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Court No. - 1

Case :- CAPITAL CASE No. - 3 of 2017

Appellant :- State of U.P.

Respondent :- Sarvan

Counsel for Appellant :- Govt. Advocate

Counsel for Respondent :- Manjusha Kapil

Connected with

Case :- CRIMINAL APPEAL No. - 1540 of 2017

Appellant :- Smt. Suman

Respondent :- State of U.P.

Counsel for Appellant :- Kamlesh Singh

Counsel for Respondent :- Govt. Advocate

with

Case :- CRIMINAL APPEAL No. - 1552 of 2017

Appellant :- Sarvan

Respondent :- State of U.P.

Counsel for Appellant :- Kamlesh Singh

Counsel for Respondent :- Govt. Advocate

Hon'ble Ramesh Sinha,J.

Hon'ble Mrs. Saroj Yadav,J.

(Delivered by Hon'ble Ramesh Sinha, J.)

(A) INTRODUCTION

1. Two accused, namely, **Sarvan** and **Smt. Suman**, were tried by the Special Judge, C.B.I. Court No.2/Additional Sessions

Judge, Lucknow in Sessions Trial No 754 of 2009 : *State Vs. Sarvan and another*, arising out of Case Crime No. 265 of 2009, under Sections 302, 201 of the Indian Penal Code, 1860 (in short, referred hereinafter as 'I.P.C. '), Police Station Mohanlalganj, District Lucknow.

2. Vide judgment and order dated 29.08.2017, the Special Judge, C.B.I. Court No.2/Additional Sessions Judge, Lucknow, convicted and sentenced accused, **Sarvan** and **Smt. Suman**, in the manner as stated hereinbelow :-

“Accused Sarvan

- I. Under Section 323 I.P.C. to undergo one year's rigorous imprisonment;
- II. Under Section 201 I.P.C. to undergo four years' R.I. and a fine of Rs.2000/-. In default of payment of fine to undergo additional one month's imprisonment; and
- III. Under section 302 I.P.C. to be hanged to death till he is dead and fine of Rs.5000/-. In default of payment of fine to undergo additional five months' imprisonment.

Accused Smt. Suman

- I. Under section 201 I.P.C. to undergo four years' rigorous imprisonment and a fine of Rs.2000/-. In default of payment of fine to undergo additional one month's imprisonment.

All the sentences were directed to run concurrently and the period of incarceration was directed to be set off against the sentence of imprisonment.

3. Aggrieved with their aforesaid conviction and sentences, accused **Smt. Suman** has preferred Criminal Appeal No. 1540 of 2017 : *Smt. Suman vs. State*, whereas accused **Sarvan** preferred Criminal Appeal No. 1552 of 2017 : *Sarvan Vs. State*.
4. Capital Case No. 3 of 2017 arises out of the Reference made by the learned trial Court under Section 366 (1) of the Code of Criminal Procedure, 1973 to this Court for confirmation of the death sentence of convict/appellant **Sarvan**.
5. Since the above-captioned capital sentence reference and criminal appeals arise out of a common factual matrix and impugned judgment dated 29.08.2017, this Court proceeds to decide the same by the common judgment.

(B) CASE OF THE PROSECUTION

6. The informant Kolai (P.W.1) was resident of Village Gaura, Police Station Mohanlalganj, District Lucknow. In front of his house, the house of Sarvan (convict/appellant) was situated. It has been alleged by the informant Kolai (P.W.1) that a gossip/talk spread throughout the village that Sarvan (convict/appellant) had an illicit relationship with his *bhabhi* (sister-in-law) Suman, on account of which, there was a lot of quarrel between Sarvan (convict/appellant) and his wife Smt. Santoshi (deceased). Often this quarrel escalated and Sarvan (convict/ appellant) would beat his wife (deceased Santoshi).

Smt. Madhuri (informant's wife) would usually intervene in such situation to protect Santoshi (deceased), because of which, Sarvan (convict/appellant) remained angry with Smt. Madhuri (informant's wife).

In the morning of 25.04.2009, at 06:30 a.m., altercation took place between Sarvan (convict/appellant) and his wife (deceased Santoshi). After that a sound of shouting came from Sarvan's (convict/appellant) house. Sarvan (convict/ appellant), while yelling inside his house, told his wife Santoshi (deceased) that 'मै आज तुझे व तेरे बच्चो को जिन्दा नही छोडुगा' (*today he would not leave her and her children alive*) and the wife of Sarvan (deceased Santoshi) was screaming to save her. On hearing the screams, Smt. Madhuri (informant's wife) ran to save her (deceased-Santoshi). At that moment, Sarvan (convict/ appellant) armed with blood stained 'axe' came out of his house saying to Smt. Madhuri (wife of the informant) that "सन्तोषी व तीनो बच्चो को आज ठिकाने लगा दिया है तु बहुत बीच बचाव करती है" (*he had put Santoshi and three children in their place and you intervene a lot*). Saying this, Sarvan (convict/appellant) assaulted Madhuri (informant's wife) with the same 'axe' many times, as a consequence of which, Madhuri (informant's wife), while sustaining injuries, fell down on the *khadanja* (dirt road) and succumbed to her injuries on the spot. When Rajendra (informant's son) and Sangeeta (informant's daughter) ran to

save their mother Madhuri (deceased), Sarvan (convict/ appellant) also assaulted and injured them.

7. Thereafter, informant Kolai (P.W.1) got the FIR scribed by one person, namely, Sewak, who after scribing read it over to him. He, thereafter, affixed his thumb impression on it and then proceeded to Police Station Mohanlalganj, where he lodged it.
8. The evidence of S.I. Anand Kumar Pandey (P.W. 8) shows that on the date of the incident i.e. on 25.04.2009, he was posted as Head Moharrir at Police Station Mohanlalganj. On the said date, at 07:30 a.m., informant Kolai (P.W.1) came to the police station Mohanlalganj and filed written report (Ext. Ka.1), on the basis of which, he prepared the chik FIR (Ext. Ka.9) and on the basis of which F.I.R. was registered against the accused.

In cross-examination, P.W.8 S.I. Anand Kumar Pandey had deposed before the trial Court that informant Kolai (P.W.1) and injured Sangeeta came to the police station Mohanlalganj with a written report. The informant Kolai (P.W.1) had handed over the written report to him on 25.04.2009 at 07:30 a.m. and at that time, S.H.O. Ashok Kumar Shukla was present at the police station. On the basis of the written report, the F.I.R. was registered by him. He further deposed that he prepared *Chithi Mazroobi* (letter for medical examination) for medical examination of injured Sangeeta. Except injured Sangeeta, no

other injured or villager came along with informant Kolai (P.W.1) at the police station nor were brought for medical examination. At that time, Sangeeta (injured) was aged about 18 years. He further deposed that immediately after lodging the F.I.R., S.H.O. along with police personnel went to the place of occurrence at about 07:30 a.m. He denied that he gave false evidence under pressure. He also denied that informant (P.W.1) did not come along with scribed written report but it was written at police station.

- 9.** A perusal of the chik FIR (Ext. Ka.9) shows that the distance between the place of incident and Police Station Mohanlalganj was three kilometers. It is significant to mention that a perusal of the chik FIR also shows that on its basis, a case under Section 302 I.P.C. was registered against Sarvan (convict/appellant).
- 10.** It is pertinent to mention here that the investigation of the instant case was conducted by In-charge Inspector Shri Ashok Kumar Shukla but he was not examined by the prosecution as he died on 29.05.2014 during pendency of the trial. In order to prove the death of the Investigating Officer Shri Ashok Kumar Shukla, C.W.1-Constable CP 840 Sri Satish Kumar Kushwaha was examined, whose evidence shows that since 2013, he was posted as Constable at police station Mohanlalganj. He stated that S.I. Shri Ashok Kumar Shukla had conducted the

investigation of the instant case and he (C.W.1) himself went as special messenger to serve summon notice to S.I. Shri Ashok Kumar Shukla. He had also filed the report in the Court wherein it was mentioned that S.I. Ashok Kumar Shukla died on 29.05.2014. He proved the said report (Ext. Ka. 16)

11. The evidence of P.W.12-S.I. Ram Vishal Suman shows that on 25.04.2009, he was posted as Sub-Inspector at Police Station Mohanlalganj. On the said date, he was accompanied with In-Charge Inspector Shri Ashok Kumar Shukla and on his direction, he went to village Gaura and prepared the '*panchayatnama*' of the dead bodies of Smt. Santoshi, w/o Sarvan aged 35 years (Ext. Ka.17), Ramroop s/o Sarvan aged 6 years (Ext. Ka. 18), Sumiran d/o Sarvan aged 4 years (Ext. Ka.19), Ravi son of Sarvan aged 1½ years (Ext. Ka.20) under his handwriting, upon which there was signature of the Investigating Officer Ashok Kumar Shukla. On the said date also, on the direction of Investigating Officer, '*panchayatnama*' of the dead body of deceased Madhuri (informant's wife) (Ext. Ka.20) was prepared by S.I. Dhrampal Singh (P.W.13), upon which there was signature of the Investigating Officer Shri Ashok Kumar Shukla. He further deposed that Dharmpal Singh (P.W.13) was posted along with him at police station Mohanlalganj, therefore, he knew his signature and handwriting.

P.W.12 had further deposed that in his presence, dead-bodies of the deceased were sealed and sent for post-mortem. He proved the signature of the Investigating Officer Ashok Kumar Shukla on Police Form No.13 (deceased Ravi, Ramroop, Madhuri, Sumiran, Santoshi) as Ext. Ka. 22 to Ext. Ka. 26. He also proved the photo lash (Paper nos. A14/1 to A14/5) prepared by the Investigating Officer Shri Ashok Kumar Shukla. He also proved the specimen seal of the dead bodies of the deceased (Paper Nos. A15/1, A15/2, A15/3, A15/5 and A15/6) prepared by the Investigating Officer Shri Ashok Kumar Shukla as Ext. Ka. 27 to Ext. Ka.31. He also proved the recovery memos (Ext. Ka. 32 to Ext. Ka.36) of blood stained soil and plain soil collected from the different places by S.I. Shri Dharm Pal Singh (P.W.13), upon which there was signature of Shri Ashok Kumar Shukla.

In cross-examination, P.W.12 had deposed that proceedings of '*panchayatnama*' were conducted in his presence and at that time, he, Investigating Officer Shri Ashok Kumar Shukla, Shri Dharm Pal Singh, S.S.I. Shri P.K. Khare, other police personnel and villagers were present. He deposed that he prepared the '*panchayatnama*' in his own handwriting on the direction and dictation of the Investigating Officer. He denied that he gave false evidence.

- 12.** The evidence of P.W.13-S.I. Shri Dharam Pal Singh shows that on 24.04.2009, he was posted as Sub-Inspector at police station Mohanlalganj. On the said date, he was accompanied with Investigating Officer Shri Ashok Kumar Shukla. On 26.04.2009, the 'axe' used in commission of crime was recovered in his presence on the pointing out of accused Sarvan and the recovery memo of it was prepared by him on the dictation of the Investigating Officer Shri Ashok Kumar Shukla. On the same date, Suman (convict/appellant no.1) was arrested from her house. He proved the recovery memo of 'axe' as well as arrest of Suman (convict/appellant no.1) as Ext. Ka. 39. The site plan of the recovery of 'axe' (Ext. Ka.40) was prepared by the Investigating Officer under his handwriting and signature. He also proved the site plan of the place of the occurrence (Ext. Ka.41) prepared by the Investigating Officer. He prepared the charge-sheet (Ext. Ka.42) on the dictation of the Investigating Officer under his handwriting and signature.
- 13.** The evidence of P.W.10-Sri Balkrishna Singh shows that he was doing the work of agriculture. He was living in the village where the incident occurred. The '*panchayatnama*' of the dead-bodies of children of Sarvan, namely, Ravi, aged about 1½ years, Sumiran aged 4 years, Ramroop aged 5 years and his wife Santoshi aged 35 years were conducted at the house of Sarvan in his presence, whereas '*panchayatnama*' of the dead-body of Madhuri wife of Kolai aged 50 years was conducted on

khadanja (dirt road) outside the house of Sarvan. The injuries of 'axe' were on the bodies of the deceased. He proved his signature on '*panchayatnama*'. The dead-bodies were sent for post-mortem. The proceeding for '*panchayatnama*' started at 09:00 a.m. on 25.04.2009 and it continued for about 1-1½ hours. On the said date also, the Inspector had collected blood stained soil and plain soil in containers from both the places i.e. from the place where the dead-body of Madhuri was lying and from the courtyard of the house of Sarvan where the dead-bodies were lying, under recovery memo. On seeing the recovery memos, he proved his signature thereon.

In cross-examination, P.W.10 had deposed that his house was at a distance of 300-400 meters from the house of Sarvan. On the date of the incident, he was present in his house. He knew Sarvan from childhood, who was doing the work of Labour. He did not know whether on the date of the incident, Sarvan had gone for work or not nor he knew whether psychiatric treatment of Sarvan was going on somewhere or not. He did not know whether any quarrel of Sarvan took place with his neighbour Kolai. He stated that on the date of '*panchayatnama*', he was present at the place of the incident. Apart from him, the signature of Pramod, Sambhoo, Banwari Ghasitey etc. were also taken in the '*panchayatnama*'. He could not say whose '*panchayatnama*' was done at hospital nor he could tell the reason for the incident. The signature of none of the family

members of Kolai (P.W.1) was taken on the '*panchayatnama*' in his presence nor Kolai (P.W.1) and his family members were interrogated in his presence. The sons and daughters of Kolai were present at the place of occurrence. He denied the suggestion that incident occurred in his presence and also after preparation of '*panchayatnama*', it was not read over to him and only his signature was taken thereon.

