

Babu Lal Vs. State of U.P.

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Court : Allahabad

Decided On : Jul-22-1998

Reported in : 1999CriLJ3738

Judge : Giridhar Malaviya and ;N.S. Gupta, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 307; Code of Criminal Procedure (CrPC) - Sections 161, 313 and 313(4); [Constitution of India](#) - Articles 134(1) and 134(A)

Appeal No. : Criminal Reference No. 3 of 1998 and Criminal Appeal No. 272 of 1998

Appellant : Babu Lal

Respondent : State of U.P.

Disposition : Appeal dismissed

Judgement :

N.S. Gupta, J.

1. Here is an unfortunate man Babu Lal named above who was convicted under Section 302 I.P.C. and was sentenced to death for committing gruesome murder of his own wife, minor daughter aged about 13 years and minor son aged about 15 years, on 12-1-94 at about 2-3.00 a. m. in village Dongre Kalan, police station

Narhat, District Lalitpur. The sessions Judge, Lalitpur submitted the record of the case before this Court for the confirmation of the death sentence awarded by him to the accused appellant vide his order dated 27-1-98. The accused appellant feeling aggrieved by the said judgment and order of conviction has come up in appeal before this Court.

2. It appears that the accused appellant was a poor man. He was having a large family to support consisting of his wife, five sons and two daughters. He was residing in village Dongra Kalan where his brother Kanchedi (P. W. 5) was also residing. He too was a poor labourer, but was having a large family consisting of six sons and four daughters. The accused appellant was having a small house consisting of two rooms, a kitchen, a courtyard made of Khaprail and a pacca Kothri in the said village. On the fateful night of occurrence the accused appellant, his daughter Suman (deceased) and son Sunil were sleeping on the ground in one room. In another room his son Rakesh (deceased), Suresh, Naresh and daughter Sandhya were sleeping. There was a door in between these two rooms. A lantern was burning therein. His wife Smt. Leela was also sleeping. At about 2-3 o'clock in the morning on 12-1-94, accused appellant and his wife were talking together in connection with some documents about which they started quarrelling. With the result that some of his children who were sleeping in the two rooms also got up. The accused appellant took out a sword from inside his house and assaulted his wife Smt. Leela by means of the same and killed her then killed his daughter Suman and son Rakesh. He also attempted to kill his other children who covered themselves with Razai and escaped. On the next day in the morning Dinesh (P.W. 2) who was the son of the accused appellant narrated this incident to his uncle Kanchedi (P. W. 5) who got a report Exh. Ka 1 about this incident written and lodged the same at the police station Narhat on 12-1-94 at about 10.30 a.m. The police station Narhat lays at a distance of about 13 Kilometre from the place of occurrence.

3. S. I. Suresh Kumar Verma (P. W. 11) who was then posted at police station Narhat took up the investigation of the case in his hand. He immediately recorded the statement of Kanchhedi right at the police station and rushed to the scene of occurrence where he inspected the dead body of the deceased Smt. Leela, Km.

Suman and Rakesh. After preparing necessary inquest reports and other papers S. I. Suresh Kumar Verma despatched the dead bodies through constables Ganga Charan (P.W. 7) and Tirath Raj for postmortem examination to the district Headquarters Lalitpur. He, thereafter, inspected the scene of occurrence and prepared site plan Exh. Ka 3. He recovered blood stained and simple earth from the scene of occurrence and prepared recovery memos Ka. 24, Ka 25 and Ka-26 about the same. He also inspected the lantern which was said to have been burning at the time of occurrence and after preparing Supurdginama of the same, he gave it in the Superdgi of Kanchhedi (P. W. 5). He thereafter recorded the statement of Dinesh (P. W. 2) and other witnesses viz. Kishnu, Kallu, Balkishan, Dhoban, Banwarilal, Ibrahim, Prem Narayan and Gore Lal. He made search for the accused appellant but he was not available. On 15-1-94, he arrested the accused appellant at about 3.30 p.m. near the crossing of Vani College, Lalitpur and on his pointing out he recovered the blood stained clothes which the accused appellant was wearing at the time of occurrence and which consisted of Banyan Towel, Pant and Bush-Shirt. He prepared recovery memo Exh. Ka 8 about the same and obtained the signatures of the accused appellant thereon. He also recovered stained sword with which the accused appellant had killed his wife, daughter and son from a well near the temple of Hanumanji on the pointing out of the accused appellant in the presence of Prasadi (P.W. 10). Sri Prasadi (P. W. 10) had in fact brought out the said sword from the well on the pointing out of the accused appellant. The Investigating Officer prepared recovery memo Exh. Ka-9 about the said sword and had obtained the signature of accused appellant Babu Lal on the same. The Investigating Officer found a number of injuries on the person of the accused appellant which the accused appellant sustained in the scuffle with his wife at the time of occurrence. The Investigating Officer, therefore, referred the accused appellant for medical examination to District Hospital, Lalitpur where he was examined by Dr. Suresh Sakhalya (P. W. 3) on 16-1-94 at about 2.30 p.m. The doctor Suresh Sakhalya found the following injuries on the person of the accused appellant:-

1) L. W. 3.5 cm. v. 0.5 cm. x scalp deep on the mid line on head 14 cm about (Rt) Bar clotted blood present with pus.

