

Pancham @ Kebal Rai Vs State of W. B.

Court: Calcutta High Court

Date of Decision: Dec. 24, 2010

Acts Referred: Constitution of India, 1950 " Article 10, 11, 12, 13, 14
Criminal Procedure Code, 1973 (CrPC) " Section 129, 235(2), 313, 354(3), 37
Penal Code, 1860 (IPC) " Section 302, 394

Citation: (2011) 1 CALLT 434

Hon'ble Judges: J.N. Patel, C.J; Ashim Kumar Roy, J

Bench: Division Bench

Advocate: Jayanta Narayan Chatterjee, Prithviroj Sinha Roy, Gourav Banerjee, Sujit Gupta and Uttam Basak, for the Appellant; Ashimesh Goswami and Yusuf Ali Dewan, for the Respondent

Final Decision: Dismissed

Judgement

J.N. Patel, C.J.

In Sessions Case No. 97 of 2005 [Sessions Trial No. 1(12) of 2005] the Appellant-accused was charged for having

committed an offence punishable under Sections 302/394 of the IPC and by judgment and orders dated 15.09.2008, 18.09.2008, 20.09.2008

and 23.09.2008 passed by the learned Additional Sessions Judge, 4th Fast Track Court, Bichar Bhawan, Kolkata, the Appellant-accused was

found guilty of having committed an offence punishable under Sections 302 IPC and was sentenced to death by ordering to be hanged by neck till

death. The Appellant-accused has also been found guilty of having committed an offence punishable u/s 394 of the IPC and sentenced to suffer

imprisonment for life with a direction that the sentence of the offence punishable u/s 394 IPC would cease to have any effect in case the sentence

of death u/s 302 IPC is confirmed by the High Court. This appeal is directed against the sentence of death and imprisonment for life. Along with

the appeal we have also taken up the reference made by the trial court for confirmation of the sentence of death.

2. The Appellant-accused Pancham alias Kebal Rai was engaged as domestic servant by Tara Chand Banka and Sarda Banka who were residing

at flat No. 8, 7th floor, Mansarabar Building, Camac street, Kolkata and the Appellant-accused was given accommodation in passage part of the

said flat. On 18.04.2005 at about 8:30 to 8:45 A.M. Suresh Kumar Banka (P.W. 3), son of Tara Chand and Sarda Devi Banka received a phone

call from Mr. Ashoke Jhunjhunwalla (P.W. 7), a neighbour, that the masseur, Rajendra Prasad Gupta (P.W. 8) had been pressing the calling bell

of his father's flat but there was no response. On receiving the said information Suresh Kumar Banka (P.W. 3) tried to contact his parents over the

telephone but as there was no response, he along with his relatives rushed to the flat of his parents in Mansarabar Building. He along with others

tried to call his parents and the Appellant-accused Pancham by his name but there was no response to the repeated calls. The entrance door of the

flat was forced opened and on entering the flat they saw Tara Chand Banka lying with bleeding injuries on his body in the drawing room and Sarda

Devi Banka was lying with bleeding injuries on the bed in the bedroom and the blood has spurt on the walls, curtains, floors of various rooms. The

two almirahs in the bedroom were open and ransacked, empty jewellery boxes and other articles were lying on the floor and a frying pan was

found on the bed of Sarda Devi Banka. They saw a blood stained knife and a swing hook in the kitchen. They also noticed valuables and cash

missing along with the cell phones of Tara Chand Banka and Sarda Devi Banka. The Appellant-accused Pancham alias Kebal Rai was not there.

Police were informed and Dr. B. K. Kochar (P.W. 19), family physician, was called. Sub-Inspector Jayanta Chakraborty and police officers of

Shakespeare Sarani Police Station reached the scene of occurrence. Dr. B. K. Kochar examined the dead bodies of Tara Chand Banka and Smt.

Sarda Devi Banka and declared them to be dead. Police recorded the statement of Suresh Kumar Banka (P.W. 3) which was treated as first

information report (Exbt. 4). The Police Officers prepared the scene of occurrence panchnama, dead bodies of Tara Chand and Sarda Devi

Banka were sent for postmortem examination, fingerprint experts were called and seizure list from place of occurrence came to be prepared. The

statements of witnesses were recorded. In course of investigation it was found that the Appellant-accused Pancham has left the building in the early

morning along with a bag. Therefore, the police suspected him to be the person who might have committed the murder of Tara Chand and Sarda

Devi Banka and has stolen away valuables and cash from the flat. The police, thereafter, started search of the suspect. On 15.05.2005 S.I

Makhanlal Gupta (P.W.22) of Anti-dacoity and robbery squad, D. D. Lalbazar informed the Investigating Officer that the Appellant-accused

Pancham has been arrested by him on 14.05.05 from Simultala P.S. area and that he is detained in central lockup, Lal Bazar. The Police Officer

investigating the case took the Appellant-accused Pancham in their custody and on 16.05.05 specimen fingerprint of the Appellant-accused

Pancham was collected. In course of investigation, the Appellant-accused volunteered to make statement, pursuant to which the police left for

Simultala, Bihar. From there, the police Officers and witnesses were taken to Ghorparan village of Simultala, Bihar and the police were successful

in discovering part of the ornaments and articles belonging to the deceased on 20.05.05 and a black coloured self-designed rexine bag. The

Investigating Officer after completing the investigation, filed charge sheet against the Appellant-accused for having committed offence punishable

under Sections 302/394 of the IPC. The case was committed to the Court of Sessions.

3. In reply to the charge the Appellant-accused pleaded not guilty and claimed to be tried and took the plea that on 17.04.05 at or about 5 P.M.

he had already left the flat for going to his native place and that he is innocent and has been falsely implicated by the police.

4. The prosecution examined the relatives of the deceased, the security personnel/Darwan of the Mansarabar Building, Medical officers and

forensic expert along with the Officers of the investigation team; i.e., in all 30 witnesses. The Appellant-accused did not examine any witness in his

defence. On conclusion of the trial the learned Additional Sessions Judge found Appellant-accused guilty of having committed offence punishable

under Sections 302 and 394 of the IPC and sentenced him to death and imprisonment for life on each count.

5. The learned Counsel appearing on behalf of the Appellant-accused submitted that the case against the Appellant-accused is based on

circumstantial evidence and the evidence led before the Court does not go to show that it is the Appellant-accused who has committed the offence.

It is submitted that the Appellant-accused has been falsely implicated in the case.

Each of the circumstance relied upon by the prosecution is not conclusive in nature and there are various missing links in the purported chain of

circumstances brought before the Court. It is submitted that the evidence of witnesses particularly the security personnel and Darwan that the

Appellant-accused left the flat of Tara Chand Banka in the morning of 18.04.2005 is merely hearsay and if this was a fact there is no reason why

these witnesses have not informed the relatives of the deceased when they arrived at the scene of occurrence. It is, therefore, submitted that the

theory of "last seen" cannot be advanced by the prosecution in support of their case.

5. The learned Counsel appearing for the Appellant-accused submitted that the manner in which the police have investigated the case itself creates

a doubt in the prosecution case. It is submitted in the course of investigation the police had arrested two more persons from the native place of the

Appellant-accused and though their remand were taken and they were interrogated the police did not prosecute them and did not file charge sheet

against them, which indicates that the investigation conducted by the police was inconclusive insofar as the accused is concerned and, therefore, the

police arrested the Appellant-accused and foisted the discovery of certain articles and rexine bag which according to the learned Counsel for the

Appellant-accused have been planted by the police and the recovery does not inspire confidence as the place from where discovery is made was

easily accessible. It is further contended that Suresh Kumar Banka (P.W. 3), de facto complainant in the case has given a list of valuables and cash

which were stolen from the flat of Tara Chand Banka. But nothing has been recovered by the police; nor the prosecution has offered any

explanation for failure of the investigation team and, therefore, recovery of stolen articles in this case at the instance of the Appellant-accused will

have to be discarded.

