

Dr. Heera Lal Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-23-2001

Reported in : 2001CriLJ2849

Judge : J.C. Gupta and ;Bhanwar Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 309; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 164, 235(2), 313, 354(3) and 364

Appeal No. : Cri. Appeal No. 3429 and Cri. Ref. No. 16 of 1999

Appellant : Dr. Heera Lal

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Chandra Shekhar Prasad, ;Krishnakant Tripathi and ;Satya Prakash Srivastava, Advs.

Judgement :

J.C. Gupta, J.

1. Appellant-Dr. Heera Lal has been sentenced to death under Section 302 of the Indian Penal Code for committing the murder of his wife and three minor children in the early hours of morning of 26-1-1999 at his in-laws House No. C-33/278, B2

Chandau Chhittupur, Varanasi city within the area of police station, Sagra, Varanasi. By the impugned judgment dated 8-12-1999 Sessions Judge, Varanasi has found the appellant guilty under Section 302, I.P.C. as well as under Section 309, I.P.C. for making attempt to commit suicide. However, since the appellant has been sentenced to extreme penalty of death under Section 302, I.P.C. no separate sentence under Section 309, I.P.C. has been passed by the learned Sessions Judge.

2. Undisputedly, appellant was married to Smt. Suraj Kumar! deceased about 14-15 years before the incident in question. Out of their wedlock three children, two daughters, namely, Km. Sajal aged about 11 years and Km. Priya aged about 8 years and one son Prince aged about 6 years were born. According to the prosecution case as revealed from the evidence on record appellant with his family was residing in village Kishanpura district Ballia. One of appellant's-daughter however, used to live with the parents of Smt. Suraj Kumar in the house where the incident occurred. Appellant was in debt of about Rs. 10 lacs. On the preceding day of incident, appellant with his wife and the other two children had come to his in-law's place. Appellant with his wife and all his three children including the girl who was staying at his in-law's place went to sleep in the outer most room of the house. At about 5 in the morning of 26-1-1999 Sachchidanand P.W. 1, brother of Suraj Kumar, Suman Kumari, P.W. 2, Sister of deceased-Suraj Kumar and Lata Devi, P.W. 3, wife of Sachchidanand P.W. 1 woke up on hearing shrieks and cries of appellant's-children emanating from the room where the appellant and his family were sleeping. They all went to the said room and found the same locked from inside. Sachchidanand gave a push at the door and saw from the slit of the door that appellant was having a sickel (hasiya) in his hand and he was assaulting his children. Smt. Lata Devi, P.W. 3, wife of Sachchidanand then opened the outer door and witnesses then came into the verandah. They peeped through his window of the room and saw that head of Suraj Kumar was lying chopped off, eldest daughter was also lying in a pool of blood and the other two children were still alive and were being assaulted by appellant with Hasiva. They also sustained injuries and fell on the ground. Witnesses raised cries. Appellant after assaulting his wife and three children also inflicted Hasiya blows on his own neck, legs and thighs. An electric bulb was throwing light in the room. In spite of request made by

the witnesses appellant did not open the door. Smt. Lata Devi and Suman Kumari shouted for help whereupon many persons from neighbourhood collected and with their help door of the room where the incident had occurred was got opened. They found Smt. Suraj Kumar and the three children dead whereas appellant was lying injured and was crying in pain. When asked as to what had happened, appellant told the witnesses that since he was in debt of Rs. 10 lacs therefore, he wanted to finish himself and his entire family.

3. Appellant was then soon removed to Kabir Chaura Hospital where his injuries were examined by Dr. Arvind Kumar P.W. 9 at 6.50 a.m. on the same day. Following injuries were found on the person of appellant.

1. Incised wound 8 cm. x 2 cm. x bone deep on front of left leg lower part.
2. Incised wound 6 cm. x V? cm. x muscle deep front of left leg lower part 1 cm. above injury No. 1.
3. Incised wound 9 cm. x 3 cm. x. muscle deep on front of left thigh middle part.
4. Incised wound 7 cm. x 2 cm. x muscle deep on left side of face near angle of mandible.
5. Incised wound 2 in number, 1 cm. apart,; 2 cm. x 1/2 cm. x muscle deep (parallel) on front of neck.
6. Incised wound 10 cm. x 3 cm. x depth not probed, on right back of neck.
7. Incised wound 8 cm. x 1 cm. muscles deep on right side root of neck.
8. Incised wound 4 cm. x muscles deep on right side back of neck near root.
9. Incised wound 5 cm. x 1/2 cm. x depth not probed, on back of neck upper part.
10. Incised wound 1 1/2 cm. x cm. x skin deep on back of neck upper part.

