
(1993) 05 AHC CK 0038

Allahabad High Court

Case No: Capital Case No. 64 of 1992

Balraj

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: May 14, 1993

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 307

Citation: (1993) CriLJ 3201

Hon'ble Judges: Surya Prasad, J; Palok Basu, J

Bench: Division Bench

Advocate: Ram Chandra Deepak, A. Ram and R.K. Srivastava, for the Appellant; Govt. Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Surya Prasad, J.

This criminal appeal has been filed by the appellant-accused Balraj, against the judgment and order dated 19th August, 1991 passed by the learned Special Judge (Additional District and Sessions Judge), Nainital, convicting him u/s 302, IPC and awarding him death sentence thereunder and further convicting him u/s 307, IPC and sentencing him to 7 years rigorous imprisonment thereunder, in Session Trial No. 202 of 1983 (State v. Balraj).

2. The prosecution case briefly stated is as follows: Smt. Laxmi Devi (P.W. 2) along with her son Buddh Jyoti and daughters, named, Km. Renu, Km. Chandrawati and Km. Deep Mala was present at her house on 13th February, 1988. In the evening at about 7-30 p.m. her husband's brother (Devar), the accused-appellant Balraj came to her with a Garasa in his hand and assaulted her with the Garasa and expressed that you wanted to kill him, he will finish them all that day and thereafter he started assaulting her son Buddh Jyoti, aged about 13 months, Km. Renu, aged about 4 years, Km. Chandrawati, aged about 11 years and Km. Deep Mala, aged about 8

years. He also assaulted her (Smt. Laxmi Devi, P.W. 2). Consequently she became unconscious, having received Gandasa injuries. She was taken to Sitarganj hospital from where she was taken to Haldwani hospital. She was ultimately sent to Lucknow hospital for treatment. Her son Buddh Jyoti, daughter Km. Renu, husband Tej Pal and Bhante Baba died. It is further alleged that Smt. Laxmi Devi (P.W. 2) had identified and recognised the accused-appellant in the electric light. It is further alleged that on 13th February, 1983 at 7-30 p.m. a telephonic message was received at the police station Sitarganj to the effect that an injured man was lying near the Post Office Sitarganj and another injured man was lying almost dead near a culvert of a canal. The then Inspector Ram Autar Singh (P.W. 7) enquired the name and address of the person conveying the said message, but the telephone wire got disrupted in the meantime. He however made a note to that effect in the general diary, an extract of which is Ext. Ka-5. Thereafter he (Ram Autar Singh P.W. 7) along with other police officials visited the place by a Jeep. There was a great crowd of people there. He found an injured man lying there and on enquiry he came to know that the name of that injured man was Tejpai. He found another injured man lying near the said culvert and came to know on enquiry that his name was Bhante Baba. He also learnt that Bhante Baba was living at the house of Tejpai. Ram Autar Singh (P.W. 7) also visited the nearby house of Tejpai. The doors of that house were closed. He made calls with a view to get the door opened, but to no effect. Then he opened the door and went inside the house along with public witnesses, named, Ramrakha Singh, Ram Asrey, Bharadwaj and Ram Pal Singh and found Km. Deep Mala and Km. Chandrawati lying unconscious near the Chhappar of Tejpai. Blood was oozing out profusely. Smt. Laxmi Devi alias Lachhoo (P.W. 2) and an year old boy Buddh Jyoti were lying injured on a cot and Km. Renu was lying injured on another cot. These two cots were quite close to each other. Since all the injured were in the state of unconsciousness and their injuries were serious in nature, they were sent to the hospital. The then Sub-Inspector R.S. Rawat accompanied them to the hospital. R.S. Rawat returned after some time and informed that Tejpai and Buddh Jyoti died while reaching Sitarganj Hospital. Ram Autar Singh (P.W. 7) got a report Ext. Ka-6 written by K.R. Sagar, on his dictation about this episode. On that basis a Chik Report Ext. Ka-7 was prepared and a case was registered in the general diary, an extract of which is Ext. Ka-9. The investigation into the case was entrusted to the then Sub-Inspector K.R. Sagar. He took into his custody the blood stained earth and plain earth from the place where Tejpai was lying and prepared a Fard Ext. Ka-2 in respect of the same. It is further alleged that on 19th February, 1988 an information was received through an informer in village Sishiya to the effect that the accused Balraj could be available at the residence of his relatives in Bareilly, Sambhal or Moradabad. On that information Ram Autar Singh (P.W. 7) along with Sub-Inspector K.R. Sagar and certain other police officials went to the Police station Baradari by a Jeep from where he took with him Inspector Surendra Singh, Sub-Inspector Vinod Kumar and searched for the accused appellant Balraj. In the meantime it came to be known to him through an informer in Mohalla Katra Chand Khan that the accused