6. It is submitted that according to the prosecution blood stains were seen on the cloth of the accused taken out from the rexine bag which was

recovered at the instance of the accused. It is submitted that apart from the fact that prosecution has failed to prove that the blood stain seen on the

cloth of the accused tallied with the blood group of the deceased, no person can be held guilty of the commission of heinous offence like murder.

Further, no person will preserve blood stained cloth and, therefore, the Court should not accept the prosecution case.

7. It is submitted that according to the prosecution one of the witnesses i.e., Krishna Saha (P.W. 13) had come to collect the keys of the car from

the flat and it was alleged to be handed over to him by the Appellant-accused by taking out from his book-pocket. At that time Krishna Saha

(P.W. 13) did not notice any blood stain on the shirt of the Appellant-accused and if it is presumed that the Appellant-accused left the flat

thereafter, it can very well be assumed that the Appellant-accused has not committed murder of Tara Chand Banka and Smt. Sarda Devi Banka

as his cloth was not stained with blood and the witnesses who have alleged to have seen him leaving the building could have definitely noticed.

Further, the stains of blood on the shirt of the accused do not match with the blood group of either the Appellant-accused or the victims which is a

serious lacuna in the prosecution case.

8. It is submitted by the learned Counsel appearing for the Appellant-accused that the sole circumstance on the basis of Appellant-accused has

been convicted is "last seen" with the deceased is not sufficient to arrive at a conclusion that it is Appellant-accused who has committed murder of

the victim. The prosecution has not brought on record any motive to correlate the Appellant-accused with the murder.

9. It is submitted that the plea of alibi taken by the Appellant-accused may be found to be untrustworthy. This by itself would not prove the

prosecution case and, therefore, the statement made by the Appellant-accused u/s 313 Code of Criminal Procedure cannot be considered and

relied as substantive evidence. It is contended by the learned Counsel for the Appellant-accused that in the case of Bishnu Prasad Sinha and

Another Vs. State of Assam, the Supreme Court has taken a view that death penalty cannot be imposed on the basis of circumstantial evidence. It

is submitted that the Appellant-accused is a young person without any criminal antecedent to his discredit. Therefore, this cannot be considered to

be a rarest of rare case only because two persons have been killed. The imposition of death sentence by the trial court was unwarranted. It is

further submitted that the trial court was swayed by the fact that such crimes are on the rise in the civilized society and the Appellant-accused being

a domestic servant has committed breach of trust and confidence of his employer and, therefore, he deserves to be sentenced to death is unjust in

the facts and circumstances of the case. The learned Counsel for the Appellant-accused submitted that as all the links in the chain of circumstances

has not been established beyond any reasonable doubt the Appellant-accused cannot be convicted merely on the basis of suspicion or emotional

consideration as a substitute for legal proof and, therefore, his conviction and sentence deserves to be quashed and set aside and the appeal be

allowed.

10. On the other hand, the learned public prosecutor contended that prosecution has been able to prove the case against the Appellant-accused

beyond all reasonable doubts. It is submitted that this is a case of robbery and murder and the same is proved by the fact that after committing the

murder of the innocent victims Tara Chand and Sarda Devi Banka who are senior citizens, the Appellant-accused took away all the valuables and

cash from the almirahs in the bedroom. It is submitted that the Appellant-accused has hardly worked for a period of 7 days as domestic servant

and having got conversant with the place where valuables were kept and finding that the couple were hapless senior citizens, committed their

murder while they were asleep and took away all the valuables and cash from the flat and ran away to his native place. It is submitted by the

learned P.P. that the prosecution has established the motive for committing the offence that the Appellant-accused was last seen with the old

couple as he was residing in the flat as a domestic servant and that the Appellant-accused was seen leaving the flat after commission of the murder

in the morning of 18.04.2005 by the witnesses and as on his arrest the police was able to discover stolen articles at his instance. This according to

the learned P.P. completes the links in the chain of circumstances from which an inference of guilt can be drawn which is cogently and firmly

established. It is further submitted that the evidence like the fingerprints of the accused at the scene of occurrence clearly goes to show his

complicity and, therefore, prosecution has proved the guilt of the accused person beyond all reasonable doubts and, therefore, the conviction is

proper. It is submitted that insofar as the sentence is concerned this is a case where domestic servant has committed murder of two senior citizens

who had employed him and that the Appellant-accused has committed cold blooded cruel and diabolical crime of murder. It is, therefore,

submitted that the conviction and sentence of the accused does not call for any interference. The appeal deserves to be dismissed and the Court

may confirm sentence of death imposed by the trial court.

11. The points which arise for determination are whether Tara Chand Banka and Smt. Sarda Devi Banka's death was homicidal and whether the

accused caused multiple injuries to the deceased persons which were sufficient in the ordinary course of nature to cause death and with the

intention of causing death so as to rob the victims of their valuables.

12. The present case rests upon circumstantial evidence alone. The law relating to proof of a case based purely on circumstantial evidence has

been settled by several authorities of this Court as well as of the Supreme Court:

In the case of Hanumant Vs. The State of Madhya Pradesh, it was observed:

In dealing with circumstantial evidence the rules specifically applicable to such evidence must be borne in mind. In such cases there is always the

danger that conjecture or suspicion may take the place of legal proof. In cases where the evidence is of a circumstantial nature, the circumstances

from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent

only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be

such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not

to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human

probability the act must have been done by the accused.

In the case of Laxmi Raj Shetty and Another Vs. State of Tamil Nadu, it was held:

in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first

instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the

circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be

proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with

the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

In the case of Sharad Birdhichand Sarda Vs. State of Maharashtra, it was held:

The following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established;

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must or should"

and not "may be" established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on

any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to

leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act

must have been done by the accused.

In the case of Gambhir Vs. State of Maharashtra, it was observed as follows:

The law regarding circumstantial evidence is well settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three

tests: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established (2) those circumstances

should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so

complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The

circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of

the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence....

13. Let us proceed to examine as to whether the prosecution has been able to establish all the circumstances on which the prosecution rests its

case. We propose to discuss "motive" as the circumstance after considering the evidence led by the prosecution as regards "last seen" together.

(I) Tara Chand Banka and Smt. Sarda Devi Banka's death was homicidal:

14. In order to prove that the death of Tara Chand Banka and Sarda Devi Banka was homicidal, the prosecution has examined the relatives,

neighbours of Tara Chand Banka who visited the flat in the first instance and Dr. B. K. Kochar (P. W. 19), family physician who examined the

dead bodies of Tara Chand Banka and Sarda Devi Banka. Dr. Dipankar Guha Roy (P.W. 18) conducted the postmortem on those dead bodies.

15. On being informed over telephone by Ashoke Jhunjhunwalla (P.W. 7), a next door neighbour of the victims residing in flat No. 7, Suresh

Kumar Banka (P.W. 3) and Rajesh Kumar Banka (P.W. 4) informed their relatives and others and immediately visited the scene of occurrence.