Dr. Arvind Kumar P.W. 9 in his statement recorded before the trial Court opined that all the aforesaid injuries could be 'caused by sharp edged weapon like Hasiya in the morning of 26-1-1999. Hasiya material Ex. 1 was shown to the (doctor in

witness-box and he stated specifically that injuries of appellant Heera Lal could be caused by that weapon. He further opined that all the aforeaid injuries be self-inflicted Injury report of Heera Lal appellant is Ex. Ka 23.

4. After getting appellant admitted in Kabir Chaura Hospital Sachchidanand P.W. 1 came back home and prepared First Information Report Ex. Ka 1 in his own hand writing and the same was lodged at Police Station, Sagra on the same day at 7.20 a.m. He also carried with him Hasiya, Ex. 1 with which appellant had assaulted the deceased persons and inflicted injuries on his own person and handed over the same at the police station which was taken into custody through memo Ex. Ka 8. Head Constable Ram Asal Yadava P.W. 5 prepared Chik F.I.R. and registered the case in the general diary. He himself prepared memo of Hasiya Ex. Ka 8. Since Station Officer Anil Kumar Rai, P.W. 11 was not present at the police station at the time when F.I.R. was lodged, Head Constable Ram Asal Yadav gave information to him on R.T. set. Sub-Inspector Ram Chandra Yadav, P.W. 7 was, however, present at the police station and he proceeded to the scence of occurrence for holding inquest. He found all the dead-bodies inside the room of incident. He held inquest proceeding and prepared necessary papers and sent the dead bodies to mortuary for post-mortem examination. He also took into his possession blood stained bed 'sheets, which were on the cots and also collected samples of blood stained and plain pieces of the floor of the room. Station Officer Anil Kumar Rai on getting information off the incident in question immediately rushed to the place of occurrence. He made inspection of the scene of occurrence and prepared site plan Ex. Ka 25. He also recorded on the same day statements of Sachchidanand, Suman Kumar and others. After completing other formalities he submitted charge-sheet Ex. Ka 26 against the appellant.

5. Dr. S. K. Rai P.W. 4 conducted autopsy on the dead bodies of deceased persons. Following ante-mortem injuries were found on the deceased-Suraj Kumari :

1. Chop wound (incised) 26 cms. x 6 cms. x bone deep on left side of neck, 2 cm. outer to mid line of neck back, 4 cm. below the left ear up to right side of neck, upper part of chest (front) and right shoulder joint (front) obliquely placed, multiple

tailing present. All the major vessels of neck (right and left), Trachea, Oesophagus, soft tissues cranial vertebrae right sterno clavicular joint cut, 4th, 5th and 6th vertebrae were also cut but intact on right side. Spinal Cord was also cut.

2. Chop incised wound 8 cm, on back of right palm (Dorsal aspect), 4 cm. above right (sic) joint incised cut through and through, partially intact skin, except right thumb and right small finger, all the fingers were cut completely from carpo phalangeal joint.

6. In the opinion of the doctor, death was due to shock and haemorrhage as a result of cut throat injuries. Post-mortem report of Smt. Suraj Kumar is Ex. Ka 2.

7. On the same day at 4.40 p.m. autopsy on the dead body of Km. Priya was conducted by the same doctor and following ante-mortem injuries were found :

1. Chop incised wound 9 cm. x 4 cm. x bone deep on back of neck left side, 2 cm. below left ear with single tailing cutting major blood vessels, cutting cervical vertebrae C4 and spinal cord at that level.

2. Chop incised wound 14 cm. x 2 cm. x brain deep, on back of head and right parietal region with cutting of occipital and right parietal bone. One tailing.

3. Chop incised wound 13 cm. x 4 cm. x brain deep on back of head, 3 cm. outer of right ear. Cutting occipital left parietal and left temporal bone. One tailing.

4. Chop incised wound with multiple tailing 7 cm. x 4 cm. x bone deep on left side of head, 4 cm. above to left ear.

5. Incised chop wound 9 cm. x 2 cm. x brain deep touching to left ear. Single tailing.

6. Chop incised wound 7 cm. x 1/2 cm. x bone deep on left side face and nose, nasal bone cut. Tailing single.

7. Incised wound (chop) 3 cm. x 1 cm. x bone deep on left side of elbow joint.

8. Chop incised slip injury 5 cm. x 6 cm. on back of (dorsal) right palm. All the fingers of right palm cut and missing.

9. Multiple incised wound 10 cm. x 4 cm. on back of (dorsal) right palm and hand.

10. Chop incised wound 8 cm. x 3 cm. x muscle deep on left side thigh outer aspect 4 cm. above to knee joint.

11. Chop incised wound 15 cm. x 3 cm. x muscle deep on back of left thigh, knee and upper 1/3rd of 1%.

12. Incised chop, wound 5 cm. x 1/2 cm. x muscle deep on back of chest, middle part.

8. According to the opinion of the doctor, cause of death was due to injuries to spine and spinal cord and injuries to head and brain. Post-mortem report of K. Priya is Ex. Ka 3.