Balraj was going near Baljatti School. Consequently he reached near the said School along with the informer and arrested the accused-appellant Balraj there. He told him (Ram Autar Singh P.W. 7) that he would get the Garasa recovered. A Fard ext. Ka-9 to that effect was prepared. The police party along with the accused Balraj came back to Sitarganj by a Jeep and procured the public witnesses Shaukat AH and Sohan from Amaria Chauraha, Sitarganj. The accused gave indication to the driver to start the Jeep. Consequently he started the Jeep and ultimately reached a canal near Nakatpura. Getting down from the Jeep, the accused proceeded ahead of all others and gave the Garasa material Ext. Ka-4 taking it out from the bushes and shrubs and told that it was used in the commission of the alleged offence. A Fard Ext. Ka-1 to that effect was prepared.

3. Dr. N.S. Katyal (P.W. 1) conducted the post-mortem examination on the dead body of Tejpal on 14th February, 1988 at 12-15 p.m. and the following ante mortem injuries thereon:

(1) Incised wound 8 cm x 1.5 cm x bone deep on forehead towards top of head. Ventrations arms. Margins are sharp. 6 cm above just of nose.

(2) Incised wound 6 cm x 1.5 cm x bone deep on top of the head towards Lt. parietal side of head 5 cm above front of nose and 3 cm away from Lt. ear. Margins are sharp Traumatic to direction.

(3) Incised wound 8 cm x 1.5 cm x bone deep on Lt. side of head 6 cm above Lt ear. Transverse in direction margin are sharp 1.5 cm below injury No. 2.

(4) Incised wound 8 cm x 1.5 cm x bone deep Rt. side of head 7 cm above Rt. ear only oblique in direction. Margin sharp.

(5) Incised wound 9 cm x 1.5 cm x bone deep on mastoid region side of head. Extending up to Rt. ear. 8 cm below injury No. 4 Margins are sharp transverse in direction.

(6) Incised wound 6 cm x 1.5 cm x bone deep on back of Head occipital region. 8 cm away from injury No. 5.

4. According to the opinion of Dr. N. S. Katyal (P.W. 1) there was possibility of the aforesaid injuries having been caused to the deceased with some sharp aged weapon like Garase half a day before. As a result of the internal examination the skull bone under injuries Nos. 1, 2 and 4 was fractured. The death was caused due to shock and haemorrhage as a result of the aforesaid ante- mortem injuries. Dr. N. S. Katyal (P.W. 1) prepared the post mortem report Ext. Ka-1 simultaneously with the performance of the post mortem examination on the dead body of Tejpal.

5. On the said date at about 1.40 p.m. he (Dr. N.S. Katyal) conducted the post-mortem examination on the dead body of Km. Renu and found the following ante mortem injuries thereon:

- (1) Stitched wound 5 cm on Rt. side of head 5 cm above Rt. ear.
- (2) Stitched wound 4 cm over Rt. side of head 2 cm below injury No. 2. Transverse in direction.
- (3) Stitched wound 7 cm on Rt. side of face 0.5 cm below Rt. eyebrow oblique in direction.
- (4) Stitched wound 8 cm extending from Rt. cheek to Lt. eyebrow including injury No. 2. Oblique in direction.
- (5) Stitched wound 3 cm on Lt. side face extending up to Rt. upper lips.
- (6) Stitched wound 5 cm on Rt. side face 2 cm above Lt. side of chin.
- (7) Stitched wound of 7 cm over forehead 2.5 cm above root of nose.