Some persons had already gathered there. Suresh Kumar Banka (P.W. 3) repeatedly called for his parents, Pancham, their servant, and knocked

the door but as there was no response they decided to break open the entrance door and entered the flat. When they entered the flat they saw

their father Tara Chand Banka was lying on the dewan in the drawing room with multiple bleeding injuries. Similarly, in the bed room they saw their

mother Sarda Devi Banka lying with multiple bleeding injuries on the body and as they did not respond Dr. B. K. Kochar was called. Dr. B. K.

Kochar (P.W. 19) was a family physician of the deceased. On examining Tara Chand Banka and Sarda Devi Banka, he declared them to be dead

and issued a death certificate (Exbt. 13).

16. Dr. Dipankar Guha Roy (P.W.18) conducted the postmortem examination over the dead bodies of Tara Chand Banka and Sarda Devi Banka

separately in connection with Section 302 (Shakespeare Sarani P.S. Case No. 127 dt. 18.04.2005. He deposed that on the dead body of Tara

Chand Banka he found the following injuries:

1. one chop wound $1\frac{1}{2}$ " x $\frac{1}{2}$ " x muscle on left side of head on temporal region, $2\frac{1}{2}$ " above the tip of left mastoid process, 4" posterior to

outer cantus of left eye.

2. One abrasion 2" x $\frac{1}{2}$ " on left side of head, over left temporal region $\frac{1}{2}$ " above the tip of left mastoid process, $5\frac{1}{2}$ " posterior to outer canthus

of left eye.

3. one chop wound $2\frac{1}{2}$ " x $\frac{1}{2}$ " x cartilage on left ear, placed obliquely, at a level 3" above left angle of x mandible, 7" lateral to midline.

4. One chop wound 1" x $\frac{1}{2}$ " x cartilage placed obliquely on left ear, 3" posterior to outer canthus of left eye, $\frac{1}{4}$ " medial to outer border of left

ear helix.

5. One chop wound 3" x $\frac{1}{2}$ " x muscle on left side of face 2" above the left angle of mandible 4" posterior to outer canthus of left eye, over lapped

with injuries Nos. 3 and 4 and extended on left ear.

6. One bruise 4" x 3" on left angle of mandible.

7. One chop wound 4 1/2" x 3/4" x bone on antero-lateral aspect of left side of neck, 1 1/2" lateral to midline, 3" above the left clavicle, on cleaning

the wound it was seen to have cut the skin, S.C. (sub-coetaneous) tissue, muscles including sternomastoid cut the carotid sheath including its

contents i.e. vessels and nerves and finally ended on the lateral aspect of body of 4th and 5th cervical vertebra.

8. One abrasion 1" x 1/2" on left side of neck, 1" posterior to left angle of mandible, 1 1/2" below the tip of left mastoid process.

9. One bruise 2" x 2" on superior surface of left shoulder, 3" lateral to the junction of neck with shoulder.

10. One bruise 2 1/2" x 2" on tip of left shoulder.

11. One abrasion 3" x 1/2" on postero-lateral aspect of left side of neck (Linear shaped) obliquely placed, at a level 2" above the tip of 7th

cervical vertebral spine, started at posterior midline. On dissection, there was deep bruise in the muscle underneath corresponding to abrasion.

12. One bruise 4" x 4" on anterior aspect of left shoulder, 1" lateral to midline, above and below the left clavicle.

13. One heamatoma 4 1/2" x 4" on left side of head, lateral aspect of occipital protuberance, over occipital region in the soft tissues of scalp.

The dead body was of a moderately built and nourished male subject, complexion rather fair, eyes partly open, cornea hazy, pupils dilated and

fixed, not reacting to light, scalp hair 3 1/2" long gray with black dye, beard and moustache shaved. Rigor mortis present all over post mortem

standing on the back over dependent parts of body except over pressure point.

Wearing apparels - One white Sando Ganjee, one white Lungi, one red thread round the waist. Dried blood stain present on head, face, both arm

and wearing apparels.

The information furnished by the police was that on 18.04.05 at 9.40 hours the person was found lying dead with bleeding injuries on his person on

a divan and inside his drawing room. He was declared dead by a local doctor on same day at 10 A.M. In my opinion the death was due to the

effects of injuries as noted above. Ante mortem and homicidal in nature.

Injuries No. 1, 3, 4, 5 and 7 are the chop wounds. It is fact that those chop wounds injuries are sufficient to cause death in ordinary course of

nature. The cumulative effect of all the injuries namely chop wounds, abrasions, bruises and haematoma can also cause death of anyone natural

course. . .

17. He further deposed that on the dead body of Sarda Devi Banka he found the following injuries:

1. One bruise 3" x 2" on upper and lower eye lid of right side with sub-conjunctival hemorrhage underneath.

2. One bruise 2" x 1 1/2" on left upper and lower eye lid.

3. One incised wound $1\frac{1}{2}$ " x $\frac{1}{2}$ " x muscle, on left side of face 3" lateral to midline 3" above lower border of mandible, placed obliquely with

tailing anterior wards.

4. One lacerated wound $1\frac{1}{2}$ " x $\frac{1}{2}$ " x bone, on left side of head, over left parietal eminence, $2\frac{1}{2}$ " above the top of left mastoid process, 6

posterior to midline. On cleaning the wound and dissection there was associated depressed comminuted fracture 2" x 1" area on left parital and left

temporal bone, with fissure fracture 4" long radiating towards left side of frontal bone. On further dissection there was evidence of laceration of

underlying meanings with a subdural haematoma 3" x 2" on left parital lobe of brain with flattening of gyri and widening of sulci.

5. One incised wound 2" x $\frac{3}{4}$ " x bone placed obliquely on left side of head at a level 1" above the level of junction of left ear with face, $4\frac{1}{2}$

lateral to midline.

6. One chop wound 3" x $\frac{1}{4}$ " x cartilage on left ear with partial amputation of left ear at a level 5" lateral to midline, 2" above the lower border of

mandible.

7. One chop wound $1\frac{1}{2}$ x $\frac{1}{2}$ " x muscle on left side of face and left ear $2\frac{1}{4}$ " above lower border of mandible, $5\frac{1}{2}$ " lateral to midline.

8. One abrasion 2" x 1" on left side of neck, 2" below the tip of left mastoid process, 6" lateral to midline.

9. One incised wound $1\frac{1}{2}$ " x $\frac{1}{4}$ x muscle on left side of neck with tailing posterior wards, 2" lateral to midline, 3" above the left clavicle. On

cleaning the wound it was seen to have the cut the skin sub-cutaneous tissue, vessels and ended in the muscle.

10. One incised wound 3" x 1" x trachea, placed transversely on anterior aspect of neck of which 2" on right and 1" on left side of neck over

midline, $2\frac{1}{2}$ " above suprasternal notch. On cleaning the wound it was seen to have cut the skin, subcutaneous tissue muscles and cut the third

tracheal ring and ended in its lumen.

11. one stab wound 1" x $1\frac{1}{4}$ " x muscle on right side of chest, upper part, at a level, $3\frac{1}{2}$ " below the superior surface of right shoulder, $2\frac{1}{2}$

lateral to midline.

12. Stab wounds, 4 in Nos. each measuring $\frac{1}{4}$ " x $\frac{1}{4}$ " x muscle, over 1" x $\frac{1}{2}$ " area at the junction of right side of neck with shoulder, 2" lateral

to midline, 1" above the right clavicle.

