

The State Vs. Kanhu Charan Barik

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SooperKanoon Citation : sooperkanoon.com/530680

Court : Orissa

Decided On : Apr-05-1982

Reported in : 1983CriLJ133

Judge : N.K. Das and ;R.C. Patnaik, JJ.

Appellant : The State

Respondent : Kanhu Charan Barik

Advocate for Pet/Ap. : Sri. R. C. Misra, Sri. R.C. Misra

Judgement :

R.C. Patnaik, J

1. Reference has been made under Section 366 of Criminal P. C. by the Court of Session, Puri, for confirmation of the sentence of death imposed by it on Kanhu Charan Barik upon his conviction under Section 302 of Penal Code. There is also an appeal by Kanhu against the conviction and the sentence passed by the Sessions Judge. Both the reference and the appeal have been heard analogously and are being disposed of by this judgment.

2. A tragedy descended upon the family of Laxmikanta Choudhury on 2-2-1981. Gouri, his wife and mother of Umakanta and Anita, was brutally killed between 11.30 a.m. and 1 p.m. that day.

3. Laxmikanta Choudhury was serving as a Superintending Engineer in the Lift Irrigation Department of the Government and was posted at Bhubaneswar. As no post of orderly attached to residence had been sanctioned, two persons, namely, Satrughna and Kanhu Charan Barik. had been spared by the office for rendering service in the residence of Sri Choudhury. Initially, Kanhu was staying outside and performing work in the residence. From Dec. 27, 1980, Kanhu used to stay in the residence of Sri Choudhury. Besides, one Basudeb Rout, borne on the muster roll of the office, had been assigned, after Satrughna was withdrawn. He was, however, staying outside and did work in the mornings and evenings.

4. Sri Choudhury was to go to Berhampur in connection with government work. So, he informed the members of his family on Feb. 1, 1981 that he would be leaving Bhubaneswar in the morning of the next day and returning from Berhampur the day after, i. e., Feb. 3, 1981. Kanhu also was present at that time and knew about the tour programme of his master. The Other inmates of the house besides Kanhu were Gouri, wife of Sri Choudhury, and Umakanta (Mitu) and Anita (Lipi), the children of Sri Choudhury. Umakanta was studying in the college and Anita in the St. Joseph's Convent. As usual, on Feb. 2. 1981, Lipi (P. W. 17) left for her school around 8 a.m. As per programme. Sri Choudhury (P. W. 25) left for Berhampur in his vehicle driven by his driver Gouranga Paramanik (P. W. 29). Around 9.45 a.m. Umakanta (P W. 14) left for his college.

5. Mrs. Jyoti Padhi, wife of a Joint Director of Agriculture, was occupying the quarters located in front of the residence occupied by Sri Choudhury. Around 10.30 a.m. she observed Gouri taking a stroll on the outer verandah of her residence. Around 11.30 a.m. Basudeb Rout (P. W. 18) went to St. Joseph's Convent carrying food for Lipi. Between 12,30 a.m. and 1 p.m. Dr. Jagannath Mohapatra (P. W. 1) paid a call at the residence of Sri Choudhury. After opening the gate, he called out Mrs. Choudhury by her name 'Gouri'. At that time Kanhu came out of the house and informed Dr. Mohapatra that Sri Choudhury had gone out on tour and the mistress of the house had gone out in a white Ambassador car half an hour earlier. Thereafter Dr. Mohapatra left. Between 1 p.m. and 1.15 p.m. Umakanta (P. W. 14) returned home from college. Kanhu asked how he could he back from college so early and Umakanta replied that classes were suspended. To

the query of Umakanta regarding his mother. Kanhu replied that she had gone out somewhere in a white Ambassador car. Umakanta thereafter began to read some book. Around 4 p.m. Lipi came back from school. To her query, the selfsame answer as given to Umakanta was also given. Between 4 p.m. and 4.30 p.m. P. W. 18 Basudeb came to perform the sundry work in the residence. As he entered the compound, he found Kanhu sitting on the outer verandah. Kanhu asked him to post a letter at the post-office and deliver an application at the General Electrical Division. After delivering the letter, he returned around 5.30 p.m. As he wanted to apply manure to the brinjal plants, Kanhu told him that there was no necessity to apply manure. When he started manuring, Kanhu asked him to fetch milk. When Gouri did not return till evening, the children became restless and approached Mrs. Jyoti Padhi (P. W. 3). She expressed her ignorance of the whereabouts of Gouri. Then she came to the residence of Sri Choudhury and enquired from Kanhu regarding Gouri and received the selfsame reply. Dr. Mohapatra was thereafter contacted. When Gouri did not return by 9 O'clock in the night, panic overtook the children and Mrs. Padhi. At that time, Dr. Mohapatra and his wife arrived. They were joined by Sri Dharanidhar Pani (P. W. 24), an Executive Engineer in the Lift Irrigation Department. To the queries of all of them, Kanhu went on replying consistently that Gouri had left in a white Ambassador car. At this stage he further said that a letter was delivered to her by the driver of the vehicle. All those present, there wanted to make a thorough search of the place. Kanhu was asked to light a hurricane lantern and Mitu went to the house of Mrs. Padhi to bring a torchlight. At that time they heard a sound 'thud' as if somebody jumped down from a wall. Soon thereafter Kanhu was missing. At that time Sri Choudhury was contacted over telephone and was informed that Gouri was missing. Information was conveyed to the Capital police station by Sri Dharanidhar Pani (P. W. 24) over telephone. Sometime later, Sri Panigrahi, the Emergency Officer (P. W. 31), arrived at the place around 12.45 a.m. and after enquiring from the inmates and the persons present, he left after taking a cursory view of the place. He enquired about Gouri and Kanhu at various places in the night.

Next morning around 8 a.m. Sri Panigrahi (P. W. 31) visited the residence of Sri Choudhury and inspected the inner apartments. While inspecting the back-yard, he found certain dry plantain leaves lying on the earth in an elevated position. As

he removed the leaves, the dead-body of Gouri wrapped in a polythene cover and tied with a rope came to his-view. The place was in the, plantain orchard and behind the improvised motor garage. The head had been totally severed from the body. Thereafter various places in the residence were searched. Bloodstains were- found in the bathroom wall, in the courtyard, over the boundary wall. Foot prints with stains of human blood were also seen. Experts were requisitioned from the Forensic Science Laboratory. A team of experts rushed to the spot and recovered the bloodstains and also fluid containing blood from the drain, the foot print was traced and photograph thereof was taken. Seizure of various articles was made.