6. According to the opinion of Dr. N.S. Katyal (P.W. 1) there was possibility of the death having occurred due to the injuries caused to her with a Garasa. Skull was fractured under injuries Nos. 1 and 2. He prepared the post-mortem report Ext. Ka-2 simultaneously with the performance of the post-mortem examination.

7. He (Dr. N. S. Katyal) conducted the post mortem examination on the dead body of Buddh Jyoti, same day at 1 p.m. and found the following ante mortem injuries thereon:

- (1) Incised wound 3 cm x 1.5 cm x Bone deep Rt. side of Head 6 cm above Rt. ear Margin are sharp oblique in direction.
- (2) Stitched wound 6 cm on nose level 2 cm above Rt. eye brow oblique in direction.
- (3) Stitched wound 6 cm on Rt. side face 2 cm above Rt. eye brow extended from Lt. side of upper lip. Oblique in direction.
- (4) Stitched wound 6 cm on left side of face 1 cm below Lt. eye brow.

8. The internal examination shows that skull was fractured under the injury No. 1. According to the opinion of the doctor, the above injuries could have been possibly caused with the Garasa, half a day before. The death occurred due to the injuries caused to the deceased. The post-mortem report is Ext. Ka-3.

9. On 16th February, 1988 at 11-30 a.m. Dr. Ashok Sharma (P.W. 6) conducted the post-mortem examination on the dead body of Bhante, Boddh Bhikshuk, aged about 60 years and found the following ante-mortem injuries thereon:

- (1) 5.5 cm long stitched wound over Rt. side of head 7 cm above the (R) eyebrow.
- (2) 2 cm long stitched wound is present over upper and posterior part of scalp (Left side) 9 cm above the left ear.

(3) 9 cm long stitched wound is present over left Temporal parietal region of scalp 3 cm above the left ear.

(4) 6.5 cm long stitched wound is present over left posterior parietal region of scalp 3.5 cm above the left mastoid process.

(5) 3.5 cm long stitched wound is present over left parietal region of scalp 1.5 cm away from mid line at the level of Lt. forearm.

(6) 1.5 cm. long stitched wound is present 2.5 cm above the left forearm.

(7) 2 cm long incised wound is present over middle of left forearm over it, External aspect.

The internal examination shows that skull was fractured over left temporal parietal region in multiple and piece. Few of these are depressed. Membranes were turned under fractured skull. Hematoma is present within and outer side of the membranes. Brain was badly lacerated under fractured skull in temporal parietal region. The death was occurred due to haemorrhage and shock as a result of ante mortem injuries, which could have been possibly caused with a Garasa. The post mortem report is Ext. Ka-4.

10. On 14th February, 1988 at 1.15 a.m. Dr. Anil Chandra Shah (P.W. 10) examined Smt. Laxmi Devi and found the following injuries on her person:

(1) Incised wound 6 cm x .5 cm x scalp deep (Lt.) side of head slightly back side 8 cm above (Lt.) ear, Margin sharp, fresh bleeding on cleaning the wound.

(2) Stitched wound 5.5 cm on the left side front of Head 4-5 cm from (Lt.) eye brow.

(3) 6 cm stitched wound on the forehead 1,5 cm above (Lt) eye brow.

(4) Stitched wound 6.5 cm on the left forehead. Margin extends up to left eye brow.

(5) Stitched wound 11 cm on the left side face 4 cm from left ear.

(6) Stitched wound 5.6 cm on left side of the face. Direction extends from left cheek to left lower lid and up to medial.....of Lt. eye.

(7) Incised wound 3.5 cm on the base of nose.

(8) Stitched wound 8 cm on the left side of the face.

(9) Stitched wound 4 cm on the Lt. side of chin with swelling around 3 cm x 2 cm.

11. All the injuries Nos. 1 to 9 were kept under observation. There was possibility of injury No. 1 having been caused by some sharp edged weapon.