18. In the cross-examination of Dr. Dipankar Guha Roy (P.W. 18) it was suggested that the injuries found on the dead bodies can be caused by a

single person or by more person to which he has stated that: "It is fact that those five vital injuries may cause by a single person or by more

persons."" In case of Tara Chand Banka and in case of injuries of Sarda Devi Banka also the same suggestion was made. He was specifically

questioned as to how much time was taken to cause these injuries on Sarda Devi Banka.

19. Dr. Dipankar Guha Roy (P.W.18) has clarified that it is difficult to say as to whether a single persons can cause these injuries to Sarda Banka

by using tawa, knife and swing hook. Far fetched suggestion was given to the Medical Officer that he had not conducted the two postmortem

examinations and without examining the said two persons he had issued postmortem reports which was specifically denied. On going through the

evidence of Dr. Dipankar Guha Roy it can safely be concluded that both Tara Chand Banka and Sarda Devi Banka's death was homicidal. It was

caused by articles like tawa, knife and swing hook and such objects.

20. The next and most crucial and essential ingredient is whether the Appellant-accused is the author of the injuries found on the dead bodies of

Tara Chand Banka and Smt. Sarda Devi Banka which in ordinary course of nature and sufficient to cause their death. The evidence of Dr.

Dipankar Guha Roy who conducted the postmortem examination on the dead bodies clearly indicates and in his opinion all the injuries noticed by

him and mentioned in the postmortem report of Tara Chand Banka and Smt. Sarda Devi Banka can be inflicted by single person though he has

accepted that the injuries can be caused by single person or by more persons. If we take into consideration the prosecution case as a whole we do

not find any material on record even to create a suspicion that the assailants were more than one. It has been canvassed by the learned Counsel for

the Appellant-accused that the police had arrested two more persons as suspects in the case but they were subsequently discharged. These two

suspects were from the native place of the Appellant-accused and there is no material to show that these suspects were in Kolkata on the relevant

day when the unfortunate incident happened. None of the witnesses particularly the security personnel/Darwan of the Mansarabar society have

noticed any stranger going to the flat of Tara Chand Banka. Dr. Dipankar Guha Roy has stated that the information furnished by the police was

that on 18.04.2005 at about 9.40 A.M. the person was lying dead with bleeding injuries on his person. He was declared dead by local doctor. On

the same day at 10 A.M. postmortem examination on the dead body of Tara Chand Banka was conducted. He opined that his death was due to

the effects of injuries as noted and they were antemortem and homicidal in nature. He has specifically referred to injury Nos. 1, 2, 4, 5 and 7 and

stated that it is fact that those chop wounds injuries are sufficient to cause death in ordinary course of nature and the cumulative effects of all the

injuries namely chop wounds, abrasions, bruises and haematoma can also cause death of anyone in natural course. He has specifically mentioned

that chop wounds can be caused by pointed sharp cutting weapons like knife and identified the knife ceased from the flat which is Mat. Exbt.

XVII. The injuries Nos. 1, 2, 4, 5 and 7 like abrasion, bruises and haematoma mentioned in the P.M. report of Tara Chand Banka, might have

been inflicted like those hard blunt weapon by tawa (Mat. Exbt. XIX) and metallic swing hook (Mat Ext. XVIII). It is very important to know all

these injuries of Tara Chand Banka as mentioned in his PM report might have been caused when he was in sleeping or lying condition and that the

said patient Tara Chand Banka died within 24 hours from the time of conducting the PM examination and as there was no evidence of healing of

the wounds, the injuries of that person were inflicted simultaneously within 24 hours from the time of conducting the PM examination.

21. Similarly, in case of Sarda Devi Banka Doctor has stated that injury No. 4 was lacerated wound and injuries No. 3, 5, 9 and 10 were the

incised wounds and injuries No. 6, 7, 11 and 12 are chop wounds and stab wounds and the remaining injuries were bruises and abrasion and

stated that injury No. 4 itself is enough to cause death in any ordinary course of nature and that cumulative effects of all the injuries No. 1 to 12 of

Sarda Devi Banka are sufficient to cause her death in ordinary course of nature. He has further discovered that injury No. 4 of Sarda Devi Banka

might have been caused by the hard and blunt weapons like iron tawa (Mat. Exbt. XIX) and incised wound can be caused by any sharp cutting

weapon. Chop wound and stab wound may be caused by sharp cutting pointed weapons which may be knife (Mat. Exbt. XVII). These type of

weapons which was shown to the witness may cause incised wound, chop wounds and stab wounds. Abrasion and bruises as mentioned in the

PM report of Sarda Devi Banka may be caused by the weapon like tawa and metallic swing hook (Mat. Exbt. XVIII and XIX). It is pertinent to

note that in the opinion of Dr. Dipankar Kumar Roy (P.W. 18) on considering the position of the injury on the body of Sarda Devi Banka it can be

said that it was possible that said injuries on her body may be caused when she was in sleeping condition and single person can also inflict such

type of injuries as mentioned in the PM report of Sarda Devi Banka. According to him, these injuries of Sarda Devi Banka were also inflicted

within 24 hours from the time of her autopsy examination.

22. Therefore, considering medical evidence tendered by the prosecution by examining Dr. Dipankar Guha Roy (P.W. 18), we have no hesitation

to conclude that at the time the assailant attacked these two victims Tara Chand Banka and Smt. Sarda Devi Banka, they were sleeping and in all

probability Tara Chand Banka was the first victim and after he was silenced, the assailant got rid of Sarda Devi Banka. In drawing the aforesaid

conclusion, we find support from the evidence of Mr. S. Mukherjee (P.W. 27), Assistant Director Physics Division F.S.L. Calcutta. After

examining the materials seized from the scene of occurrence like printed bed sheet, one black brown strained pillow, side pillow, a full sleeve open

breast shirt, a piece of cloth (appeared to be Lungi), one cut open sando ganji, a saya, a nighty and a cut open brassiere all of which had black

brown stains, did not find any sign of violence.

(II) Appellant-accused Pancham @ Kebal Rai engaged as domestic servant and last seen with the deceased:

23. The fact that the Appellant-accused was employed by Tara Chand Banka and Smt. Sarda Devi Banka as a domestic servant is not much

disputed. Paras Shah (P.W. 10) who has been working as a Darwan for last about 30 years at 3B Camac Street, Mansarabar Building in his

evidence stated that on 02.04.05 Appellant-accused had approached him in search of work being referred to by one Udho and told me that his

name was Pancham and his residence was at Banka District in Bihar. As Tara Chand Banka was in need of a domestic servant, he took the

Appellant-accused to the flat of Tara Chand Banka and had a talk with him relating to engaging Pancham as domestic servant in his house. Tara

Chand Banka informed them to go to the flat and meet his wife Sarda Devi Banka. On meeting Sarda Devi Banka, the Appellant-accused was

approved for being employed as servant in their house and, thereafter, his employment as a servant was finalized by Tara Chand Banka. He was

asked to join as servant from the morning of the next day. On the next day, i.e., on 03.04.05 Appellant-accused Pancham came back to

Mansarabar building and he asked Krishna Saha (P.W. 13) to take him to the flat of Tara Chand Banka. On that day Tara Chand Banka had told

Pancham to come on 10.04.05 as they were going out from Calcutta and it was on 10.04.05 in the morning Pancham was kept as servant for

working the flat of Tara Chand Banka. On 17.04.05 it was a Sunday. Suresh Kumar Banka (P.W. 3) along with his wife Prabha Banka (P.W. 5)

and brother Rajesh Kumar Banka (P.W. 4) visited the flat of their parents to meet them. They were there on that day till 21:30/21:45 hours. It has

come in their evidence that when they were in the flat along with their parents, i.e., Tara Chand Banka and Sarda Devi Banka, they saw Appellant-

accused Pancham was working in the flat. These witnesses have also stated that there was a maid servant engaged by them along with Pancham.

