

## State of Assam and Another Vs Tote Dewan @ Man Bahadur Dewan

**Court:** Gauhati High Court

**Date of Decision:** April 28, 2005

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 313, 354(3), 361  
Penal Code, 1860 (IPC) â€” Section 302, 84

**Citation:** (2005) 3 GLT 67

**Hon'ble Judges:** P.G. Agarwal, J; A. Hazarika, J

**Bench:** Division Bench

**Advocate:** F.H. Laskar, P.P, for the Appellant; K.K. Gupta, for the Respondent

**Final Decision:** Dismissed

### Judgement

P.G. Agarwal, J.

Criminal Death Reference No. 1/2004 and Criminal Appeal No. 38(J)/2004 filed by the accused-Appellant Sri Tote

Dewan @ Man Bahadur Dewan have been heard together and disposed of by this common judgment.

2. In Sessions Case No. 70(S-C)/2003 and Sessions Case No. 71(S-C)/2003 the accused Appellant was tried by the learned Sessions Judge,

Sibsagar for causing the death of his own wife, Smt. Gauri Dewan and minor sons, Rajib Dewan and Kajib Dewan and a co-villager Budhimaya

Dewan. The two Sessions cases were tried analogously and disposed of by way of common judgment.

3. Prosecution case, in brief, is that on 30.9.02, at about 4-00 AM, the accused Appellant Tote Dewan @ Man Bahadur Dewan awoke from

sleep and thereafter picked up a dao and killed his wife, Gauri Dewan and two minor sons, Rajib and Kajib. It may be mentioned that Anr. son of

the accused, Raju Dewan and daughter Jyotimaya Dewan, aged about 7/8 years were not in the house at the relevant time as they were sleeping

for the nigh in the house of one of their relations. The accused Appellant thereafter came out of his house with a dao in his hand and knocked at the

door of Prasad Dewan and Bijay Dewan. The inmates of the house out of fear did not open the door. The accused thereafter came to the house of

Raj Kr. Dewan, P.W. 1 and finding Bidhimaya in the court-yard, he killed Bidhimaya with a dao by inflicting two dao blows on the neck. The

accused then went back to the house, picked up the severed head of his son Rajib, put the same in his bag and went to Moranhat Police Station

along with the weapon of assault, the dao. The accused surrendered at the Police Station. In the meantime, the son of the accused Raju Dewan

had filed an FIR being Moranhat Police Station case No. 67/02 stating about the death of his mother and two brOrs. by the accused. Another FIR

being Moranhat P.S. Case No. 68/02 was filed by Raj Kr. Dewan, P.W. 1 about the killing of his mother by the accused. The severed head of

Rajib which was brought in a plastic bag and the weapon of assault, the dao, Ext. 1, was seized by police. The Investigating Police Officer held

separate inquest over the severed head of Rajib Dewan and headless body of Rajib and over the three other dead bodies. The dead bodies were

thereafter sent for post-mortem examination. The Investigating Police Officer also made Anr. inquest by joining the head with the trunk of Rajib

Dewan. The sweater and sporting shirt worn by the deceased were found with blood stained and these were also seized. Material Ext. 3 and 4 are

the wearing apparel of the accused which were blood stained. As the accused wanted to make confessional statement, he was sent to a magistrate

for recording the confessional statement. The confessional statement was recorded by Mazed Ali, Judicial Magistrate, P.W. 8.

4. P.W. 7 is Dr. Biman Kr. Das, who held post-mortem examination over the four dead bodies and found as follows:

Gouri Dewan

External wounds:

(i) One incised wound on the back of the size 10"x6"x5". Second Vertebra, muscles and blood-vessels were found cut. Clotted blood was seen in

and around the wound.

(ii) Another incised was seen on the left side of the neck of the size 10"x6"x5". Muscles, nerves and blood vessels were found cut under the

wound.

Both the wounds were ante-mortem and homicidal in nature.

Thorax:

Trachea was found cut horizontally below Injury No. (i) Other organs were healthy.

Muscles, Bones and Joints:

Second vertebra was found cut below Injury No. (i)

Rajib Dewan

External Appearance:

Trunk portion of a dead-body of a male boy, aged about 10 years. The head-portion was missing from the trunk. The head was severed by an

incised wound at the upper part of the neck. Rigor-mortis were found present.