12. On that very day at 1.30 a.m. Dr. Anil Chandra Shah (P.W. 10) examined Bhante and found the following injuries on his person:

(1) Incised wound 5.5 cm x 0.5 cm x scalp deep on the Rt. front of Head 7 cm above the (RT) eye brow. Margins are sharp clean cut, fresh bleeding on cleaning of wound.

(2) Incised wound 2 cm x 0.5 cm x scalp deep on the back of Head slightly (Lt) side 9 cm. from (Lt) ear. Margins sharp and fresh bleeding on cleaning of wound.

(3) Multiple stitched wound size 9 cm to 1:5 cm on the left side of Head in an area 12 cm x 19 cm.

(4) Incised wound 2 cm x 0.5 cm x muscles deep with swelling. Admitted 3 cm x 2.5 cm on middle (Rt) left forearm.

Injuries Nos. 1 and 2 were kept under observation. Injuries Nos. 1, 2 and 4 could have been possibly caused with some sharp edged weapon. Dr. Anil Chandra Shah (P.W. 10) examined Km. Deep Mala and found the following injuries on her person:

(1) Incised wound size 8 cm x 1.3 cm x bone deep on the (Rt) back of Head 11 cm from the (Rt) ear, Margines sharp fresh bleeding on cleaning of wound.

(2) Stitched wound 10 cm on the (Lt) side extending from just eye brow on the upper. Margin of the (Lt) ear downward to the face.

(3) Stitched wound 4.5 cm on the left side cheek.

13. Injury No. 1 was kept under observation. There was possibility of this injury having been caused with some sharp edged weapon.

14. On 14th February, 1988 at 1.50 a.m. Dr. Anil Chandra Shah (P.W. 10) examined Km. Chandrawati and found the following injuries:

(1) Incised wound 14 cm x 2.5 cm x bone deep on (Rt) side of the front of Head and fore-Head extending up to (Lt) side of fore head up to medial end of (Lt) eye brow, Margin sharp. Brain matter frontal lobe coming out of wound.

(2) Incised wound 8 cm x 1 cm x skull deep 2.5 cm below the injury No. 1 on (Rt) forehead. Margin sharp.

(3) Incised wound 6 cm x 2 cm x bone deep and cartilage deep on the (Rt) side of Head (Mustoid Region) middle of (Rt) pinna of (Rt) ear, Margin sharp.

(4) Stitched wound 5.5 cm (Rt) side of Head 3 cm below injury No. 3.

(5) Stitched wound 8.5 cm on middle of Nose, extending from (Rt) aspect to (Lt) aspect Nose and up to (Rt) left side of cheek.

15. Dr. Anil Chandra Shah (P. W. 10) has categorically stated that the injuries to the aforesaid four injured could have been possibly caused with Garasa, material Ext. Ka-4.

16. On the receipt of the post-mortem reports and the injury reports and after the completion of the investigation into the case, the Investigating Officer submitted the charge-sheet against the accused.

17. The prosecution examined Dr. N.S. Katyal (P.W. 1), Smt. Laxmi Devi (P.W.2), Km. Chandrawati (P.W.3), Km. Deep Mala (P.W. 4), Harish Chandra (P.W. 5) Dr. Ashok Kumar Sharma (P.W. 6), Ram Autar Singh (P.W. 7), Ram Rakha Singh (P.W. 8), Sohan Singh (P.W. 9), Dr. Anil Chandra Shah (P.W. 10), Beer Singh (P.W. 11), Dr. Kalyan Singh (P.W. 12), Dr. J.K. Pangati (P.W. 13), Layak Ram (P.W. 14), Virendra Singh (P.W. 15), Sub-Inspector Mahendra Nath Misra (P.W. 16), Sub-Inspector Rajiv Yadav (P.W. 17), Virendra Singh (P.W. 18) and Mohan Lal (P.W. 19) and filed certain documents in support of its case. Smt. Laxmi Devi (P.W.2), Km. Chandrawati (P.W.3) and Km. Deep Mala (P.W. 4) are alleged to have seen the incident. The other witnesses can be treated as formal ones.