Therefore, the fact that Pancham was employed by Bankas as servant to work in their flat, on 17.04.05 he was in the flat till Suresh Kumar Banka

(P.W. 3) along with his wife Prabha Banka (P.W. 5) and brother Rajesh Kumar Banka (P.W. 4) left the flat. These witnesses have also stated that

Pancham was permitted by his parents to reside in the flat, used to keep his belongings in the flat and sleep in the passage between first and second

entry door. On 18.04.05, i.e., on the next day in the morning Krishna Shah (P.W. 13) son of Paras Shah (P.W. 10) used to reside with his father

in Mansarabar Building and used to help him in cleaning the cars of the flat owners. He found that the milk packet of Banka Babu was lying near

the lift on the ground floor and as per instruction of his father he took the milk packet and went to the flat of Banka Babu to collect the key of the

car of Banka Babu from his flat. On reaching there he pressed the calling-bell of his door several times but as he did not get any response, the door

was not opened. Thereafter, he left the milk packet near the door of the flat of Tara Chand Banka and came down and informed the matter to his

father. He stated that after sometime his father again asked him to bring the key of the car and so again went to the flat of Tara Chand Banka and

brought the key of the car and when he pressed the switch of the calling bell of the door, the Appellant-accused Pancham opened the door and

gave him the key of the car from his book pocket. After collecting the key, he came down to the ground floor and gave the key of the car to his

father and informed him that Pancham has given him the key of the car.

24. Krishna Shah (P.W. 13) has been extensively cross-examined and questioned on this aspect, particularly, as to why he did not ask Pancham at

the time when he opened the door of the flat of Tara Chand Banka on his second visit and why he did not open the door in spite of pressing the

calling bell which he failed to answer. He was also questioned whether he noticed anything in the flat at the time he came to collect the key. He

replied he saw nothing else. His attention was also drawn to the fact that Pancham was wearing a yellow coloured shirt but he could not tell and

specifically denied the suggestion that on 18.04.05 Pancham had left his job in the flat of Banka Babu. Krishna Shah (P.W. 13) has deposed to the

effect that in the morning on 18.04.05 he saw Pancham in the flat from whom he had collected the keys of the car of Tara Chand Banka and gave

it to his father.

25. Other witness who speaks about presence of Pancham on that fateful day was Ranjan Dutta (P.W. 20). According to Ranjan Dutta he had

been working as security guard under D.C.M. Security Services at Mansarabar building for the last 8 to 12 years. On 18.04.05 at about 8 A.M.

he found newly appointed servant of Tara Chand Banka went away hurriedly towards out gate with a black bag in his hand after getting down

from the lift of Block B Mansarabar building. Md. Wahid (P.W. 9) who was the liftman of Block B, Mansarabar building has deposed to the effect

that on 18.04.05 at 8 A.M. while he was going to the 10th floor, he saw Pancham on the 7th floor having pressed the button of the lift indicating

that on the 7th floor somebody has given a call. He came down to the 7th floor and saw Pancham carrying a black coloured bag (Mat. Exbt. 21).

Appellant-accused Pancham then came in the lift and left at the ground floor. This witness was also questioned in cross-examination as to whether

he noticed anything on the shirt of the Pancham which he stated that he does not remember. In the cross-examination of these witnesses except for

suggesting that they are deposing on behalf of Suresh Kumar Banka (P.W. 3) and/or the police, otherwise their evidence to the effect that they saw

Pancham leaving the flat and the building in the morning of 18.04.2005 at about 8 A.M. goes unchallenged. Therefore, the prosecution by

examining Suresh Kumar Banka (P.W. 3) along with his wife Prabha Banka (P.W. 5) and brother Rajesh Kumar Banka (P.W. 4), family

members of the deceased and Md. Wahid (P.W. 9), liftman, Ranjan Dutta (P.W. 20), the security guard at the reception table of B Block has

clearly established that the Appellant-accused Pancham alias Kebal Rai was in the flat of Tara Chand Banka and Smt. Sarda Devi Banka in

between the night of 17th and 18th April, 2005.

26. In the morning of 18.04.05 Rajendra Prasad Gupta (P.W. 8) who used to give massage to Tara Chand Banka, came to the flat and pressed

the calling bell but he did not get any response. A neighbour Ashoke Jhunjhunwalla (P.W. 7) noticed Rajendra Prasad Gupta ringing the door bell

of Tara Chand Banka and Sarda Devi Banka. As the door of the said flat was not opened, he came out from his flat and inquired from Rajendra

Prasad Gupta about him. R. P. Gupta (P.W. 8) informed him that he was a masseur and had come to massage Tara Chand Banka. Ashoke

Jhunjhunwalla (P.W. 7) also gave a call to Tara Chand Banka but did not get any response. Some adjoining flat owners also assembled. On

noticing that there is some problem as why no one was opening the door of the flat of Tara Chand Banka, some other flat owners including the

driver of Tara Chand Banka, Acchelal Ram gathered in front of the flat of Tara Chand Banka. It is in this fact situation that Ashoke Jhunjhunwalla

(P.W. 7) gave a call to Suresh Kumar Banka over his telephone and within 15/20 minutes of the said telephone call, Suresh Kumar Banka (P.W.

3) reached the flat of Tara Chand Banka in Mansarabar building. They repeatedly pushed the calling bell and from outside gave a call to

Appellant-accused Pancham, but there was no response. Thereafter, Suresh Kumar Banka (P.W. 3) along with his brother Rajesh Kumar Banka

(P.W. 4) broke open the first entry door of the flat and entered the passage. They did not notice Pancham. They saw that the second entry door

was also closed from inside. So, they broke open the second entry door by force and entered the drawing room of the flat. They saw their father

was lying on the bed cot with severe bleeding injury on his person. Suresh Kumar Banka (P.W. 3) called his father, shook his leg but did not get

any response. So, they went to the bed room of the flat and found that their mother was lying on a double bed cot with serious bleeding injuries on

her person. They found marks of blood in the bed sheet, side walls, and curtains and at various other places of the bed room. They also called

their mother and shook her legs but got no response. They tried to search out Pancham in the flat by calling his name but could not found him. They

went around the flat and found two of the almirahs in the two rooms were opened and articles were found scattered in the said bed room and

noticed empty boxes of jewellery and on search and inquiry found that jewelleries, money and other valuables were stolen. They also noticed that

one knife stained with blood, one swing hook stained with blood, one copper Jug lying inside the kitchen of the flat. They also noticed that

ornaments which their parents were regularly wore, like gold chain of his father, diamond and gold jewellery of his mother were not there. They

called Dr. B. K. Kochar (P.W. 19), their house physician, who immediately came there and examined Tara Chand Banka and Sarda Devi Banka

and declared them to be dead. The police were informed. The police from Shakespeare Sarani P.S. was arrived at the scene of occurrence and

recorded the statement of Suresh Kumar Banka (P.W. 3) which was treated as an FIR. The evidence of Suresh Kumar Banka (P.W. 3) along

with his wife Prabha Banka (P.W. 5) and brother Rajesh Kumar Banka (P.W. 4), Ashoke Jhunjhunwalla (P.W. 7), Rajendra Prasad Gupta (P.W.

