav v. State of Chhattisgarh (2019) 10 SCC 437**]

158. In a case of circumstantial evidence, such as this one, the question of presumptions of specific facts as per Section 114 of the Evidence Act becomes essential. This section allows for the Court to presume the existence of specific facts, which it thinks likely to have happened in the ordinary course of natural events, human conduct and public and private business, form the facts of the case. However, it is also settled law that the presumption of truth must be the exercise of a logical conclusion as to the most probable position, flowing from the facts already proved. [**W.B. v. Mir Mohammad Omar (2000) 8 SCC 382**, **Tulshiram Sahadu Suryawanshi v. State of Maharashtra (2012) 10 SCC 373**]

159. In **Dinesh Borthakur v. State of Assam (2008) 5 SCC 697,** the Hon'ble Apex Court has held that a finding of guilt cannot be presumed, and ought to be proved. Here, the facts of this case are quite similar to the case at hand, in as much as that there was no clear indication of motive on behalf of the accused and the evidence on record related to

circumstances and the conduct of the accused. The Court in this case clarified that:

> "33.A finding of guilt cannot be based on a presumption. Before arriving at an inference that the appellant has committed an offence, existence of materials therefor ought to have been found. No motive for committing the crime was identified which, in the facts and circumstances of the case, was relevant. How the links in the chain of the circumstances led to only one conclusion that the appellant and the appellant alone was guilty of commission of the offence has not been spelt out by the learned trial Judge."

160. In **Tulshiram Sahadu Suryawanshi v. State of Maharashtra (2012) 10 SCC 373**, the Hon'ble Apex Court reiterated the interplay between presumption under Section 114 and Section 106 of the Evidence Act:

> "23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a precise of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the Courts shall have regard to the common course of natural events, human conduct etc in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilized. We make it clear that this Section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from

> which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference.
>
> (emphasis supplied)

161. This has also been reiterated in the recent decision of the Hon'ble Apex Court in **Kalu v. State of Madhya Pradesh (2019) 10 SCC 211**.

162. Specifically, on the fact of motive, the trial judge has arrived on his conclusion without the consideration of crucial and material facts. Firstly, reliance is only placed on the assertions made by the relatives of the deceased, P.W.1-5, to arrive at this understanding, without assessing whether motive can even be proved from statements of another person or could it be ascribed through conduct. Secondly, the fact that the deceased also had a son, Manish, who remains alive and well has not been considered. The presence of the deceased's son would disentitle any claim the accused would have over the ownership rights of the property. It is no one's case that the accused and deceased were married, then how is it that on the death of the deceased, any part of the property would be transferred to the accused? Thirdly, there was no evidence to prove ownership or title of the house where the deceased was

living. P.W.1 in his deposition also states that the parents of accused Niranjan had given the house. The Court has conveniently dismissed this statement as a stray statement. However, we think that this statement has considerable relevance. P.W.1 himself is contradicting the prosecution story. The question of transferring the property also does not serve common logic in light of the prosecution story that the accused was already living with the deceased. If the accused was currently enjoying the property, why would he commit the murders just to continue the same, as he was not the deceased's husband, ownership would not have transferred to him. The findings of the trial court stand on shaky ground.

163. Here, the Court also observed that the accused Niranjan also took no effort to file an FIR, which would also be considered conduct in light of the ‘proved fact’ that he was living with the deceased, and therefore be a relevant fact under Section 8 of the Evidence Act, forming an additional link of circumstance against him.

164. This analysis of the Court suffers from a great misunderstanding of the law. The Court seems to suggest that since no other suspect has been identified, and presume it unlikely that "a mother having daughters would allow strangers

into the house", the Court has deemed Niranjan as the perpetrator. It is also pertinent to note that the Court has again taken the statement, of P.W.11 in this case, on face value without any analysis on whether and what part of it inspires confidence or not. He is not the informant. He never disclosed such fact to anyone. He never named the accused in his previous statement. Was he himself, not a suspect?