Wounds:

(i) One incised wound on the left shoulder of the size-6 cms. x 1cm x 2cms. This wound was antemortem in nature. Head with face was cut by an

incised wound on the upper part of the neck. Eyes were closed, mouth was open, hair were black and short. The head appeared to be of that

male boy of about 10/12 years. The wounds was antemortem.

When the head and trunk portions were placed together the dead-body appeared to be of the male boy aged about 10 years. Circumference at

the cut edges of both the head and truck was 30 cms. Colour of the face and truck was fair.

Cranium and spinal canal:

Second cervical vertebra was found cut at both the trunk and head portions.

Thorax:

Larynx was found cut completely and horizontally.

Muscles, Bones and Joints:

Neck muscles were found cut.

Kajib Dewan:

External Appearance:

The dead body was stout. Rigor mortis were present

Wounds:

One antemortem incised wound on the back of the neck of the size 6"x4"x4. The head was found attached with the rest of the body with the help

of a flap of skin. All the muscles, second vertebra, blood vessels were found cut under the wound. There was clotted blood in and around the

wound. Larynx was also found cut below the wound.

Abdomen: Abdomenal organs were found healthy:

Thorax: Larynx was found cut horizontally.

Muscles, Bones and Joints: Second vertebra was found cut below the wound.

Other organs were found healthy.

Smt. Buddhimaya Dewan:

External Appearance: The dead body was stout. Rigor mortis were present.

Wounds:

(i) One incised wound on the back of the neck of the size 10"x5"x5". Muscles and blood vessels were cut. Dark clotted blood were seen in and

around the wound,

(ii) One incised wound was seen on the neck below wound No. (1) of the size-8"x5"x5".

Both the wounds were antemortem and homicidal in nature.

Thorax: Larynx was found cut horizontally below wounds No. 1 and 2.

Abdominal organs were found healthy. Muscles, Bones and Joints: Furniture of the second and third vertebrae were seen.

5. P.W. 7 has deposed that the above injuries on the four dead bodies were all caused by sharp weapon and they could have been caused by a

weapon like dao, Material Ext. 1. The death of the four victim was caused due to shock and haemorrhage as a result of the wound sustained by

them. Further, as per the doctor, the injuries were individually sufficient to cause death in ordinary course of nature. The post-mortem report have

been proved and exhibited in the Court and we find that the medical evidence have not been challenged.

6. In this case we find that so far the death of Gauri Dewan, Rajib Dewan and Kajib Dewan are concerned, there are no eye witness. The

witnesses, including the Investigation Police Officer have stated about the recovery of the dead bodies from the house of the accused Appellant

with injury marks. The incident took place at the early hours, i.e. at about 4-00 AM inside a house, which was at the relevant time occupied by the

accused and the three deceased persons, one wife and two sons of the accused Appellants. As the three other persons are no more in this world,

admittedly, there is no eye witness to the occurrence. The surviving son of the accused, namely, Raju Dewan and the surviving daughter Jyotimaya

were admittedly not present in the house where the incident took place, they were residing with some other relations. Moreover, we find that these

two witnesses did not come up to depose during trial. After the death of their mother and brOrs. , these two witnesses were kept away from the

village and during trial their whereabouts could not be traced and they could not be produced. We find that the non-examination of these two

witnesses is not at all material as they were not eye witnesses to the incident and they were merely reported witnesses. Hence, for the death of the

wife and two sons of the accused prosecution has relied on the confessional statement of the accused recorded by P.W. 8.

7. As regards the death of Bidhimaya Dewan, Sri Raj Kr. Dewan, P.W. 1, the unfortunate son of the deceased, is the sole eye witness. He was

living with the mother at the relevant time in the same house. The witness deposed that on the date of occurrence in the early morning, his mother

went out to answer her nature's call and she returned back and after awakening P.W. 1 told him that something has gone wrong at the house of

Prasad Dewan as she heard some knocking. To satisfy her curiosity, Bidhimaya went out again and she was followed by P.W. 1. P.W. 1

thereafter saw the accused To be Dewan giving dao blows on the neck of her mother. The incident was witnessed by him from about 20 cubit and

when P.W. 1 started shouting the accused left the place. His sister and brother Bijay Dewan P.W. 3 came running and in the meantime, the other

villagers also arrived. P.W. 1 subsequently lodged the FIR, Ext. 1. After sometime P.W. 1 came to know about the killing of wife and two sons by

the accused.