8), Dr. B. K. Kochar (P.W. 19) and others were gather which clearly go to show that in the morning of 18.04.05, the Appellant-accused

Pancham who was working as a domestic servant in the flat of Tara Chand Banka and Smt. Sarda Devi Banka was not in the flat and so found

missing. Dead bodies of Tara Chand Banka and Sarda Devi Banka were found lying in the drawing room and bed room respectively and there

were blood everywhere. The two rooms were ransacked, ornaments of daily wear from the bodies of Tara Chand and Sarda Devi Banka were

missing. So also the ornaments and valuables and cash were taken away. We have no hesitation to believe these witnesses who are natural

witnesses and their presence at the scene of occurrence after coming to know that no one was opening the entrance door of the flat of Tara Chand

Banka when the masseur Rajendra Prasad Gupta (P.W. 8) came there to massage Tara Chand Banka in the morning. From their evidence

particularly the evidence of Dr. B. K. Kochar (P.W. 19) it is quite clear that Tara Chand Banka and Sarda Devi Banka were murdered and

ornaments and other valuables and cash were taken away from their flat. This clearly indicates that motive for committing murder was to rob the

couple of their belongings, viz., ornaments, valuables and cash and the fact that their domestic servant Appellant-accused Pancham was not there

in the flat made them think that he was suspect No. 1. The photographs taken by the police photographer are tendered in evidence as exbts. I, II-

II/I to XVI-XVI/I show the state of affairs at the place of occurrence.

27. On 18.04.2005 at 9.30 A.M. Sub-Inspector Jayanta Chakraborty (P.W. 29) received a phone call from the Officer-in-charge Control room

Lalbazar, regarding the murder of a couple at flat No. 8, 3B, Camac Street, Kolkata. On receiving the information he made a G.D. entry and

informed the Officer in-charge of Shakespeare Sarani P.S., Addl. O.C. Shakespere Sarani P.S. and S.I. Piyush Kundu (P.W. 28) and he along

with other Officers and investigation box left the Police station. They learned that the murder has taken place in flat No. 8, 7th floor, Block - B,

Mansarabar Building. So, they went to the flat and found 10 to 15 persons gathered in front of the flat No. 8. There was a name plate affixed

beside the entrance door of flat No. 8 written as T.C. Banka. There was another flat beside flat No. 8 which is flat No. 7. So, he along with O.C.,

Addl. O.C., S.I. Piyush Kundu and others entered inside the flat No. 8 where they saw one elderly person was lying on his chest on the pillow

strained with blood on the divan in the drawing room of the said flat. The de facto complainant Suresh Kumar Banka came forward and introduced

himself. He pointed out that the elderly person was his father Tara Chand Banka who was lying on his chest. Thereafter, Suresh Kumar Banka led

the police to master bed room of the flat where an elderly lady having stained of blood lying with pool of blood on the bed and also found that two

of the three wooden wall almirah at the northern side wall of the room were in open condition and some articles were scattered on the floor of the

bed room. They noticed one iron made frying pan (tawa) was lying on the bed of Sarda Devi Banka. They also found one blood stained knife, one

blood stained swing hook and one jug lying on the kitchen slab as well as on the floor. In their presence Dr. V. K. Kochar P.W.19 arrived at the

flat. He was allowed to examine the bodies of Tara Chand Banka and Smt. Sarda Devi Banka. On examination Dr. Kochar declared the victim as

dead and issued the death certificate in the name of Tara Chand Banka and Sarda Devi Banka and handed over those to Police Officer S.I.

Jayanta Chakraborty (P.W. 29). Statement of Suresh Kumar Banka came to be recorded by S.I. Jayanta Chakraborty who treated the same as

FIR (Exbt. 4). S.I. Jayanta Chakraborty (P.W. 29) instructed S.I. Piyus Kundu (P.W. 28) to prepare seizure list of articles in the place of

occurrence. Accordingly, S.I. P. Kundu prepared the seizure panchanama of the place of occurrence and seized various articles. The witnesses to

the panchanama were Pravin Kumar Saraogi (P.W. 14), Suresh Kumar Banka (P.W. 3), Hari Prakash Agarwal (P.W. 17), family friend of

Bankas. The dead bodies of the victims came to be removed to the coroner's office where formalities like inquest and post mortem were

completed.

(III) Finger prints of the Appellant-accused at the scene of occurrence:

28. The witnesses to the seizure of the articles from the place of occurrence Pravin Kumar Saraogi (P.W. 14) and Hari Prakash Agarwal (P.W.

17) have deposed in detail about the articles seized and the fact that fingerprints were taken under the supervision of S. I. Piyus Kundu (P. W.

28). Pranab Kumar Bandopadhyay (P.W. 26), finger print expert took the fingerprint on two jewellery boxes lying at the place of occurrence and

after arrest of the Appellant-accused he also collected the specimen fingerprint of the Appellant-accused.

29. In the evidence of Prasanta Kumar Saha (P.W. 21), one Mr. Bikash Bhushan Chowdhury who was the then Director of Finger Print Bureau

who has prepared the report (exbt. 14). This witness also assisted Mr. Chowdhury being one of the examiners of finger prints of this case in

connection with comparison of finger prints of Appellant-accused. He has deposed to the effect that D.D. Calcutta Police supplied three sets of

photograph of finger impressions. Two copies each marked as X1, X2 and Y along with negatives and 10 digit finger prints of Pancham @ Kebal

Rai son of Lachman Rai in two F.P. slips each dated 16.05.2005. Among these photographs finger impression marked X2 is declared unfit. The

prosecution has, therefore, established that the police reached the place/scene of occurrence. They saw the dead bodies of Tara Chand Banka and

Sarda Devi Banka and some articles were scattered in the flat and the knife and swing hook stained with blood in the kitchen. This sufficiently

corroborates the evidence of Suresh Kumar Banka (P.W. 3), Rajesh Kumar Banka (P.W. 4) and Prabha Banka (P.W. 5) and other persons who

were present at the place of occurrence. The most crucial thing is in spite of collection of chance finger prints from the scene of occurrence which

was found in the jewellery boxes in the flat and when these finger prints were compared with the specimen finger prints of Appellant-accused

Pancham, his right thumb impression was found identical with the finger prints marked as X1 and Y. There is no explanation offered by the

Appellant-accused Pancham in this regard. The fact that finger prints of the Appellant-accused having been found on the jewellery boxes found

scattered in the flat on the very day when victim were murdered clinches the prosecution case insofar as the presence of the Appellant-accused in

the flat is concerned and that in all probability he is the person who committed murder of the two victims and robbed them of their valuables.

Otherwise, there is no reason why and how Appellant-accused could have had access to the jewellery boxes which were otherwise kept in the

wooden almirahs and the contents therein were missing.