F.I.R. was lodged by Dr. Mohapatra (P. W. 1), on information that Kanhu had a brother serving in Siba Metal Industries at Rourkela, officers were deputed for his apprehension there. In the meanwhile, the photograph of Kanhu had appeared in the newspapers. The Manager of Siba Metal Industries came upon Kanhu and on questioning, Kanhu admitted his guilt. The Manager directed Kanhu's brother Jambeswar to hand over Kanhu to police. Kanhu, however, left for New Delhi. There he secured an employment under one Balabhadra Pradhan (P. W. 35) He was arrested by Sudarsan Ray (P. W. 37) on Feb. 9, 1981. The Crime Branch who took over the investigation on Feb. 5. 1981, completed the investigation and submitted charge-sheet against Kanhu under Section 302 of the Penal Code. This, in short, is the prosecution case.

6. Prosecution examined 38 witnesses and Kanhu examined one Duryodhan as defence witness in support of his plea of denial and alibi. There was no direct evidence. Prosecution laid evidence to establish that the death of Gouri was a homicidal death; the crime was committed inside the residence not, by an outsider but by an inmate with whom Gouri was last seen and who had opportunity of doing away with her. Prosecution also laid evidence that it was Kanhu who had HIP motive, who was last seen together with the deceased and who had the opportunity to do the crime. Prosecution laid evidence to show that the conduct of Kanhu. recovery of various incriminating articles, his extra judicial confession established that, it was Kanhu who was the author of the crime.

7. On a consideration of the materials, the learned Sessions Judge convicted Kanhu under Section 302 of the Penal Code and imposed the death penalty. This is how the Death Reference and the Criminal Appeal are before us.

8. It has not been disputed that death of Gouri was homicidal. From the narration of facts aforesaid, it is seen that Mrs. Jyoti Padhi, who was sitting on the verandah of her residence with some visitors, had seen Gouri between 10.30 a.m. and 11 a.m. At that time Gouri was loitering on her verandah. Basudeb left around 11.30 a.m. for St. Josepe's Convent carrying food for Lipi. Food was handed over to him by Gouri. P. W, 3 also observed Basudeb opening the gate and closing it while leaving the residence. Kanhu in his statement under Section 313 Cr. P.C. admits that Basudeb left at 11.30 a.m. carrying food for Lipi. The learned Sessions Judge is, therefore, right in his conclusion that Gouri was last seen around 11.30 a.m. on Feb. 2, 1981. The only inmates in the residence thereafter were Kanhu and Gouri. By 12.30 p.m. when Dr. Jagannath Mohapatra (P. W. 1) arrived at Sri Choudhury's residence, Gouri was not available Kanhu informed that she had left in a white ambassador car. The questions are when and where did the occurrence take place and who was the culprit?

9. The evidence laid on behalf of the prosecution can be classified under several heads; as relating to

(a) motive;

(b) opportunity to commit the crime;

(c) the deceased being last seen;

(d) recoveries of incrimination articles;

(e) bloodstained foot prints and

(f) conduct and extra judicial confession.

10. It is worthwhile to recall what the Supreme Court said in Udaipal Singh v. State of U.P. AIR 1972 SC 54 : 1972 Cri LJ 7 (Para 11):.In case where only circumstantial evidence is available at the outset one normally starts looking for

the motive and the opportunity to commit the crime. If the evidence shows that the accused having a strong enough motive had the opportunity of committing the crime and the established circumstances on the record considered along with explanation-if any- of the accused, exclude the reasonable possibility of anyone else being the real culprit then the chain of evidence can be considered to be so complete as to show that within all human probability the crime must have been committed by the accused. He may, in that event, safely be held guilty on such circumstantial evidence....

and in the case of *The State of Andhra Pradesh v. I.B.S. Prasad Rao* ;

In regard to the question of the effect and sufficiency of circumstantial evidence for the purpose of conviction, it is now settled law that before conviction based solely on such evidence can be sustained, it must be such as to be conclusive of the guilt of the accused and must be incapable of explanation on any hypothesis consistent with the innocence of the accused. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must meet any and every hypothesis suggested by the accused, however extravagant and fanciful it might be. Before an accused can contend that a particular hypothesis pointing to his innocence has remained unexcluded by the facts proved against him, the Court must be satisfied that the suggested hypothesis; is reasonable and not far-fetched. Further, it is not necessary that every one of the proved facts must in itself be decisive of the complicity of the accused or point conclusively to his guilt. It may be that a particular fact relied upon by the prosecution may not be decisive in itself, and yet if that fact, along with other facts which have been proved, tends to strengthen the conclusion of his guilt, it is relevant and has to be considered. In other words, when deciding the question of sufficiency, what the Court has to consider is the total cumulative effect of all the proved facts each one of which reinforces the conclusion of guilt, and if the combined effect of all those facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that any one or more of those facts by itself is not decisive.

It is difficult to accept that Gouri was done to death at a place away from the residence and the dead body was dumped in the back-yard wrapped in a polythene cover. It is equally difficult to accept that an outsider after-killing Gouri inside the residence would clean the place where the crime was committed and take steps for wiping out evidence of the killing and hide the dead body by wrapping the same with a polythene cover and cover up the same with plantain leaves. Human blood detected in the stains recovered from the walls of the bath-room, the courtyard, the compound wall and from the fluid in the drain conclusively establish that the crime was committed in the bath-room before 12.30 p.m. It is difficult to accept the theory that a stranger to the household could be the author of the crime. The use of the scooter cover (M.O.I.) belonging to P. W 9 and the rope (M.O. XXXV) belonging to Laxmikanta with which the body was tied excludes the theory of an outsider committing the crime.

11. The next question for consideration is if Kanhu who was last seen with Gouri around 11.30 a.m. could be the author and if he had the opportunity to do the crime? From the evidence of Laxmikanta (P. W. 25), Umakanta (P. W. 1,4), Anita (P. W. 17), Basildeb (P. W. 18) and Gouranga (P. W. 29), it appears that Kanhu knew that Laxmikanta would be absent till Feb. 3, 1981. Lipi who had left for school around 8 a.m. would come back in the afternoon Umakanta who had left for college at 9.45 a.m. would return in the afternoon. Driver Gouranga had accompanied and would be absent till Feb. 3. The only other person, Basudeb, had left for school and would return for work in the afternoon. Besides Gouri, there was no Other person in the residence. So, it can safely be concluded that Kanhu had the opportunity to commit the crime.