- 2) Abraded contusion 1 cm x 1 cm on middle of head.
- 3) Multiple L. W. 0.5 cm x 0.5 cm x scalp deep to 2 cm x 0.5 cm x scalp deep in occipital region in area of 8 cm x 9 cm.
- 4) Incised wound 3 cm. x 0.8 cm x muscle deep on (Lt) palm just above root of (Lt) ring finger.
- 5) Incised wound 2.5 cm x 0.5 cm x muscle deep on outer part of Lt. palm.
- 6) Abrasion 4.5 cm x 4 cm on the middle of back.
- 7) Abrasion 12 cm x 8 cm on the back near gluted region.
- 8) Abrasion 2 cm x 0.5 cm on back of Lt. fore-arm on middle.

The doctor opined that injury No. 4 and 5 were caused by sharp object like sword and that injury Nos. 1,2, 3,6,7 and 8 were caused by hard/ blunt object. Their duration was about 5 days.

4. Dr. Suresh Shankilya also conducted autopsy on the dead body of the deceased Smt. Leela on 13-1-94 at about 1.30 p.m.; that of Km. Suman at about 2.30 p.m. and that of Rakesh at about 3.18 p.m. and found the position as under :-

Dead body of Leela

The deceased was aged about 45 years and had an average body. She had expired about 1 1/2 days prior to the examination. Rigor mortis was present in the lower limbs only.

Dr. Shankilya found the following ante-mortem injuries :-

- 1) Incised wound 18.0 cm x 3 cm x trachea deep on left side of neck from chin to posteriorly oblique with cutting of underlying vessels, nerves and muscles.
- 2) Incised wound 6.0 cm x 5.0 cm on right side of lower part which is cavity deep, loop of intestine was cut.

The doctor opined that death of Smt. Leela was caused due to shock and haemorrhage resulting from ante-mortem injuries.

Dead body of Ku. Suman

The deceased was aged about 13 years. Her body was average built. She died about 1 Yi days prior to the examination. Rigor mortis was present in lower limbs only. There was no sign of decomposition. Dr. Shankilya found the following ante-mortem injuries on the person of the deceased:-

- 1) Left hand was amputated from wrist joint.
- 2) Oblique through and through incised wound on (Rt) up to the root of the thumb on upper part of palm.
- 3) Incised wound 10 cm x 5 cm (Lt) side of face deep.
- 4) Incised wound 4.0 cm x 2 cm x cavity deep with perforation of intestine with prolapse out-side.
- 5) Incised would 8.0 cm x 2.0 cm x muscle deep on left knee on outer side.

The doctor opined that death was caused due to shock and haemorrhage resulting from ante-mortem injuries.

Dead body of Rakesh :

The deceased was aged about 15 years apd his death took place about 1 1/2 days prior to the examination. Rigor mortis was present in the lower limbs. His eyes were half closed.

The doctor found the following ante-mortem injuries :-

- 1). Incised wound 15 cm x 3 cm x bone deep obliquely on mandibular region on left side with mandible (lower jaw).
- 2) Incised wound 10 cm x 3 cm x muscle deep with cutting of muscle, nerve, left carotid.

- 3) Incised wound 9 cm x 3 cm x bone deep on upper 1/3 of right hand with fracture of underlying bone.
- 4) Incised wound 8 cm x 2 cm x bone deep just above injury No. 3 with fracture of bones.
- 5) Incised wound 5 cm x 2.5 cm x bone deep just above wrist joint with fracture of radius and ulna.
- 6) Amputation of left hand from fore-arm at level of just about wrist joint.

The doctor opined that all the injuries of the three deceased were caused by a sword and were sufficient in the ordinary course of nature to cause death.