9. Post-mortem examination of Km. Sajal was conducted by the same doctor on the same day at 5.10 p.m. and following ante-mortem injuries were found :

1. Chop incised wound 14 cm. x 4 cm. x bone on right side face, neck obliquely placed touching to angle of mouth right side and right ear. Cutting all major vessels of right side, single tailing.

2. Chop incised wound 7 cm. x 1 cm. x bone deep on right side of head right temporal and frontal bone cut, single tailing.

3. Chop incised wound 10 cm. x 2 cm. x bone deep on back of neck, 3 cm. behind right ear, single tailing.

4. Chop incised wound 10 cm. x 2 cm. x brain deep on back of head touching to injury No. 3 occipital bone cut single tailing.

5. Chop incised wound 11 cm. x 2 cm. x brain deep on back of neck 1 1/2 cm. near injury No. 4, single tailing.

6. Chop incised wound 10 cm. 1 cm. x bone deep on back of head, 1 cm. near injury No. 5, single tailing.

7. Incised wound 7 cm. x 3 cm. x muscle deep, on back of left shoulder.

8. Chop incised wound 3 cm. x 1 cm. x bone deep on outer and dorsal aspect of left palm with out of left little finger at carpo phalangeal joint.

In the opinion of the doctor cause of death was coma as a result of injury to brain and other injuries, post-mortem report of K. Sajal is Ex. Ka 4.

10. Post-mortem on the dead body of Prince was held on the same day at 5.30 p.m. by the same doctor and following antemortem injuries were found :

1. Chop slip incised wound 15 cm. x 4 cm. x bone deep on left side head face, left side of mouth involving upper lip cutting left ear, obliquely placed. All major vessels and left mandible cut, single tailing.

2. Chop incised wound 11 cm. x 4 cm. x bone 'deep on back of neck. Mostly neck area with single tailing, one tail continues with injury No. 1 at left ear area cutting all major vessels and occipital bone; 1st cervical vertebrae (C1) medulla oblongata is also cut, brain matter is coming out. Spinal cord cut.

3. Chop incised wound 8 cm. x 3 cm. x bone 'deep with double tailing on back of head,' 2 cm. above injury No. 2, occipital bone cut.

4. Incised chop wound 4 cm. x 2 cm. x bone deep on back of left shoulder at top. Ligaments of scapula humerus joint are ruptured.

5. Chop incised wound 4 cm x 2 cm. x bone deep on top of right shoulder with dislocation of right shoulder joint.

6. Chop incised wound 3 cm. x 2 cm. on back of chest scapula region right scapula cut.

7. Incised chop wound 5 cm. x 2 cm. x bone deep on left palm dorsal aspect and left thumb; left thumb is cut at carpelo phalangeal injunction.

8. Chop incised wound 5 cm. x 3 cm. x bone deep on front of chin. Mandible cut and fractured.
11. In the opinion of doctor cause of death has come as a result of head and brain injury and injury to spinal cord. Postmortem report of Prince is Ex. Ka 5.
12. To substantiate charges against the appellant, prosecution produced 11 witnesses before the trial Court. They were P. W. 1-Sachchidanand; P.W. 2, Suman Kumar; P.W. 3 Lata Devi; P.W. 4 Dr. S. K. Roy; P.W. 5 Head Constable Ram Asal Yadav; P.W. 6 Kamlesh Sharma; P.W. 7 S. I. Ram Chandra Yadav- P.W. 8 Vijai Kumar; P.W. 9 Dr. Arvind Kumar; P.W. 10 Addl. District Magistrate, Arvind Kumar Pandey and P.W. 11 S. O. Anil Kumar Roy, the Investigating Officer, P.W. 1 Sachchidanand, P.W. 2 Suman Kumari and P.W. 3 Lata Devi are eye-witnesses of the incident.
13. P.W. 4 Dr. S. K. Roy deposed that he ' had conducted autopsy on the dead bodies of Smt. Suraj Kumar, wife of appellant, Km. Priya and K. Sajal, daughters of appellant-Heera Lal and Prince son of appellant)-Heera Lal on 26-1-1999 and proved their post-mortem reports as Ex. Ka 2, 3, 4 and 5- Dr. Roy further stated that ante-mortem injuries found on the deceased persons were sufficient to cause their death in ordinary course and they were caused by sharp edged weapon like Hasiya.
14. P.W. 5 Head Constable Ram Asal Yadav was posted as Head Moharrir at P. S. Sagra. He stated that on 26-1-1999 at 7.20 a.m. Sachchidanand had lodged written report Ex. Ka 1 on the basis of which chik F.I.R. Ex. Ka 6 was prepared and the case was registered in the genral diary vide copy Ex. Ka 7. He further stated that the first information had also produced at the police station one Hasiya Ex. 1 and the same was taken into police custody and kept in a sealed bundle through memo Ex. Ka 8. He denied the defence suggestion that the F.I.R. was lodged much later than it purported to be.
15. P.W. 6 Constable Kamlesh Sharma has stated that he had escorted the dead bodies of four deceased-persons from the place of occurrence to mortuary for postmortem examination. P.W. 7 is S.I. Ram Chandra Yadav. He stated that on

26-1-1999 case was registered at the police station in his presence at 7.20 a.m. and he proceeded to the spot for holding inquest. He proved inquest reports and other necessary papers. He further stated that he collected blood stained and plain pieces of the floor of the room where the incident had occurred and also two blood stained bed sheets.