12. On the question of motive, prosecution relies on the evidence of Dr. Jagannath Mohapatra (P. W. 1), Mrs. Jyoti Padhi (P. W. 3), Umakanta (P. W. 14). Basudeb (P. W. 18) and Laxmikanta Choudhury (p. W. 25) and Basanta Kumar Misra (P. W. 3) Laxmikanta (P. W. 25) testified: Within one year, prior to the date of occurrence Kanhu had represented to me through my wife to absorb him as a regular employee in our Department, I told my wife and Kanhu that I would ascertain from the Executive Engineer, the vacancy position and the seniority of Kanhu and in case Kanhu would be eligible for appointment, I would certainly request the

Executive Engineer to do the needful. Otherwise Kanhu had to wait till his chance comes in the regular procedure. My wife understood but Kanhu did not realise my official embarrassment. Kanhu used to press regularly on me for his regular appointment and I used to give him the very same reply as indicated above. My wife used to get angry with Kanhu and expressed her dissatisfaction and discontentment in making such illegal and unreasonable request. So much so, my wife had told Kanhu that if he felt dissatisfied, he was at liberty to vacate our house. Within one year prior to the date of occurrence, Kanhu became very insincere in discharge of his work. He became disobedient so much so my wife and I had driven him out from our house and after a week from the date of his departure, Kanhu again came and thronged on us to keep him in our house. Taking pity over Kanhu my wife and I allowed him again to remain in our house. On some occasions, my wife had expressed her discontentment and dissatisfaction over Kanhu in his presence regarding his insincere and irregular way of discharging his work. My wife used to say that as work charged employee, if Kanhu was insincere, then he would become more insincere after receiving a regular appointment and therefore, Kanhu should not be absorbed as a regular employee in the Lift Irrigation Department. Insincerity of Kanhu rose to such an extent that not only my wife was displeased, but I was also dissatisfied. He used to absent himself at regular intervals without giving any information to us and thereby causing lot of inconvenience to us....

P. W. 1 deposed.-

Gouri had complained to me being dissatisfied with the services of Kanhu so she expressed that Kanhu was becoming disobedient and was not cooperating with her regarding the work that were required to be done by him.

P. W. 3 said:.During the aforesaid period, Gouri was expressing her discontentment to me regarding the insincerity and the disobedient manner of Kanhu rendering his service to Gouri. This expression was made by Gouri before me. at times, in the presence of Kanhu.

Umakanta P. W. 14 testified:

My mother was never satisfied with services of Kanhu who was very disobedient to my mother. Whenever my mother asked Kanhu to do a particular work he exhibits a disgruntling attitude and sits tight for hours together outside our house and within the compound. After sitting for an hour or so, Kanhu voluntarily comes into our house, does some work or the other according to his choice and goes away. When my mother sends Kanhu for a shopping in the local market and we would be waiting for Kanhu's arrival, so that cooking would start Kanhu does not return on the same day but comes back 10 or 15 days thereafter and offers lame excuses for his absence' saying that he was attacked by a witchcraft or a spirit or was bitten by a snake. Invariably Kanhu remains absent from our house on some false pretext Or the other and on this account my mother was thoroughly displeased with Kanhu. I have heard Kanhu requesting my father to give him a regular employment under the Govt. without keeping him as a member of the work-charge. My father used to tell Kanhu that he would be absorbed when vacancy arises. But my mother used to stiffly oppose this request of Kanhu made to my father in the presence of Kanhu and some time behind his back on the ground that his insincerity would increase and he would be more disobedient if he gets a regular appointment.

P. W. 18 stated:

Kanhu was expressing his dissatisfaction before me for not having been absorbed as a regular employee in spite of the fact that he was in the work charge for several years.

Kanhu had been transferred to Puri Section in June, 1980; but he was working with Laxmikanta Choudhury. So, his attendance was not being marked in the Attendance Register maintained in the office. In Dec. 1980 he was transferred to Bhubaneswar Section. He was not reporting at the office as he was working in the residence of Laxmikanta Choudhury. During the months of Dec. 1980 and Jan., 1981, his attendance was not marked. From the evidence of P. W. 30 we get that though Kanhu was assigned to the office, he was working in the residence of Laxmikanta. Though the remuneration bill for the month of Dec., 1980 of Kanhu was prepared and drawn, the amount was withheld due to his 'unauthorised

absence' and P. W. 30 so stated with reference to the acquittance roll.

We further find from the evidence of P. W. 25 that on his direction payment for the months of Dec., 1980 of Kanhu had been withheld. The reason was that on Dec. 25, 1980. Laxmikanta and the members of his family had an outing and Kanhu refused to accompany them though was asked to.

From the aforesaid evidence it can be concluded that the appellant had the motive for the commission of the offence.

13. Next was come to the recovery of Incriminating materials and to appreciate the same, it is desirable to bear the topography in mind. The learned Sessions Judge made a local inspection and his observations are embodied in the judgment. We better quote him:

The quarter of Sri Choudhury faces north. It is a twin quarter. By a twin quarter I mean two quarters completely adjacent and touching each other having a dividing wall in the courtyard and green fence having barbed wire running from north to south touching the bed room of Sri Choudhury and this barbed wire fence divides the outer premises of both the quarters - one occupied by Sri Choudhury and the other by a Motor Vehicle Inspector. The quarter of the Motor Vehicle Inspector is to the east of the quarter of Sri Choudhury. Both the quarters touch each other having the dividing line as indicated above. Both the above mentioned quarters, have separate gates for entrance and exit of the respective occupants. Both these quarters abut the road running from East to West. At the extreme western end of this road is situated the quarter of Sri Choudhury. A road runs from North to South on the Western side of the quarter of Sri Choudhury touching the extreme western end of the road which runs from East to West. There is an open space situated to the western side of the quarter of Sri Choudhury extending from North to South i. e. from the front portion to the backyard of the quarter of Sri Choudhury. Over this space, there was an improvised, motor garage and behind the motor garage, a kachha drain runs out from the inner court-yard and there were also some plantain trees behind and to the western side of the motor garage as indicated in the spot map (incidentally I may mention that at the time of spot inspection conducted by me the improvised motor garage had been dismantled).

As soon as one enters the quarter of Sri Choudhury through the main gate, there is an open space between the gate and the outer verandah of the said quarter. Just after crossing the verandah, one has to enter into the drawing room which abuts the inner verandah. In order to reach the inner verandah, one has to pass through the drawing room. Three rooms are situated in one row running from east to west. The room situated to the extreme western end is the drawing room and the room situated to the extreme eastern end of the same row is situated the bed room of Sri Choudhury and the intervening room between the bed room of Sri Choudhury and the drawing room is used as the bed room of the son and the daughter of Sri Choudhury viz. Umakanta Choudhury alias Mitu (P. W. 14) and Anita Choudhury alias Lippi (P. W. 17). The doors of all these three rooms viz., the drawing room, bed room of Mr. and Mrs. Choudhury and their children open towards the south i. e. the inner side verandah. There is a bath room just near the bed room of Sri Choudhury and its door opens towards the inner side verandah facing towards the west. In order to step into the courtyard from the inner verandah one has to pass through a Rate which is situated just in front of the door of the bed room of the children of Sri Choudhury. The length and the breadth of the bath room would be 7' x 5' respectively and the distance between the door of the bath room and the gate opening towards the courtyard would be about 12 cubits. In the bath room, there is a water reservoir whose length and breadth would be about 3' x 3'.