8. Jonge Dewan, P.W. 2 is the cousin of P.W. 1 and P.W. 3 and at the relevant time he was residing at the house of P.W. 3. Both P.W. 3 and

P.W. 2 have deposed that on the morning of the day of occurrence, the accused came to their house and started knocking at the door. The

accused knocked the door repeatedly and loudly called his name and asked him to open the door. Out of fear, they did not open the door and

after sometime they heard shouts of P.W. 1 and when they came out, they saw the accused running away towards his house with a dao in his hand.

When they proceeded further, they saw Buddhimaya lying dead with cut injury on the neck and they were reported by P. W. 1 that the accused

Tote Dewan had killed their mother. Thus, we find that although P. W. 2 and P.W. 3 did not see the actual assault by accused on Buddhimaya

they saw the accused running from the place of occurrence with a dao in his hand soon after the assault.

9. Sri Dil Bahadur Dewan, P.W. 5 and Smt. Shanti Thapa, P.W. 6 are the two other co-villagers who saw the accused passing by their house with

a bag in one hand and they also saw that the bag (containing head of human being) contains blood mark and blood was sipping through the bag.

They also saw the accused carrying a dao in his hand. The gaonburah and other witnesses have deposed about the reporting of the incident etc.

10. P.W. 8 is Sri Mazed Ali, who was working as a Sub-Divisional Judicial Magistrate at Sonari. He has deposed that the accused was produced

before him at about 11-00 AM on 1.10.2002 for recording confessional statement and he cautioned the accused and gave him sufficient time for

reflection. The accused was assured by him that even if he declines to confess, he would not be sent back to police. The Magistrate also enquired

as to why the accused wants to confess. P.W. 8, on being satisfied recorded two confessional statement in two separate cases, registered against

the accused Petitioners. Ext. 11 and Ext. 12 are the said statements. On perusal of the confessional statements as well as the evidence of P.W. 8,

we find that the confessional statement was recorded in accordance with law, rules and regulations and complying with the guidelines given by the

High Court. The relevant portion of the confessional statement reads as follows:

On last Sunday night I had a quarrel with my wife Gauri Dewan. We had quarreled in the morning and in the afternoon also. I took the dao that

was there nearby and first hacked Gauri in the neck. Her neck was severed but for a little portion. Then I cut my second son, Rajib Dewan, (about

11 or 12 year old) in the neck. Thereafter I cut my seven month old son, severing the neck. The three of them died then and there. Taking the dao

I then went to the residence of my younger brother Biraj. He had not opened his door till then. Then I went to the residence of Sri Prasad to cut

him. But he, too, had not opened his doors till then. Then I went to the residence of Rajkumar Dewan, I found his mother, Buddhimya, the front

courtyard. Having seen me, Rajkumar Dewan fled away. I could not cut him, too. I then cut his mother to death. Then returned home, took my

second son's head, went to the police station and produced there the severed and the dao. What is there to repent for what I did?

Both the confessional statements are more or less identical.

11. In order to examine the requirement of law for accepting the confessional statement, we have examined the evidence and materials on record

and find that the statement was made voluntarily and there is no allegation or whisper even that the statement was made under duress or under the

influence of the Police Officer. As regards the truthfulness of the statement, we find that the above statement has been fully corroborated by the

medical evidence as regards the manner in which the four persons died and also regards the weapon of assault. The witnesses have deposed that

the accused had knocked at the doors of Biraj as well as Prasad at early hours but they did not open the door and thereafter finding. Buddhimaya

in the court-yard of P.W. 1, she was killed. The confessional statement has been corroborated on material particulars. The post crime conduct of

the accused and the recovery of weapon of assault from the possession of the accused is relevant and there is evidence of P.W. 5 and P.W. 6 as

well as the Investigating Police Officer.