165. Further, the Trial Court has applied the principle of presumption as per section 114 of the Evidence Act, to fill in the gaps in the story laid forth by the prosecution that a woman would not allow a stranger to enter her house. The Trial Court has subsequently also eliminated any suspicion of involvement of P.W.11 merely on his statements that he was not involved with the deceased, Rekha Devi and her family. Given these presumptions, how could the court conclude that since only a known person would be allowed to enter the house, that person ought to be the accused Niranjan?

166. We disagree with such an extension of the rule of presumptions by the trial court. The Court seems to use deductive logic in saying that just because no other viable suspects exist, it must be accused Niranjan who had committed the crime. It is equally likely that other persons in the vicinity

of the locality who were not complete strangers to the family of the deceased, who may have been allowed into the house. The presumption that only the accused would have been allowed to enter the house is not without considerable doubt and we are inclined to reject this argument.

167. Now, it becomes essential to lay down the standard of proof and the burden of proof on the parties, that ought to have been followed by the Trial Court. Chapter VII of the Evidence Act lays down the statutory provisions on the burden of proof. Section 101 provides that the person, who desires the Court to give judgment on a legal right/ liability or the existence of a fact, must prove the existence of the facts. Section 102 proving a suit or a proceeding is on the person who would fail if no evidence is given on either side. Section 103 provides that the burden of proving a fact is on the person who wishes the Court to believe the fact. Section 106 is an exception to this and provides that the burden of proving a fact, especially within the knowledge of a person is upon such person.

168. It is trite law that in criminal cases, the burden of proof on the prosecution is one of proof beyond reasonable doubt as opposed to a preponderance of possibilities. A Constitution Bench of the Hon'ble Apex Court, in the case

of **Iqbal Singh Marwah v. Meenakhi Marwah (2005) 4 SCC 370,** reiterated the standard of proof for criminal cases, holding that:

> "32. Coming to the last contention that an effort should be made to avoid conflict of findings between civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence, while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. ..."

169. In **Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793** it was held that:

> "6. ...The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary contest of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles of golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned author [Glanville Williams in 'Proof of Guilt'] has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law,

> and this in turn leads to a public demand for harsher legal presumptions against indicted 'persons' and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. ... In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents. We have adopted these cautions in analysing the evidence and appraising the soundness of the contrary conclusions reached by the Courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant. In India the law has been laid down on these times long ago."
>
> (emphasis supplied)

170. In **State of Karnataka v. J. Jayalalitha (2017) 6 SCC 263**, the Hon'ble Apex Court also recognized that although the standard of proof was one of beyond reasonable doubt, it should not be used in a hyper-technical way so as to allow a guilty person getaway. It held that:

> "225. The proof beyond reasonable doubt is only a guideline and not a fetish and that a guilty man cannot get away with it because the truth suffers from infirmity, when projected through human processes ...thus whether a meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty men must be callously allowed to escape.
>
> 226. In the same vein, this Court in **Ashok Debbarma v. State of Tripura (2014) 4 SCC 747** expounded that in our criminal justice system, for recording guilt of the accused, it is not necessary that the prosecution should prove the case with

> absolute or mathematical certainty but only beyond reasonable doubt and the criminal courts, while examining whether any doubt is beyond reasonable doubt, may carry in their mind some "residual doubt" even though the courts are convinced of the accused persons' guilt beyond reasonable doubt."
> (emphasis supplied)

171. It is settled law that only when the prosecution satisfies its initial burden to proof, be it preponderance of possibilities in a civil matter or beyond reasonable doubt in a criminal matter, does the burden of proof shift to the defence. If the prosecution fails to prove foundational facts so as to establish its case, the burden of disproving does not shift on the defence. [**Tukaram v. State of Maharashtra (1979) 2 SCC 143**, **Noor Aga v. State of Punjab (2008) 16 SCC 417, Bhola Singh v. State of Punjab (2011) 11 SCC 653**].