5. Subsequent investigation into the matter was conducted by S. I. Harihar Ram, the then S.H.O. Narahat w.e.f. 29-1-94. He recorded the statement of Kenchhedi, Parvat, Chhuttan, Naththu, Suresh Kumar, Kanhai Daya Ram, Gayasi Sobhran Singh, Ramkishan, Halke, Jangali, Shankar, Khilley, Magan, Prasad, Constable Ganga Charan and constable Tirathraj Singh. He inspected the spot from where the sword used by the accused in the occurrence of this case was recovered on 30-1-94 and prepared site plan Exh. Ka 30 about the said place. He inspected that place from where the blood stained clothes of the accused appellant were recovered and prepared site plan Ka-31. He despatched the blood stained clothes and sword for examination and report by the Chemical Examiner and after concluding his investigation submitted charge sheet Exh. Ka 32 against the accused appellant.

6. After committal of the case to the court of sessions the case came up for trial before the Sessions Judge at Lalitpur who framed charges under Section 302/307 1.P.C. against the accused appellant. The accused appellant pleaded not guilty and claimed trial. After needful trial into the matter the learned sessions Judge convicted and sentenced the accused appellant as aforesaid, hence the reference in question and the appeal.

7. We have heard Sri R. P. Tripathi, advocate who was appointed as Amicus Curiae to argue the case on behalf of the accused appellant and Sri A. K. Misra,

learned A. G. A. for State; considered their contentions, perused the evidence on record and proceed to decide the case as under :-

FINDINGS :

8. It is clearly proved by the medical evidence of Dr. Shankilya (P.W. 3) who conducted autopsy on the dead body of the deceased Smt. Leela, Km. Suman and Rakesh on 13-1-94 from 1.30 p.m. to 4.00 p.m. that two incised wounds which were measuring 18 cm x 3 cm x traches deep on left side of neck from chin cutting of underlying vessels, nerves and muscles and 6 cm x 3 cm on right side, lower part cavity deep, loop of intestine was cut, were found on the dead body of deceased Smt. Leela as ante-mortem injuries and that Smt. Leela had died due to shock and haemorrhage which resulted from the said ante-mortem injuries. The doctor found left hand of the deceased Km. Suman amputated from wrist joint. He found oblique incised wound through and through right up to the root of the thumb on upper part, an incised wound measuring 10 cm x 5 cm x cavity deep, an incised wound 8 cm x 2 cm x muscle deep on left knee outer side as ante-mortem injuries on the person of Km. Suman who was a minor girl aged about 13 years and a number of incised wound measuring 15 cm x 3 cm x bone deep on mandible region left side lower jaw. Incised wound measuring 10 cm x 3 cm x muscle deep with cutting of muscles and nerves, incised wound measuring 9 cm x 3 cm x bone deep on upper 1/3rd of right hand with fracture of underlying bone, incised wound 8 cm x 2 cm x bone deep with fracture of bones, incised wound measuring 5 cm x 2 cm x bone deep above right hand with fracture of radius and Ulna and amputation of left hand and fore arm above wrist joint were found as ante-mortem injuries on the person of Rakesh who was a young boy aged about 15 years as ante-mortem injuries. Dr. Shankilya stated that the death of all the three deceased persons was caused due to shock and haemorrhage which resulted from the aforesaid ante-mortem injuries. He clearly stated that the injuries of the three deceased persons could have been caused by means of a sword on the intervening night of 11/12-1-94 and that they were sufficient in the ordinary course of nature to cause death.

9. Thus the fact that Smt. Leela, the wife of the accused who was a grown up woman aged about 45 years, the adolescent girl Km. Suman and the young boy

Rakesh who were then aged 13 and 15 years respectively were brutally assaulted by means of a sword and were instantaneously done to death on the night of occurrence viz. 11/12-1994 stands fully proved beyond any shadow of doubt by the medical evidence on record.

10. Now the pertinent question which arises for our consideration is to see as to whether the accused appellant was responsible for the said murders.

11. The prosecution in support of its case had examined as many as 17 witnesses, out of whom only Dinesh (P.W. 2) was the eye-witnesses of the occurrence. He being the son of the accused, only stated about the fact that his mother Smt. Leela (deceased), sister Ku. Suman (deceased) and brother Rakesh (deceased) had died about 8-9 months back inside his house, but he did not see as to who killed them. The other witnesses were :-

(i) Constable Chhedi Lal (P.W. 1) who proved the chick report and the G.D. reports;

(ii) Dr. Suresh Shankilya (P.W. 3) was the medical officer who conducted autopsy on the dead body of the deceased persons and had also examined the injuries of accused appellant.

(iii) Chuttan (P.W. 4) was the scribe of the F.I.R. Exh. Ka 7.

(iv) Kanchhedi (P.W. 5) was the brother of the accused appellant and was the maker of the F.I.R. Exh. Ka-7.