The courtyard is enclosed with pucca walls on all sides. There is a door fixed to the southern side of the wall enclosing the courtyard and this door opens towards the backyard and behind this pucca wall, there is an open space which I say to be the backyard and this open space extends from east to west touching the barbed wire fence situated to the western side of the quarter of Sri Choudhury. Beyond this backyard to the further south runs a scavenger's pathway from east to west and this path touches both the roads running on the eastern side and the western side of the quarter in question. The kacliha drain about which reference has been made above runs out from the courtyard through the western side of the pucca wall enclosing the courtyard and there is a fuel shed to the western side of the door opening towards the backyard. A water reservoir touches the western side wall enclosing the courtyard and the northern side wall of the fuel shed. The .

length and breadth of the said water reservoir would be '5' x 5' and its height would be about 3'.

From the bloodstains collected from the bath-room, the courtyard, the compound wall and the dead body recovered from the backyard near the kuccha drain behind the motor garage, it is abundantly clear that the crime was committed in the bath-room and the dead body was carried through the court yard and lifted over the compound wall and deposited on the ground near the drain. P. W. 20 is the Scientific Officer of the State Forensic Science Laboratory at Rasulgarh. He visited the quarters on 3-2-1981 along with other members on the requisition of P. W. 31, the Second Officer of the police station. He took strappings of blood found in the walls of the bath-room and collected bloodstains where the quantity was meagre, by extraction. He found bloodstains at different places in the walls and also in the ceiling of the said bathroom. The fluid in the drain was also collected, as he suspected that that contained blood. The foot prints in the courtyard also contained bloodstains and scrappings thereof were collected. Human blood has been detected in the scrappings (see items marked 'J' in Ext. 32). These materials reinforce the conclusion that the murder was committed inside the house and the bath-room was the place where the act was committed.

Until the discovery of the dead body on the morning of Feb. 3, 1381, there was no suspicion that Gouri was murdered. On the other hand, journey ran in various directions. Hence, investigation could not be directed on the proper track. As soon as the dead body was recovered from the backyard, other places were searched. From the fuel shed, Sri Panigrahi, the Second Officer of Bhubaneswar police station (P. W. 31), seized a trouser (M. O. IX). From one of its pockets, were recovered a watch (M. O. II), a gold ring (M. O III), a bunch of keys (M. O. IV), two loose keys (M. O. XXV-III) and currency notes with loose coins amounting to Rs. 463.52. Seizure was made under the seizure list Ext. 1/2 and the seizure witnesses are Dr. Jagannath Mohapatra (P. W. 1) and Dharanidhar Pani, an Executive Engineer (P. W. 24). A Katari (M. O. VIII) stained with blood was also seized.

14. The prosecution laid evidence to prove that M. O. IX belonged to Kanhu. Kanhu disowned ownership, Umakanta and Laxmikanta (P. Ws. 14 and 25, respectively) identified M. O. IX. The trial judge has accepted their evidence and though certain suggestions were made to the said witnesses to discredit them, we see no reason to disbelieve their version. We hold that M. O. IX belonged to the appellant, Kanhu.

The watch M. O. II was identified by P. W. 14. He stated that the watch belonged to Kanhu and on many occasions he had seen Kanhu using the same. The most important recovery from the trouser pocket is the gold ring (M. O. III). The said ring was identified by Mrs. Jyoti Padhi (P. W. 3), Umakanta (P. W. 14), Laxmikanta (P. W. 25). They stated that the ring belonged to the deceased.

We quote the evidence of P. W. 14 which has impressed its:

The gold ring (M. O. III), spectacles (M. O. XIII), Chappals (M. O. XIV) and Sarees (M. Os. XXV and XXVI) belonged to my mother. My mother was using these material objects and till I departed from my house at 9.45 a.m. of 2nd February, 1981, I have seen my mother wearing the gold ring (M. O. III). She was wearing M. O. III in her middle finger...

P. W. 3 was an intimate friend of the deceased and P. Ws. 14 and 25 are competent witnesses to testify to the fact of ownership. It is difficult to believe that they are falsely implicating (he appellant. On going through their evidence, we are satisfied that they are speaking the truth and the gold ring belonged to the deceased and the same was recovered from the pocket of the trouser belonging to the appellant. The bunch of keys (M. O. IV), ownership whereof could not be established, are not material. Two other keys marked M. O. XXVIII are material. P. Ws. 14 and 25 identified those two keys. Those belonged to Laxmikanta. One of those was of the lock put on the door of the bed-room of Laxmikanta and the other was of the lock put on the door of the store-room. The two locks have been marked as M. Os. XXIX and XXX.

When Dr. Jagannath Mohapatra (P. W. 1) arrived, he found the bed-room locked. So also was the bed-room padlocked when Umakanta returned home.

The lock of the bed-room was broken by Kanhu on the instruction of P. W. 14 and others. M. Os. XXIX and XXX were seized by the Investigating Officer (P. W. 33). The numbers engraved on the padlocks tallied with those engraved on the keys, M. Os. XXVIII. It is in the evidence of P.W. 3 that whenever Gouri used to lock up her room and go out, she used to hand over the keys to her. P. W. 3 used to do the same thing when she had occasion to go out locking the doors. On Feb. 2, 1981, P. W. 3 asserted that the keys had not been given to her by Gouri which improbabilised her going.

The appellant had not been paid his remuneration for the months of Dec, 1980 and Jan., 1981. He had asked for Rs. 20/- from P. W. 25. It is in evidence that Sri Sadananda Choudhury (P.W. 23), a lecturer in history in Utkal University, was to deposit Rs. 466/- towards electricity charges on Feb. 2, 1981. He had come to his younger brother's residence. He handed over the bill and the amount and requested him to get the amount deposited. He left around 9 a.m. sometime before the departure of Laxmikanta on tour. P. W. 25 slated that he handed over the amount to the deceased asking her to get the amount deposited through Kanhu. The amount recovered from the trouser pocket fell short of the amount handed over by P. W. 23 by Rs. 2 and odd. An inference can be drawn that this amount had been handed over by the deceased to Kanhu for making the deposit.

Kanhu disowned the trouser and denied to have been staying in the house of Laxmikanta. But the said version of the appellant is unbelievable in the face of clear and unimpeachable evidence of Umakanta (P. W. 14), Lipi (P. W. 17) and Laxrnikanta (P. W. 25) corroborated by the evidence of p. Ws. 1, 3 and 18. We get from the evidence of P. Ws. 14 and 25 that the fuel shed was being exclusively used by the appellant and he was using the same for keeping his clothes.