172. In the case of **Narinder Kumar v. State (NCT of Delhi) (2012) 7 SCC 171**, the Court held that the onus on the prosecution is to prove each and every ingredient of the offence it seeks to establish and the onus for this never shifts. It held that the prosecution case had to stand on its own legs and could not take support from the weakness of the defence case. Unless the offence was established beyond reasonable doubt on the basis of legal evidence and material on the record, a person

cannot be convicted. [Also reiterated in **Abdulla Mohd. Pagarkar v. State (1980) 3 SCC 110**, **Sunil Kundu v. State of Jharkhand (2013) 4 SCC 422**, **Mukesh v. State (NCT of Delhi) (2017) 6 SCC 1**].

173. In **Anand Ramchandra Chougule v. Sidarai Laxman Chougala (2019) 8 SCC 50**, the Hon'ble Apex Court held that:

> "10. The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. The contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless prosecution is able to prove its case beyond all reasonable doubt."

Right of accused and right of victim/deceased

174. Another essential issue in any criminal trial that ought to weigh with the Courts is the rights of accused and that of the victim, and a balance of the two thereof. The Hon'ble Apex Court has time and again recognized that while dispensing justice, not only the liberty of the accused but also the interest of the victim, their near and dear ones, and above

all the collective interests of the community shall be duly considered.

175. The law on the rights of the accused is well settled by the Hon'ble Apex Court. Its decision in the case of **Kartar Singh v. State of Punjab (1994) 3 SCC 569** held that as per Article 21, the procedure established by law must follow the principles of natural justice. More recently in the case of **Dinubhai Boghabhai Solanki v. State of Gujarat, (2018) 11 SCC 129,** the Hon'ble Apex Court states its guiding principle in criminal cases, that "ten criminals may go unpunished but one innocent person should not be convicted. However, the Court also recognizes the importance of the rights of the victims. It has observed as follows:

> "34…The victim has, till recently, remained forgotten actor in the crime scenario. It is for this reason that "victim justice" has become equally important, namely, to convict the person responsible for a crime…."

176. Having recognized the importance of the rights of the victims, the Court observes in order to ensure an effective criminal justice system, perpetrators of crime should not go unpunished. Therefore, the Court needs to play a balancing role and endeavor to achieve a fair trial. The Court observes as follows:

> "37**.** The position which emerges is that in a criminal trial, on the one hand, there are certain fundamental presumptions in favour of the accused, which are aimed at ensuring that innocent persons are not convicted. And, on the other hand, it has also been realised that if the criminal justice system has to be effective, crime should not go unpunished and victims of crimes are also well looked after… This calls for balancing the interests of the accused as well as victims, which in turn depends on fair trial…"

177. More recently, in a similar vein to the above principles, the Hon'ble Apex Court in the case of **Varinder Kumar v. State of H.P. (2020) 3 SCC 321,** has held that societal interest to bring the offender to book and for the system to send the right message to the society is very important. The relevant extracts are as follows:

> "12**.**Individual rights of the accused are undoubtedly important. But equally important is the societal interest for bringing the offender to book and for the system to send the right message to all in the society—be it the law-abiding citizen or the potential offender. "Human rights" are not only of the accused but, extent apart, also of the victim, the symbolic member of the society as the potential victim and the society as a whole."

178. The onus to establish its case beyond all reasonable doubt vested with the prosecution which even prima facie cannot be said to have been so done by proving the factum of the murder of the three victims through clear, cogent, credible, convincing and trustworthy evidence, be it ocular or

documentary. The burden to prove the case through circumstantial evidence was heavy, which never stood discharged, necessitating the accused to prima facie establish his defence based on the principles of the preponderance of probability. It cannot be said that evidence led by the prosecution led to no other inference save and except the guilt of the accused and not his innocence as also pointing suspicion towards non-else.

179. Hence for all the aforesaid reasons, we do not find the findings returned both on fact and law to be as per settled principles of law and the judgment of conviction on all counts against the present the appellant, namely Niranjan @ Alakh Deo Kumar, to be sustainable in law.