(v) Ram Kishan (P.W. 6) was the witness of recovery of blood stained Banyan, Kameez, Pant and Towel which were recovered by the Investigating Officer on the pointing out of the accused appellant. He also witnessed the recovery of the sword used by the accused appellant for committing the murder of the deceased which was recovered on the pointing out of the accused and had put his signature on the recovery memo Exh Ka 9.

(vi) Constable Ganga Charan (P.W. 7) was a formal witness who took the dead body of the deceased persons for post-mortem examination to the mortuary.

(vii) Magan (P.W. 8) was the witness of the fact of quarrel of the accused appellant was her wife deceased Smt. Leela, but he turned hostile and stated that he knew nothing about the accused appellant.

(viii) Khilawan (P.W. 9) was witness of fact that accused appellant used to quarrel with his wife on the point of some documents, but he turned hostile before the Court below and showed his ignorance even on the point as to when the wife and children of the accused were murdered.

(ix) Parsadi (P.W. 10) was the witness of recovery of the sword in question and had also signed the recovery memo about the same which was prepared by the Investigating Officer.

(X) S.I. Suresh Kumar Verma (P.W. 11) was the investigating Officer who conduct initial investigation of the case.

(xi) Constable Ehsan Khan (P.W. 12) was a formal witness who proved the entry regarding the deposit of incriminating articles in Malkhana register.

(xii) Bashir Khan (P.W. 13) was also a formal witness who took blood stained clothes of the deceased, blood stained earth recovered by the investigating officer from the scene of occurrence and the sword for examination to the Chemical Examiner Agra.

(xiii) Gyasi (P.W. 14) was an witness of recovery memo prepared by the investigating Officer regarding the lantern which was burning at the scene of occurrence at the time of occurrence which was inspected by the investigating officer.

xiv) Jangley (P.W. 15) stated that prior to the occurrence of this case, the accused appellant had disclosed that he wanted to sell out his land and house, but he failed to oblige the prosecution by stating that the wife of the accused appellant was not giving those papers to him. He was also declared hostile by the prosecution.

xv) Shanker (P.W. 16) was also a witness of this very fact, but he too failed to state that the accused appellant wanted to sell his land and house but the papers

thereof were with his wife.

xvi) Inspector Harihar Ram (P.W. 17) was the S.H.O. of police station Narahat; who concluded the investigation of the case and had challenged the accused appellant. No evidence in defence was adduced on behalf of the accused appellant. 12. It would thus be seen that there is no direct; evidence on record to prove the guilt of the accused appellant.

13. The conviction of the accused appellant rests upon the following grounds viz.

A) Chain of certain circumstances leading to the guilt of the accused appellant;

B) Recovery of blood stained clothes belonging to the accused appellant on his pointing out, as also the recovery of sword with which the accused appellant had committed the murder of his wife, son and daughter;

C) The statement of the accused appellant under Section 313 Cr.P.C.

14. We take up all the aforesaid points for discussion one by one as under :-

A) P.W. 5 Kanchhedi is the real brother of the accused appellant. Although he was hostile to the prosecution, yet he stated in his statement ' on oath before the Court below that the wife, the son and the daughter of the deceased were murdered about 8-9 months prior to his giving his, statement before the Court below. The statement of this witness was recorded on 1941-97. He further stated that the information regarding the murder of the wife, son and daughter of the accused was given to him by Dinesh, the son of the accused appellant when he was present at his house in the early morning. Although he denied to have dictated F.I.R. Exh. Ka. 7 yet he very much admitted his signature on the said F.I.R. He stated that the said F.I.R. was never read out to him. He stated that the said F.I.R. was dictated by the Sub-Inspector of Police. When cross examined by the prosecution, he stated that the deadly occurrence had taken place about two days prior to Sankranti. Sankranti invariably falls on 13th of January every year. That being so when this witness stated that the occurrence had taken place about 2 days prior to Sankranti, it obviously meant the occurrence of this case. He maintained that prior to his putting signature on the F.I.R. Exh. Ka. 7, the F.I.R. was fully written: He