14. The injury of injured Sangeeta was examined on 25.04.2009 at 02:20 p.m. in Community Health Centre, Mohanlalganj, Lucknow by Dr. Shailendra Kumar Dwivedi (P.W.4), who found on her person the following injuries :-

"Injury of injured Sangeeta, daughter of Kolai, aged about 16 years

L.W. 1.5 cm x 0.25 cm x skin deep. Left side of Arm, ant. aspect, 1.5 cm above left elbow joint. Clotted blood seen."

15. P.W.4-Dr. Shailendra Kumar Dwivedi, in his examination-in-chief, had reiterated the aforesaid injury and had deposed that on 25.04.2009, he was posted as Medical Officer at Community Health Centre, Mohanalalganj, Lucknow. On the said date, at 02.20 p.m., he examined the injury of injured Km. Sangeeta aged 16 years, who was brought by Woman Constable No. 2997 Anita Kashyap and Constable 2926 Rajesh Kumar Shukla of police station Mohanlalganj, Lucknow. He further deposed that after examining the injured Km. Sangeeta, he found that the injury was simple in nature; it could be caused by blunt and

hard object; and it was half day's old. He stated that the injury on her person could be attributable from the back of the 'axe' on 25.04.2009 at 06:30 a.m.

In cross-examination, P.W.4 had deposed that the medical examination of injured Km. Sangeeta was conducted on 25.04.2009 at 02:20 p.m. The injury occurred on her person could be 12-14 hours old and it could be attributable to falling on hard object but it was not from a sharp edged weapon. He further deposed that injury could be caused by falling upon *kharanja* (dirt road) and it could also be caused by lathi, danda but it could not be a self-inflicted injury.

- 16.** The post-mortem examination of the dead-bodies of the deceased Ramroop, Smt. Santoshi and Ravi were conducted on 25.04.2009 at 08:30 p.m., 08:00 p.m and 09:30 p.m., respectively, at T.B. Hospital, Thakurganj, Lucknow by Dr. G.P. Tiwari (P.W.6), who found the ante-mortem injuries on their persons as enumerated hereinafter :-

“(I) Ante-mortem injuries of Ramroop, son of Sarvan, aged about 6 years

- 1.** Abraded contusion 6 x 5 cm on Rt. side of face just below Rt. eye.;
- 2.** Abrasion 3 x 1 cm on Rt. side of forehead 1 cm above Rt. eyebrow;
- 3.** Incised wound 5 x 3 cm muscle deep on the side of neck 3 cm below Rt. ear, margins clear cut, sharp, well defined on

opening echymosis present under neath all above injuries, soft tissues & large blood vessels, carotid Rt. cut.

(II) Ante-mortem injuries of Santoshi, wife of Sarvan, aged about 35 years

1. Abraded contusion 8 x 6 cm on Rt. side of face 1 cm below Rt. eye;
2. Incised wound 8 x 3 cm muscle deep on top of Rt. shoulder;
3. Incised wound 3 x 1 cm, muscle deep present on front of neck 2 cm above top of sternum;
4. Incised wound 4 x 2 cm, muscle deep present on front of neck 2 cm above injury no.3;
5. Incised wound 7 x 3 cm, muscle deep on front of neck 2 cm above injury no.4.
6. Incised wound 3 x 2 cm on top of Lt. shoulder.

All above injuries contain clear cut & well defined margin on opening echymosis present underneath above injuries. Soft tissues & large blood vessels larynx, trachea are cut.

(III) Ante-mortem injuries of Ravi son of Sarvan aged about 1½ years

1. Incised wound 3 x 1 cm muscle deep on back of neck 2 cm below occipital;
2. I.W. 1 x 1 cm on mid of chest;
3. Abraded contusions 6 x 4 cm on forehead 2 cm above root of nose. Margins are clean, sharp, well defined. On opening echymosis present underneath soft tissues & blood vessels clear cut.

The cause of death spelt out in the autopsy report of the deceased Ramroop, Santoshi and Ravi was due to shock and haemorrhage as a result of ante-mortem injuries.

17. It is significant to mention that P.W.6-Dr. G.P. Tiwari, in his examination-in-chief, had reiterated the aforesaid cause of death of deceased Ramroop, Santoshi and Ravi and had deposed that on 25.04.2009, he was posted as Medical Officer in T.B. Hospital, Thakurganj, Lucknow. On the said date, he was nominated by the District Magistrate to conduct post-mortem examination in artificial light, of the dead-bodies of deceased Ramroop, Santoshi and Ravi, which were brought in a sealed condition by Constable 130 Mohd. Shamim and Constable 129 Brij Kishore Patel of police station Mohanlalganj, Lucknow. He further deposed that on external examination of the dead-body of deceased Ramroop son of Sarvan, he found that deceased Ramroop was aged about six years; his physique was normal; rigor mortis on his both the hands and legs were present; his both eyes were closed; and his mouth was half opened. On internal examination of deceased Ramroop, he found that his brain and membranes were pale; his spinal cord, ribs, lungs, larynx, trachea, bronchi etc. were normal; his both chambers of heart were empty; his peritoneum was pale; his teeth was 8/9; in his stomach, 100 ml. semi digested food was present; in his small intestine, digested food and gas were present; in his large intestine, faecal matter and gases were present; his liver was

450 gm and was pale; his gall bladder was half full; his pancreas and spleen was pale; his both the kidneys were also pale; and his urinary bladder was empty. He further deposed that the ante-mortem injuries of the deceased Ramroop could be attributable on 25.04.2009 at 06:30 a.m. by a sharp edged weapon.

P.W.6-Dr. G.P. Tiwari had also stated that on internal examination of the deceased Smt. Santoshi, he found that her physique was normal; rigor mortis was present on her whole body; her eyes were closed; and her mouth was half opened. On internal examination of the deceased Smt. Santoshi, he found that her scalp and skull were normal; her membranes and brain were pale; her base and vertebrae were normal; ribs, cartilages, pleura were normal; her both the lungs and pericardium were pale; her both portion of heart were empty; her peritoneum was pale; her teeth was 16/16; in her stomach, 200 ml. semi digested food was present; in her small intestine, digested food and gas was present; in her large intestine, faecal matter and gases were present; her liver was pale and was 1100 gm; her gall bladder was half full; her pancreas, spleen and both the kidneys were pale; and her urinary bladder was empty. He further deposed that injuries of deceased Smt. Santoshi could be attributable on 24.04.2009 at 06:30 a.m. by sharp edged weapon. He proved ante-mortem injuries of Smt. Santoshi as Ext. Ka. 6.

P.W.6 had further deposed that on external examination of the deceased Ravi, he found that his physique was average; rigor mortis was present over his whole body; his eyes were closed; and his mouth was half opened. On internal examination of the deceased Ravi, he found that his brain membrane was pale; his outer membrane of lungs was pale; his both the lungs were also pale; his pericardium was also pale; his both the chambers of heart were empty; his teeth was 6/6; in his stomach, 50 ml. fluid was present; his liver and both the kidneys were pale; and his urinary bladder was empty. He proved the post-mortem report of Ravi as Ext. Ka. 7.

In cross-examination, P.W.6 had deposed that he conducted the post-mortem examination of deceased in the light of Petromax Gas. All the injuries of the deceased have been sustained about the same time. He further deposed that it was not possible to ascertain that the injuries inflicted by sharp edged weapon was attributable by same weapon or by different weapons. He further deposed that he conducted the post-mortem examination of the deceased Ramroop, Ravi and Smt. Santoshi. At the time of post-mortem, Dr. Ravi Awasthi was also along with him. He found three ante-mortem injuries on the dead body of the deceased Ravi. He deposed that injury no.1 caused to the deceased Ravi was attributable by sharp edged weapon; and injury no.1 of the deceased Ravi could be caused by banka or

hasiya or from falling upon sharp edged iron. He reiterated the same opinion in respect of injury no.2 caused to the deceased Ravi. However, injury no.3 caused to the deceased Ravi could be attributable by blunt object like danda. All three injuries caused to the deceased Ravi were lethal.

P.W.6, in his cross-examination, had further deposed that he found six ante-mortem injuries on the dead body of the deceased Santoshi. He deposed that injury no.1 caused to the deceased Santoshi could be attributable by a blunt object like lathi, danda and her injury no.2 could be attributable by a sharp edged weapon like hasiya, banka etc. He reiterated the same opinion in respect of other injuries caused to the deceased Santoshi. He further deposed that he found three injuries on the body of the deceased Ramroop. He deposed that injury no.1 caused to the deceased Ramroop could be attributable due to friction against any hard surface, whereas injuries no. 2 and 3 could be attributable by sharp edged weapon like *hasiya* and *banka etc.* The Investigating Officer did not record his statement with regard to post-mortem examination of the deceased.

- 18.** The post-mortem examination of the dead-bodies of the deceased Sumiran and Smt. Madhuri was conducted on 25.04.2009 at 08:30 p.m. and 09:00 p.m., respectively, in T.B. Hospital, Thakurganj, Luckow by Dr. Rajesh Awasthi (P.W.9),

who found the ante-mortem injuries on their person enumerated hereinafter :-

“(I) Ante-mortem injury of Sumiran daughter of Sarvan aged about 4 years

Lacerated wound in the back of neck trachea, larynx, vessels, oesophagus lacerated.

The cause of death spelt out in the autopsy report of the deceased Sumiran was due to shock and haemorrhage as a result of ante-mortem injuries.

(II) Ante-mortem injury of Smt. Madhuri, wife of Kolai aged about 50 years

1. Lacerated wound 6 x 3 cm on the frontal and occipital region on exploration underneath bone fracture. haematoma in brain, margins lacerated and haematoma present.
2. Lacerated Rt. eye 6 x 2 cm into bone deep underneath orbit bone fracture. Brain membranes lacerated;
3. Lacerated wound 7 x 3 Rt. cheek bone underneath bone fracture;
4. Lt. ear lacerated;
5. Lacerated wound Rt. wrist joint.”

The cause of death spelt out in the autopsy report of the deceased Smt. Madhuri was due to shock and hemorrhage as a result of ante-mortem injury no. 4.

- 19.** It is significant to mention here that P.W.9-Dr. Rajesh Awasthi had reiterated the aforesaid cause of death of the deceased Sumiran and Smt. Madhuri before the trial Court and had further deposed, in his examination-in-chief, before the trial

Court that on 25.04.2009, he was posted as Medical Officer in T.B. Hospital. On that date, on the direction of the District Magistrate, he conducted the post-mortem examination of the dead bodies of deceased Sumiran d/o Sarvan aged about 04 years and deceased Smt. Madhuri, w/o Kolai, which were brought by C.P. 1301 Mohd. Shamim and C.P. 129 Braj Kishore Patel of police station Mohanlalganj. He deposed that on external examination of deceased Sumiran, he found that rigor mortis was present over her upper and lower parts of the body; and the deceased Sumiran died on account of ante-mortem injuries caused to her. He deposed that the deceased Sumiran could have died before 6-12 hours of the post-mortem. He proved the post-mortem report of the deceased Sumiran and Smt. Madhuri as Ext. Ka. 11 and Ext. Ka. 12, respectively.

In cross-examination, P.W.9 had deposed that ante-mortem injury caused to deceased Sumiran could be attributable by sharp edged weapon and she could have died before six hours of the post-mortem. He further deposed that injury no.1 caused to the deceased Madhuri could be attributable by sharp edged weapon; injury no.1 could also be attributable by blunt object; injury no.2 could be attributable by any weapon, however, injury was lacerated; injuries no. 3, 4 and 5 could be attributable by blunt object. The injuries caused to the deceased Madhuri could be attributable before 12 hours of the post-mortem.

20. It is pertinent to mention that during the incident, son of the informant (P.W.1), namely, Rajendra, also sustained injuries in the incident. On the date of the incident, Rajendra was admitted in Trauma Centre, Lucknow by the police. During his treatment, Rajendra aged about 10 years died on 03.05.2009 in the night. After the death of Rajendra, informant (P.W.1) gave information about the death of his son Rajendra to the police on 06.05.2009 (Ext. Ka.2).

21. The evidence of P.W.11-Sri Pramhans Prasad shows that on 04.05.2009, he was posted as Sub-Inspector at Medical College Chowki of police station Chowk. On the information of S/A Monu Kumar, he and Constable Chandrika Prasad reached Medical College Mortuary along with requisite papers at 09:40 O'clock. The dead-body of the deceased Rajendra aged about 10 years was in mortuary, wherein the family members of the deceased Rajendra were also present. The '*panchayatnama*' of the dead body of the deceased Rajendra was prepared by him.

In cross-examination, P.W.11 had deposed that he only conducted the '*panchayatnama*' of the dead body of the deceased Rajendra, which started at 09:40 a.m. and ended it at 10:10 a.m.. The family members of the deceased Rajendra, who were present there, had put their signature in the '*panchayatnama*', which was written on spot.

22. P.W.7-Guddu, who is the real brother of the deceased Rajendra, in his examination-in-chief, had deposed that deceased Rajendra was aged about 10 years. The '*panchayatnama*' of the dead body of the deceased Rajendra was conducted by the Inspector at Medical College Mortuary in his presence on 04.05.2009 at 10:00 a.m. The *panchayatnama* was written in his presence and it was read over to him by the Inspector and after that he put his signature thereon.

In cross-examination, P.W.7-Guddu had deposed that on 04.05.2009, '*panchayatnama*' was made and at that time, he (Guddu), Inspector, Sangeeta (injured), Ram Naresh and Adesh were present. In the *panchayatnama*, he put his signature and four persons also affixed their thumb impression. He further deposed that there were about 6-7 injuries on the head of the deceased Rajendra.