16. Vijay Kumar P.W. 8 is a witness of memo through which Hasiya was taken into possession by police at the police station. He stated that the same was produced by first informant Sachchidanand in life presence when Sachchidanand lodged first information report at the police station.

17. P.W. 9 is Dr. Arvind Kumar, Medical Officer who had examined injuries of accused-appellant-Heera Lal on 26-1-1999 at 6.50 a.m. He proved the injury report as Ex. Ka 23. He further stated that injuries of accused-appellant were possibly caused by sickle Ex. 1. He has further opined that all the injuries of accused-appellant could be self-inflicted. He also proved certificate {Ex. Ka 23A) appended by him on the statement of accused-appellant recorded by Executive Magistrate under Section 164, Cr. P.C.

18. P.W. 10 Arun Kumar Pandey was posed as Additional City Magistrate. He has stated that on 26-1-1999, he recorded the statement of accused-appellant under Section 164, Cr. P.C. and whatever was stated by appellant he reduced the same into writing and proved the said statement as Ex. Ka 24.

19. P.W. 11 Station Officer Anil Kumar Roy is the Investigating Officer. The case of accused-appellant was of denial. In his statement recorded under Section 313, Cr. P.C. appellant stated that he wanted to construct his house at Varanasi after purchasing land and he had told this fact to his brother-in-law Sachchidanand, who informed him on phone that an amount of Rs. Six lacs would be needed for getting the sale deed executed and registered. On this information he along with his family reached at Sachchidanand's house with the required money. On the asking of Sachchidanand he handed over the entire amount to him. Thereafter in the morning of 25th he along with his wife got ready at about 9.30 a.m. and asked Sachchidanand to proceed for the execution of the sale deed. However, Sachchidanand told him that as deed writer has gone out it would not be possible

to get the sale deed executed on that day and as registration officer would be closed on 26th January registration could only be possible on 27th January. Therefore, he stayed back at Sachchidanand's house. On 26-1-1999 the incident in question occurred and he himself was assaulted as a result of which he became unconscious and he did not know who had committed the murders and assaulted him. Accused, however, did not produce any witness in defence.

20. On evaluation of evidence on record, the learned Sessions Judge has come to the conclusion that it has been established beyond doubt that in the morning of 26-1-1999 at about 5 O'clock accused-appellant-Heera Lal committed the murder of his wife Suraj Kumari, daughters K. Priya and K. Sajal and son Prince with Hasiya in House No, C 33/278, B-2 Chandau Chhittupur, Varanasi and thereafter accused-appellant made an attempt to commit suicide by inflicting injuries on his own person from the same Hasiya. According appellant has been convicted and sentenced to death under Section 302, I.P.C. while no separate sentence has been passed in respect of offence punishable under Section 309, I.P.C. He has also made a reference to this Court for confirmation of death sentence.

21. Shri Satya Prakash Srivastava argued appeal on behalf of the appellant while Shri K. C. Saxena made submission on behalf of the State.

22. In support of its case prosecution produced before the trial Court three witnesses, namely, Sachchidanand P.W. 1, Suman Kumar, P.W. 2 and Smt. Lata Devi, P.W. 3 who all gave eye-witness account. Sachchidanand is the brother-in-law of accused-appellant-Heera Lal. Deceased Suraj Kumar was his real sister who was admittedly married to appellant. The witness further stated that one day before the incident in question, appellant had come to his house along with his wife, one daughter and son Prince. The other daughter of appellant was already living with Sachchidanand and his family even before the incident. In the night of 25/26-1-1999 appellant along with his wife Suraj Kumar and 3 children were sleeping in the outer most room of Sachchidanand's house. In the morning of 26-1-1999 at about 5 a.m. he heard cries and shrieks of children coming from the room where appellant was sleeping. He got up and also awakened his wife and sister Suman Kumar and proceeded towards the room from where cries were