18. The accused pleaded not guilty. He stated that all the allegations levelled against him are wrong and incorrect. He has pleaded ignorance about many of the facts; relating to the present case. He has stated that he has been falsely implicated on account of enmity. He has, however, not examined any one in support of his contentions.

19. Having heard the learned counsel for the parties and having considered the evidence on the record, the learned Special Judge (Additional District and Sessions Judge) convicted the accused u/s 302, IPC. and awarded him to death sentence thereunder and further convicted him u/s 307, IPC and sentenced him to 7 years rigorous imprisonment, through his impugned judgment and order as mentioned earlier. Aggrieved, he preferred this appeal from jail against the same.

20. We have heard the learned counsel for the parties and have carefully gone through the record. Harish Chandra Saklani (P.W. 5) has turned hostile. He has, however, supported the prosecution case on the point of date and time of the incident. The sister of Beer Singh (P.W. 11) was married to the father of Tej Pal, Balraj and Virendra Singh. He turned hostile. The accused Balraj is the brother-in-law (Sala) of the son of Layak Ram (P.W. 14), who turned hostile. Virendra Singh (P.W. 18) is the real brother of the accused Balraj. Mohan Singh and Mahesh are also his (Balraj's) real brothers. Virendra Singh (P.W. 18) turned hostile. Mohan Lal (P.W. 19) is the real brother of the accused. He has also turned hostile. There can be various understandable reasons for Harish Chandra Saklani (P.W. 5), Beer Singh (P.W. 11), Layak Ram (P.W. 14), Virendra Singh (P.W. 18) and Mohan Lal (P.W. 19) for having turned hostile.

21. Km. Chandrawati (P.W. 3) was aged about 11 years on 18th October, 1988, when her statement was recorded. She has stated that she has not identified the assailant and, therefore, she was declared hostile at the instance of the learned counsel for the prosecution in the trial court. She has stated that her mother Smt. Laxmi Devi,

brother Buddh Jyoti and sisters Deep Mala and Renu were assaulted by the assailant when she was assaulted. She has further stated that there was some quarrel between her father and the accused Balraj. She has also stated that Balraj was displeased with her father. She, Km. Renu and Km. Deep Mala were taking their meals and Buddh Jyoti was near her mother, when they were assaulted. Her statement on these facts cannot be discarded. She has been cross-examined in such a way as to establish intimacy or something more than this between Bhante deceased and Smt. Laxmi Devi (P.W. 2). But this is nobody's case and, therefore, the efforts made to that effect in her cross-examination appear to be futile and fruitless. Km. Deep Mala (P.W. 4) was treated as minor by the learned Additional District and Sessions Judge. Her signature was not obtained under her statement by him and, therefore, no importance can be attached to her so-called statement.

22. Ram Autar Singh (P.W. 7) has initially narrated what he had done up to the registration of the case and subsequently what he had done along with the Investigating Officer K.R. Sagar and how and where the accused was arrested and how the recovery of the Garasa, material Ext. 4 was made by the accused. Ram Autar Singh (P.W. 7) and other witnesses named above excluding Smt. Laxmi Devi (P.W. 2), Km. Chandrawati (P.W. 3), Km. Deep Mala (P.W. 4) are more or less formal witnesses, as mentioned earlier. Smt. Laxmi Devi (P.W. 2) was injured in the course of the incident. She is, therefore, most important witness in this case. Therefore, her statement has to be scrutinised with care and caution. Smt. Laxmi Devi (P.W. 2) is the wife of Tejpal deceased. She had been present at her house along with her son Buddh Jyoti, daughters, namely, Km. Renu, Km. Chandrawati and Km. Deep Mala. There elapsed nearly eight months, on the date of the recording of her statement since the date of the incident. It was 7 or 7-30 p.m. when the accused Balraj had come with a Garasa in his hand and assaulted her with the same and also expressed that they wanted to kill him and that he would finish them all that day. Thereafter he started assaulting Buddh Jyoti, aged about 13 months, Km. Renu, aged about 4 years, Km. Chandrawati aged about 11 years and Km. Deep Mala, aged about 8 years with the Garasa. He again assaulted her (Smt. Laxmi Devi) (P.W. 2). Consequently she became unconscious having received Garasa injuries. She was initially taken to Sitarganj Hospital, from where she was subsequently taken to Haldwani Hospital and ultimately to Lucknow where she was medically treated. Her son Buddh Jyoti and daughter Renu died. Her husband Tejpal and Bhante also died. She did not know who assaulted Tejpal and Bhante, as she became unconscious. There was electric light in her house when she and her son and daughters were assaulted. Consequently she had fully identified and recognised the accused Balraj in that light. The accused Balraj was aged about 6 years when her marriage was solemnised with Tejpal. She had brought him (Balraj) up as her son. The accused had previously treated her as his mother. He had love and affection towards her children till a year back. There was a congenial atmosphere in her family till a year back. There was no quarrel at all. She, her husband and the accused Balraj were