admitted that Dinesh (P.W 2), the son of the accused appellant had: informed him that his mother, brother and sister were lying dead at his house, but he never inquired from him as to who killed them. This was an unnatural conduct of a very close relation of the deceased persons that when informed about their death, he never bothered to enquire as to who killed them. He stated that he had gone to meet his brother accused appellant Babu Lal when the later was lodged in jail and that he came to know after about two months that his brother accused appellant Babu Lal was lodged in jail in connection with the murder of his wife, son and daughter. He admitted to have been residing at a distance of about 30-40 paces from the house of the accused appellant. He admitted that five children of the accused appellant out of which four were sons and one was the daughter were still alive and admitted that since after the incident of this case, all the five children of accused appellant were living with him and that he has been maintaining them. He himself has got eight children. His income was Rs. 30-35 per day. He stated that he has been facing trouble in maintaining the children of the accused appellant. In reply to a Court question he has denied that the wife of the accused appellant was unchaste and beautiful and that her elder daughter Suman was also beautiful. He stated that Suman (deceased) was aged about 13 years, the elder son was aged about 8-9 years. He stated that the accused appellant and his wife used to quarrel on petty matters but there was nothing important about the same. He was unable to state whether the accused appellant bore enmity with anybody. He admitted that immediately on getting information about this incident he went inside the house of the accused appellant and found all the three persons lying dead. He stated that there was nothing like dacoity having been committed. He denied the suggestion of the prosecution on the point that the accused appellant used to keep the sword and also used to display the same in Akhara. It was suggested on behalf of the prosecution that because he was closely related as brother of the accused appellant he was not telling the correct fact to the Court.

15. P.W. 4 Chuttan who is the scribe of the F.I.R. Exh. Ka 7 has very clearly stated in his statement on oath before the Court below that on 1-2-1-94, he had written the F.I.R. Exh. Ka.7 on the dictation of Kanchhedi S/o Kunji Lal resident of village Dongra Kela, police Station Narahat viz. (P.W, 5), He further stated that after writing this F.I.R, he read out the same to Sri Kanchhedi and that Kanchhedi had

put his signature thereon. He stated that he also put his signature in the F.I.R. as a scribe.

16. It would thus be seen from the statement of Kanchhedi (P.W. 5) read with the statement of Chhuttan (P.W. 4) that the F.I.R. Exh. Ka.7 was written by Sri Chuttan at the dictation of Kanchhedi (P.W. 5). This F. I. R. reads as under :-

^^Jheku Fkkuk/;{k egksn; FkkukujkgV fuosnu gS fd izkFkhZMksxjk dyk dk jgusokyk gS A vkt fnukad 12-1-94 dh lqcgdjhc 7 cts esjk Hkrhtk fnus'k ,l@vks ckcw yky usvkdj crk;k fd jkr esa izfrfnu dh Hkkafr esjs firkth o cfgu lqeu o HkbbZNksVklq'khy ,d dejs esa tehu esa lks jgs Fks eSa o esjk cMk HkbbZ jkds'k] lqjs'k]ujs'k o la/;k nwljs dejs es lks jgs Fks nkuks dejksa dk chp dk njoktk [kqyk Fkk]ykyVsu ty jgh Fkh esjs firkth eka vkil esa dkxt [kks tksus ds lEcU/k es ckr dijgs Fks fQj yM+us yxs rks ge tx x;s firkth us ogha ij jD[kh ryokj mBk yh vkSj ekdks ekj nh fQj liu dks ekjus yxs brus es esjk NksVk HkbbZ lq'khy mB dj esjs iklysV x;k liu fpYyk;h fd ej x;s fQj firkth esjs dejs esa vk;s vksj jkds'k ds ijokj dj fn;k fQj gekjs ij gesa tku ls ekjus dh fu;r ls okj fd;k rks eSus jtkbZrku yh ftlls eS o esjk HkbbZ o ujs'k o la?;k cp x;s ekjrs le; dg jgs Fks fd lHkh dks tku ls ekj MkywWxk fQj ryokj fy, fiNs ds njoktk ls Hkx x;s rks eS Mj ds otgls pqipki ysVk jgk ;g ckr lqcg esjs Hkrhts fnus'k us vkdj crkbZ eS ekSds ij x;krks rhuksa cgw yhyk o lqeu o jkds'k ejs iMs Fks ;g ?kVuk 2 ;k 3 cts jkr dh gS Afjiks VZ fy[kdj dk;Zokgh djsa izkFkhZ dUNsnh iq=dqUth yky xzke Mksxjk dyk dUNsnhYkky

fnukad 12-1-1994 o c- NqVVu iq=oklh fiifj;k

iz'u % rqEgjkj HkbbZ ftlus gR;kdh gS mudk uke o firkd uke D;k gS A

mRrj % esjs HkbbZ dk uke ckcw ykyiq=dqUth yky lksuh gS ftlus gR;k dh gS A

n- dUNsnh yky

17. According to the statement of constable Chhedi Lal (P.W. 1) and the investigation officer S.I. Suresh Kumar Verma (P.W. 11) the aforesaid F.I.R. was brought to the police station by Kanchhedi (P.W. 5) and on the basis of this F.I.R. chick report Exh. Ka. 1 and further entries into the General Diary of the police station were made. S.I. Suresh Kumar Verma (P.W. 11) after copying out this

F.I.R. and G. D. entries and after recording the statement of constable clerk Chhedi Lal recorded the statement of Kanchhedi (P.W. 5) and rushed to the scene of occurrence.