23. The post-mortem examination of the dead body of the deceased Rajendra was conducted on 04.05.2009 at 01:00 p.m. in Balrampur Hospital, Lucknow by Dr. U.K. Prasad (P.W.5), who found the ante-mortem injuries on his person enumerated hereinafter :-

**“Ante-mortem injuries of deceased Rajendra,
son of Kolai**

- 1.** Contusion 8.0 cm x 5.0 cm present on forehead 2.0 cm above root of nose.

2. Contusion 10.0 cm x 8.0 cm present on back of head over occipital region.
3. Contusion 5.0 cm x 4.0 cm present on Rt. temporal region 2.0 cm above Rt. ear. On opening echchymosis present underneath above mentioned injuries. Fracture of Rt. temporal, Rt. parietal bones present and subdural haematoma present all over the brain underneath the fracture brain meninges lacerated & extra dural haematoma present.

The cause of death spelt out in the autopsy report of the deceased Rajendra was coma as a result of ante-mortem head injuries.

24. It is significant to mention here that P.W.5-Dr. U.K. Prasad, in his examination-in-chief, had reiterated the aforesaid cause of death of the deceased Rajendra before the trial Court and had further deposed that on 04.05.2009, he was posted as Senior Surgeon at Balrampur Hospital, Lucknow. On the same date, at about 01:00 p.m., he conducted the post-mortem of the unsealed body of the deceased Rajendra aged about 10 years, which was brought and identified by C.P. 2666 Chandrika Prasad of Police Station Chowk, Lucknow. The deceased Rajendra died at Gandhi Memorial & Associated Hospital on 03.05.2009 at 08:40 p.m. He further deposed that on external examination of the dead body of the deceased Rajendra, he found that his physique was average; rigor mortis was present all over his body; P.M. staining was present on his back; tracheotomy tube was present in his neck; I.V. cannula was

present on his right wrist joint; ryles tube was present on his right nostril; eyes were closed; and mouth was half open. On internal examination, he found that brain membrane was torn; pleura, both lungs and pericardium were congested; left chamber of heart was empty; right chamber of heart was empty; in the stomach, 60 ml fluid was present; in the small intestine, digested food and gas were present; in the large intestine, faecal matter and gases were present; liver was 850 gms and was congested; his gall bladder was half full; his pancreas was congested; his spleen was 90 gms and was congested; both the kidneys were 125 gms and was congested; urinary bladder was empty; and the organ of generation was normal. He further deposed that it was difficult to say how old are the injuries but injuries could be attributable from back of the 'axe'. He proved the post-mortem report (Ext. Ka. 4).

In cross-examination, P.W.5 had deposed that injuries could be attributable from back of the 'axe'.

- 25.** The case was committed to the Court of Sessions in usual manner where the convicts/appellants were charged for the offence punishable under Sections 302, 323, 201 I.P.C.. They pleaded not guilty to the charges and claimed to be tried. Their defence was of denial.

26. During trial, the prosecution, in order to prove its case, had examined thirteen witnesses viz. P.W.1-Kolai (informant); P.W.2-Sangeeta (injured), daughter of the informant and deceased Madhuri; P.W.3-Ram Naresh, son-in-law of the informant (P.W.1); P.W.4-Dr. Shailendra Kumar Dwivedi, who conducted the medical examination of injured Sangeeta (P.W.2); P.W.5-Dr. U.K. Prasad, who conducted the post-mortem of the deceased Rajendra; P.W.6-Dr. G.P. Tiwari, who conducted the post-mortem of the deceased Ramroop, Smt. Santoshi, Ravi; P.W.7-Guddu, who is the witness of conducting *panchayatnama* of the dead body of the deceased Rajendra; P.W.8-S.I. Anand Kumar Pandey, who registered the chik F.I.R. on the basis of the written report of informant (P.W.1); P.W.9-Dr. Rajesh Awasthi, who conducted the post-mortem of the dead body of the deceased Sumiran and Smt. Madhuri; P.W.10-Bal Krishna Singh, who is witness of '*panchayatnama*' of the dead bodies of the deceased Ramroop, Smt. Santoshi, Ravi, Sumiran and Smt. Madhuri; P.W.11-S.I. Pramhans Prasad, who conducted the '*panchayatnama*' of the dead body of the deceased Rajendra; P.W.12-S.I. Ram Vishal 'Suman', who accompanied the Investigating Officer Ashok Kumar Shukla while conducting the investigation of the case and prepared the *panchayatnama* of the deadbodies of the deceased Ramroop, Santoshi, Ravi, Sumiran and Madhuri; and P.W.13-Dharam Pal Singh, who also accompanied the Investigating Officer Ashok

Kumar Shukla while conducting the investigation of the case. The trial Court had also examined Constable C.P. 840 Sri Satish Kumar Kushwaha as C.W.1 in order to prove the fact that the Investigating Officer of the case, namely, Ashok Kumar Shukla died on 29.05.2014.

- 27.** P.W.1-Kolai, informant, in his examination-in-chief, had deposed before the trial Court that Sarvan (convict/appellant) was residing in front of his house in the village. A gossip/talk spread in the village that Sarvan (convict/appellant) had an illicit relationship with his *bhabhi* (sister-in-law), which was objected by the wife of Sarvan and on this issue, sometimes altercation took place between them and sometimes scuffle took place between them. When scuffle took place between them, his wife Madhuri used to go for pacifying the issue, upon which Sarvan (convict/ appellant) used to remain angry with (informant's wife) Madhuri.

P.W.1 had deposed that he did not know the date of the incident, however, it was the incident of six months ago and it was the fourth month of the year and the time was about 06:30 a.m. When he was standing in front of the house of Rajaram which was adjoining the house of Sarvan, a noise 'बचाओ बचाओ' (help-help) came from the house of Sarvan. Thereafter, his wife (deceased Madhuri) came out of the house for rescue at *kharanja* (dirt road). After some time, Sarvan armed with 'axe'

came out of his house and told his wife (deceased Madhuri) that 'अपनी बीबी और बच्चो को काट कर लाइन से लगा दिया है तुम बचाने दौडती है तुम्हे भी लाइन से लगा दूंगा।' (*after cutting his wife and children, he has put them on the line, you often run to save, you will also be put in the line*). After saying this, Sarvan started assaulting his wife (deceased Madhuri) with 'axe'. In the said 'axe', bamboo stick of about the length of two-hand was attached. He further deposed that when Sarvan came out from his house with 'axe', blood was dripping from the 'axe'. He saw Sarvan swing 3-4 blows of 'axe' upon his wife (deceased Madhuri) and immediately thereafter, his wife (deceased Madhuri) fell down on *kharanja* (dirt road) and after that she did not get up again and died.

P.W.1 had further deposed that when Sarvan assaulted his wife (deceased Madhuri), then, his son Rajendra (deceased) and his daughter Sangeeta (injured P.W.2), who were standing at the door, ran to save their mother (deceased Madhuri). After that Sarvan also assaulted them with the same 'axe'. Sarvan hit with 'axe' on the head of Rajendra and thereafter he assaulted Sangeeta (injured) inside the house with the 'axe'. After that both his children became unconscious and fell down. When he screamed, 2-4 villagers came and on seeing them, Sarvan fled away with the 'axe'. He deposed that at the time of the incident, fear had arisen in the village; none of the children went to school; the doors of the people got locked; the road

traffic was closed; villagers even did not go to their barn due to fear. At that time, the age of the wife of Sarvan was 35 years and their children were 6, 5 and 1½ years, whereas age of his wife (deceased Madhuri) was 50 years and his son (Rajendra) was 6 years. He saw the incident from a distance of 10 steps.

P.W.1 had also deposed that when Sarvan assaulted his wife (deceased Madhuri), his *bhabhi* (*sister-in-law*) was standing at the door of Sarvan and told that ‘वह बार बार बचाव बचाव कहती है इसलिए इसे मरा दिया तो ठीक किया’ (*she always asked to save-save, therefore, he killed her, he did right*). He got scribed written report from one person, namely, Sewak, who after scribing read it over to him and then he affixed his thumb impression on it and lodged it in the police station. He proved the written report (Ext. Ka. 1). He further deposed that he brought his son along with police to the Medical College; his son died during treatment; and after the death of his son, he got scribed the information regarding the death of his son and after affixing thumb impression on it, he lodged it (Ext. Ka. 2) in the police station on 9th day of the incident. The Inspector took his statement regarding the incident at his house. He had shown the place of occurrence to the Inspector. At the time of the incident, his relative Ram Naresh (P.W.3) was also present and saw the incident.

In cross-examination, P.W.1-Kolai had deposed that people used to say that Sarvan and his *bhabhi* (sister-in-law) Suman had illicit relationship. He did not ever intervene in the altercations that occurred between Sarvan and his wife. His wife intervened between them in his presence. No quarrel had happened between accused Suman and his family members. Before the incident, his family members were at talking terms with the accused Suman. His house was at a distance of 50 steps from the house of Suman and in between their houses, there was one house. The house of Suman was situated in western direction from his house and the house of Sarvan was at a distance of ten steps from his house. There was a gap of two houses between the house of Suman and the house of Sarvan. Out of the said two houses, one house was of Baijnath and the other was of Kandha. A handpump, which was installed near the house of Suman two years ago, was in running condition and also visible from his house. He and his wife never went to fetch water in front of Suman's door. He and his wife filled water from the handpump installed in front of the door of Sitaram. The house of Sarvan was at a distance of 5-6 houses from the house of Sitaram. In the middle of his house and the house of Suman, there was house of Changa. The houses were in seriatum, therefore, could be seen clearly. Accused Sarvan ran with blood stained 'axe' passing through his house towards the house of Pawan. After that he did not

know where Sarvan had gone. He further deposed that they did not go to search for Sarvan instead they went to police station. A bamboo stick was attached with the 'axe'. He further deposed that on 09.02.2008, an altercation took place between Suman and his daughter-in-law, for which both sides have lodged report, however, either of the side did not sustain any injury.

P.W.1 had further deposed that the name of the elder brother of Sarvan was Pawan Kumar. There was dispute between Sarvan and Pawan Kumar. Earlier he was at talking terms with Pawan but after lodging the report of the instant case, he was not at talking term with Pawan as he supported his brother. Sarvan and Pawan were residing in different houses. The house of Sarvan was at a distance of 50 steps from the house of Pawan. The house of Sarvan was at a distance of 8-10 steps from his house.

P.W.1 had further deposed that on the date of the incident, he was at the door of Rajaram along with Rajaram, Bablu and sister-in-law of Sukhlal. All of them tried to catch Sarvan but he fled away. He did not sustain any injury.

- 28.** P.W.2-Sangeeta, who is the daughter of informant Kolai (P.W.1), in her examination-in-chief, had deposed that the said incident was of 25.04.2009 at about 06:00 a.m. The quarrel

between Sarvan and his wife took place in the house of Sarvan. When Sarvan was assaulting his wife, then, voice 'बचाओ-बचाओ' came from inside the house. At that moment, her mother (deceased Madhuri), on listening the voice, came out from the house at *Kharanja* (dirt road), whereas she and his brother Rajendra (deceased) were standing at the door. Sarvan armed with blood stained 'axe' came out from his house and told that 'तुम श्रीमती बहुत बचाती थी अब तुमको भी मार डालेगे' (*you Srimati used to protect a lot, now you will also be killed*). After that Sarvan swung 5-6 blows of 'axe' on her mother, as a consequence of which, her mother fell down. Thereafter she and Rajendra (deceased) ran to save their mother, then, Sarvan had assaulted Rajendra (deceased) with 'axe'. After that Rajendra (deceased) fell down and thereafter Sarvan had also hit on her head with the 'axe'. She deposed that at the time of the incident, first of all, Sarvan came out from his house with the 'axe' and behind him, his sister-in-law came out and stood at the door. She further deposed that when her mother was being assaulted by Sarvan, then, Suman instigated Sarvan that '*kill her as she used to intervene a lot*'. She deposed that this incident was witnessed by Rajaram, Bablu, Nanhku, Baijnath apart from her. Rajaram, Bablu, Baijnath and her husband ran to save and no one else was there. After the incident, her father (P.W.1) went to lodge the report. The inspector took her statement. After the incident, fear was spread in the village; on

account of fear, people entered into their respective houses; some of the villagers left the village; she had also sustained injuries in the incident; she sustained injuries on two places of her hands; these injuries were caused by the assault of Sarvan; a woman and a woman Constable took her for treatment. In the said incident, four persons got injured from the side of Sarvan and three persons got injured from her side. All these persons got injured on account of assault of Sarvan.

In cross-examination, P.W.2-Sangeeta had deposed that the incident was of Saturday. On that day, she woke up at 06:00 a.m. The house of Sarvan and her house was opposite to each other. There was no drain flowing in front of her house. A drain was beside the house of Sarvan. The water of her house was flowing in the drain constructed with *kharanja* and the said *kharanja* was in the mid of her house and the house of Sarvan. She denied the suggestion that there was quarrel between her family and Sarvan with regard to flow of drainage water. Her father had not lodged any report with regard to quarrel of drain. She also denied the suggestion that Sarvan or his family members had lodged any report upon her father Kolai or her family members. She also denied the suggestion that she had knowledge that F.I.R. was lodged against her father. She also denied that any complaint was ever submitted against her family. She also denied the suggestions that Nanha (brother of P.W.2) went to meet Santoshi to the house of Sarvan on the date

of the incident; Nanha frequently went to the house of Sarvan to meet Santoshi; her father Kolai, her mother, her brother Rajendra had entered inside the house of Sarvan on the date of the incident; before two days of the incident, scuffle took place between her father and Sarvan regarding the drain water and in this scuffle, her father threatened Sarvan that he would kill his family. She further deposed that there was no 'axe' in her house nor ever had 'axe' in her house. She denied the suggestion that when Sarvan was not in the house, then, his father Kolai, Nanha, Rajendra, his mother and she herself, on getting a chance, entered into the house of Sarvan with 'axe' and killed the wife and children of Sarvan and in the meanwhile Sarvan came and scuffle took place. She also denied the suggestion that there was no scuffle between Sarvan and her mother and her brothers. She also denied the suggestion that her father raised an 'axe' to kill Sarvan but it hit her mother. She deposed that on that date, her father was at the door of Rajaram. On hearing screaming, her father came outside the house and at that time Sarvan was assaulting her mother. Upon reaching the spot, her father tried to save her mother. However, no injury was caused to him. She further denied the suggestion that her father was assaulting Sarvan, therefore, no injury was caused to him. She also denied the suggestion that the 'axe' used in the incident was of her house. She further submitted that after the incident, Sarvan ran from the village.