12. We have also perused the statement of the accused recorded u/s 313 Code of Criminal Procedure, wherein the accused person has admitted

that on the date of occurrence he had killed his own wife, Gauri and two minor sons, Rajib and Kajib and Anr. co-villager Buddhimaya by

assaulting them with a dao. The accused has also admitted that he had carried the severed head of Rajib to the police station in a plastic bag. As

regards the confessional statement the accused has this to say:

Yes, it is a fact that I have given a confessional statement before a Judicial Magistrate at Charaidee, Sonari. The confessional statements were

given by me voluntarily and I was not coerced or pressurized by any Police Officer to give self indictable statement.

13. The accused has also admitted that Material Ext. I is the said dao which was used by him in committing the offence whereby he had killed

these persons. As regards the blood stained clothes the accused stated:

Yes, Mat. Exts. III and IV were the shirt and sweater worn by me at the relevant time, Mat. Exts. V, VI and VII are the blouse and vests of my

deceased wife and two sons. However, I cannot say if Mat. Ext. VIII was the blouse of the deceased Smt. Buddhimaya Dewan. Similarly, I do

not remember if the Mat. Ext. II was the same plastic bag in which I had carried the severed head of my son.

14. In this case we find that the only pleas raised by the accused u/s 313 Code of Criminal Procedure is that he had committed the offence due to

mental insanity. Except the solitary statement in Section 313 Code of Criminal Procedure, there is absolutely no other material in support of the

mental insanity. None of the witnesses have stated that the accused was insane at any point of time, on the contrary, they have deposed that neither

the accused nor his other family members were suffering from mental disease. There is also not medical evidence on this score. The law is well

settled that the burden is on the defence to establish the plea of insanity u/s 84 of the IPC. The trial Court has recorded a specific finding that the

defence has failed to establish the plea in any manner. On perusal of the evidence and materials on record, we find that the defence has failed to

make out even probable plea of insanity. The trial Court, therefore, rightly rejected the plea of insanity and we concur.

15. In view of the evidence, the confessional statement and the confession of guilt in his statement u/s 313 Code of Criminal Procedure, we have

no hesitation whatsoever to hold that it was the accused Appellant who killed four innocent persons on the date of occurrence. Learned Counsel

for the Appellant has, however, submitted that there is no mens rea or motive for the killing. The law is well settled that in case of murder, where

there is direct evidence, motive is irrelevant.

16. Now coming to the question of sentence/confirmation of capital punishment, we may recapitulate the observations of the Apex Court in the

case of *Lehna Vs. State of Haryana*, wherein the Apex Court observed as follows:

The other question of vital importance is whether death sentence is the appropriate one. Section 302 IPC prescribes death or life imprisonment as

the penalty for murder. While doing so, the Code instructs the court as to its application. The changes which the Code has undergone in the last

three decades clearly indicate that Parliament is taking note of contemporary criminological thought and movement. It is not difficult to discern that

in the Code, there is a definite swing towards life imprisonment. Death sentence is ordinarily ruled out and can only be imposed for "special

reasons", as provided in Section 354 (3).

The Apex Court further provided as follows:

This is some indication by the legislature that reformation and rehabilitation of offenders and not mere deterrence, are now among the foremost

objects of the administration of criminal justice in our country. Section 361 and Section 354(3) have both entered the statute-book at the same

time and they are part of the emerging picture of acceptance by the legislature of the new trends in criminology. It would not, therefore, be wrong to

assume that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the

offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some

relation to these factors. Criminal justice deals with complex human problems and diverse human beings. A Judge has to balance the personality of

the offender with the circumstances, situations and the reactions and choose the appropriate sentence to be imposed.

17. In the case of Bachan Singh Vs. State of Punjab, the Apex Court laid down the following guidelines for consideration where the question of

death sentence arises

(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. Death sentence must be imposed only when life imprisonment appears to be

an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to

impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the

relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be

accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is

exercised.

18. In the case of Machhi Singh and Others Vs. State of Punjab, the Apex Court provided as follows:

The following questions may be asked and answered as a test to determine the "rarest of the rare" case in which death sentence can be inflicted:

(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?