18. It is, therefore, apparent that the machinery of law was set into motion on the basis of the F.I.R. Exh, Ka. 7 which was lodged by the real brother of the accused appellant at police station Narahat about 10.30 A.M. on 12-1-1994, the police station being situate at a distance of 13 kilometres from the village of occurrence.

19. True it is that the F.I.R. is not a substantive piece of evidence, it is only a corroborative piece of evidence but then the maker of the F.I.R. turned hostile to this extent as-to deny to have dictated the F.I.R. but admits his signature therein, the averment of the F.I.R. assume significance. A perusal of the said F.I.R. makes it clear that the meticulous details about the occurrence as also the fact that the accused appellant was responsible for committing-the murder of his wife, Smt. Leela, daughter Km. Suman and son Rakesh by means of a sword inside his house have been mentioned therein, the fact that the information about his incident was conveyed by the son of the accused appellant, Dinesh (P.W. 2) to his uncle Kanchhedi (P.W. 5) who was the next kin of his father was a natural conduct of a child like Dinesh who was then aged 7-8 years.

20. It is important to note here that Dinesh (P.W. 2) in his cross examination by the prosecution stated that the accused appellant was his father and Rakesh (deceased) was his elder brother. He was the eldest child in the family, next to him was Suman (deceased). He stated that younger to him are three brothers viz. Suresh, Naresh and Sushil and his sister Sandhya. Kanchhedi was his sole uncle. He had six sons and two daughters have been married. Younger to those daughters there were two brothers who were elder to him. One son of Kanchhedi was of his age group and the other three sons were younger to him in age. He admitted that after the occurrence of this case, he and all his brothers and sister have been living with his uncle Kanchhedi who has been looking after them. He maintained that Kanchhedi (P.W. 5) was a poor man who was earning 10-20 rupees per day. The children of Kanchhedi were doing the job of selling groundnuts and were earning about 15-20 rupees per day. He stated that when

the sun rose, obviously after night of occurrence he found that his mother, sister Suman and brother Rakesh were lying dead. Their hands etc. were cut away. There was blood inside the room. They had died because of the injury. He stated that he, Rakesh, Naresh, Suresh, Sushil and sister Sandhya were sleeping in one and the same room. His mother, brother and father were also sleeping in the same room. Suman was also sleeping in that very room. He stated that half of the room was used as were

21. The public prosecutor had drawn the attention of this witness towards the defence counsel and after seeing him this witness stated that he recognised him, but he never visited him along with his uncle Kanchhedi. He denied the suggestion of the prosecution on the point that the statement which he had given before the Court below was tutored to him by the defence counsel. He further denied the suggestion of the prosecution on the point that his father had committed the murder of his mother, brother and sister right in his presence and that he was not telling the correct facts before the Court. In reply to the question of defence counsel, he stated that he did not know as to what day it was when the occurrence had taken place. He maintained that the lantern was put off when he had gone to sleep. He stated that police officials did not take out the blood stained earth in a sealed cover. He was unable to state as to what clothes his mother was wearing. He was unable to state as to whether or not her mother was wearing any ornament in her hand or legs. He replied to the suggestion of the defence that he did not see the occurrence and knew nothing about the same.

22. Blood is thicker than water. P.W. 5 Kanchhedi being real brother of the accused appellant and P.W. 2 Dinesh being the son of the accused appellant, it was natural for them to have turned hostile. But whatever, statement they have given before the Court below during the course of their cross examination by the public prosecutor they clearly establish at least the following facts :-

i) That the deceased persons viz. Smt. Leela, Km. Suman and Rakesh were murdered inside the house of the accused appellant during the night preceding the visit of S.I. Suresh Kumar Verma(P.W. 11).

ii) That the accused appellant and his brother were poor persons who were finding it difficult to make both the ends meet with their meagre income. When according to the statement of Sri Dinesh (P.W. 2) who appears to be grown up child, capable of full understanding it is clear that when he had gone to sleep his father was very much present there inside the house and when he got up he found his mother, brother and sister lying dead in the pool of blood and his father was missing from there. It leads to only one inference that his father and father alone viz. accused appellant Babu Lal was responsible for murder of the deceased persons, otherwise he should have been the first man to go to police station or at least to his brother Kanchhedi (P.W. 5) to narrate the story of the dreadful incident.

22-A. The circumstances that instead of doing so, the accused appellant absconded and was not traceable to the police for about three days is the circumstance which points out to the guilt of the accused appellant.