P.W.2-Sangeeta had further deposed that no quarrel took place between accused Suman and her family members. Before the incident, they were on talking terms with the family of Suman, however, she had no good talking terms with Sarvan and before the incident, she did not visit to the house of Sarvan. Sarvan had not come to her house. They also did not visit the house of Pawan before the incident. Before the incident, her mother did not go to the house of Sarvan and there was no enmity between them. At the time of scuffle, she was cooking in her house. At the time of the scuffle, firstly Sarvan came out from the house and after that Suman came out from the house. She has seen Suman going to the house of Sarvan in the night sometimes. When Suman came out from the house of Sarvan, her mother and her brother were standing at their door in front of *kharaanja*. After the incident, Suman went towards her house and at that time, Suman did not carry anything in her arm. At the time of the incident, her brother-in-law was returning from call of nature. She denied the suggestion that on account of enmity with Suman, report was lodged against Suman. She further deposed that she had no enmity with the family of Suman and Pawan. She denied the suggestion that Suman had no relation with the present incident.

- 29.** P.W.3-Ram Naresh, who is son-in-law of the informant, had deposed in his examination-in-chief before the trial Court that a

day before the incident, he went to his in-law's house. The incident was of 25th at 06:30 a.m. When he and Sangeeta, while standing at the door of his in-law's house, were talking, a noise 'बचाओ बचाओ' came out from the house of Sarvan. After that his mother-in-law (deceased Madhuri) and Rajendra (deceased) ran. Then, Sarvan armed with 'axe' came out from other side and told them that he had put aside his wife and children, he would also put aside three of them (brother-in-law, sister-in-law and mother-in-law). He deposed that 'axe' was stained with blood. Sarvan, by assaulting his mother-in-law (deceased Madhuri), put her down on *kharanja*. When his brother-in-law Rajendra and Sangeeta ran, then, he also assaulted them. All of them were assaulted with 'axe'. They were assaulted by back of 'axe' as well as front of the 'axe'. At that time, accused Suman, while standing at her door, was instigating Sarvan. On the information of the incident, the police had reached the spot. The police brought Sangeeta and Rajendra to Trauma Centre Hospital, where the treatment of Sangeeta and Rajendra was conducted. During treatment, Rajendra died after eight days of the incident on account of injuries caused to him in the incident. The police had recorded his statement.

In cross-examination, P.W.3-Ram Naresh had deposed that Suman was living along with her husband Pawan in a separate house. On listening the noise, he did not go inside the house of Sarvan nor went to intervene in the scuffle on account of fear

neither did he go to call any one for intervention, but he only made hue and cry. Accused ran in front of him but he did not try to catch him due to fear. At the time of the incident, his wife was at her parents' home. He was standing at a distance of 25 steps from Suman. After the incident, Sarvan fled with the axe. Suman also ran behind Sarvan. On account of fear, he did not go to save his sister-in-law, mother-in-law and brother-in-law. The police had recorded his statement on the date of the incident at the place of occurrence. When his father-in-law went to lodge the report, then, the police came there.

- 30.** The statements of the convicts/appellants, Sarvan and Suman, were recorded under Section 313 Cr.P.C. The convict/appellant Sarvan, in his statement recorded under Section 313 Cr.P.C., has accepted the statements of the prosecution witnesses that he and his *bhabhi* (sister-in-law) Smt. Suman had an illicit relationship, which was objected by his wife Smt. Santoshi and on this issue, quarrel and fight used to take place between him and his wife (Smt. Santoshi) and the wife of the informant (P.W.1-Kolai), Madhuri, came to intervene between them, upon which he used to be angry with her. The convict/appellant Sarvan had also admitted the statements of the prosecution witnesses that on the date, time and place of the incident, informant P.W.1-Kolai was standing in front of the house of Raja Ram adjacent to his house and a sound of 'save-save' was coming from his house; he came out with an 'axe' from his

house and told the informant's wife, Smt. Madhuri that '*he has put his wife and children on line, you run to save, then you will also be put in the line*' and by saying this, he assaulted the informant's wife, Smt. Madhuri, with 'axe', as a consequence of which, informant's wife Smt. Madhuri fell down on *khadanja* and died. Convict/appellant Sarvan had also admitted the statements of the prosecution witnesses that on the date, time and place, when he came out from his house with 'axe', blood was dripping from his 'axe'. Convict/appellant, however, had stated that first of all, informant and his family members had killed his (Sarvan's) family members and thereafter, he had also killed the family members of the informant. Convict/appellant had also admitted that on the date, time and place of the incident, on the hue and cry of P.W.1-Kolai, 2-4 persons came and thereafter he fled away with the 'axe'. Convict/appellant had also admitted the statement of P.W.1-Kolai that on 25.04.2009 informant Kolai (P.W.1) got the FIR scribed by Ram Sewak son of Hari Prasad, who after scribing read it over to him and thereafter, he affixed his thumb impression on it and then proceeded to Police Station Mohanlalganj and lodged it. Convict/appellant Sarvan had also admitted the statements of injured Sangeeta (P.W.2) that on 05.07.2009, at about 06:00 a.m., a scuffle was going on between Sarvan and his wife Santoshi and when Sarvan was beating his wife Santoshi, then, a noise 'save-save' came out

from his house. On listening this noise, her mother (Smt. Madhuri) came out near the *khadanja* and at that time, she and Rajendra were standing at the door. Sarvan came outside his house with blood stained 'axe' and told her mother Smt. Madhuri that she protected his wife Smt. Santoshi a lot and now he would also kill her and thereafter, Sarvan started to assault her mother Smt. Madhuri with 'axe'. 4-5 blows of 'axe' were made upon her mother, as a consequence of which, her mother fell down. Thereafter, when she and Rajendra ran to save her mother Madhuri, then, Sarvan had assaulted Rajendra with 'axe', as a consequence of which, Rajendra fell down. Sarvan had also assaulted on her head with 'axe'. Convict/appellant had also stated that informant and his family members had killed his wife and children and, therefore, he had also killed their family members because of which case was lodged.

- 31.** Convict/appellant Suman, in her statement recorded under Section 313 Cr.P.C., had denied the allegations levelled against her and claimed to be innocent and further stated that she has been falsely implicated in the case on account of enmity because she belongs to the family of Sarvan. She further stated that on 25.04.2002, at 06:30 a.m., she did not see Sarvan assaulting but she, on hue and cry, went at the place of the incident along with family. She denied the allegation of the prosecution that she had an illicit relationship with Sarvan. She also denied that she saw Sarvan killing his wife, his children

and informant's wife by assaulting them with 'axe'. She also denied the fact that she saw Sarvan assault the informant's son Rajendra and his daughter Sangeeta with 'axe'. However, she admitted the fact that informant Kolai (P.W.1) got scribed the report from Ram Sevak son of Hari Prasad and after scribing it Ram Sevak read it over to him and thereafter Kolai (P.W.1) affixed his thumb impression on it and lodged it at Police Station Mohanlalganj, Lucknow.

- 32.** In defense, three witnesses, namely, D.W.1, Pawan Kumar, real brother of convict/appellant Sarvan, D.W.2-Banshi Lal and D.W.3-Kanhaiya Lal were produced.
- 33.** D.W.1-Pawan Kumar, real brother of convict/appellant Sarvan, had deposed in his examination-in-chief before the trial Court that incident was of 25.04.2009 between 6-7 a.m. One day before the incident, he went to attend *Tilak* ceremony of Dinesh at Ahimakheda. On account of work of *rajmistri* (masonry), he returned to his house at village Gaura by bicycle on the next day at about 06:45 a.m. His wife was cleaning utensils. He put his bicycle on stand. At that moment, on hue and cry coming from the village, he ran and reached there and behind him, his wife also reached there and saw that his brother Sarvan was shouting that Kolai after cutting his wife and children fled away. After that, he asked his brother (Sarvan) that '*where were you*', then, Sarvan told him that he went to get salt and on

returning home, he saw his wife and children were lying cut off. He further deposed that when he went inside the house of Sarvan, he saw that the vegetable pot was overturned inside the house and deadbodies of three children and his brother's wife were lying. He, thereafter, came out from the house and called the police. After some time, the police came on a Jeep and after loading four dead-bodies on a Jeep, took away him and his brother (Sarvan) to the police station. Thereafter, the police again brought them to home. After that the police brought 'axe' from the house of Kolai (P.W.1) and a stick from his house and fixed it on the 'axe' in front of them. Thereafter, the police dripped the 'axe' in blood, which was lying on soil and took them away to police station again along with blood stained 'axe' through a Jeep. He asked the police to lodge the report but no report was written by the police. He further deposed that he had old enmity with Kolai as Kolai had usurped his one bigha of land. The whole village was afraid of Kolai. After the incident, Kolai had attacked upon him and his father, on account of which, his father had lost his life, whose case was going on. He also deposed that Kolai did not allow him to do *pairvi* of the case and threatened to kill him. After the incident, rumour was in the village that Kolai had killed Sarvan's children.

In cross-examination, D.W.1-Pawan Kumar had deposed that he was doing the work of rajmistri (masonry). The distance

between Mohanlalganj to his village Gaura was 3 Kms. After getting off work at 05:00 p.m., 30-45 minutes were taken to wash hands, feet and his articles and after that, he went to home. It took fifteen minutes by bicycle to cover the distance of 3 Kms. He reached home at 06:00 p.m. On 24.04.2009, he went along with 4-5 persons to attend *tilak* ceremony of Dinesh at Ahimakheda by bicycle at about 07:30 p.m. and on 25.04.2009, he returned to his house from *tilak* at 06:45 a.m. The distance of Ahimakheda from his village was 6 Kms. He reached near the deadbodies of his brother's son and wife at the place of occurrence in the morning at about 06:45 a.m. He further deposed that he did not come to give evidence from the side of the deceased because no one had asked him to give evidence but on the instance of Sri Kamlesh, Advocate, he came to give evidence. He knew Kolai as well as his wife Madhuri. He denied that he had falsely deposed in order to save Suman. He also deposed that summon had not gone from the Court to him.

- 34.** D.W.2-Banshi Lal, in his examination-in-chief, had deposed before the trial Court that the incident was of 25.04.2009 at about 06:10 a.m. On the date of the incident, he was in his village. The house of Sarvan and Kolai were opposite to each other. His house was at a distance of 1 kms. from the house of both Sarvan and Kolai. On the date of the incident, he had gone for his work. After 2-2½ hours of the incident, he got

information about the big incident. On getting the information, he left his work and reached to the place of the incident and saw that villagers and police personnel were present at the place of the incident. The police took away all the deadbodies and no *panchayatnama* was made. He knew the informant Kolai. No one was present at the house of Kolai and his wife locked the door and was trying to flee from there. When Sarvan came back after buying groceries, then, he saw such a big incident occurred at his house and the wife of Kolai was running away. On the dictate of police personnel, all the deadbodies were carried out and loaded in a police Jeep by Sarvan himself. Thereafter, Sarvan and his sister-in-law were brought by the police. When the police personnel reached at the place of the incident, none of the family members of Kolai were present there. The information about the incident spread in the village that families of both sides had killed each other. The police did not recover any weapon in his presence. After the incident, Sarvan was present. The police was informed by Chowkidar and villagers. Sarvan was living in his old house, whereas the house of his sister-in-law was away from Sarvan's house.

In cross-examination, D.W.2 had stated that he did work of construction, labour and farming. He further deposed that it is correct to say that on the date of the incident, he was not present at the place of the incident as he was 2-2½ kms. away from his house in relation of work. He did not see anyone

killing. He did not even see who challenged whom. It is true that he only knew the factum of the incident from the villagers. It is also true that when he got information after 2-2½ hours of the incident, then, he reached there but the police did not make him witness in respect of the incident. The police collected the blood from the place where it was present. He denied that he falsely deposed in order to save the accused.

- 35.** D.W.3-Kanhaiya Lal, in his examination, had deposed that the incident was of 25.04.2009 between 06:00-07:00 a.m. His house was far from the house of Kolai on eastern side. The house of Sarvan and Kolai were opposite and in between their house, there was *khadanja*. On the date of the incident, he was in his house and there was *katha* at his house. He had gone to call the gardner. The house of gardener was at a short distance from the house of Sarvan. He went to call the gardener at 06:00-07:00 a.m. It was the month of *chait*. Two sons of Kolai armed with 'axe' jumped from the ruined house and ran away and blood was on their clothes. He could not tell their names but he recognized them. When he reached near to the house of Sarvan, then, he saw that Kolai and his sons were armed with *Banka* and his daughter was armed with *hasiya*, that were blood stained. Sarvan was not there nor any member of his family was there.