19. The trial Court has drawn up a balance-sheet of aggravating and mitigating circumstances as below:

**Aggravating Circumstances:**

(i) The accused has committed quadruple murders in a horrendous manner. The victims included wife of the accused Smt. Gauri Dewan (35 years

old); two sons, namely, Rajib Dewan (10 years old) and Kajib Dewan (8 months old) and one 60 years old lady. Buddhimaya Dewan.

(ii) The wife and minor children were slaughtered to death while they were asleep.

(iii) After chopping of the head of Rajib the accused carried the severed head to the police station and openly declared the witnesses that he was

carrying a human head in the bag. This conduct of the accused has aggravated the crime and it is very similar to the situation of the case of State of

Rajasthan v. Kheraj Ram (Supra) in which the accused was found smoking "chilam" in the compound after killing four persons of his family. While

upholding the death penalty, their Lordships observed that the said conduct of the accused indicated that the gruesome act did not even arouse any

human touch in him. In this way post crime conduct in the present case is identical to the above case.

(iv) While giving the confessional statement also the accused had stated that he had killed the persons with an intention to kill them and he had no

regret. Besides this the accused did not show any remorse or repentance of brutally committing murders of four persons at any stage of the trial.

(v) Apart from killing four persons the accused had also attempted to kill other persons, but did not succeed as P.Ws 2,3 and 4 did not open their

doors.

(vi) Almost all the village witnesses requested the court while giving depositions that the accused should not be sent back to their village. Finally a

written representation was submitted in that regard on 27.8.03, signed by as many as 100 persons from different community. This shows that if the

accused is released from custody at any age he will be a menace to the society.

(vii) The murders were committed in a cool and calculated manner and without least provocation from the victims.

**Mitigating Factors:**

(i) Shri G.C. Bezborua, learned defence counsel submitted that the murders were committed without any motive. In my opinion this circumstance is

rather going against the accused. It means four persons were killed without any cause. In the C.S. the accused had stated that on the previous day

and in the previous night he had quarrel with his wife. However, in the statement u/s 313 Code of Criminal Procedure the accused has stated that

the quarrel took place one month prior to the day of incident. Hence, there is incongruity in these vital statements. At any rate, the quarrel had

allegedly taken place with the wife only. Hence, there was no justification to kill two other minor children and Anr. woman from different family.

(ii) The other submission was that the accused is 48 years old and there is no criminal antecedent against him. As such the accused may be given

an opportunity to reform himself. In my opinion this submission has no force. Similar plea was also taken in the case of Gurdev Singh (Supra). The

Hon"ble Apex Court, rejecting the plea held as below: "It is true that we cannot say that they would be menace to the society or not as we like as

creatures saddled with an imperfect ability to predict future. Nevertheless, the law prescribes for future, based upon its knowledge of past and is

being forced to deal with tomorrow"s problems with yesterday"s tools"

(iii) Regarding the future of the survives children I can only say that they were lucky enough to survive because of fateful night they had slept with

other relatives. Besides this, the survived son of the accused himself had lodged an FIR against the father and since after the incident they have left

the place and are now living with their maternal uncle. The children also did not come to the court any time seeking bail or any other relief for their

father. I am also of the view that the convict has no moral right to use his children as a shield to escape from the capital punishment after killing his

wife and two minor children. Hence, the plea of the accused for showing leniency to give fatherly care to the otherwise grown up children is also

misplaced and reject.

20. In the case of State of Rajasthan Vs. Kheraj Ram, the Apex Court upon consideration of the guidelines in Machi Singh (supra) observed as

follows:

In rarest of rare cases when collective conscience of the community is so shocked that it will expect the holders of the judicial power center to

inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be

awarded. The community may entertain such sentiment in the following circumstances:

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme

indignation of the community (SCC pp. 487-88, paras 32-33)

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward or

a cold blooded murder for gains of a person vis-a-vis whom the murderer is committed in the course for betrayal of the motherland. (SC Cp. 488,

para-34)

(3) When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which

arouse social wrath, or in cases of ""bride burning"" or ""dowry deaths"" or when murder is committed in order to remarry for the sake of extracting

dowry once again or to marry Anr. woman on account of infatuation (SCC p. 488, para 35)

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large

number of persons of a particular caste, community, or locality, are committed. (SC Cp. 488, para 36)

(5) When the victim of murder is an innocent child, or a helpless woman or an old or infirm person or a person vis-a-vis whom the murderer is in a

dominating position or a public figure generally loved and respected by the community. (SCC pp. 488-89, para 37)

If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the

questions posed by way of the test for the rarest of rare cases, the circumstances of the case are such that death sentence is warranted, the court

would proceed to do so.