living together in her house till a year back. Her house had only one room. Her children, including her son were in a hut which was quite adjacent to that room. She was in that room at the time of the incident. She did not become unconscious immediately after receiving injuries. She became so 15-20 minutes after receiving injuries. She has denied having been assaulted by 10-12 assailants, whom she could not identify and recognise.

23. The injuries caused to Smt. Laxmi Devi (P.W. 2) were serious in nature. There was possibility of all the injuries having been caused to all the victims including deceased with Garasa, according to the medical opinion. The accused Balraj is the real brother of her (Smt. Laxmi Devi's) husband Tejpal. There was electric light in her house at the time of the incident. There is nothing on the record to show otherwise than this. There is further nothing on the record to show that she could not identify or recognise the accused Balraj, at the time of the incident, particularly in view of the facts and circumstances of the case. She has brought him up as her son, since he was about 6 years of age. She has, therefore, all sorts of love and affection towards him as her son. There is nothing on the record to show that she was not a pious or good natured lady. She appears to have become religious. She used to provide food to Bhante on his visit to her house. Bhante was a Budh monk. He had no permanent house of his own to live in. She appears to be a kind hearted lady. Not only this, but she also appears to be fully imbued with the feelings of mercifulness. She has not implicated any other brothers (Devars) of her husband in the case. She has not stated that she had seen the accused-appellant assaulting her husband and Bhante. She appears, therefore, to be pious, pure, clean, merciful and truthful. Her husband, son and daughters died as a result of the commission of the offence. She appears to have no helper and supporter of her own, after the death of her husband in particular. Her husband's other brothers have turned hostile. She has, therefore, become completely hapless and helpless. She cannot be said to have derived any gain in getting the accused-appellant implicated in the case. And yet she has deposed to against the accused-appellant and proved the case to the hilt beyond all reasonable doubt. Why because the truth appears to have impelled and inspired her to tell the truth boldly, fearlessly and truthfully against the accused despite the odd and adverse circumstances of her own.

24. Thus from the discussions and observations made hitherto above the following facts become crystal clear:

- (i) That there is no dispute as to the time and place of the occurrence;
- (ii) That there is no evidence to prove who assaulted the deceased Tejpal and Bhante;
- (iii) That the accused-appellant came to the house of Smt. Laxmi Devi (P.W. 2) with a Garasa in his hand and assaulted her that day;

- (iv) That the accused-appellant expressed that they wanted to kill him and, therefore, he would finish them all;
- (v) That the accused-appellant assaulted Buddh Jyoti, Km. Deep Mala, Km. Renu and Km. Chandrawati and again assaulted Smt. Laxmi Devi;
- (vi) That there was electric light in which Smt. Laxmi Devi identified and recognised the accused-appellant in the course of the commission of the offence;
- (vii) That Smt. Laxmi Devi became unconscious;
- (viii) That Smt. Laxmi Devi (P.W. 2) was taken to the hospitals, one after the other, for medical treatment and consequently she survived;
- (ix) That Buddh Jyoti and Km. Renu died as a result of the injuries caused to them;
- (x) That the victims Smt. Laxmi Devi, Buddh Jyoti, Km. Renu, Km. Deep Mala and Km. Chandrawati received large number of Garasa injuries on their person in the commission of the offence;
- (xi) That the medical evidence corroborates the ocular account;
- (xii) That there is nothing on the record to discard the unimpeachable statement of Smt. Laxmi, Devi. In other words, she is wholly reliable and has proved the prosecution case against the accused to the hilt;
- (xiii) That even the most innocent son and daughters of his own brother could not be spared by the accused-appellant without any rhyme or reason. Two of them died as a result of injuries caused to them;
- (xiv) There is no reason for Smt. Laxmi Devi (P.W. 2) having falsely implicated the accused-appellant;
- (xv) That there is nothing to disbelieve the recovery of the Garasa material Ext. 4 at the instance of the accused.