emanating. The room was closed from inside. He gave a push on the door and saw from the slit of the door that the children of appellant were weeping inside the room and running here and there and appellant-Heera Lal holding a Haslya (sickle) in his hand was assaulting them. He further stated that his wife Smt. Lata Devi opened the outer door of the house and the witnesses came in the verandah. The room where the incident occurred had a window in this verandah. The witnesses peeped through the window and saw that head of Suraj Kumar was lying chopped off; eldest daughter of appellant-K. Sejal was also lying in a pool of blood. The other two children were still alive and they were being assaulted by appellant with sickle. They sustained injuries and fell down on the floor of the room. The witnesses shouted for help. Accused-appellant after inflicting injuries on his wife and three children started inflicting Hasiya blows on his own person. The electric bulb was throwing light in the room. On the alarm raised by the witnesses many persons from neighbourhood arrived and with their help door of the room where the incident occurred was got opened. It was found that Smt. Suraj Kumari and her three children were already dead. However, appellant was crying in pain. Blood stained sickle was a|sp lying near him which this witness picked up. On being asked by the witnesses as to, what has happened, appellant told them that since he had incurred a debt of Rs. Ten lacs so he wanted to finish himself and his entire family. Appellant was then soon removed to Kabir Chaura Hospital where his injuries were examined and he was admitted. Thereafter Sachchidanand came back home and himself prepared First Information Report Ex. Ka 1 in his own handwriting. He then went to police station with the written report and the sickle which he had picked up from the room where the incident had occurred. In cross-examination he stated that he had no knowledge if appellant had borrowed Rs. Ten lacs and if so from whom. In his presence no one had demanded money from the appellant. However, he was told of that fact by appellant himself and his sister Smt. Suraj Kumari. He further stated that it was not within his knowledge if appellant wanted to purchase a plot of land in Varanasi. He denied the defence suggestion that he had told the appellant regarding availability of land for Rs. Six lacs. He further denied that on 23-1 -1999 he had informed appellant to come with Rs. Six lacs and accordingly appellant had come to his house on 24-1-1999 with Rs. Six lacs which the appellant gave to him. It was suggested to this witness that

in order to usurp appellant's money the entire family of appellant was done to death by this witness and his family, members but the witness denied this suggestion.

23 P.W. 2 Smt. Suman Kumari, is the younger sister of deceased-Saroj Kumari. He stated that on the night of occurrence she was sleeping in her own room while her brother-in-law, (appellant), her sister and their three children were sleeping in the outer most room of the house. At about 5 in the morning she woke up on hearing cries whereupon she along with her brother Sachchidanand and his wife Smt. Lata Devi reached at the door of the room where appellant and his family were sleeping. She fully supported P.W. 1 Sachchidanand and stated that from the window of the room she was that her sister Suraj Kumar was lying in a pool of blood on the cot, Km. Sajal was also lying in a pool of blood and the appellant was assaulting his two other children. Seeing this ghastly incident she was so shocked and terrified that she did not enter into the room where the incident occurred.

24. P.W. 3 Lata Devi is wife of P.W, 1 Sachchidanand. She also testified and narrated the entire facts as have been deposed by P.W. 1 Sachchidanand. She has also specifically stated that when her husband asked the appellant about the incident he told him that he was in debt of Rs. Ten lacs and, therefore, he decided to finish himself and his entire family.

25. It was submitted by learned counsel for the appellant that as per the evidence of the witnesses the appellant committed the murder of his wife and three children and also attempted to finish himself for the reason that he had incurred a debt of Rs. Ten lacs, but there is no evidence on record to establish this motive. It was further submitted by the learned counsel for the appellant that it was highly improbable and unnatural that appellant would have gone to his in-law's place simply to kill his own wife and three children there. If he had such an intention he could have carried out his plan easily at his own house. We have duly considered the submissions of learned counsel for the appellant but find no weight therein. It is true that the Investigating Officer did not try to collect evidence as to whether in fact appellant had borrowed Rs. Ten lacs and if so from whom but this lapse on the part of Investigating Officer will have no adverse effect on the veracity of the

prosecution case. It has come in the statement of P.W. 1 Sachchidanand and his wife P.W. 3 Smt. Lata Devi that as soon as the witnesses entered into the room of incident, Sachchidanand inquired from appellant about the incident whereupon appellant himself told them that he was in debt of Rs. Ten lacs which he was unable to pay and, therefore, he had decided to finish himself and his entire family. This fact was even mentioned by Sachchidanand in the F.I.R. Ex. Ka 1 which he lodged at the police station within a short period. There is nothing on record to indicate that Sachchidanand and his wife Smt. Lata Devi had any Animus or other reason to depose falsely against the appellant. It was suggested to P.W. 1 Sachchidanand that appellant had come to his house with an amount of Rs. Six lacs to purchase land as was suggested to him by Sachchidanand and that money was given to Sachchidanand and, therefore, with a view to usurp the money, murders were committed and appellant was also injured. There is no material on record whatsoever to indicate that the appellant was having Rs. Six lacs when he arrived at the house of Sachchidanand. To us there seem to be no grain of truth in this suggestion of the defence. Had the incident occurred for the reason as stated by the appellant, he would have been the main target of assailants yet surprisingly he alone survived and was not given murderous assault, though his innocent wife and three minor children were butchered in a most cruel manner. If Sachchidanand and his other family members were real murderers, it does not sound to reason that they would even kill three minor innocent children of whom the youngest was of the age of six years. In that event P.W. 2 Km. Suman Kumari, real younger sister of the deceased-Suraj Kumar would have been the last person to depose against the appellant. So far as the argument of learned counsel for the appellant that it was highly unnatural that the appellant would have come to his in-law's place to kill his entire family there, is concerned, it is not easy to find out what actually operated in the mind of the appellant before committing the crime in question. There could be various reasons which could be known only to the appellant and none else as to why the appellant selected to carry out his design only at the place of his in-laws. It is not possible to lay hands over them. However, we may mention here that undisputedly one of the daughter of the appellant was already staying at the place of appellant's in-laws even before the occurrence in question. The appellant as per his own statement given to the witnesses had