At this stage we should answer the criticism levelled at Mrs. Jyoli Padhi (P. W. 3). She is material witness in regard to the conduct of the appellant and identification of certain material objects and other' material circumstances. She impressed the trial Judge as a truthful witness. To us, she appears to be a trustworthy witness and nothing has been brought to our notice which could affect the veracity of her version. She had no axe to grind and her close relationship with the family of

Laxmikanta and Gouri is an assurance that she would not falsely implicate an innocent person. We have gone through her evidence and find nothing which can attribute any motive or throw doubts on the trustworthiness of her version.

The Katari (M. O. VIII), stained with human blood, was recovered from a drum in the courtyard. The prosecution has, however, failed to connect Kanhu with this Katari, There is no acceptable evidence that Kanhu had purchased the Katari previous to the occurrence.

P. W. 15 who conducted the postmortem examination has stated that the Katari like M. O. VIII could cause injuries on the neck and head, which he found in the case of Gouri and more than one blow must have been given by the assailant. P. W. 31 found a fresh dent mark on M. O. VIII. He also observed a fresh cut mark on an edge of the cement reservoir in which water was stored in the bath-room. Relying on this evidence the prosecution submits that the place of occurrence was the bath-room and the weapon of offence was the Katari. The stains of human blood hardly leave any room for doubt that the Katari was used for the commission of the offence and was concealed in the drum.

The next article of importance which was seized by P. W. 31 on 3-2-1981 was a broom stick (M. O. XXIV) seized, under Ext. 8/1. P. W. 18 Basudeb identified the broom stick as one which he used to use daily for sweeping the courtyard. Criticism levelled against this evidence was that the broom stick had not been identified by being put in a Test Identification Parade and so, the evidence was not reliable. There is no hard and fast rule as to under what circumstances a T. I. parade should be held. But on general principles, there is little scope for the criticism. The broom stick was not a suspected stolen article nor a suspect. A T. I. parade of suspects or stolen article is held where there is doubt about the identity or the evidence of identification needed assurance. The broom stick with which P. W. 18 used to sweep the courtyard did not fall within the aforesaid categories, though it assumed importance in the chain of circumstances. Dr. Mohapatra (P. W. 1) has stated that after he was informed by Kanhu that Gouri had left for some place, he went inside the drawing room to talk to his wife on the telephone. At that time, he found that the courtyard had been washed and he got smell of phenyl

coming from the side of the court yard. It has been argued by Sri R. C. Misra, learned Counsel for the appellant, that P. W. 1 did not narrate this fact in the F.I.R. lodged by him in the morning of Feb. 3, 1981. Law on this aspect is well settled. The report is not required to contain all the facts and circumstances that the informant might know. Even if the same incident is observed by a group of persons simultaneously, reports lodged by each of them separately would not be identical. The contents would vary from person to person depending upon the importance attached by the informant to each fact or circumstance, to the details and upon his estimate of relevancy. The F.I.R. is lodged with a view to setting the investigative process in motion and not for the purpose of setting down on paper all known facts and circumstances about the incident. There should be a common sense approach to such matters while evaluating the criticism levelled and we hold that non-mention of the aforesaid fact by P. W. 1 in the F.I.R. lodged by him is of no consequence. P. W. 18 further stated that on Feb. 2, 1981, he did not sweep the courtyard as he found the same to have been cleaned by somebody. He has not been cross-examined on this aspect. The evidence of P. W. 1 gains support from the aforesaid version of P. W. 18. Human blood has been detected in the broom stick (vide Exts. 35/1). We agree with the learned Sessions Judge that in the facts and circumstances of the case it can be held that M. O. XXIV had been used to clean the bath-room and the courtyard.

A vest (M. O. XXXI) was recovered from Kanhu at New Delhi. The same was stained with blood. The learned Sessions Judge did not consider M. O. XXXI to be an incriminating article and the prosecution has not relied on the said article before us. We exclude the same from our consideration. M. O. XXXIII is a torn piece of a shirt recovered from the upper part of the dead body of Gouri at the time of holding the inquest. The same was identified by Basudeb (P. W. 18). M. O. XXXIII contained human blood. But detection of blood is not very material as the said article clung to the dead body. Certain criticisms have been levelled against the detection of this article on the ground that it did not find place in the inquest report Ext. 3/1, and dead body chalan Ext. 29. It is contended by the learned Additional Government Advocate that the non-mention of M. O. XXXIII was due to oversight as it was sticking to the dead body, it could be that the same was not noticed. But the seizure list Ext. 30 prepared in the afternoon of Feb. 3, 1981 recorded it. In the

facts and circumstances, however, we exclude this from consideration. It is improbable that 'he accused would have left a torn piece of his shirt/a torn shirt with the dead body when he was taking various other steps for obliterating evidence.

After the post-mortem, the dead body was returned for performance of the religious rites and cremation. Upon arrival, it was proposed that the dead body should be placed in the garage for observance of the religious rites. The garage was found locked. Gouranga (P. W. 29) stated that before leaving for Berhampur he had handed over the keys to Kanhu. Kanhu, however, denied this fact and the defence argued that this evidence was not available to be used as P. W. 29 had omitted to state that he had handed over the key to Kanhu in his statement under Section 161 Cr. P.C. When the key of the lock could not be found, the leaves were lifted out of their hinges. At that time P. W. 31 came upon certain articles inside a drum and seized the same under Ext. 9/1 on Feb. 4, 1981. These were -

- (a) A striped green saree;
- (b) One saree of maroon colour stained with blood;
- (c) A pair of chappals meant for ladies;
- (d) One spectacles for ladies;
- (e) A gold chain broken into two pieces;
- (f) One five rupee currency note containing stains of blood;
- (g) Some cut pieces of hair, and
- (h) A twentyfive paise coin.

These had been packed into a gunny bag. The spectacles, chappal and the Saree were identified by P. Ws. 3, 14 and 25 as belonging to Gouri. Unfortunately, the gold chain cut into two pieces was not available at the trial as the same was mislaid somewhere. As per the report of the Chemical Examiner and Serologist, the sarees and the chappals contained human blood. Though the spectacles

contained blood, the quantity was insufficient for serological test. It can safely be deduced that the culprit after the commission of the crime had secreted the articles in the garage to which he had access with a view to avoiding immediate detection and the residence of Laxmikanta Choudhury could be the only place where the crime was committed.