In cross-examination, D.W.3 had stated that he did not know that when he went to call gardener, it was 6 O'clock or 7 O'clock. However, the gardener met with him. He reached to the house of gardener and he talked to him for about one minute. He further deposed that incident occurred earlier and thereafter he met with gardener. Even after seeing the incident, he went to the house of gardener. After that he went to the house through other pathway due to fear. He further deposed that even after the occurrence of the incident, *katha* happened in his house. He further deposed that it is correct to say that he went to call gardener from his house at 07:00 a.m. and before that incident had happened.

36. The learned trial Court, upon appreciation of oral and documentary evidence, by its impugned judgment dated 29.08.2017, convicted and sentenced the appellants, **Sarvan** and **Suman**, in the manner stated hereinabove in paragraph-2.
37. Feeling dissatisfied and aggrieved by the judgment of conviction recorded and sentence awarded, appellants, Smt. Suman and Sarvan have preferred Criminal Appeal Nos. 1540 of 2017 and 1552 of 2017, respectively, under Section 374 (2) of the Cr.P.C. before this Court. However, the learned trial Court in accordance with the provisions contained in Section 366 (1) of the Cr.P.C. made reference to this Court for confirmation of sentence of death of convict/appellant Sarvan.

38. Heard Ms. Manjusha Kapil, learned Counsel for the convicts/appellants, Mr. Vimal Srivastava, learned Government Advocate assisted by Mr. Pankaj Tewari, learned Additional Government Advocate for the State and perused the material brought on record.

(C) ARGUMENTS ON BEHALF OF APPELLANTS

39. Challenging the impugned judgment dated 29.08.2017 passed by the trial Court, Ms. Manjusha Kapil, learned Counsel for the convicts/appellants has argued that :-

- I.** the entire case against the convicts/appellants is fabricated one and has been framed at the instance of Kolai (PW-1).
- II.** the convict/appellant Sarvan, in his statement recorded under Section 313 Cr.P.C., in clear terms has stated that informant Kolai (P.W.1) and his family members had killed his wife and children, because of which in retaliation, he got angry and killed the wife of the informant (P.W.1) and his son.
- III.** She stated that it is settled law that if the prosecution admits the statement under Section 313 Cr.P.C. then it has to be considered as a whole and it is not permissible under law to accept only one part of this statement, which

supports the prosecution and to exclude the remaining part. In the instant case, the trial Court has only considered one part of this statement but erred in not considering the whole statement of convict/appellant Sarvan recorded under Section 313 Cr.P.C.

IV. the dispute amongst the informant Kolai (P.W.1) and the convict/appellant Sarvan was due to flow of drainage from the house of informant (P.W.1) to the house of the convict/appellant Sarvan. She argued that the entire case as presented by the prosecution is concocted and false as actual facts are that on the date of the incident, convict/appellant Sarvan went to purchase salt and upon returning therefrom, he saw that informant Kolai (P.W.1), his sons Guddu, Nanha as well as his wife and his daughter were running from his (Sarvan's) house with *hasiya, axe etc.* Immediately thereafter, Sarvan entered into his house and saw that his wife and children were lying dead on the floor, upon which he got angry and in retaliation, convict/appellant Sarvan came out from his house and killed the informant's wife and son. Therefore, the offence committed by the convict/ appellant will not fall within the penal provision of Section 302 I.P.C. but at the most, it would fall within First Part of Section 304 I.P.C. as the convict/appellant had killed the informant's wife and informant's son in revenge as the informant and

his family members had killed the wife and children of convict/appellant Sarvan. Thus, the trial Court erred in convicting and sentencing the convict/appellant under Section 302 I.P.C.

V. the convict/appellant Sarvan has no motive to commit the murder of his wife and children. She argued that even if for the sake of argument it is presumed that on account of illicit relationship with his sister-in-law, the convict/appellant Sarvan had killed his wife, even then, there is no motive for him to commit the murder of his own minor children as the convict/appellant Sarvan was not mental nor did the trial Court find the same. Thus, the findings of the trial Court in this regard is perverse and is liable to be rejected.

VI. the prosecution, in order to prove its case, has failed to produce any independent witness. P.W.1, P.W.2 and P.W.3 are interested and partisan witnesses. Therefore, their testimonies cannot be said to be trustworthy. The trial Court erred in believing the testimonies of interested and partisan witnesses.

VII. as per the prosecution, 'axe' was used as a weapon for committing the murder of five persons, namely, Rajendra, Ramroop, Smt. Santoshi, Ravi, Sumiran, Smt.

Madhuri and causing injury to Sangeeta by convict/appellant Sarvan but perusal of the ante-mortem injuries caused on their persons reveals that size of all the injuries are different, which itself clarifies that these injuries could be caused from different weapons. Thus, the case of prosecution that 'axe' was used in commission of murder of the aforesaid persons, is doubtful and it cannot be said that the deceased was murdered by the assault of 'axe'.

VIII. the 'axe' in question was handed over by Kolai (P.W.1) himself to the police and thereafter police went on the spot; dripped the 'axe' in blood at the place of occurrence; sealed it; and prepared the forged recovery memo. This fact has been proved from the testimonies of D.W.1-Pawan Kumar and D.W.2-Banshi Lal. But the trial Court erred in disbelieving the testimonies of D.W.1 and D.W.2.

IX. the 'axe' was allegedly stated to be found from the heap of straw on the pointing out of convict/appellant Suman. If that being so, some straw ought to have strick on it, but nowhere in the police report, description of straw has been mentioned by the police. This itself shows the prosecution case with regard to recovery of 'axe' on the

pointing out of convict/appellant Suman, is doubtful and not believable.

X. D.W.3-Kanahaiya Lal, in his examination-in-chief, had deposed before the trial Court that two sons of Kolai (P.W.1) armed with 'axe' jumped over the boundary wall of the convict/appellant Sarvan and blood was present on their clothes and when he reached to the house of convict/appellant Sarvan, he saw that Kolai (P.W.1) was there armed with blood stained banka; his sons were there armed with blood stained 'banka' and his daughter was also there armed with blood stained 'hasiya' and none of the family members of Sarvan (convict/appellant) and Sarvan himself were present there. But the trial Court has erroneously not believed the testimonies of defense witnesses while passing the impugned order.

XI. learned trial Court has committed grave legal error in holding that the present case falls within the category of '*rarest of rare*' case as the learned trial Court has failed to record special reasons for sentencing the convict/appellant Sarvan to death as required under Section 354 (3) of the Cr.P.C.

XII. the prosecution has miserably failed to connect the convicts/appellants with the crime in question either by direct, medical or circumstantial evidence and therefore the convicts/appellants be acquitted from the charge and the criminal appeals be allowed and the reference be rejected.

XIII. the extreme penalty of death awarded to the convict/appellant Sarvan by the trial Court is too harsh and excessive in nature and alternate penalty of the punishment of imprisonment for life would meet the ends of justice.

(D) ARGUMENTS ON BEHALF OF THE STATE

40. Shri Vimal Srivastava, learned Government Advocate, ably assisted by Shri Pankaj Tiwari, learned Additional Government Advocate for the State has opposed the submissions advanced by the learned Counsel for the convicts/appellants and argued that :-

I. the prosecution has brought sufficient material in shape of ocular, medical and documentary evidence to justify conviction of the convicts/appellants for the above-stated offence.

II. the convict/appellant Sarvan had illicit relationship with his sister-in-law, which was objected by the wife of

Sarvan, upon which some quarrel took place between Sarvan (convict/appellant) and his wife (deceased Smt. Santoshi) and sometimes Sarvan (convict/appellant) had also assaulted his wife (deceased Smt. Santoshi). The wife of informant Kolai (P.W.1), Madhuri, used to intervene and settle the issue but Sarvan disliked it. These facts have been proved by the prosecution. Therefore, the defense taken by the convict/appellant Sarvan that he had killed the wife and son of the informant in retaliation as the informant and his sons had killed his wife and children while he had gone to purchase salt, has rightly been discarded by the trial Court.

- III. P.W.1, P.W.2 and P.W.3 have fully supported the version of the prosecution.
- IV. Thus, the trial Court, after appreciating the evidence on record, rightly came to the conclusion that the convicts/appellants were responsible for committing the murder of all six persons and had also rightly convicted them for the offences under Sections 302, 323, 201 I.P.C.
- V. the seizure of blood stained 'axe' at the instance of the convicts/appellants Sarvan and Suman itself is a substantial piece of evidence and also itself proves the

guilt of the convicts/appellants in committing the murder of six persons.

- VI.** the prosecution has established the motive of the convicts/appellants to commit the murder of the six deceased persons.
- VII.** the medical evidence has fully supported the prosecution case.
- VIII.** in view of the aforesaid evidence available on record, the criminal appeals preferred by the convicts/appellants deserves to be dismissed and the death sentence awarded to convict/appellant (Sarvan) deserves to be confirmed.
- IX.** this is a case of 'rarest of rare' case where the convict/appellant Sarvan has murdered his own wife and his own three growing/minor children aged about 1½ years, 4 years and 6 years as well as wife of informant Madhuri and son of informant Rajendra and also injured Sangeeta, daughter of informant, by assaulting them with 'axe' and absconded from the scene of occurrence which will fall within the meaning of rarest of rare case as indicated by their Lordships of the Supreme Court in **Bachan Singh Vs. State of Punjab** : AIR 1980 SC 898. He argued that the manner in which murder of his own wife and three growing/minor children as well as wife and son of the

informant has been committed by the convict/appellant Sarvan brutally by assaulting them with 'axe', it can be said to be a 'rarest of rare' case and there is no chance of reformation of the convict/appellant Sarvan and he is a burden to the society, therefore, imprisonment for life or other sentence is completely inadequate, only the sentence of death would be appropriate and adequate punishment which has rightly been awarded to him by the trial Court.

(E) ANALYSIS

41. This Court has examined the submissions advanced by the learned Counsel for the parties and perused the statements of the prosecution witnesses and defense witnesses, the material exhibits tendered and proved by the prosecution, the statements of the appellants recorded under Section 313 I.P.C. and the impugned judgment.

E.1. F.I.R.

42. The prosecution case commenced with the First Information Report lodged by PW-1-Kolai on a written report (Ext.Ka.1) given by him after approximately one hour of the incident at police station Mohanlalganj, district Lucknow, wherein it was stated that five deceased persons, namely, Ramroop, Smt. Santoshi, Ravi, Sumiran and Smt. Madhuri, were brutally murdered and two persons, namely, Rajendra and Sangeeta, got

injured by the convict/appellant Sarvan. The convict/appellant Sarvan was named in the First Information Report with the details of the weapon i.e. 'axe' which he was carrying. The murder weapon i.e. 'axe', which the convict/ appellant Sarvan was carrying, as per the description in the First Information Report and the depositions of the eye-witnesses PW-1, PW-2 and PW-3, are tallying with the injuries sustained by the six deceased persons and injured Sangeeta (P.W.2) as is clear from the Medico-legal reports. S.I. Anand Kumar Pandey (P.W.8) has proved the factum of lodging the F.I.R. on the basis of the written report (Ext. Ka.1) submitted by the informant Kolai (P.W.1).

E.2. MOTIVE

- 43.** Learned Counsel for the convicts/appellants had contended that there was no motive on the part of the convict/appellant Sarvan to commit the murder of his own wife and children but on account of enmity between the convict/appellant Sarvan and informant Kolai regarding flow of drain water, the informant and his family members had killed his wife and three children when he went to buy salt outside his house and in retaliation, the convict/appellant Sarvan had inflicted injuries to the informant's wife and son.
- 44.** Refuting the aforesaid submissions, learned Government Advocate has stated that as the informant's wife Madhuri being

the neighbour always used to intervene in the altercations which took place between convict/appellant Sarvan and his wife Santoshi (deceased) on account of illicit relationship of convict/appellant Sarvan with his *bhabhi* (sister-in-law), convict/appellant Sarvan remained annoyed with the informant's wife. Further, the wife of convict/appellant, Santoshi, always had quarrel with convict/ appellant Sarvan on the issue of his illicit relationship with his *bhabhi* (sister-in-law), hence convict/appellant Sarvan had committed the murder of his wife and children on account of illicit relationship with his *bhabhi* (sister-in-law).

45. In Bipin Kumar Mondal Vs. State of West Bengal : (2010) 12

SCC 91], the Apex Court has held that :-

“18. In fact, motive is a thing which is primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited him to commit a particular crime. In **Shivji Genu Mohite Vs. State of Maharashtra**, AIR 1973 SC 55, this Court held that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye-witnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case

and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy.

19. It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance. (Vide **Hari Shankar Vs. State of U.P.**, (1996) 9 SCC 40; **Bikau Pandey & Ors. Vs. State of Bihar**, (2003) 12 SCC 616; and **Abu Thakir & Ors. Vs. State of Tamil Nadu**, (2010) 5 SCC 91).”

- 46.** In the present case, P.W.1, P.W.2 and P.W.3, in their statements recorded before the trial Court, establish the facts that on account of illicit relationship of convict/appellant Sarvan with his bhabhi (sister-in-law), the convict/appellant Sarvan had murdered his wife and three minor children and when Madhuri (informant’s wife) being the neighbour tried to intervene, convict/appellant Sarvan became annoyed with informant’s wife Madhuri and also murdered her and when Rajendra tried to save his mother (Madhuri), convict/appellant Sarvan had also assaulted Rajendra with ‘axe’ and during treatment, Rajendra (informant’s son) also died. From the side of the

convicts/appellants, three witnesses, D.W.1, D.W.2 and D.W.3 have been produced and all the defense witnesses have stated different motive on different occasions in order to substantiate their claim that informant Kolai and his family members had committed the murder of wife of convict/ appellant Sarvan and his three children and convict/appellant Sarvan, in retaliation, had murdered informant's wife and his son. The convict/appellant Sarvan, in his statement recorded under Section 313 Cr.P.C., had admitted the fact that he had illicit relationship with his *bhabhi* (sister-in-law) and his wife Santoshi (deceased) always confronted with him regarding his illicit relationship with his *bhabhi* and informant's wife Madhuri always used to intervene in their confrontation, upon which convict/appellant remained annoyed with informant's wife. Thus, the Trial Court has rightly come to the conclusion that the convict/appellant Sarvan had a strong motive and had the opportunity of committing the act. If the convict/appellant Sarvan is to be excluded, there should have been a reasonable possibility of anyone else being the real culprit under the facts and circumstances of the case, as such the chain of evidence can be considered to be complete as to show that in all probabilities the crime has been committed by the convict/appellant Sarvan.