decided to finish his entire family including the said daughter. Who knows for this reason he carried out his plan at his in-laws place as he wanted to kill that daughter also. Another reason which strikes us could be that the appellant might have selected his in-laws place so that dead bodies of his entire family could well be attended and cremated. In any view of the matter to fasten guilt on accused appellant, we do not think it necessary to probe any further about the reason as to why crime was committed by appellant at his in-laws place and not any other place.

26. All the three prosecution witnesses undoubtedly are Inter-related with each other but their presence in their own house at 5 in the morning was most natural and probable. They have given a vivid account of the incident and their evidence gets full corroboration from the medical evidence. It is further corroborated by the fact that sickle Ext. 1 with which assault was made by the appellant was picked up by P.W. 1 Sachchidanand from the place of occurrence and was handed over to police when First Information Report was lodged. P.W. 1 Sachchidanand identified the sickle in Court and stated on oath that assault was made by the same weapon. Dr. S. K. Rai P.W. 4 specifically stated that ante-mortem injuries of all the deceased persons were of sharp edged weapon like Hasiya. P.W. 9 Dr. Arvind Kumar who had medically examined the injuries of appellant has stated that injuries of appellant were of sharp edged weapon. Hasiya (sickle) Ex. 1 was shown to Dr. Arvind Kumar and he was asked specifically whether injuries found on the person of appellant could be caused by that weapon and Dr. Arvind Kumar gave his opinion in affirmative. Dr. Arvind Kumar further stated that all the injuries of appellant could be self-inflicted. A perusal of injury report of appellant Ex. Ka 23 leaves no room for doubt that the injuries were self-inflicted. Injury Nos. 1, 2 and 3 were on left leg and left thigh. Injury No. 4 was again on left side of face near angle of mandible. Injury No. 5 was on front of neck. Injury Nos. 6 to 10 were on right side of back of neck. The seat of injuries and the force with which they were caused support the prosecution case that those injuries were caused by appellant himself when he made an attempt to finish himself. Had the murders been committed by any other person or persons, appellant would not have been left with either skin or muscle deep injuries, particularly when other deceased persons were butchered. Suraj Kumari had two chop incised wounds, first one was a 36

cm. x 6 cm. chop incised wound which had cut major vessels of neck, trachea, oesophagus, soft tissues cranial vertebrae, right sterno clavicular joint also 4, 5 and 6th vertebrae and spinal cord. Injury No. 2 would show that except right thumb and right small finger all other three fingers were completely chopped from carpo phalangeal joint. Similarly a number of chop incised injuries were caused to Kumari Priya including on neck and head. All the fingers of right palm had been cut completely and found missing. Km. Sajal had also sustained 7 'chop incised injuries. Prince, a child of six years of age, had also sustained six chop incised injuries. It would thus appear that the assailant who had caused injuries on the four deceased per^ sons was merciless in inflicting blows with Hasiya. Injuries were inflicted in such a manner as to make sure that the victims had no chance of survival. If that was the situation, it does not sound to reason that the appellant would have been spared with skin or muscle deep injuries with no internal damage. All the injuries found on the person of appellant were within the reach of appellant's right hand. No injury found on his person was out of reach of appellant's own hand. It is of common knowledge that where a person himself strikes blows on his own person, he cannot inflict injuries with a considerable force on account of natural phenomenon of reflex action. Therefore, though the appellant intended to kill himself and even tried to inflict some blows on the back of right side of his neck but none of them entered very deep so as to cause internal damage which could prove fatal. The medical evidence brought on record thus fully corroborates the ocular testimony of the three prosecution witnesses produced at the trial. The blood stained Hasiya was also sent for serologist report. However, no definite opinion could be given as blood had disintegrated when the weapon was examined by serologist. That, however, would not weaken the prosecution case in any manner.