15. Next we come to the foot prints stained with blood found in the courtyard. We find from the evidence of P. W. 19 that he found 5 to 6 foot prints. He selected three out of those as fit for examination. Amulya Chandra Sahu (P. W. 28) and Duryodhan Barik (P. W. 21) were directed by him to take photographs. Thereafter glass tracing was done by him. Specimen foot prints of Basu and Kanhu were also taken. Only one foot print was found suitable and on comparison the specimen foot print of Kanhu resembled the foot prints as reflected in Exts. 14, 15, 16 and 16/1. He proved the report Ext. 20. P. W. 19 stated: In the opinion Ext. 20 we are definite that the foot print marked 'A' as Exts. 14, 15, 16 and 16/1 has resemblance with the foot prints in the document marked 'X'. In report Ext. 20 we said 'some resemblance' because the foot prints in Exts. 14, 15, 16 and 16/1 were partial foot prints which completely tallied with the corresponding, part of the foot print reflected in the document marked 'X' for identification which is the full foot print of Kanhu Barik. True it is the reason assigned by me today in the foregoing lines do not find place in Ext. 20 because these details were not at all necessary. There was no ridges and therefore, the number of, ridges taken into consideration does not arise....

The reasons in support of the said opinion are lacking. The report is not conclusive proof. Evidence of experts after all is opinion evidence. The opinion is to be supported by reasons. The Court has to evaluate the same like any other evidence. The reasons in support of the opinion, if convincing, make the opinion acceptable. There is no place for ipse dixit of the expert. It is for the court to judge whether the opinion has been correctly reached on the data available and for the reasons stated. We quote from the decision of the Supreme Court in *Murarilal v. State of M.P.* AIR 1980 SC 531 : 1980 Cri LJ 396 (para 4). But the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts in general, are unreliable witnesses - the quality of

credibility or incredibility being one which an expert shares with all other witnesses -, but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of fingerprints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. An expert deposes and not decides. His duty is to furnish the judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the judge to form his own independent judgment by the application of these criteria to the facts proved in evidence.

Their Lordships further stated in para 11: Reasons for the opinion must be carefully proved and examined.... In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of a handwriting expert may be accepted...

(underlining supplied)

Following the aforesaid dictum of the Supreme Court and agreeing with the counsel for the appellant, we exclude the evidence of foot prints as in Exts. 14, 15, 16 and 16/1 and Ext. 20 and the evidence on this question as given through P. W. 19 from consideration, as having no probative value. It is worthwhile to note that the expert does not say that the specimen foot prints were identical with the foot prints as per Exts. 14, 15, 16 and 16/1. On the contrary, in Ext. 20 he says that there was 'some resemblance'. He admits that there were no ridges and so, consideration of ridges did not arise.

16. The next item is the evidence exhibited by conduct of Kanhu, the appellant. When Basudeb left for the St. Joseph Convent carrying food for Lipi, the only inmates in the house were Gouri and Kanhu. The appellant in his Section 313 Cr. P.C. statement has admitted this fact. Sometime thereafter arrived at the spot Dr. Mohapatra (P. W. 1). Gouri was related to him. He arrived between 12.30 p.m. and 1 p.m. of Feb. 2, 1981. After opening the gate as per his usual practice, he called

Gouri by name. Kanhu walked fast towards him and informed him that Laxmikanta was out on tour and Gouri had gone to the local market for making some purchases in a white Ambassador car. He made similar statements to the children P. Ws. 14 and 17 and to Mrs. Jyoti Padhi (P. W. S). P. W. 16 Sarat Chandra Patra corroborates P. W. 17 stating that Lipi had told him that Kanhu told her and her brother that : Gouri had left in a white Ambassador car. Learned Counsel for the appellant has strenuously urged that this story of Kanhu having told them that Gouri had left in a white Ambassador car was fabricated inasmuch as in the Station Diary lodged in the night of Feb. 2, 1981 by Dharanidhar Pani, it was not reported that Kanhu had so reported. He drew our attention to the Station Diary (Ext. 6/1) lodged by Sri Pani. The relevant portion from Ext. 6/1 is: Today i. e. on 2-2-81 at about 10.30 or so some gentleman in a white Ambassador car came and handed over a letter to his wife and Mrs. Choudhury left her home and accompanied him in that car....

The omission in OUT opinion is immaterial. The only other inmate was Kanhu. Who else could have so told them? That probabilises the version of P. Ws 1, 3 14 and 17.

In that lonely part of the evening, when Kanhu was further interrogated regarding the whereabouts of Gouri, he modified his earlier version by stating that the driver of the car handed over a letter to Gouri and after reading the letter, she left in a hurry. In his statement under Section 313 Cr. P.C. Kanhu has admitted that he had told that Gouri had left; but he denied to have stated about the car. There is no reason why the witnesses would fabricate the story regarding the Ambassador car. We have already held P. W. 3 to be a trustworthy and reliable witness. Her entire evidence inspires confidence and there was no particular reason why any of the witnesses would introduce the story of car. We cannot agree with the counsel for the defence that Mrs. Jyoti Padhi could make an untrue statement. From the aforesaid, it is clear that 'Kanhu intended to misdirect the course of investigation.

It is in the evidence of P. W. 18 that when he came back for discharging his dirty in the afternoon and wanted to manure the brinjal plants in the garden, the appellant asked him not to as there was no necessity. When P. W. 18 paying no heed to

Kanhu proceeded to apply manure to the plants, he was obstructed and Kanhu asked him to fetch milk though he had fetched milk never before. It was Kanhu who used to do that job. A contradiction was sought to be utilised to discredit him, namely, that in his 164 Cr. P.C. statement this witness had stated that milk was never brought from the house of the milkman. The said statement could be explained and the explanation has been given by the learned Sessions Judge. We need not repeat the same. In our opinion, the said statement does not affect his credibility. It is seen that Kanhu escaped from the residence of Laxmikanta sometime later in the evening, around 9 p. m. This fact has been admitted. The appellant has explained that he went to Rourkela and from there to New Delhi. It appears that he gave his identity as Kailash Chandra Behera of 'Tirtol' to P. W. 26, Nalini Kumar Patnaik, the Supervisor of Siba Metal Industries at Jhilpani in Rourkela. To Balabhadra Pradhan, a contractor at New Delhi, he described himself as Kailash Chandra Behera of 'Jatni'. The native place of Kanhu is Uttarana. The explanation of the appellant was that he took fright on account of threats given to him. It is worthwhile to mention here that when Gouri did not return till late in the evening it was decided to make a thorough search of the back-yard and the surrounding places. A torchlight was fetched and the appellant was asked to light a hurricane lantern. At this stage, alleges the prosecution, Kanhu made good his escape. The prosecution says that Kanhu apprehended discovery of the dead body in course of the search. So, he fled from the place. We find considerable force in this submission of the prosecution. If Kanhu had no guilty mind, we expected a co-operative and helping attitude from him directed towards tracing out the mistress or detection of the crime, if any. By then nobody had any inkling that Gouri had been killed. The fear was that Gouri had either fled or had been kidnapped. We have been invited to a case decided by the Supreme Court in the case of *Suresh v State of U. P.* (AIR 1981 SC 1122) : (1981 Cri LJ 746). We are of the view that the aforesaid conduct of the appellant is not in consonance with innocence.