(IV) Arrest of the accused and discovery of incriminating articles:

30. Other evidence which reinforces the prosecution is in the form of the discovery of articles belonging to the deceased at the instance of the

Appellant-accused. S.I Subhasish Bhattacharjee (P.W. 30) Officer-in-charge, Homicide Squad, D.D. Lalbazar was entrusted with investigation of

Shakespeare Sarani P.S. Case No. 127 Dt. 18.04.2005 u/s 302/394 IPC on 20.04.2005. After taking over the investigation he visited the place of

occurrence and carried out further investigation. He specifically focused on tracing the suspect, i.e., the Appellant-accused Pancham and gathered

further details about the suspect Pancham alias Kebal Rai son of son of Lachman Rai of village Khajuria P.S. Katoria Dist. Banka, Bihar. He,

therefore, visited the native place of the Appellant-accused and conducted raid at different places but could find him. On 15.05.2005 S.I

Makhanlal Gupta (P.W.22) of Anti-dacoity and robbery squad, D. D. Lalbazar informed him that Appellant-accused Pancham alias Kebal Rai

had been arrested by him from Simultala. Therefore, he took over the custody of the Appellant-accused Pancham and produced him before the

learned C.M.M. Calcutta. Appellant-accused Pancham was taken for obtaining his specimen footprint and on interrogation he informed that he

could lead to the place where he had concealed the articles. The memorandum (exbt. 24) cause to be prepared in which the accused stated ""I

have kept concealed a rexine bag containing my blood stained wearing apparel and other articles at different places in Ghorparan Village of

Simultala. I will be able to identify those places if I am taken there by police."" Statement was recorded, left hand thumb impression of Appellant-

accused was taken and the police party led by S.I. Subhasish Bhattacharjee (P.W. 30) went to Simultala, Bihar. On 20.5.2005 they reached

Deoghar and boarded in a Dharmasala viz., Banarasilal Satnaliwala Smriti Bhawan. According to his evidence most of the area under Simultala

P.S. was effected by naxalites activities and, therefore, they requested one Dibakar Singh (P.W. 24), caretaker of the Dharmasala, to accompany

them to Simultala as a witness. Police team took his assistance of Simultala P.S. and accompanied by J.C.O. Kamaluddin Answare of that P.S.

went to Ghorparan village under Simultala P.S. It has come in the evidence of Dibakar Singh (P.W. 24), the witness accompanied the police and

so also S.I. Subhasish Bhattacharjee (P.W. 30) that Appellant-accused Pancham alias Kebal Rai took them to an abandoned place, full of

garbage situated at about 8 ft. North of a hut in that village which came to be recorded in Exbt. XXIV. There was a hut occupied by one Manu

Rai who also agreed to be a witness of search and the police asked him to provide a spade which was handed over to the accused person who led

the police party and the witness to an abandoned place and dug soil for about 1 ft. deep and brought out a brown colour envelope (Mat. Exbt.

XXVII) adhered with soil dust and handed over the same to the police which was opened in front of the witnesses and the local people from

where ornaments were found. The envelope was bearing the writings ""If undelivered please return to Novo Flex Marketing Pvt. Ltd., 3B, Camac

Street, Calcutta."" The ornaments and articles came to be seized under the seizure list in presence of the witnesses which was signed by accused as

well as the witness Dibakar Singh (P.W. 24) and the local police officer of Simultala P.S. The seizure list is exbt. XIX. The witnesses as well as

Police Officers identified the articles and the jewellery seized at the instance of Pancham alias Kebal Rai in their evidence before the Court and

identified the signature on the labels of the seized articles during the trial. After the discovery of the envelope and the gold articles the Appellant-

accused Pancham alias Kebal Rai led them to a dense bush situated at about 100 yard East of the village and brought out one rectangular shape

black colour old dirty self designed rexine bag fitted with chains and handed the same to the Police Officers in the presence of the witnesses. The

bag was opened and from inside the bag some articles such as one full sleeve breast open old and used partly torn yellowish shirt stained with

blood having its this third button from the top was missing, one blueish full pant having brownish stains at places, one identity card issued by Iscon

Authority bearing photograph of Tara Chand Banka. Two pieces of visiting cards in the name of Tara Chand Banka, two empty jewellery boxes

which was seized by the police in another seizure list contained therein the signatures are also identified and exhibited during evidence in the trial by

the witness Dibakar Singh (P.W. 24) and S.I. Subhasish Bhattacharjee (P.W. 30).

31. This evidence of discovery at the instance of the Appellant-accused by Dibakar Singh (P.W. 24) and Subhasish Bhattacharjee (P.W. 30) has

not been shaken in cross-examination. The prosecution has been able to establish that the gold ornaments found in the envelope discovered at the

instance of the Appellant-accused contains jewellery belonging to Tara Chand Banka and Smt. Sarda Devi Banka. Suresh Kumar Banka (P.W. 3)

in his evidence before the Court has identified the envelope of their company "Novo Flax" which is situated at the ground floor of Mansarabar

building. He has specifically stated that even the jewellery and other articles which were stolen would value at 18 to 20 lakhs and that the gold

locket (Mat. Exbt. XXII) with diamond setting has been scribed the letter "S" belongs to his mother. The gold ring (Mat. Exbt. XXIII) with

diamond setting has been scribed the letter "T" belongs to his father. The gold chain (Mat. Exbt. XXIV) having three lines gold chain belongs to his

mother. He has also identified the rexine bag (Mat. Exbt. XXI) belongs to his parents which was lost in the said incident. He has also identified the

visiting card of his father (Mat. Exbt. XXV) and Identity Card (Mat. Exbt. XXVI) of his father.

32. Therefore, we have no doubt that the Appellant-accused Pancham has committed the murder and robbed the couple of their valuables and

cash.

33. Learned Counsel appearing for the Appellant-accused submitted that the police in course of investigation had arrested two suspects, but they

were subsequently discharged. In the evidence of S.I. Subhasish Bhattacharjee (P.W.30) it is stated that during investigation it could be learnt that

one Ramswarup Mondal and Jodhan Mondal of village Ardhari P.S. Katoria, Dist. Banka, Bihar are involved in disposing some of the buties of

this case. So, they were in look out and, subsequently, came to be arrested by Katoria P.S. The investigating team took custody of these two

suspects by obtaining a production warrant issued by the learned CMM of Calcutta. Learned Court granted remand of both the accused to police

custody as sought for and they were interrogated but the police could not gather sufficient material to prosecute them and, therefore, these two

persons came to be discharged.

34. It is common knowledge that during investigation the police are able to gather information and material related to the crime and that is why they

come to know a lot of details relating to the offence and the involvement of persons in the commission of the offence as well as their accessories

before and after the fact, but all such information and material gathered during the course of investigation cannot be translated into preparation of

charge sheet as the investigating agency knows well that they will not be able to place it before the Court as evidence and, therefore, merely

because two of the suspects were let off by the police as they were not able to get any incriminating material against them to charge and prosecute

them along with the Appellant-accused. The Appellant-accused cannot claim any benefit of doubt on this count. We are required to make this

observation as we find that the arrest of the two suspects and their discharge was part of the investigation carried out by the investigating agency

but for want of sufficient material they could not be prosecuted in this case.

35. To sum up we find that the prosecution has established that the Appellant-accused Pancham robbed the old couple of their valuables and cash

after committing their murder for which he had all the opportunity being the only person in the flat. This becomes clear from the established

circumstances such as "last seen" in the flat in the night of 17.04.2005 and seen leaving the flat with a rexine bag in the morning of 18.04.2005, the

fingerprints found on the empty jewellery boxes, his arrest and discovery of stolen articles at his instance. When all this evidence is put to him he

has not only denied but took a plea that on 17.04.2005 at 5 P.M. he had already left the flat and gone to his native place which is false to his own

knowledge as on the very day he was seen present in the flat at 9.45 P.M. by family members of deceased who have come to meet their parents in

the evening. Therefore, we have no hesitation to conclude that the chain of circumstances is complete as reasonable possibility of any other person

being real culprit is excluded.