27. The prosecution case that appellant committed the murder of his wife and three children further gets support from the fact that on the night of occurrence appellant had slept with his wife and three children in that very room where the dead bodies were found. The tell-tale signs of violence were visible all over the room. It is admitted to appellant that he had come at Sachchidanand's house one day prior to the date of incident. It is also not denied by him that he was present in the room on the night of occurrence with his wife and three children. According to

the witnesses the door of room where incident occurred was chained from inside. It is nobody's case that any other person was also sleeping in the same room. It is also in evidence that after witnessing the ghastly murders, the inmates of the house with the help of their neighbours broke the door of the room and found appellant present in that room in an injured state. He was crying in pain. He was soon removed to hospital where his injuries were examined at 6.50 a.m. by Dr. Arvind Kumar, P.W. 9. A perusal of injury report Ex. Ka 23 further shows that Heera Lal appellant was carried to hospital by Sachchidanand, P.W. 1. Had Sachchidanand been the person responsible for committing murders, he would have been the last person to remove appellant-Heera Lal for medical aid so that his life could be saved. This circumstance goes a long way in support of the prosecution case. Since appellant is brother-in-law of Sachchidanand, it was most natural for Sachchidanand to have removed him to hospital for immediate medical help for saving his life as he was found bleeding. This circumstance completely rules out the allegation of appellant that Sachchidanand had a hand in the commission of murders of four persons. It is well settled that a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. In arriving at the conclusion about the guilt of the accused, the Court has to judge the evidence with the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Although the benefit of every reasonable doubt is to be given to the accused, the Court should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures. On a close scrutiny of evidence on record, we find no sufficient ground to reject the testimony of the three eye-witnesses examined at the trial and they in our opinion are wholly reliable and trustworthy.

28. Prosecution also produced P.W. 10 Shri Arvind Kumar Pandey, Executive Magistrate. He proved statement of appellant recorded by the said witness under Section 164, Cr. P.C. as Ex. Ka 24. Before this witness, appellant had stated that he was in debt of about 8-9 lacs of rupees, therefore, he has committed murder of his wife and children with sickle and made an attempt to kill himself as he thought that if he would not remain alive how and by whom his wife and children would be fed and maintained. Learned Sessions Judge has placed reliance on this piece of evidence also. It was argued by appellant's-counsel that Ex. Ka 24 cannot be read

in evidence either as a dying declaration or as a confession of appellant. We find substance in this submission of the learned counsel for the appellant. As the appellant has survived, the aforesaid statement cannot be read in evidence as his 'dying declaration'. The same cannot also be treated as a judicial confession, because it has neither been recorded by a Judicial Magistrate nor in accordance with the procedure laid down under Section 364 of the Cr. P.C. Even if this piece of evidence is left out from consideration, the prosecution case still stands established beyond doubt on the impeaching and trustworthy evidence of the three prosecution witnesses and the circumstances appearing in the case.

29. On a careful scrutiny of evidence on record, we have no hesitation in affirming conclusion of the trial Court that it has been firmly established beyond doubt that it was appellant alone who committed murder of his own wife and three children by sickle Ext. I at the time, place and in the manner alleged by the prosecution. It has also been established that after committing the murders, appellant made an attempt to commit suicide by inflicting injuries on his own person by the same weapon with which he had committed murder of his wife and three children. The appellant's conviction under Sections 302 and 309, I.P.C. and, therefore, maintained.

30. The next question that arises for serious consideration is whether imposition of death penalty in the facts and circumstances of the case is justified?

31. Under the old Code of Criminal Procedure ample discretion was given to Courts to pass death sentence as a general proposition and the alternative sentence of life term could be awarded in exceptional cases and that too after advancing special reasons for making departure from the general rule. The new Code of 1973 has entirely reversed the approach. A sentence for imprisonment for life is now the rule and capital sentence is an exception. It has also been made obligatory on the Courts to record special reasons if ultimately death sentence is awarded. A constitutional Bench of the Supreme Court in the case of Bachan Singh v. State of Punjab AIR 1980 SC 898 while upholding the constitutional validity of the death sentence voiced that as a legal principle death sentence is still awardable but only in rarest of rare cases, when the alternative option of lesser

sentence is unquestionably foreclosed. By enacting Section 354(3), Cr. P.C. it has been made obligatory for the Courts to assign reasons in support of the sentence awarded to the convict for an offence punishable with death or imprisonment for life and further ordains that if the Judge decides to award the extreme penalty of death he shall record special reasons for doing so. In other words judge is under a legal obligation to explain objectively about his choice of sentence. The expression 'special reasons' in the context of Section 354(3), Cr. P.C. as expounded in Bachan Singh's case (supra) means 'exceptional reasons' founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal.

32. Under the old Criminal Procedure Code, there was no provision conferring any right on the accused to have a say in the matter of sentencing. However, a new provision in the form of Section 235(2), Cr. P.C. has been inserted in the new Code of Criminal Procedure. In view of catena of decisions of the Apex Court, it is no more debatable that provision contained in Section 235(2), Cr. P.C. is mandatory and an integral part of every criminal trial and confers a right on the convict to be heard on the question of sentence, which hearing is not confined merely to hearing oral submission of the accused and/or his counsel but the same extends to giving of an opportunity to accused to produce before the Court evidence or other material having a bearing on the question of sentence. For that matter reference may be made to Santa Singh v. State of Rajasthan AIR 1976 SC 2386 and Alaudin Mia v. State of Bihar 1989 SCC (Cri) 490 : (AIR 1989 SC 1456).