17. The next item relied upon by the prosecution is the extra judicial confession of the appellant made before Nalini Kumar Patnaik (P. W. 26) and Natabar Mohapatra (P. W. 27). Admittedly Jambeswar Barik served as an employee in the Siba Metal Industries. Around 8 a. m. on February 4, 1981, P. W. 26 saw the

appellant. The appellant gave his identity as Kailash Chandra Behera of 'Tirtol' and told him that he was in search of a service. During noon P. W. 26 learnt from a copy of the daily 'Prajatantra' that one Kanhu Barik had committed the murder of the wife of an Engineer and had absconded and Kanhu belonged to Uttarana. He asked one Sikhar Jena as to why the appellant was roaming in the premises of the industry with other people of village Uttarana. Sikhar Jena belonged to Uttarana. sikhar told him that he was the brother of Jambeswar. A little while later P. W. 26 went to the house of Laxmidhar Biswal, a neighbour of Jambeswar Barik. Laxmidhar informed that Jambeswar's brother Kanhu had come. Thereafter he called Jambeswar and asked why Kanhu had come. Jambeswar told him that Kanhu had come after committing a murder at Bhubaneswar. The appellant informed him that he had killed his employer by running the jeep over him. On further questioning, the appellant admitted that he had killed the wife of the engineer as the engineer did not absorb him in a regular post. He gave details by stating that while the wife of the engineer was washing herself in the bath-room, he killed her with a Katari and packed the dead body in a bag and dumped the same outside the house, near the plantain trees. Natabar (P. W. 27) corroborated P. W. 26 in all material particulars. He was one of the persons present when the appellant made the statement before P. W. 26. The appellant admitted his presence in the premises of Siba Metal Industries. Some criticism is made regarding the manner of investigation. It is said that S.I.B.B. Dey was sent to Rourkela to arrest Kanhu Barik and he had examined Jambeswar Barik, Natabar Mohapatra and Laxmidhar Biswal. But this B. B. Dey was not examined by prosecution P.W. 26 arrived at the Capital police station on 15-2-1981 and his statement was recorded on 16-2-1981. The defence submits that the belated statement of P.W. 26 has made his version weak and unacceptable. Failure of the investigating agency to record the statement of P. W. 26 under Section 164 Cr. P.C. at Rourkela is commented upon. We find that B. B. Dey was not a material witness. He had taken no active part in the investigation. By the time he reached Rourkela, Kanhu had decamped and so, he returned to Bhubaneswar with Jambeswar and Natabar Mohapatra (P. W. 27) for interrogation. Nalini Kumar Patnaik was absent. At the instance of the Investigating agency he appeared at the Capital P. S. on 15th February, 1981. In our opinion, there is no force in the

criticism levelled by the defence. P.Ws. 26 and 27 had no axe to grind. The only suggestion given to P. Ws. 26 and 27 for discrediting them has been that they supported the prosecution case as they were threatened that they would be indicted as co-accused for having harboured the criminal, the appellant. The suggestion is too far-fetched and is hollow. We accept their version as free, independent and truthful. In our opinion, the appellant made the aforesaid confession of guilt before p. Ws. 26 and 27. The said confession appears to us to be voluntary and true. The version is in consonance with the known facts and circumstances. Our attention has been drawn to Maghar Singh v. State of Punjab where it has been held (Para 5):

Evidence furnished by the extra-Judicial confession made by the accused to witnesses cannot be termed to be a tainted evidence and if corroboration is required it is only by way of abundant caution. If the court believes the witnesses before whom the confession is made and it is satisfied that the confession was voluntary, then in such a case conviction can be found on such evidence alone.

18. It is submitted that P. Ws. 26 and 27 were strangers to the appellant and it was improbable that he would be out to confess before them. There is no universal rule of human behaviour. It is guided and controlled by various factors. Environment, circumstances, the nature of the maker, his state of mind, his psychology, his state of mind at the material time are relevant considerations. Behaviour or conduct is to be judged on the facts and in the circumstances of each case. We, therefore, do not accept the argument of the counsel for the appellant that the evidence of P. Ws. 26 and 27 should be rejected on that score. Our attention has not been drawn to any serious infirmity which would throw doubt on their truthfulness.

19. The appellant has examined one Duryodhan Patnaik as defence witness to substantiate his version of alibi. He took 'he stand that he was absent from the house from 11.30 a. m. to 12.45 p. m. on February 2, 1981 as he had gone with permission of his mistress, Gouri, to the temple of Ananta Basudev for taking Prasad, D. W. 1 stated that the appellant served under his brother. Triloch, 8 to 10 years ago. On February 2, 1981 he had gone with his children to Lingaraj temple for cropping the hair of his children. Thereafter he took the children to Bindusagar

for bathing. After Darshan, he went to the temple of Ananta Basudev for Prasad. There he found Kanhu taking Prasad, It was around 12 noon then. Both of them talked to each other for some time. As has been shown by the learned Sessions Judge on an analysis of the evidence, D. W. 1 does not appear to be a truthful witness. In cross-examination he has miserably failed to furnish many important details of recent past relating to him though he posed to have remembered the happenings of 2nd February, 1981. There is no particular reason why he would remember an event relating to Kanhu. A reading of his evidence convinces us that this witness as has been brought out in the analysis of his evidence by the learned Sessions Judge, also appears to be an unreliable one. He admits to a court's question that certain of his answers was not true and was false. The learned Sessions Judge rightly observes .-.Due to the prevaricating statements made by the witness and the improbabilities appearing in his evidence shaking the veracity of the witness especially in regard to the lapse of memory on important matters which in ordinary course, one is expected to remember, I cannot but hold that the evidence of D. W. 1 does not inspire confidence and furthermore, I am of opinion that D. W. 1 has least regard for truth...' On a perusal of his evidence, we accept the said finding of the learned Sessions Judge and reject D. W. 1 as untrustworthy and unreliable.