25. In view of the above established and proved facts it can be unhesitatingly expressed that the instant is the rarest of the rare cases. For this reliance is placed upon [Asharfi Lal and Others Vs. State of Uttar Pradesh](#), wherein the Hon"ble Supreme Court has observed, inter alia, as under:

"The accused-appellant being guilty of a heinous crime out of greed and personal vengeance, deserved the extreme penalty as a measure of social necessity and also as a means of deterring other potential offenders. This case falls within the test "rarest of the rare cases" as laid down by the court in Bachan Singh and elaborated in Machhi Singh. The punishment must fit the Crime. These were cold-blooded brutal murders in which two innocent girls lost their lives. The extreme brutality with which the appellants acted shocks the judicial conscience. Failure to impose a death sentence in such grave cases where it is a crime against the society - particularly in

cases of murders committed with extreme brutality will bring to naught the sentence of death provided by Section 302 of the Indian Penal Code. It is the duty of the court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment."

26. The accused-appellant has committed cold-blooded gruesome murders of his real nephew and niece aged about 13 months and 4 years respectively. He had mercilessly assaulted his real Bhabhi Smt. Laxmi P.W. 2 and two others minor nieces. He did not, therefore, spare even his dearest and nearest kith and kins. There is no helper, supporter or protector of the widow Smt. Laxmi P.W. 2 and her remaining fatherless children after the commission of the present offence in particular. The law and order situation has become worse. There is no regard for the law. There is no security of one's life. Human life has become cheaper than vegetables. One can stoop down to any extent to do anything and everything against the other even on trifling matters. One cannot read the mind of the criminal. Society appears to have been inhabited by and infested with criminals, hooligans, anti-social and undesirable elements, Brutal murders are being committed at one place or the other almost everyday. The protectors of the society appear to have become perpetrators of the crime. There is, however, exception in every sphere of life. The criminals go scot-free. The judiciary is also an organ of the society. It has also got its accountability for the welfare of the society. It has to assiduously contribute its mite to wipe out the tears of the victims and sufferers and ameliorate their lots as and when the opportunities present themselves before it. The courts should not, therefore, feel shy of awarding maximum deterrent punishment in the event of the case being proved to the hilt against the accused. This has also got to be done to deter and damper the spirit of the criminals like the, present one. The criminals and undesirable elements have their upper hands in the society. They have dulled the intelligence and dimmed the vision of all concerned. Justice and mercy cannot always go together. The interest of the society is supreme. The instant is a case which falls within the category of the rarest of the rare cases as mentioned earlier. Therefore, the interest of justice demands that the accused-appellant must be awarded the death sentence. Any other sentence than the death sentence to the accused-appellant will mean, the mockery and massacre of justice, the deletion of Section 302 from the Indian Penal Code, the creation of the sense of complete despondency and frustration in the mind of the law abiding citizens and the cessation of interest by such persons as are imbued with the spirit of service and sacrifice for the welfare of the society. Therefore, the learned Special Judge (Additional Sessions Judge) has very rightly awarded the death sentence to the accused-appellant in the instant case.

27. In the result the appeal is dismissed. The impugned judgment and order is upheld. The death sentence awarded to the accused-appellant by the learned Special Judge (Additional Sessions Judge) is confirmed. The accused-appellant is in jail. He will be hanged by the neck till he is dead. The reference is accordingly

accepted.