E.3. PROSECUTION WITNESSES

47. It appears from the evidence on record, more particularly the evidence of the informant P.W.1-Kolai that the house of convict/appellant Sarvan was opposite to his house. P.W.1, in his deposition, had deposed that a rumour was spread in the village that convict/appellant Sarvan had an illicit relationship with his *bhabhi* (sister-in-law), which was objected by Smt. Santoshi (deceased-the wife of convict/appellant). On this issue, sometimes scuffle and verbal fight took place between them and Smt. Madhuri (deceased, wife of the informant P.W.1) being the neighbour always used to intervene, upon which convict/appellant used to remain annoyed with Smt. Madhuri (deceased). P.W.1, in his deposition, thereafter, has talked about the fight that ensued at 06:30 a.m. on 25.04.2009 between convict/appellant Sarvan and his wife Smt. Santoshi (deceased) on the issue of illicit relationship between convict/appellant Sarvan and his *bhabhi* (sister-in-law). After that, an alarm 'save-save' came out from the house of convict/appellant Sarvan, when he (P.W.1-Kolai) was standing in front of the house of Rajaram which was adjacent to the house of convict/appellant Sarvan. At the same time, wife of P.W.1, Smt. Madhuri (deceased), on hearing the alarm 'save-save', also came out from her house for rescue, the convict/appellant Sarvan armed with blood stained 'axe' came out from his house and told the wife of the informant (P.W.1), Madhuri that '*after cutting his wife and children, he has put them on the line, you*

often run to save, you will also be put in the line'. After saying this, convict/appellant Sarvan assaulted the wife of P.W.1 (Smt. Madhuri) with 'axe', as a consequence of which, the wife of P.W.1 (Smt. Madhuri) fell down on *kharanja* and succumbed to her injuries. P.W.1 had also deposed that Rajendra (son of the informant and deceased Madhuri) and P.W.2-Sangeeta (daughter of the informant and deceased Madhuri), who were standing at their door, ran to save their mother Madhuri (deceased) but they were also assaulted by the convict/appellant Sarvan with 'axe'. P.W.1 had also deposed that when Sarvan was assaulting his wife Madhuri, Suman, sister-in-law of the convict/appellant Sarvan, was standing at his door and instigated the convict/appellant Sarvan to kill Madhuri as she always intervened. After the assault was over, P.W.1 and other villagers tried to catch convict/appellant Sarvan but he fled away with blood stained 'axe' and behind him, Suman also fled away. Thereafter, P.W.1 along with his daughter Sangeeta (injured) went to the police station and lodged the report.

- 48.** P.W.2-Sangeeta, injured eye-witness, had supported the deposition of the informant P.W.1 and had deposed that on the date of the incident i.e. on 25.04.2009 at about 06:00 a.m., a quarrel took place between Sarvan (convict/appellant) and his wife (deceased-Santoshi) and after that a noise 'save-save' came out from their house. At that time, her father, informant P.W.1-Kolai, was standing at the door of Rajaram. On listening

the noise 'save-save', her mother, Madhuri (deceased) came out from her house. At that moment, she (P.W.2) and her brother Rajendra (deceased) were standing at the door. After sometime, Sarvan (convict/appellant) armed with blood stained 'axe' came out from his house and told her mother Madhuri that '*you Srimati protected a lot, now you will also be killed*'. On saying this, Sarvan (convict/appellant) had assaulted her mother with 'axe', as a consequence of which, her mother Madhuri fell down and succumbed to her injuries. P.W.2 had also stated that she and her brother Rajendra (deceased) also tried to save their mother but Sarvan (convict/appellant) had firstly assaulted her brother Rajendra with 'axe', as a consequence of which, he fell down and after that Sarvan had also assaulted on her head with 'axe'. She also deposed that when the convict/appellant Sarvan came out from his house with blood stained 'axe', his sister-in-law Suman also came out behind him and stood at the door of convict/appellant Sarvan and instigated convict/ appellant Sarvan to kill Smt. Madhuri as she always used to intervene. She further deposed that her father Kolai (P.W.1) tried to save her mother Madhuri (deceased) and also tried to catch convict/appellant Sarvan but convict/appellant fled away with blood stained 'axe' and behind him, his sister-in-law Suman also fled away. Thereafter, she along with his father P.W.1 went to the police station, where her father after getting the scribed

report, lodged it at police station Mohanlalganj, district Lucknow.

- 49.** P.W.3-Ram Naresh, who is the son-in-law of the deceased Madhuri and informant Kolai (P.W.1), had also supported the testimonies of the informant P.W.1-Kolai and injured P.W.2-Sangeeta and had deposed that before one day of the incident, he came to his in-law's house (the house of informant Kolai). On the date of the incident i.e. on 25.04.2009 at about 06:30 a.m., when he was talking with Sangeeta (injured) while standing at the door of his in-law's house, a noise 'save-save' came out from the house of convict/appellant Sarvan and on listening this noise, his mother-in-law Madhuri (deceased) came out from her house. At that moment, Sarvan (convict/appellant) armed with blood stained 'axe' came out from his house and told her mother-in-law (deceased Madhuri) that '*he had put aside his wife and children, he would also put aside three of them*'. On saying this, Sarvan (convict/appellant) assaulted her mother-in-law with 'axe', as a consequence of which, her mother-in-law fell down on *kharanja* and died. He further stated that his brother-in-law Rajendra and Sangeeta (P.W.2) tried to save his mother-in-law but they were also assaulted by the convict/appellant Sarvan with 'axe'. At that time, sister-in-law of the convict/appellant Sarvan (Suman), while standing at the door of convict/appellant, was instigating him to kill them. He further stated that on account of fear, he did not try to save

his mother-in-law (Madhuri), brother-in-law (Rajendra) and Sangeeta but he only raised hue and cry.

- 50.** From the aforesaid evidences of P.W.1, P.W.2 and P.W.3, it transpires that nothing improbable in their examination-in-chief is found more particularly considering a very scant and deficient cross-examination. This Court takes notice of the fact that except a minor contradiction in the form of an omission, nothing substantial could be elicited from the cross-examination of P.W.1, P.W.2 and P.W.3 so as to render their entire evidence doubtful.

E.4. DEFENSE WITNESSES

- 51.** The presence of the convicts/appellants at the scene of occurrence has not been disputed by the learned Counsel for the appellants nor can it be doubted in any manner. Her argument, however, is that convict/appellant Sarvan can be pinpointed during the commission of murder of his wife Smt. Santoshi and their three children, Ramroop, Ravi and Sumiran, in as much as, at that time, convict/appellant Sarvan went to purchase salt and after returning back from there, he saw his wife and three children lying dead and in counterblast, convict/appellant Sarvan came out from his house and assaulted the wife of the informant Kolai (Madhuri), his son Rajendra and his daughter Sangeeta. Her contention is that any action on the part of the convict/appellant Sarvan, therefore, was only in reaction and he

cannot be convicted of the offence of committing homicidal death of his wife Santoshi and three children, Ramroop, Ravi and Sumiran.

- 52.** To appreciate the said argument, this Court has to assess the probabilities of the defence version sought to be established by production of three defence witnesses (DW-1, DW-2 and DW-3). Therefore, this Court would also be required to examine the prosecution evidence to ascertain as to whether the probabilities of the defence version would make the prosecution story doubtful.
- 53.** It transpires from the evidence of P.W.2-Sangeeta that a suggestion was put to her from the side of the convicts/appellants that informant Kolai (P.W.1) had also entered into the house of the convict/appellant Sarvan, whereas at the same time it transpires from the cross-examination of P.W.1-Kolai that a suggestion was put to him from the side of the convicts/appellants that Kolai (P.W.1) and Rajaram were not present at the place of the occurrence. This shows that from the side of the convicts/appellants, contradictory stand was taken with regard to the presence of the informant Kolai (P.W.1) at the place of the occurrence as on one hand convicts/appellants took stand that informant and his family members entered into the house of convict/appellant and killed the wife of convict/appellant and his children and on the other hand, stand was

taken from the side of the convicts/appellants that informant Kolai and Rajaram were not present at the place of the occurrence. Therefore, it is not established from the aforesaid stand of the convicts/appellants that informant and his family members entered into the house of convict/appellant Sarvan and killed the wife of convict/appellant Sarvan and his children.

- 54.** Learned Counsel for the convicts/appellants has also contended that there was dispute between convict/appellant Sarvan and informant Kolai with regard to flow of drainage water and on account of this, the informant Kolai (P.W.1) and his family members entered the house of the convict/appellant Sarvan and killed his wife and children when convict/appellant Sarvan had gone to buy salt. In our view, this contention of the learned Counsel for the convict/appellant has no substance looking to the facts that at the time of the incident, deceased Rajendra, who was the son of informant Kolai (P.W.1), was aged about 10 years; injured Sangeeta was aged about 16 years; the presence of Nanha was also shown at the place of the occurrence, therefore, it is quite probable that if there was any dispute of flow of drainage water, then, elder members of the informant's family would involve to pacify the issue or do anything in this regard, but under the given facts and circumstances, it is quite unnatural and unbelievable that all the family members including Rajendra aged about 10 years and Sangeeta aged about 16 years went into the house of the convict/appellant

Sarvan on the date of the incident when convict/appellant had allegedly went to buy salt. Moreso, there is no evidence produced from the side of convict/appellant that on the date and time of the incident, convict/appellant Sarvan went to buy salt.

55. In the statement of the convict/appellant Sarvan recorded under Section 313 Cr.P.C., convict/appellant Sarvan had admitted the facts that on the date, time and place, informant Kolai (P.W.1) was standing at the door of Rajaram; a noise of 'save-save' was coming from his house; at that time, he came out from his house with 'axe' and told Madhuri (informant's wife) that '*he had put his wife and children on the line and you (Madhuri) often run to save, you (Madhuri) will also be put in the line*'; on saying this, he had assaulted informant's wife with 'axe'; and immediately thereafter informant's wife Madhuri fell down on *kharanja* and died. Convict/appellant Sarvan had also admitted the testimonies of P.W.2-Injured Sangeeta. Therefore, it transpires from the whole statement of convict/appellant Sarvan recorded under Section 313 Cr.P.C. that he had supported the case of the prosecution.

56. From the side of convicts/appellants, three witnesses, namely, D.W.1-Pawan Kumar, D.W.2-Banshi Lal and D.W.3-Kanhaiya Lal were examined. D.W.1-Pawan Kumar is the real brother of the convict/appellant Sarvan. His evidence shows that on hue and cry of his brother Sarvan that informant Kolai, after killing

his wife and children, fled away, he went to the house of convict/appellant Sarvan. This itself shows that D.W.1-Pawan Kumar is not an eye-witness as he reached at the place of occurrence after the incident. D.W.1-Pawan Kumar, in his examination-in-chief, did not depose anything regarding the dispute of flow of drainage water between his brother Sarvan (convict/appellant) and informant Kolai (P.W.1) but he had stated a new story that informant Kolai had captured one bigha of land and the informant Kolai had attacked upon his father, upon which his father died and a case in this regard is going on. It transpires that there is no evidence on record, which establishes the aforesaid facts of D.W.1. Later on, D.W.1 in his deposition had stated that rumour was spread in the village that informant Kolai had killed the wife of Sarvan and his children, which establishes the fact that D.W.1 has stated before the Court on the basis of the rumour, therefore, his statement cannot be reliable and it appears that the facts of capturing one bigha land and the killing of his father by the informant Kolai, is imaginary and cannot be believed.

- 57.** D.W.2-Banshi Lal was produced from the side of convict/appellant Sarvan, claiming to be an eye-witness of the incident but it transpires from his evidence that D.W.2 is not an eye-witness as D.W.2 in his deposition has stated in clear terms that on the date of the incident, he had gone for work and after 2-2½ hours of the incident, when he reached at the place of the

incident, he saw that the police took out the deadbodies of the deceased and informant's wife died. D.W.2 had also stated that the police was informed by Chaukidar and villagers about the incident through phone, whereas it transpires from the statement D.W.1-Pawan Kumar, who is the real brother of the convict/appellant Sarvan that on his telephonic call, the police reached at the place of occurrence. This contradictory statement itself shows that D.W.2 had no actual knowledge about the incident. Moreover, D.W.2 had not stated about the fact that there was any dispute between Sarvan (convict/appellant) and informant Kolai regarding the flow of drain water. Thus, the statement of D.W.2 is also not trustworthy.

- 58.** D.W.3-Kanhaiya Lal was produced from the side of convicts/appellants as eye-witness. His evidence shows that on the date of the incident, there was a '*katha*' in his house and he went to call the gardner, whose house was situated at a short distance from his house. D.W.3 had further deposed that he saw that two sons of Kolai (P.W.1-*Informant*) armed with '*axe*' jumped from the ruined house and ran away and blood was on their clothes. This version of D.W.3 is belied from his own cross-examination made before the trial Court where he himself had stated that he went from his house to call the gardner at 07:00 p.m. and when he came out of his house, incident had already occurred. Thus, it is clear that D.W.3 is not an eye-witness. Furthermore, D.W.3 had stated that even after the

incident, 'katha' had happened in his house. Hence, the evidence of D.W.3 is also not believable.