180. The Trial Court sentenced the accused Niranjan to death punishment for the offence punishable under Section 302 IPC, along with a fine of Rs. 20,000/-.

181. The defence had prayed for a lenient view on the grounds that (1) the accused was a young man aged 32 years; (2) this was his first conviction, he bore no previous criminal record, and he should be given a chance of reformation; (3) the socio-economic condition of the accused that he was a shopkeeper making ends meet for his aged parents; (4) he was

unmarried; (5) life imprisonment is the rule and death sentencing being the exception – there existed no particular reason to award a death sentence; (6) presumption of innocence was in his favour; (7) the conviction was solely based on circumstantial evidence and not any direct evidence against him.

182. The prosecution pressed for maximum punishment considering the crime committed by the accused.

183. The Court considered the following reasons and principles for arriving at its decision on the quantum of sentence.

184. Placing great reliance on **Mukesh (supra)** and the principles of law laid down and cases cited therein, the Trial Court discussed the various points on death punishment sentencing: 1) That life imprisonment is the norm and death sentence the exception; 2) That imposing death sentence is only allowed in the rarest of rare cases; 3) That a balance sheet of the mitigating and aggravating circumstances of the crime needs to be made; 4) That the doctrine must be applied in the background of certain categories of cases including motive, manner of commission of the crime, magnitude of crime and personality of the victim of murder; 5) That the list of

categories of cases is not exhaustive and needs to be given expansive adherence; 6) That the various tests the “Crime Test”, “Criminal Test” and “Rarest of the Rare Test”, examine whether society abhors the crimes, whether they shock the conscience of society and attract extreme indignation of the community; 7) That where the victims are helpless women, children or old persons and the accused displayed depraved mentality, death penalty should be awarded; 8) That the young age of the accused is not a mitigating circumstance; 9) That crimes against women are not ordinary crimes, rather they are social crimes and hence they call for harsh punishment; 10) That the object of sentencing should be that the crime does not go unpunished and the victim of the crime and society is satisfied that justice has been delivered; 11) That the measure of punishment must depend upon the atrocity of the crime, the conduct of the criminal and the defenceless and unprotected state of the victim; 12) That there are several reasons cumulatively taken for converting death penalty to that of life imprisonment and those factors include the young age of the accused, the possibility of reforming, the likelihood of the accused being a menace in society, the crime not being premeditated and that the case was one of circumstantial

evidence; 13) That sentencing policy of India is victim-centric; 14) That where a crime is committed with extreme brutality, irrespective of personal opinion, the courts must impose a death sentence; 15) That deterrent punishment commensurate with the gravity of the crime needs to be awarded.

185. Stating that the afore-discussed principles were guiding the decision on quantum sentence for the Court, it went on to consider mitigating and aggravating circumstances that weighed in the case. It found the following facts as aggravating circumstances for this case: (1) After the death of the husband of Rekha Devi, the convict took advantage of her loneliness and started living in her house; (2) While living with the widow, he assaulted and tortured her to get her property transferred in his name; (3) On failure of his attempt to get the property transferred, he committed the brutal act of murdering the three helpless family members and; (4) That the gruesome nature of the murder of all three victims, with the total number of 10, 27 and 16 incision wounds being found on the bodies of the deceased, showing the brazenness and coldness with which, the acts were committed. This reflected the fact that the convict had little scope of reform and would be a threat to society if not appropriately punished.

186. The Court then went on to consider the mitigating circumstances for the case. It observed them to be three - (1) the fact that the accused is 32 years old, is an unmarried shopkeeper, (2) has no criminal antecedent and (3) the family circumstances such as the fact that he is from a rural background.

187. Again, citing the Hon'ble Apex Court in **Mukesh (supra),** the Court observed that in order to ensure justice, courts ought to impose punishment that befits the crime; thus factors such as young age of the accused, absence of criminal antecedent and poor background cannot be said to be mitigating circumstances.