36. We have heard the learned Counsel for the Appellant-accused and the learned P.P. on the point of sentence at length.

37. The learned Counsel for the Appellant-accused submitted that the trial Court has not taken into consideration the social background of the

Appellant-accused, his age and the fact that he has criminal antecedent to his discredit and the prosecution has brought nothing on record to show

that he has taken to a life of crime and, therefore, was the first offender. It is submitted that the trial court focused on the crime and ignored the

criminal. In support of his contention that in the present case death is not called for, he also placed reliance upon the case of Bishnu Prasad Sinha

and Another Vs. State of Assam, and drew the attention of the Court to the observation made by the Supreme Court in paragraphs 57 to 65 of

the said judgment. The Supreme Court has taken into consideration various decisions on the subject. In the opinion of Their Lordship imposition of

punishment of imprisonment for life shall meet the ends of justice. It is directed that both the Appellants, therefore, are instead of being awarded

death penalty, sentenced to undergo imprisonment for life. It was a case of rape and murder of a girl aged 7-8 years and the fact that Appellant,

Bishnu Prasad Sinha, showed his remorse and repentance and accepted his guilt in the statement u/s 313 Code of Criminal Procedure, the

Supreme Court felt it appropriate not to award extreme penalty of death.

38. On the other hand, the learned P.P. submitted and in identical case the Supreme has thought it appropriate to award death sentence and

submitted that in the given facts and circumstances of the case the Appellant-accused has committed murder of old couple who had reposed

complete faith in him in providing him with job and shelter. This given case comes within the category of rarest of rare case and awarding of the

death sentence was provided. The learned P.P. further submitted that the trial court has highlighted aggravating circumstances as a justification for

imposing death sentence and cited the decision of the Supreme Court in Amrutlal Someshwar Joshi Vs. State of Maharashtra, . In the facts and

circumstances of that case Their Lordships were of the firm opinion that the case of the Appellant comes within the category of rarest of rare cases

as the accused, domestic servant, was awarded sentence of death for having committed murder of three members of family with intention to

commit murder and the victims were an old man aged 77 years, a hapless lady and a child aged 3 years. It is further submitted by the learned P.P.

that such crimes are on the rise and that domestic servants are betraying the confidence reposed in them and killing their employees seeing them in

a hapless condition and, therefore, the Court should not show any sympathy for such crimes.

39. In Bachan Singh Vs. State of Punjab, a five-Judge Bench of the Supreme Court by majority observed:

199. With great respect, we find ourselves unable to agree to this enunciation. As we read Sections 354(3) and 235(2) and other related

provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of

special reasons"" in that context, the Court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the

aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so

intertwined that it is difficult to give a separate treatment to each of them. This is so because "style is the man". In many cases, the extremely cruel

or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not

desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate water-tight compartments. In a sense, to

kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability

assumes the proportion of extreme depravity that ""special reasons"" can legitimately be said to exist.

200. Drawing upon the penal statutes of the States in U.S.A. framed after Furman v. Georgia, in general, and Clause 2 (a), (b), (c), and (d) of the

Indian Penal Code (Amendment) Bill passed in 1978 by the Rajya Sabha, in particular, Dr. Chitale has suggested these ""aggravating

circumstances"":

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

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

(b) if the murder involves exceptional depravity; or

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

committed -

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

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member

or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or

public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty u/s 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 u/s 37 and Section 129 of the said Code.

201. Stated broadly, there can be no objection to the acceptance of these indicators but as we have indicated already, we would prefer not to

fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other.

202. In Rajendra Prasad, the majority said: ""It is constitutionally permissible to swing a criminal out of corporeal existence only if the security of

State and society, public order and the interests of the general public compel that course as provided in Article 19(2)-(6)."" Our objection is only to

the word ""only"". While it may be conceded that a murder which directly threatens, or has an extreme potentiality to harm or endanger the security

of State and society, public order and the interests of the general public, may provide ""special reasons"" to justify the imposition of the extreme

penalty on the person convicted of such a heinous murder, it is not possible to agree that imposition of death penalty on murderers who do not fall

within this narrow category is constitutionally impermissible. We have discussed and held above that the impugned provisions in Section 302, Penal

Code, being reasonable and in the general public interest, do not offend Article 19, or its "ethos"; nor do they in any manner violate Articles 21

and 14. All the reasons given by us for upholding the validity of Section 302, Penal Code, fully apply to the case of Section 354(3), Code of

Criminal Procedure, also. The same criticism applies to the view taken in Bishnu Deo Shaw Vs. State of West Bengal, , which follows the dictum

in Rajendra Prasad (ibid).

203. In several countries which have retained death penalty, pre-planned murder for monetary gain, or by an assassin hired for monetary reward

is, also, considered a capital offence of the first degree which, in the absence of any ameliorating circumstances, is punishable with death. Such

rigid categorization would dangerously overlap the domain of legislative policy. It may necessitate, as it were, a redefinition of "murder" or its

further classification. Then, in some decisions, murder by fire-arm, or an automatic projectile or bomb, or like weapon, the use of which creates a

high simultaneous risk of death or injury to more than one person, has also been treated as an aggravated type of offence. No exhaustive

enumeration of aggravating circumstances is possible. But this much can be said that in order to qualify for inclusion in the category of ""aggravating

circumstances"" which may form the basis of "special reason" in Section 354(3), circumstance found on the facts of a particular case, must evidence

aggravation of an abnormal or special degree.

204. Dr. Chitaley has suggested these mitigating factors: ""Mitigating circumstances: in the exercise of its discretion in the above cases, the Court

shall take into account the following circumstances:

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

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

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

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

conditions 3 and 4 above.

(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.

40. We find that the trial court failed to consider the aggravating or mitigating circumstances as per the guidelines provided in Bachan Singh's case

(supra).

41. In Machhi Singh and Others Vs. State of Punjab, the Supreme Court observed:

33. In this background the guidelines indicated in Bachan Singh's case (supra) will have to be culled out and applied to the facts of each individual

case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh's 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 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.

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

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and call 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 ?

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

questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the Court would proceed to do so.

42. In the present case, the Appellant-accused, a domestic servant, murdered Tara Chand Banka and Sarda Devi Banka while they were sleeping

by inflicting multiple injuries causing their instant death so as to facilitate him to rob them of their valuables and fled away to his native place. No

doubt, the manner in which the Appellant-accused committed crime does not call for any sympathy but we pause to consider whether the

Appellant-accused has by his conduct forfeited his right to life. We do not think so. The crime committed by the Appellant-accused to satisfy his

greed and the Appellant-accused having found the opportunity, committed murder of the old couple and if we ask ourselves (a) is there something

uncommon about the crime which renders sentence of imprisonment for life inadequate and call 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 ? Our answer is in the negative for the reason that we do not find Pancham has any criminal record and this

was his first crime and in all probability the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

Considering that the accused was about 25 years of age there is a probability that he can be reformed and rehabilitated. Further, this cannot be

considered as rarest of rare case. In our considered opinion, the imposition of penalty of imprisonment for life shall meet the ends of justice.

Therefore, we alter sentence of death imposed by the trial court to one of imprisonment for life and the sentence of imprisonment of life awarded to

the Appellant-accused for committing robbery is upheld except for modification of sentence of death to imprisonment for life, the appeal stands

dismissed and reference is disposed of accordingly.