33. In the present case in spite of well settled law the learned Sessions Judge, Varanasi, gave a complete go-bye to this mandatory provision as he merely heard oral submission of the learned counsel for the appellant on the question of sentence after finding him guilty under Sections 302 and 309, I.P.C. The learned Sessions Judge has taken into his consideration merely the aggravating circumstances while awarding death sentence without at all adverting to extenuating and mitigating circumstances. It is well recognised that while awarding sentence on one hand the Courts are required to keep in mind that the offender of the crime is suitably and adequately punished and the society's cry for justice and judicial conscience get satisfied, while on the other hand the Courts must also

consider a variety of factors including mitigating and extenuating circumstances. For arriving at a just conclusion on this sensitive issue neither aggravating circumstances can be ignored nor mitigating circumstances overlooked and this task assumes a greater proportion when the Court is called upon to select one of the two alternative sentences like death penalty and life term.

34. The learned Sessions Judge committed a grave error in law in not giving an opportunity of hearing to the accused as contemplated under Section 235(2), Cr. P.C. We, therefore, called upon the appellant at the appellate stage and gave him that opportunity. He was specifically asked that he has been found guilty under Section 302 of the I.P.C. for committing murder of his wife Smt. Suraj Kumari, daughters, Sajal and Priya and son Prince and what he had to say on the question of sentence. The appellant stated only this much that his entire family has been finished. His age at the time of occurrence was about 36-37 years. He was also asked whether he would like to produce material or evidence in relation to the question of sentence, to which the appellant replied in negative.

35. We also heard learned counsel for the parties on the question of sentence. In the present case appellant has been found guilty of committing the murder of his wife and three minor children. In the case of *Anshad v. State of Karnataka* (1994) 4 SCC 381 it was held that the Court must be alive to the legislative changes introduced in 1973 through Section 354(3), Cr. P.C. Death sentence, being an exception to the general rule should be awarded in the 'rarest of rare cases' for 'special reasons' to be recorded after balancing the aggravating and mitigating circumstances, in the facts and circumstances of a given case. The number of persons murdered is a consideration but that is not the safe and determining consideration for imposing death penalty. While deciding the question of appropriate sentence, the Court must keep in view the nature of the crime, the brutality with which it was executed, the circumstances in which crime was committed, the antecedents of the accused, the weapons used etc. It is neither possible nor desirable to formulate a catalogue of such factors and they depend upon case to case.

36. In the case of *Balraj v. State of U.P.* (1994) 3 JT (SC) 649 : AIR 1995 SC 1935 four members of a family were murdered and the trial Court awarded death sentence. The Apex Court reduced the sentence of death to imprisonment for life on the conclusion that while committing the murders the accused was under the influence of extreme mental and emotional disturbance as such he could not be said that he would be a menace to the society, if allowed to live.

37. In the present appeal, even as per the prosecution case appellant committed the murders of his wife and three children and also wanted to kill himself as he had incurred a debt of Rs. Ten lacs. It is in the evidence that as soon as the witnesses entered into the room where the appellant belaboured his wife and three children, the appellant was also found lying injured and crying in pain. When he was questioned about the incident he immediately told the witnesses that since he was in debt of Rs. Ten lacs which he was unable to repay, he wanted to kill himself and his entire family as there was no one who could look after his family after his death. The prosecution agency could not bring on record any other reason for which the murders were committed. It is thus apparent that the appellant was in great stress and frustration and his mental condition was greatly disturbed. Whatever he did, was done in frustration and in mental and emotional disturbance. This vital and important mitigating circumstance cannot be overlooked merely for the reason that in this case four murders were committed in a brutal and cruel manner. We cannot lose sight of the fact that the appellant himself tried to commit suicide and inflicted number of injuries on his own person with the same weapon with which killed his own wife and three children, that further reflected his mental disturbance. In our opinion in the facts and circumstances, the case does not fall within the category of 'rarest of rare' cases and it cannot be said that imposition of lesser sentence of life term is altogether foreclosed. We therefore, reduce the death sentence to imprisonment for life.

38. For the reasons assigned above while affirming the conviction of the appellant under Section 302, I.P.C. we set aside the sentence of death imposed by the trial Court and reduce the same to imprisonment for life. The appellant is further sentenced to three years R.I. under Section 309, I.P.C. Both the sentences shall run concurrently. To this extent the appeal is allowed. The appellant is in jail and

shall be kept there to serve out the sentences as modified by this Court.
Reference made by the learned Sessions Judge is rejected.

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