23. The prompt lodging of F.I.R. Exh. Ka. 7 by P.W. 5 Kanchhedi at police station Narahat at 10.30 A.M. the police station being situate at a distance of about 13 kilometres from the village of occurrence and thereby setting the machinery of law into motion too is the indicator of the guilt of the accused appellant.

24. It is clear from the statement of S.I. Suresh Kumar Verma (P.W. 11) that he had arrested the accused appellant on 15-1-94 at about 3.30 P.M. at Lalitpur and after proper interrogation the accused appellant disclosed to get the sword used by him in the occurrence of this case, as also blood stained clothes which he was wearing at the time of occurrence recovered. He came to village Dongra Kala and after taking Ramkishan (P.W. 6) and Halke he reached to the house of the accused appellant from where the accused appellant brought a Banyan, Towel, pant and Bush-Shirt which were all blood stained. All these clothes were taken by S. I. Suresh Kumar Verma (P.W. 11) in his possession after preparing recovery memo Exh. Ka.8, which was duly signed by accused appellant as also Ram Kishan (P.W. 6), constable Ram Babu and witness Halke. After preparing the recovery memo Exh. Ka 8, S.I. Suresh Kumar Verma (P.W. 11) went to the well situate near the Hanumanji temple in which the accused appellant had thrown away sword which was used by him for the commission of the crime in question

and from that well he got the sword recovered through Parsadi (P.W. 10). A recovery memo Exh. Ka. 9 was duly prepared and was signed by the accused appellant as also Parsadi (P.W. 10), Ram Kishan, constable Ram Bhau and Halke.

25. P.W. 6 Ram Kishan clearly stated in his statement on 6th before the Court below about the recovery of the Banyan, Kameez, pant and Towel which were stained blood on the pointing out of the accused appellant as also his signatures on the recovery memo Exh. Ka 7 about those articles. He further stated about the recovery of sword and his signatures on the recovery memo of the said sword Exh. Ka. 9.

26. Similarly Parsadi (P.W. 10) stated that the accused appellant had informed the investigating officer that he had thrown away the sword in question in the well situate near the Hanuman Temple. He stated that he brought out sword in question from the said well.

27. It would thus be seen that besides the testimony of the investigating officer S.I. Suresh Kumar Verma (P.W. 11) the testimony of independent witnesses viz. Ram Kishan (P.W. 6) and Parsadi (P.W. 10) is available on record which proves the recovery of blood stained clothes and sword on the pointing out of the accused appellant.

28. Ex. Ka. 37 is the report of the chemical examiner. According to this report S. No. 26 was a sword, S. No. 27 was a white pant, S. No. 28 was a Banyan. These articles are those articles which were recovered by the investigating officer on the pointing out of the accused appellant. According to this report blood stains were found on these articles. It is further clear from this report that human blood was found upon towel and banyan. The existence of human blood on the towel and banyan and the blood on the sword in question which articles were recovered at the instance of the accused appellant are the clear indicator of the guilt of the accused appellant.

29. The third and the most important circumstance against the accused appellant is his own statement which was recorded by the Court below in accordance with the provisions of Section 313 Cr.P.C. The provisions of Section 313 Cr.P.C. read

as under :-

313 : Power to examine the accused -

(1) In every inquiry or trial, for the purpose enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case;

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under Clause (b).

(2) No oath shall be administered to the accused when he is examined under Sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

30. Some questions put to the accused appellant under Section 313 Cr.P.C. and the reply given by him were as follows :-

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31. Sri B. P. Tripathi, learned Amicus Curiae defending the accused appellant has vehemently argued before us that the statement given by the accused appellant under Section 313 Cr.P.C. cannot be made the basis of his conviction. It is not possible to appreciate the argument of the learned Amicus Curiae, defending the accused appellant for the reason that the matter regarding the statement of the accused made under Section 313 Cr.P.C. came up for consideration before the Apex Court in Criminal Appeal No. 234 of 1993 State of U. P. v. Laxmi reported in AIR 1998 SC 1007 : 1998 Cri LJ 1411 : 1998 All LJ 680. Their Lordship in paragraphs 7 and 8 of the said judgment had observed as follows :-

7. As a legal proposition we cannot agree with the High Court that statement of an accused recorded under Section 313 of the Code does not deserve any value of utility if it contains inculpatory admissions. The need of law for examining the accused with reference to incriminating circumstances appearing against him in prosecution evidence is not for observance of a ritual in a trial, nor is it a mere formality. It has a salutary purpose. It enables the Court to be apprised of what the indicated persons has to say about the circumstances pitted against him by the prosecution. Answers to the questions may sometimes be flat denial or outright repudiation of those circumstances. In certain cases accused would offer some explanations to incriminating circumstances. In very rare instances accused may

even admit or own incriminating circumstances adduced against him, perhaps for the purpose of adopting legally recognised defences. In all such cases the Court gets the advantage of knowing his version about those aspects and it helps the Court to effectively appreciate and evaluate the evidence in the case. If an accused admits any incriminating circumstances appearing in evidence against him there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defence strategy.