188. Relying on this principle, the Court found that the crime committed in the instant case was diabolic in nature, and the manner of achieving it, where helpless family members were murdered by brutally inflicting dozens of injuries on their bodies, made the cruelty of the convict apparent. Such acts were bound to shock the conscience of society. The Court also stated that such a brutal massacre instils a sense of insecurity and helplessness in community especially amongst women and the brutality and viciousness of the crime shocks the collective conscience of society. Therefore it was the duty of law

enforcing systems to remedy the situation.

189. The Court reasoned that the aggravating circumstance of the case outweighed the mitigating circumstances. The gruesome nature of the crime showed that high viciousness and cruelty, more so because the reason for provocation was the greed of wealth and to grab the property. Since the well-settled principle of rarest of rare test largely depended on the perception of society, factors like society's abhorrence, extreme indignation and antipathy to some instances ought to be considered. It further reasoned that especially since the cases of crimes against women have become rampant, the courts needed to send a strong deterrent message to the perpetrators of such crimes. Subsequently, on a consideration of the aggravating and mitigating circumstances, the Court stated that the aggravating circumstances outweigh the mitigating circumstances and thus sentences the accused to death. Accordingly, the accused was sentenced to the death penalty.

190. We find that although the Trial Court has discussed the principles of death sentencing and reasoned that the gruesome and diabolic nature of the crime and motive for the crime was the particular reason for awarding the rarest of the

rare penalty, the Court failed in the due application of its mind on essential mitigating circumstances. Factors such as the socio-economic condition of the accused, lack of criminal antecedent, and him being a young man were mitigating factors that the Court did consider. However, the Court failed in believing that the whole prosecution case was based on circumstantial evidence and 'residual doubt' and presumption of innocence still existed in favour of the accused as a relevant mitigating circumstance.

191. No doubt that the manner of committing the crime was brutal, but the Court heavily erred in ascribing the motive of the crime as an aggravating circumstance, considering that the whole finding on motive was a result of statements of interested witnesses. Further, the Court has ascribed the fact of the victim is an unmarried woman who was taken "advantage" of as an aggravating factor which is a fact that has neither been proved nor alleged in the case. Such a stance reflects the paternalistic attitude of society towards women, who are always considered as a helpless victim. The Court must be mindful of this.

192. The quality and strength of the evidence and the case of the prosecution not only have a bearing on the decision

of conviction or acquittal but also very much on the quantum of sentencing. Residual doubt becomes a factor for commuting sentence, especially where evidence is purely circumstantial. Judicial approach on the death penalty ought to be cautious, circumspect and careful more so because the decision is permanent and irreversible.

193. The Court has also laid great emphasis on the collective consciousness of society and a call for maximum punishment as a legal remedy where vicious and brutal crimes are committed against women. The Court also seems to be swayed by the fact that the victims are women thereby meriting greater reparations for the crime, however, in this case, the alleged reason of the crime was with respect to a property dispute and not necessarily related to the fact that they were women. The Court has failed to realise that the courts are not oracles of public opinion and the role of the courts is not to soothe public sentiment. Courts have to exercise restraint and first ensure that individual rights guaranteed by the constitution are kept at a higher pedestal than public opinion.

194. Another fallacy is in awarding further simple imprisonment on account of non-payment of a fine. If a person were to be hanged till death, then how would the question of

serving simple imprisonment arise?

195. The gravity of the award of the death penalty need not be reiterated. It is an ultimate and irreversible award of punishment to a person. This is also the reason why the Courts have refrained from laying down cases where the death penalty should be awarded and left it to judicial discretion guided by principles, to decide on facts of every case. It is true that only in the gravest of cases of extreme culpability, the sentence of death must be awarded - life imprisonment being the rule and death penalty the exception. This is also the reason why the Hon'ble Apex Court has been clear that judges ought not to be bloodthirsty and give due consideration to mitigating factors.