The counsel for Kanhu submitted that the case diary for 5th February, 1981, had been withheld and adverse inference should be drawn against the prosecution case. This submission appears to have no substance, p. W. 31 of the Capital P. S. was investigating into the case. He was asked by the S.P. on the February 4, 1981 not to proceed with the investigation any further as decision had been taken to entrust the investigation to the Crime Branch. On 5-2-81, at about 8.30 p.m. P.W. 33 of the Crime Branch took over charge. Evidence of P. W. 31 is clear that after receiving instruction from the S. P. on 4-2-1981, he did not make any investigation into the case. We have also verified this fact from the case diary. Investigation was resumed from the stage where P. W. 31 had closed on 4-2-1981, after the Crime Branch took over charge. Another criticism of Sri R.C. Misra, learned Counsel for the appellant, was that no seizure list has been prepared for the seizure of the blood-stains recovered and foot prints traced at the spot by P. Ws. 19 and -20. We find it from the evidence that a team containing 4 to 5 persons including P. Ws. 19

and 20 was deputed by the Director of State Forensic Science Laboratory. After examining various places and extracting and collecting blood-stains wherever possible, the experts prepared a spot visit report in triplicate, a copy whereof was marked Ext. 28. A copy of the report was handed over to the Investigating Officer at the spot and a copy of the report together with the materials that were collected was also given to the Investigating Officer. Ext. 28 was signed by the members of the team and the Investigating Officer. In these circumstances, we see no merit in the criticism that no seizure list was prepared. Authenticity of Ext. 28 has not been disputed.

Our attention has been drawn to *Hardayal v. State of U.P.* . On a consideration of the materials on record, we hold that the prosecution has been able to establish that the appellant had the motive and the opportunity to commit the crime and -the various circumstances, namely, the conduct of the appellant, his subsequent escapement, and giving false identity and recovery of incriminating materials and the fact that the deceased was last seen with him, establish unerringly that the appellant was the culprit, the author of the crime and the circumstances are incapable of explanation on any hypothesis consistent with the innocence of the appellant. All the facts proved point conclusively to the guilt of Kanhu.

To cap it all, the extra judicial confession on which alone conviction can be founded, has brought the charge home and reinforces the circumstantial evidence and fortifies the conclusion drawn therefrom. The charge having been established beyond reasonable doubt, the learned Sessions Judge has rightly convicted the appellant under Section 302 of Penal Code.

20. As Justice Krishna Iyer said:

Guilt once established, the punitive dilemma begins.

Under the Code of Criminal Procedure, 1973, life imprisonment for murder is the rule and capital sentence the exception, to be resorted to for reasons to be stated (see Sub-section (3) of Section 354). In olden times emphasis was on crime alone. The recent trend in penology has shifted the emphasis. Now both crime and the criminal are equally material. It has been observed by the highest Court that the

capital punishment may be imposed in 'rarest of rare cases' and the exhortation of Chief Justice Chandrachud should always be present in the mind of the Judge faced with the sentencing dilemma. In these words His Lordship observed:

Passing of the sentence of death must elicit the greatest concern and solicitude of the Judge because that is one sentence which cannot be recalled.

Retributionist cries : 'The man has killed; let us kill the man'. No guidelines have been indicated to help the Judge in sentencing. Such principles which have been framed by judicial dicta can be resorted to for guidance.

The Constitution Bench of the Supreme Court constituted to decide the legality of capital punishment (AIR 1980 SC 898) : (1980 Cri LJ 636) observed (Para 199):.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.

The Constitution Bench refused to categorise the circumstances in which murder is to be punishable with death stating that such 'rigid categorisation would offend the legislative policy', but took note of the aggravating circumstances as suggested by Dr. Chitale (see paragraph 200). Shortly put, death sentence would be warranted if the murder is 'diabolically conceived and cruelly executed', having regard to the weapon used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim, and the like, which steel the

heart of the law for a sterner sentence' and also where murder has been committed after previous planning and involves extreme brutality. However, presence of 'emeliating circumstances or mitigating factors would call for lesser penalty. The mitigating factors suggested by Dr. Chitaley enumerated in paragraph 204 of the judgment were approved by the Constitution Bench. Some of such are : commission of the offence under the influence of extreme mental or emotional disturbance; the age of the accused; and socioeconomic and psychic compulsions from which the offender might be suffering. We approach the dilemma keeping the aforesaid guidelines in the forefront. The appellant was 26 to 27 years at the time of commission of the crime and was recently married and had a small baby. He was borne on the N.M.R. of the Lift Irrigation Department and was not obliged to do menial work in the residence of the Superintending Engineer. For 7 to 8 years, he was continuing as a temporary hand. Whenever he implored his employer for absorption on a permanent basis, his efforts were thwarted by Gouri, the wife of the Superintending Engineer, interceding and opposing that he would become more insincere and disobedient if he was absorbed on permanent basis. He was to discharge his duty in the office and sign the roll as token of his performance. But as he had been asked to work in the residence, his attendance was not being marked in the acquittance roll for the months of December, 1980 and January, 1981. As a consequence, his salary for those two months had been withheld. In the words of the Assistant Engineer: With reference to the said acquittance roll I am in a position to say that though the remuneration bill for the month of December, 1980 of accused Kanhu Barik was prepared and drawn, yet the money was withheld due to his unauthorised absence. I say so because there is an endorsement to the above effect in the acquittance roll sheet mentioned against the name of Kanhu Barik. I did not prepare the bill for payment of remuneration to Kanhu Barik of the month of January, 1981 because he had not filed his joining report.

P.W. 25 says in his evidence:

On 25th December, 1980 we had to go out. Kanhu did not come. For such insincerity in the discharge of the work I asked the Assistant Engineer to withhold the monthly emolument of Kanhu for the month of January, 1981, Kanhu did not

receive his remuneration due to him for the month of December, 1980...

The appellant was not to be blamed if his attendance was not marked in the acquittance roll in the office. It was the responsibility of the officer who directed him to do work in the residence to see that his attendance was marked and his remuneration was paid on due date. The appellant had a wife to maintain and a baby to feed. In such circumstances when he asked for Rupees 20/-, a sum of Rs. 10/- was paid to him.

Legally, the appellant being the author of the crime must perforce suffer the penalty. On a different plane, it was the bureaucratic system and the malady pervading the system that was responsible for the tragedy that came upon Gouri and the members of the family of Laxmikanta. Kanhu must have been fretting under a feeling of disgrace by being asked to do menial work in the residence of the Superintending Engineer, It was not part of his duty. He compromised his position for his survival and that of his dependants. Even then, the sword of Damocles continued to hang over his head. 7 to 8 years was a long period in the context of tenure of service. To have been snubbed repeatedly by the wife of the superior authority while pleading for absorption as a permanent employee must have caused considerable mental anguish and torment. The appellant must have been passing through a severe mental turmoil and emotional disturbance. Moreover, the precise momentary circumstance that compelled him to commit the crime has not been unravelled. These are enough mitigating features which dissuade us from extinguishing his life. We, therefore, set aside the penalty of death imposed and substitute the same by imposing imprisonment for life.

21. In the result, the reference is discharged and the appeal is allowed in part. While maintaining the conviction of the appellant under Section 302 of Indian Penal Code, we sentence him to undergo rigorous imprisonment for life.

We record our appreciation of the assistance rendered by Sri, R.C. Misra, Advocate for the appellant, and Sri. R.K. Patra, Additional Government Advocate.

N.K. Das, J.

22. I agree.

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