8. Sub-section (4) of Section 313 of the Code contains necessary support to the legal position that answers given by the accused during such examination are intended to be considered by the Court. The words 'may be taken into consideration in such enquiry or trial' in Sub-section (4) would amount to a legislative guideline for the Court to give due weight to such answers though it does not mean that such answers could be made the sole basis of any finding.

32. So that being the position of law, it is not possible for us to ignore the admissions made by the accused appellant himself in his examination before the Court below when the accused appellant in reply to question No. 1 to the effect that on the intervening night of 11/12-1-1994 at about 2-30 A.M. the accused appellant inside his house situate in Dogra Kala in connection with the quarrel on certain papers committed the murder of his wife Smt. Leela, daughter Km. Suman and son Rakesh by causing injuries to them by means of a sword, the accused replied that it was correct, it is obvious that the accused appellant could not conceal his guilt at the time of his examination before the Court below and came forward with a frank answer that it was correct to suggest that he was responsible for the murder of his wife, daughter and son by means of a sword on the intervening night of 11/12-1-1994 inside his house situate in village Dogra Kala.

33. The circumstances that in reply to question No. 5 that with a view to escape from legal consequences regarding his arrest the accused absconded from the spot, the accused appellant stated that he ran away from the backside door of his house and throw away the sword in a well situate near the Hanuman Temple, fully proves that the sword which was recovered on the pointing out of the accused appellant by the investigating officer from the well near Hanuman Temple by

Parsadi (P.W. 10) was that very sword with which the accused appellant had committed the ghastly murders in question.

34. Further the circumstance that the lantern was burning inside the house of the accused appellant at the time of occurrence as admitted by the accused in reply to question No. 16, fully go to prove that there was sufficient light inside the house in which his son Dinesh (P.W. 2) could have seen the entire incident and in turn he narrated the same to his uncle Kanchhedi (P.W. 5) on the basis of which Kanchhedi (P.W. 5) lodged written report Exh. Ka. 7 and set the machinery of law into motion.

35. Thus the finding of fact recorded by the Court below regarding the guilt of the accused appellant punishable under Section 302 IPC in connection with the murder of his wife, daughter and son admits of no doubt and appears to be absolutely correct. It is accordingly sustained.

36. Coming on the point of sentence, we find, that the accused appellant was a poor man who was having a big family to support. It appears that probably the accused appellant was interested in the disposal of his house and land to which his wife resisted because she had a number of children to support. The devil mind of the accused appellant persuaded him to eliminate his own family in anguish over the conduct of his own wife on her refusing to handover the necessary papers to him as suggested by the prosecution. Having regard to the poverty to the accused appellant and the circumstances in which he appears to have committed the ghastly murder of his own wife, daughter and son, it appears that at the time of committing the said offence the accused appellant was deprived of his power of self control and committed ghastly murder of his own wife and children rather in an excitement.

37. Thus the sentence of death inflicted by the Court below upon the accused appellant does not appear to us to be proper one. We accordingly commute the said sentence of death into imprisonment for life and accordingly the reference No. 3 of 1998 regarding the confirmation of death sentence of the accused appellant made by the Sessions Judge, Lalitpur is hereby rejected.

38. Thus in the result the appeal of the accused appellant is hereby dismissed. His conviction under Section 302 IPC is maintained. However, the death sentence is commuted to life imprisonment.

39. Let a copy of this order be sent to the jail authorities to be conveyed to the accused appellant.

40. We further direct the Registrar of this Court to pay a sum of Rs. 2,000/- (Rupees Two Thousand) as fee of Sri R. P. Tripathi for the assistance rendered by him to this as Amicus Curiae.

Sri R. P. Tripathi, learned Amicus Curiae made an oral prayer for grant of a certificate for appeal to the Supreme Court in accordance with the provisions of Article 134(1)(c) of the [Constitution of India](#) read with Article 134(A). Having regard to the fact and circumstances of the present case, leave sought for is hereby granted. Since this appeal was preferred by the accused from jail in which the Court had appointed Amicus Curiae to argue this appeal on behalf of the accused appellant and on whose request leave to appeal to Supreme Court has been granted by us, we direct the Registrar of this Court to immediately transmit the record of the case to the Supreme Court of India through its Registrar General for getting the appeal registered in the Supreme Court in accordance with the rules and procedure of the Supreme Court of India.