196. The landmark case on the subject, **Macchi Singh v. State of Punjab (1983) 3 SCC 470**, has laid great emphasis on the factors to be considered while awarding such a sentence. The fact that case is purely based on circumstantial evidence and 'residual doubt' remains, distinguished from principle of proof beyond a reasonable doubt in the case; such becomes a mitigating circumstance for commutation of the death penalty. The standard of proof for a death sentence is essentially raised from the standard of proof applied for a conviction.

197. Finally, the following principles that ought to

guide Courts in their decision on death penalty sentencing:

I. Rarest of rare cases: The normal rule of punishment for murder sentences for life and exception is the death penalty, must only to be given in **rarest of the rare cases**. To depart from the normal rule and give the death sentence. [**Bachan Singh v. State of Punjab (1980) 2 SCC 684**, **Macchi Singh v. State of Punjab (1983) 3 SCC 470**, **Mithu Singh v. State of Punjab (1983) 2 SCC 277**, **Santosh Kumar SarishBhushanBariar (2009) 6 SCC 498, Om Prakash v. State of Haryana (1999) 3 SCC 19**, **Dharmendrasinh v. State of Gujarat (2002) 4 SCC 679, IshwariLalYadav v. State of Chhattisgarh (2019) 10 SCC 423**]. Exceptional Circumstances are not limited to cases where security of state and society and public interest in general are at issue. [**Bachan Singh v. State of Punjab (1980) 2 SCC 684**]

II. Judicial discretion on sentencing must be accompanied by application of judicial mind, and governed by rule of law. [**Jagmohan Singh v. State of UP (1973) 1 SCC 20, Bachan Singh v. State of**

Punjab (1980) 2 SCC 684, **Mithu Singh v. State of Punjab (1983) 2 SCC 277**, **State of Punjab v. Dalbir Singh (2013) 3 SCC 346**, **Ravi v. The State of Maharashtra (2019) 9 SCC 622**]

III. The judgment must be supported by special reasons. [Section 354 (3) of the Code; **Balwant Singh v. State of Punjab (1976) 1 SCC 425, Bachan Singh v. State of Punjab (1980) 2 SCC 684**,**Allauddin Mian v. State of Bihar (1989) 3 SCC 5**, **Shashi Nayar v. Union (1992) 1 SCC 96**, **Swamy Shraddananda (2) v. State of Karnataka (2008) 13 SCC 767**, **Deepak Rai v. State of Bihar (2013) 10 SCC 421**, **Sandesh v. State of Maharashtra (2013) 2 SCC 479**]

IV. Balancing of aggravating and mitigating circumstances: As listing all possible aggravating and mitigating circumstances is not possible, judicial discretion on a case-to-case basis depending on an analysis of facts and circumstances of each case is the best safeguard. Doctrine of proportionality of gravity of offence and punishment becomes relevant. [**Jagmohan Singh v.**

State of UP (1973) 1 SCC 20, Rajendra Prasad v. State of UP (1979) 3 SCC 646, Bachan Singh v. State of Punjab (1980) 2 SCC 684, Macchi Singh v. State of Punjab (1983) 3 SCC 470,**VashramNarshibhaiRajpara v. State of Gujarat (2002) 9 SCC 168**, **Om Prakash v. State of Haryana (1999) 3 SCC 19**, **Dharmendra Sinha v. State of Gujarat (2002) 4 SCC 679, Santosh Kumar Sarish Bhushan Bariar (2009) 6 SCC 498**, **Vsanta Sampat Dupare v. State of Maharashtra (2017) 6 SCC 631**, **Khushwinder Singh v. State of Punjab(2019) 4 SCC 415**, **IshwariLal Yadav v. State of Chhattisgarh (2019) 10 SCC 423**]

V. Weightage to every relevant circumstance relating to the crime and the criminal: Weightage must be given to the motive, manner and anti-social or abhorrent nature, magnitude of the crime, personality of the victim i.e. the Court must examine the manner in which the crime is committed, offender's mental condition at the relevant time, motive of offence, brutality with

which crime was committed and who it was committed on. [**Bachan Singh v. State of Punjab (1980) 2 SCC 684, Macchi Singh v. State of Punjab (1983) 3 SCC 470, Dharmendrasinh v. State of Gujarat (2002) 4 SCC 679**, **Mohan v. State of T.N. (1998) 5 SCC 336**, **State of UP v. Sanjay Kumar (2012) 8 SCC 537**, **Shabnam v. State of U.P. (2015) 6 SCC 632**, **Ishwari Lal Yadav v. State of Chhattisgarh (2019) 10 SCC 423**]