E.5. INJURED WITNESS

59. Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain, protect the real culprit. We need not discuss more elaborately the weightage that should be attached by the Court to the testimony of an injured witness. In fact, this aspect of criminal jurisprudence is no more *res integra*, as has been consistently stated by the Apex Court in uniform language.

60. In **Abdul Sayeed v. State of Madhya Pradesh** :(2010) 10 SCC 259, the Apex Court has held as under :-

"28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.

"Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh v. State of Bihar*, *Malkhan Singh v. State of U.P.*, *Machhi Singh v. State of Punjab*, *Appabhai v. State of Gujarat*, *Bonkya v. State of Maharashtra*, *Bhag Singh, Mohar v. State of U.P.* (SCC p. 606b-c), *Dinesh Kumar v. State*

of Rajasthan, Vishnu v. State of Rajasthan, Annareddy Sambasiva Reddy v. State of A.P. and Balraje v. State of Maharashtra.]

29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

"28. Darshan Singh (PW 4) was an injured witness.

He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy.

The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below."

The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and

because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

- 61.** In the instant case, P.W.2-Sangeeta is an injured witness. She had fully supported the prosecution case and stood firm as a rock of Gibraltar. She had stated that on the date and time of the incident, a noise 'save-save' came from inside the house of convict/appellant Sarvan. On listening this noise, her mother Madhuri came out from her house and behind her, she and her brother Rajendra came and were standing at their door. After sometime, Sarvan (convict/appellant) armed with blood stained 'axe' came out from his house and told her mother that '*you Srimati protected a lot, now you (Madhuri) will also be killed*' and by saying this, Sarvan swung 4-5 blows of 'axe' upon her mother, as a consequence of which, her mother fell down on '*kharanja*'. Thereafter, she and Rajendra (deceased) ran to save their mother Madhuri but Sarvan (convict/appellant) had also assaulted her brother Rajendra and thereafter her with 'axe', as a consequence of which, she sustained injuries. After that convict/appellant Sarvan fled away and behind him Suman also fled away from there. Immediately thereafter, she along with her father (P.W.1) went to the police station Mohanlalganj, where her father (P.W.1) lodged the report. After lodging the

report, she was sent for medical examination along with the Constable.

- 62.** From the evidence of P.W.2-Sangeeta, it is established that the presence of P.W.2-Sangeeta at the place of occurrence is natural and also injuries on her person were caused by the convict/appellant Saravan.

E.6. RECOVERY OF WEAPON OF ASSAULT 'AXE'

- 63.** It transpires from the recovery memo Ext. Ka. 39 that the weapon of assault 'axe' was recovered on the next day of the incident i.e. on 26.04.2009 on the pointing out of convicts/appellants Sarvan and Suman. At the time of recovery of weapon of assault, blood was found on it. In order to prove the recovery of weapon of assault, S.I. Shri Dharam Pal was examined as P.W.13, who, in his deposition, had proved the recovery of weapon of assault on the pointing out of convicts/appellants Sarvan and Suman from the straw and also proved the arrest of convict/appellant Suman on the same day i.e. 26.04.2009 from her house. P.W.13 had also proved the site-plan of the recovery of weapon of assault as Ext. Ka. 40. Thus, the prosecution has fully established the recovery of weapon 'axe' on the pointing out of convicts/appellants Sarvan and Suman.

E.7. INTERESTED AND PARTISAN WITNESSES

64. The contention of the learned Counsel for the convicts/ appellants is that P.W.1, P.W.2 and P.W.3 are interested and partisan witnesses as P.W.2 and P.W.3 are the daughter and son-in-law of the informant P.W.1, therefore, their testimonies cannot be believed.

65. In **Namdeo v. State of Maharashtra** : (2007) 14 SCC 150 : (2009) 1 SCC (Cri) 773] , the Apex Court after observing previous precedents has summarized the law in the following manner :-

"38. it is clear that a close relative cannot be characterised as an "interested" witness. He is a "natural" witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the "sole" testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one."

66. The Apex Court has reiterated the aforesaid principle in **Gulam Sarbar v. State of Bihar** : (2014) 3 SCC 401 as under :-

"19. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence

has a ring of truth, is cogent, credible and trustworthy or otherwise.

The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Even in probate cases, where the law requires the examination of at least one attesting witness, it has been held that production of more witnesses does not carry any weight.

Thus, conviction can even be based on the testimony of a sole eyewitness, if the same inspires confidence. (Vide *Vadivelu Thevar v. State of Madras* [AIR 1957 SC 614: 1957 Cri LJ 1000] , *Kunju v. State of T.N.* [(2008) 2 SCC 151: (2008) 1 SCC (Cri) 331] , *Bipin Kumar Mondal v. State of W.B.* [(2010) 12 SCC 91: (2011) 2 SCC (Cri) 150 : AIR 2010 SC 3638] , *Mahesh v. State of M.P.* [(2011) 9 SCC 626 : (2011) 3 SCC (Cri) 783], *Prithipal Singh v. State of Punjab* [(2012) 1 SCC 10 : (2012) 1 SCC (Cri) 1] and *Kishan Chand v. State of Haryana* [(2013) 2 SCC 502 : (2013) 2 SCC (Cri) 807: JT (2013) 1 SC 222].)"

- 67.** Keeping in mind the aforesaid propositions of law, it transpires from the record that there are three eye-witnesses examined by the prosecution i.e. P.W.1, P.W.2 and P.W.3 and they have not contradicted amongst themselves being the eye-witnesses. Merely because they are related witnesses, in the absence of any material to hold that they are interested, their testimonies cannot be rejected.

E.8. MEDICAL EVIDENCE

- 68.** So far as medical evidence adduced by prosecution in this case is concerned, four persons, namely, Ramroop, Smt. Santoshi, Ravi and Sumiran were done to death on 25.04.2009 in the house of convict/appellant Sarvan; one person, Smt. Madhuri was done to death on 25.04.2009 outside the house of convict/appellant Sarvan; two persons, namely, Rajendra and Sangeeta got injured on 25.04.2009; and Rajendra died during treatment at Trauma Centre, King George's Medical College, Lucknow on 03.05.2009 at 08:40 p.m.
- 69.** The post-mortems of deceased Ramroop, Smt. Santoshi and Ravi were conducted on 25.04.2009 at 08:30 p.m., 08:00 p.m. and 09:30 p.m., respectively, at T.B. Hospital, Thakurganj, Lucknow by P.W.6-Dr. G.P. Tiwari. In all postmortem reports, time of death of deceased persons were shown as 25.04.2009 at 06:30 a.m. Injuries found on deadbodies of deceased persons Ramroop, Smt. Santoshi and Ravi are incised and abraded wounds and P.W.6-Dr. G.P. Tiwari opined that deceased Ramroop, Smt. Santoshi and Ravi died due to shock and haemorrhage as a result of ante-mortem injuries. P.W.6 had also stated that all the ante-mortem injuries could be attributable by a sharp edged weapon.
- 70.** The postmortem report of deceased Ramroop aged about 6 years reveals that first injury is abraded contusion 6 x 5 cm on right side of face just below right eye; second injury is abrasion

3 x 1 cm on right side of forehead 1 cm above right eyebrow; and third injury was incised wound 5 x 3 cm muscle deep on the side of neck 3 cm below right ear. A perusal of post-mortem report of deceased Santoshi aged about 35 years, it reveals that abraded contusion 8 x 6 cm was found on her right side of face 1 cm below right eye; incised wound 8 x 3 cm muscle deep was found on her top of right shoulder; incised wound 3 x 1 cm muscle deep was found on front of neck 2 cm above top of sternum; incised wound 4 x 2 cm muscle deep was found on her front of neck 2 cm above injury no. 3; incised wound 7 x 3 cm muscle deep was found on her front of neck 2 cm above injury no.4; and incised wound 3 x 2 cm was found on top of left shoulder. The post-mortem report of Ravi aged about 1½ years shows that incised wound 3 x 1 cm muscle deep was found on back of neck 2 cm below occipital; incised wound 1 x 1 cm was found on mid of chest; and abraded contusion 6 x 4 cm was found on forehead 2 cm above root of nose. P.W.6-Dr. G.P. Tiwari found on the persons of deceased Ramroop, Smt. Santoshi and Ravi that margins were clear cut, sharp, well defined and on opening, echymosis was present underneath all the injuries; and soft tissues and large blood vessels larynx tracea were found cut.

- 71.** The post-mortem examination of deceased Sarvan aged about 4 years and Smt. Madhuri aged about 50 years were conducted on 25.04.2009 at 08:30 p.m. and 09:00 p.m., respectively, in T.B.

Hospital, Thakurganj, Lucknow by P.W.9-Dr. Rajesh Awasthi, who found one injury i.e. lacerated wound in the back of neck and trachea, larynx, vessels, oesophagus were lacerated, on the dead body of Sumiran, whereas on the dead-body of the deceased Madhuri, P.W.9 found five injuries i.e. (i) lacerated wound 6 x 3 cm on the frontal and occipital region on exploration underneath bone fracture, haematoma in brain, margins lacerated and haematoma present; (ii) lacerated right eye 6 x 2 cm into bone deep underneath orbit bone fracture and brain membranes lacerated; (iii) lacerated wound 7 x 3 cm right cheek bone underneath bone fracture; (iv) left ear lacerated; and (v) lacerated wound right wrist joint. P.W.9 had stated before the trial Court that injury no.1 caused to the deceased could be attributable by sharp edged weapon; injury no.1 could also be attributable by blunt object; injury no.2 could be attributable by any weapon, however, injury was lacerated; injuries no. 3, 4 and 5 could be attributable by blunt object. He further stated that injury caused to the deceased Sumiran could be attributable by sharp edged weapon.

- 72.** It is pertinent to mention that after the incident, deceased Rajendra was admitted to Trauma Centre, Lucknow, where he succumbed to injuries on 03.05.2009. The post-mortem of Rajendra was conducted on 04.05.2009 at 01:00 p.m. by Dr. U.K. Prasad (P.W.5), who found three ante-mortem injuries on his person. The first injury was contusion 8.0 cm x 5.0 cm on

forehead 2.0 cm above root of nose; second injury was contusion 10.0 cm x 8.0 cm on back of head over occipital region; and third injury was contusion 5.0 cm x 4.0 cm on right temporal region 2.0 cm above right ear. P.W.5 had also found that on opening, echymosis was present underneath the injuries; fracture of right temporal and right parietal bones were found; subdural haematoma was present all over the brain underneath the fracture brain meninges lacerated and extra dural haematoma present. As per the opinion of P.W.5, the deceased Rajendra died due to coma as a result of ante-mortem injuries.

- 73.** The injury of injured Sangeeta (P.W.2) was examined by P.W.4-Dr. S.K. Trivedi on 25.04.2009 at 2:20 p.m. at Community Health Centre, Mohanlalganj, Lucknow, who found incised wound 1.5 cm x 0.25 cm x skin deep left side of arm anterior aspect, 1.5 cm. above left elbow joint and clotted blood seen, on her person. P.W.4-Dr. S.K. Trivedi opined that injury is simple in nature and could be caused by hard and blunt object and it was 1/2 day old.
- 74.** If statements of P.W.4, P.W.5, P.W.6 and P.W.9 is compared in light of statement of other prosecution witnesses examined in the matter, it is clear that all deceased persons were done to death on 25.04.2009 at 06:30 a.m. The convict/appellant Sarvan used same weapon in committing murder of all deceased persons. It is also evident from record that injuries found on

body of deceased persons can be caused with the weapon "axe" said to have been recovered on the pointing out of convicts/appellants. Thus, the prosecution was able to prove the manner in which deceased were done to death and has connected the weapon "axe" used by convict/appellant Sarvan in committing the offence. Thus, finding recorded by Trial Court in the impugned judgment and order on point of medical evidence, in our considered opinion, is also in accordance with facts and evidence which needs no interference by this Court. It may also safely be held in this matter that medical evidence is not contrary to oral version of prosecution.

E.9. CONVICTION

75. From the discussion of the prosecution evidence as above, this Court finds that :-

- (i) The first information report is prompt having been lodged within one hour of the incident-in-question;
- (ii) PW-1 lodged the First Information Report by giving a written report, which was proved by him as 'Exhibit Ka-1'. The said report contains a graphic description of the convict/ appellant Sarvan with weapon in his hand and the manner in which the six deceased were murdered and one got injured as also the place of occurrence.
- (iii) PW-1, P.W.2 and P.W.3 stood firm as a rock of Gibraltar by supporting the case of the prosecution.

- (iv) There is no inconsistency in the oral testimony of PW-1 P.W.2 and P.W.3, the medical evidence and the testimony of the P.W.7, P.W.8, P.W.10, P.W.11, P.W.12, P.W.13 and C.W.1 and the reports such as inquest, site plan with regard to the injuries of the deceased and the place of occurrence.
- (v) The medical evidence fully corroborates with the evidence of eye witnesses P.W.1, P.W.2 and P.W.3 with regard to the ante-mortem injuries sustained by six deceased persons.
- (vi) The defence evidences i.e. D.W.1, D.W.2 and D.W.3 are not reliable.”