21. Coming to the facts of the present case, we find that the accused person killed his own wife and two sons in cold blooded manner while the

innocents were sleeping in their own house under the protection of their mentor, the husband and father. They had no inkling that death would visit

them in such manner. The accused, thereafter, went out to kill co-villagers in a spree and went to the house of Bijay Dewan, Prasad Dewan, but

fortunately they did not open the door out of fear and on seeing the dao in the hands of the accused. The deceased Buddhimaya was, however, not

so fortunate as she was picked up by the accused and in spite of the fact that she is an old helpless lady, the accused put her to death. The killing of

four persons was heinous. Out of the four victim, two were women and other two were minor children and one was about 10 years old and the

other was hardly 7/8 months. We also find that the victims did not contribute or provoke the incident. Out of the four victims, three were

immediate relations of the accused as they were dependant on him for protection but the protector has turned to be a eliminator. The killing was

also made in a most brutal manner and the accused was carrying the head of his own son in a bag. The murder has apparently caused much ripple

and disturbance in the entire village and the entire community was perturbed and disturbed. This is a case of multiple murder involving innocent

child and hapless woman.

22. The trial Court has recorded special reasons for awarding the extreme penalty of death. The plea raised before it that the accused is required

to look after his surviving son and daughter and he is not a menace to the society was rebutted by the trial Court for good reasons and the trial

Court has also placed reliance on a decision of the Apex Court in the case of Gurdev Singh v. State of Punjab, 2003 SCC (Criminal) 1616. The

Apex Court held:

In the course of wide-ranging submissions, the counsel for the Appellants laid stress on the point that the underlying principle of our sentencing

jurisprudence is reformation and there is nothing in evidence to show that the Appellants may be a threat or menace to the society. It is true that we

cannot say that they would be a further menace to the society or not as "we live as creatures saddled with an imperfect ability to predict the future.

Nevertheless, the law prescribes to future, based upon its knowledge of the past and is being forced to deal with tomorrows problems with

yesterday"s tools. The entire incident is extremely revolting and shocks the collective conscience of the community. The acts of murder committed

by the Appellants are so gruesome, merciless and brutal that the aggravating circumstances far outweigh the mitigating circumstances.

23. In the instant case, we find that the two surviving children of the accused, the informant Raju and the daughter Jyotimaya who have grown up in

the meantime, do not want to be associated themselves with the accused. As a matter of fact, they are trying to keep themselves aloof and do not

want to associate their names with the accused. They are so frightened that the informant even did not come to Court to depose and they are

taking shelter at some unknown place. Hence, apparently there is no scope to consider the submission that this accused if let off with the minor

punishment would be able to look after his surviving son and daughter. They are too scared to remain in his company.

24. So far the mitigating circumstances is concerned, the accused had no apparent motive for killing and the killing was not made for any reward.

So far the possibility of repentance is concerned taking into consideration of the facts and circumstance of the case and the disturbance of the

collective conscience of the entire village, we find that the above plea, which is in the realm of fond hopes, have no supporting base and in our

opinion, it would not outweigh the aggravating circumstances as stated above.

25. On consideration of the various judgments of the Apex Court and the law laid down by the Apex Court in the matter of awarding punishment

of death sentence and upon consideration of the available materials the facts and circumstances of the case we have no hesitation to concur with

the findings of the trial Court that this is the rarest of rare case involving killing of four innocent persons, two women and two children, in a brutal

manner without any provocation whatsoever and, as such, the extreme penalty of death is called for.

26. For the reasons mentioned above, we confirm the sentence of death awarded by the trial Court. The Criminal death Reference is affirmed and

the Criminal Appeal fails and is dismissed.