VI. Residual doubt becomes a mitigating circumstance, more so, for cases based on circumstantial evidence. [**Ashok Debbarma v. State of Tripura (2014) 4 SCC 747**, **Ravishankar v. State of MP (2019) 9 SCC 689**, **Sudam v. State of Maharashtra (2019) 9 SCC 388**]

VII. Judicial approach must be cautious, circumspect and careful. Court must exercise prudence, and each Court - from Sessions court to the Supreme Court - must peruse and analyze facts of the case at hand and reach independent conclusion. [**Bachan Singh v. State of Punjab (1980) 2 SCC 684,**

Dharmendrasinh v. State of Gujarat (2002) 4 SCC 679, **Sandesh v. State of Maharashtra (2013) 2 SCC 479**]

VIII. Sessions court, in particular, must rigorously apply the rarest of rare case principle, they cannot do lip service to application of judicious mind, and their discretion is liable to be corrected by superior courts as a safeguard. [Section 366 of the Code; **Sandesh v. State of Maharashtra (2013) 2 SCC 479**, **State of Punjab v. Dalbir Singh (2013) 3 SCC 346**]

IX. Principle of retribution: Capital punishment is based on the principle of denunciation of wrong doing. It is a reflection of revulsion felt by society against crimes so outrageous that the wrongdoer gets 'punishment they deserve' - where life imprisonment is an inadequate punishment for the crime. [**Rajendra Prasad v. State of UP (1979) 3 SCC 646**, **Bachan Singh v. State of Punjab (1980) 2 SCC 684**, **Ravi v. The State of Maharashtra (2019) 9 SCC 622**,**Manoharan v. State (2020) 5 SCC 782**]

X. Doctrine of rehabilitation: The Court must take into

account where there is a possibility of rehabilitation of the offender and not determine the punishment on the ground of proportionality alone. [**Dharmendrasinh v. State of Gujarat (2002) 4 SCC 679, Sushil Sharma v. State (NCT of Delhi) (2014) 4 SCC 317**, **Ravi v. The State of Maharashtra (2019) 9 SCC 622**]

XI. The Court must not be an oracle of the public opinion and recognize limits to judicial power. They must ensure that individual rights guaranteed by the constitution are at a higher pedestal than public opinion. [**Om Prakash v. State of Haryana (1999) 3 SCC 19, Dharmendrasinh v. State of Gujarat (2002) 4 SCC 679**, **Santosh Kumar SatishbhushanBariyar v. State of Maharashtra (2009) 6 SCC 498**]

198. We, accordingly, answer the Death Reference to be in the negative.

199. Also, for all the aforesaid reasons, we allow the appeal filed by accused Niranjan @ Alakh Deo Kumar and set aside the judgment of conviction dated 18th January 2018 and order of sentence dated 23rd January 2018 passed in Sessions

Trial No.632 of 2015 (Trial No.606/2017) arising out of Sultanganj P.S. Case No.140 of 2015 by the learned 5th Additional Sessions Judge, Bhagalpur (Bihar). The appellant Niranjan @ Alakh Deo Kumar stands acquitted from the charges under Section 302/34 of the Indian Penal Code, levelled against him. Presently, he is in jail and as such be released forthwith unless required in any other case.

200. Registrar (List) shall ensure communication of the judgment to all concerned, also by an electronic mode.

201. Equally, learned counsel for the State is directed to do so.

(Sanjay Karol, CJ)

S. Kumar, J. I agree.

(S. Kumar, J)

sujit/-

AFR/NAFR	AFR
CAV DATE	20.07.2020
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