76. Having carefully appreciated all the arguments made by the learned Counsel for the convicts/appellants, learned Government Advocate, the prosecution evidence, defense evidence, medical evidence and other materials on record, this Court finds that the prosecution has proved its version beyond all reasonable doubts. The convicts/appellants, on the other hand, though took a plea that their act to assault informant's wife and his son was in retaliation but has utterly failed to discharge the initial burden laid on it to probalise its story or create dent or doubt on the prosecution story. The presence of convicts/appellants at the scene of occurrence is neither disputed nor can be doubted from any of the circumstances brought before the Court. It is proved by the prosecution that convict/appellant Sarvan in a pre-meditated manner armed with

'axe' caused death of six persons and got injured one person by inflicting fatal injuries in a manner that the deceased could not escape the attack. The prosecution has also proved the fact that it was convict/appellant Suman who, with an intention of saving the convict/appellant Sarvan from legal punishment, concealed the weapon of assault 'axe' and on the pointing out of both the convicts/appellants, Sarvan and Suman, weapon of assault 'axe' was recovered. Thus, their conviction for the offences as mentioned in paragraph-2 hereinabove are fully justified and the convicts/appellants Sarvan and Suman have been rightly convicted by the trial Court by means of the impugned order for the offences as indicated in paragraph-2 hereinabove. In this regard, no infirmity is, therefore, found in the decision of the trial court. The conviction of each of the convicts/appellants is hereby upheld.

E.10. SENTENCE

77. As far as sentence awarded to convicts/appellants is concerned, the Trial Court in its wisdom has imposed death punishment finding the present case in the category of "*rarest of rare*" cases. Six persons were done to death and one got injured. Convict/appellant Sarvan is the husband of deceased Smt. Santoshi aged about 35 years and father of Ramroop aged about 6 years, Ravi aged about 1½ years, Sumiran aged about 4 years and also neighbour of deceased Smt. Madhuri aged about 50

years, deceased Rajendra aged about 10 years and injured Sangeeta aged about 16 years.

78. Aggravating and mitigating circumstances in the present matter can be summarized as under :-

“Aggravating Circumstances :-

- (a)** Offence in the present case was committed by the convict/appellant Sarvan in an extremely brutal, grotesque, diabolical, revolting and dastardly manner so as to arouse intense and extreme indignation of society as has been evident from the F.I.R. as well as the evidences of P.W.1, P.W.2 and P.W.3;
- (b)** Offence was also committed by the convict/appellant Sarvan in preordained manner demonstrating exceptional depravity and extreme brutality;
- (c)** Extreme misery inflicted by convict/appellant Sarvan upon his own wife, three minor children and his one neighbour, who came to save his wife and children;
- (d)** Helpless children were done to death;
- (e)** Brutality and premeditated plan of convict/appellant Sarvan also finds support from his act as he ensured the death of all deceased by assaulting them on the vital part of deceased persons;

- (f) The act of convict/appellant Sarvan is shocking not only to the judicial conscience but also to the Society as he has eliminated his wife and three children only on account of illicit relationship with his *bhabhi* (*sister-in-law*) which had always been objected by his wife and also eliminated his neighbour Madhuri (informant's wife) on account of the fact that she always used to intervene between them;
- (g) Act and conduct of convict/appellant Sarvan itself shows that there is no chance of reformation and he is menace to the Society; and
- (h) It is a cold-blooded murder of six persons without provocation.

79. On the other hand, Mitigating Circumstances, as emerged, are (a) age of the convict/appellant Sarvan was 48 years at the time of filing Criminal Appeal No. 1552 of 2017 and now he appears to be aged about approximately 52 years; (b) he belongs to village background and offence was committed because the convict/appellant Sarvan had illicit relationship with his *bhabhi*; and (c) chance for reformation and rehabilitation.

80. Now, the question before this Court is whether death penalty in the present case is justified. Before looking to the facts of present case on the question of sentence, it would be appropriate to advert to judicial authorities on the matter

throwing light and laying down principles for imposing penalty, in a case, particularly death penalty.

- 81.** In the case of **Bachan Singh v. State of Punjab** : (1980) 2 SCC 684, the Apex Court, in para-164, observed that normal rule is that for the offence of murder, accused shall be punished with the sentence of life imprisonment. Court can depart from that rule and impose sentence of death only if there are special reasons for doing so. Such reasons must be recorded in writing before imposing death sentence. While considering question of sentence to be imposed for the offence of murder under Section 302 IPC, Court must have regard to every relevant circumstance relating to crime as well as criminal. If Court finds that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, Court may impose death sentence.
- 82.** Relying on the authority in **Furman v. Georgia**, (1972) SCC On-Line US SC 171, the Apex Court noted the suggestion given by learned counsel about aggravating and mitigating circumstances in para 202 of the judgement in **Bachan Singh (supra)** which reads as under :-

"202. ... 'Aggravating circumstances: A court may, however, in the following cases impose the penalty of death in its discretion:

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

(b) if the murder involves exceptional depravity; or

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

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

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

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code."

83. Thereafter in para 203, the Apex Court observed that broadly there can be no objection to the acceptance of these indicators noted above but Court would not fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other. Thereafter in para 206 of judgment in **Bachan Singh (supra)**, the Apex Court also suggested certain mitigating circumstances as under :-

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

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

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

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

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

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

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

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

84. Again in para 207 in **Bachan Singh (supra)**, the Apex Court further said that mitigating circumstances referred in para 206 are relevant and must be given great weight in determination of sentence. Thereafter referring to the words caution and care, in **Bachan Singh (supra)**, the Apex Court observed that it is imperative to voice the concern that Courts, aided by the broad illustrative guidelines, will discharge onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be

done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.

85. In **Machhi Singh v. State of Punjab**, (1983) 3 SCC 470, stress was laid on certain aspects namely, manner of commission of murder, motive thereof, antisocial or socially abhorrent nature of the crime, magnitude of crime and personality of victim of murder. Court culled out certain propositions emerging from **Bachan Singh (supra)**, in para 38 and said as under :-

"The following propositions emerge from Bachan Singh case:(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

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

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

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

86. The Apex Court in **Machhi Singh (supra)** further observed that following questions must be answered in order to apply the guidelines :-

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

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

(Emphasis added)

87. In Haresh Mohandas Rajput v. State of Maharashtra :

(2011) 12 SCC 56, after referring to **Bachan Singh (supra)** and **Machhi Singh (supra)**, the Apex Court expanded the "*rarest of rare*" formulation beyond the aggravating factors listed in **Bachan Singh (supra)** to cases where the "collective conscience" of community is so shocked that it will expect the holders of judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining the death penalty, such a penalty can be inflicted. Court, however, underlined that full weightage must be accorded to the mitigating circumstances of the case and a just balance had to be struck between the aggravating and the mitigating circumstances.

88. In para 20 of the judgment in Haresh Mohandas Rajput

(supra), the Apex Court observed that the rarest of the rare case comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of society. The crime may be heinous or brutal but may not be in the category of "*the rarest of the rare case*". There must be no reason to believe that

the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. The accused may be a menace to the society and would continue to be so, threatening its peaceful and harmonious coexistence. The manner in which the crime is committed must be such that it may result in intense and extreme indignation of the community and shock the collective conscience of the society. Where an accused does not act on any spur of the momentary provocation and indulges himself in a deliberately planned crime and meticulously executes it, the death sentence may be the most appropriate punishment for such a ghastly crime. The death sentence may be warranted where victims are innocent children and helpless women. Thus, in case the crime is committed in a most cruel and inhuman manner which is an extremely brutal, grotesque, diabolical, revolting and dastardly manner, where his act affects the entire moral fibre of the society, death sentence should be awarded.

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

"76. The law enunciated by this Court in its recent judgements, as already noticed, adds and elaborates the principles that were stated in the case of Bachan Singh (supra) and thereafter, in the case of Machhi Singh (supra). The aforesaid judgments, primarily dissect these principles into two different compartments - one being the "aggravating circumstances" while the other being the "mitigating circumstances". The Court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the Court. It will be appropriate for the Court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the Court as contemplated under Section 354 (3) of Cr.P.C.

Aggravating Circumstances:

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

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

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

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

(5) Hired killings.

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

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

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

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

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

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

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

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

Mitigating Circumstances:

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

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

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

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

(5) The circumstances which, in normal course of

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

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

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

90. In the case of **Dharam Deo Yadav vs. State of UP** reported in

(2014) 5 SCC 509, the Hon'ble Supreme Court has held thus:-

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

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

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

91. In **Kalu Khan v. State of Rajasthan** reported in (2015) 16

SCC 492, the Hon'ble Supreme Court has held that:-

"30. In *Mahesh Dhanaji Shinde v. State of Maharashtra*, the conviction of the appellant-accused was upheld keeping in view that the circumstantial evidence pointed only in the direction of their guilt given that the *modus operandi* of the crime, homicidal death, identity of 9 of 10 victims, last seen theory and other incriminating circumstances were proved.

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

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

- 92.** Applying the exposition of law as discussed above, in the facts of the present case, we have examined the available ‘aggravating’ and ‘mitigating’ circumstances in the case in hand.
- 93.** The convict/appellant was 48 years of age at the time of filing Criminal Appeal No. 1552 of 2017 and now he is aged about 52 years.
- 94.** Coming to the aggravating circumstances, we also find that convict/appellant Sarvan had committed murder of not only his wife but also his three minor children and two of his neighbours. Postmortem reports disclose brutal, grotesque, diabolical murder, which clearly reflects the mindset of convict/appellant Sarvan.
- 95.** The present incident was committed when convict/appellant Sarvan had illicit relationship with his *bhabhi* (*sister-in-law*). The manner in which offence was committed and also the magnitude of crime, in our view, places the present matter in the category of anti-social or socially abhorrent nature of crime. We concur with the finding of Trial Court that six persons were murdered by convict/appellant Sarvan in most brutal, grotesque, diabolical and dastardly manner arousing indignation and abhorrence of society which calls for an exemplary punishment. Three minor children including their mother and two of his

neighbours have been murdered by convict/appellant Sarvan when they were helpless and nothing is on record to show that they aggravated the situation so as to arise sudden and grave passion on the part of convict/appellant Sarvan to commit such dastardly crime. Convict/ appellant Sarvan has also not shown any remorse or repentance at any point of time, inasmuch as, he attempted to hide the weapon in the house of his bhabhi (co-appellant Suman). In the statement recorded under Section 313 Cr.P.C. also, we find no remorse on the part of convict/appellant Sarvan rather he admitted his guilt that he had an illicit relationship with his *bhabhi* (sister-in-law) and his wife objected to this, on account of which, scuffle often took place between them and his neighbour Madhuri used to intervene between them, upon which he remained unahappy with her. The above conduct, attitude and manner in which murder of four persons of his family and two persons of his neighbours was committed by convict/appellant Sarvan shows that convict/appellant Sarvan is a menace to the Society and if he is not awarded death penalty, others members of the Society may not be safe. He slayed six lives to quench his thirst. The entire incident is extremely revolting and shocks the collective conscience of the community. Murders were committed in gruesome, merciless and brutal manner.

- 96.** Balancing mitigating and aggravating factors and looking to the fact that convict/appellant Sarvan had committed crime in a

really shocking manner showing depravity of mind and learned Government Advocate has also stated that there is no report regarding any chance of rehabilitation received from the Jail Authorities, in our view, the aggravating circumstances outweigh the mitigating circumstances by all canons of logic and punishment of life imprisonment would neither serve the ends of justice nor will be an appropriate punishment. Here is a case which can be said to be in the category of "rarest of rare" case and justify award of death punishment to convict/appellant Sarvan. We are also clearly of the view that convict/appellant Sarvan is a menace to the society and there is no chance of his rehabilitation or reformation and no leniency in imposing punishment is called for.

- 97.** In the circumstances, we are of the view that death punishment imposed upon convict/appellant Sarvan for the offence under Sections 302, 323 and 201 IPC is liable to be confirmed. Capital Case No. 03 of 2017 is liable to be allowed and accepted to the extent of confirmation of death penalty.

E. 11. CONCLUSION

- 98.** In the result :-

(A) Capital Case No. 3 of 2017

The reference made by the trial Court under Section 366 (1) Cr.P.C. for confirmation of death punishment awarded to

convict/appellant, **Sarvan**, for the offence under Section 302 I.P.C. is hereby accepted and death punishment awarded to convict/appellant **Sarvan** in the present case is hereby **confirmed**.

(B) Criminal Appeal No. 1540 of 2017

This criminal appeal filed by convict/appellant **Suman** is **dismissed**.

It transpires that the convict/appellant **Suman** was on bail granted by a Co-ordinate Bench of this Court vide order dated 20.12.2017.

The convict/appellant **Suman** shall be taken into custody forthwith and sent to jail. She shall serve out the sentence as ordered by the trial Court vide impugned order dated 29.08.2017.

(C) Criminal Appeal No. 1552 of 2017

This Criminal Appeal preferred by convict/appellant **Sarvan** is **dismissed**.

Convict/appellant **Sarvan** is in jail. He shall serve out the sentence as ordered by the trial Court vide impugned order dated 29.08.2017.

- 99.** However, as provided under Section 415 Cr.P.C. execution of sentence of death shall stand postponed until the period allowed

for preferring such appeal has expired and if an appeal is preferred within that period, until such appeal is disposed of. It is also clarified that death punishment shall only be executed in accordance with law complying with all guidelines laid down by Hon'ble Supreme Court time and again.

100. Let a copy of this judgment along with Trial Court record be sent to Court concerned for compliance and two copies of judgment as well as printed paper book be sent to State Government, as required under Chapter XVIII Rule 45 of Allahabad High Court Rules, 1952, forthwith.

101. A copy of the judgment be also sent to convicts/appellants **Sarvan** and **Suman** through Jail Superintendent concerned for intimation forthwith. Compliance report be also sent to this Court.

(Mrs. Saroj Yadav, J.) (Ramesh Sinha, J.)

Order Date :- 06th September, 2022

Ajit/-