

**Sunil Chand Jain Vs. State**

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**Court :** Delhi

**Decided On :** Dec-16-1994

**Reported in :** 1995IAD(Delhi)217; 1995(32)DRJ474

**Judge :** P.K. Bahri and; S.D. Pandit, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 386; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

**Appeal No. :** Murder Reference No. 4 of 1994 and Criminal Appeal No. 197 of 1994

**Appellant :** Sunil Chand Jain; State

**Respondent :** State; Sunil Chand Jain

**Advocate for Pet/Ap. :** D.C. Mathur,; R.M. John and; N.K. Handa, Advs

**Judgement :**

**S.D. Pandit, J.**

(1) Sunil Chand Jain s/o Padam Singh Jain resident of House No.638, Gali Ishwari Prasad, Bara Hindu Rao was tried by an Additional Sessions Judge of Delhi in Session's case number 3/93 and is found guilty of the offences punishable under 302, 307 and 392 of the Indian Penal Code. The appellant is convicted under Section 302 and is sentenced to death and to pay a fine of Rs.50,000.00 and in

default to suffer RI for 10 years. He is convicted under Section 307 and sentenced to imprisonment for life. He is further convicted under Section 392 of the Indian Penal Code and is sentenced to suffer RI for 10 years and to pay a fine of Rs.25,000.00 . The learned Additional Sessions Judge has made a reference to this court to confirm the said death sentence whereas the accused Sunil Chand Jain has preferred Criminal Appeal 197/94 against the order of conviction and sentence passed against him.

(2) First informant Public Witness .I Rajinder Kumar son of Vakil Chand Jain is resident of Gali Bahuji, Pahri Dheeraj, Delhi. He had two elder brothers and two younger brothers. Rajinder Kumar and his two elder brothers were married whereas his younger brothers Anil and Rakesh Kumar were get to marry. Their parents Vakil Chand and Rashma Devi were living with them. This Jain family had business in hankerchief. They had also a small factory for the production of the said article.

(3) Rajinder Kumar's elder brother Prem Chander was married in the year 1973 and Prem Chander and his wife Santosh had no living children. Suresh, second son of Vakil Chand Jain was married with Public Witness .4 Kamini in the year 1977 and they had three daughters. Public Witness .I Rajinder Kumar was married in February, 1985 and had no issue though more than 16 months had passed since his marriage.

(4) The appellant/accused Sunil Chand Jain was the classmate of Public Witness .I Rajinder Kurnar when Public Witness .I Rajinder Kumar was in Xth standard and therefore he was known to Public Witness .I Rajinder Kumar. Public Witness .I Rajinder Kumar was occasionally visiting the house of accused Sunil Chand Jain and his family members were very rarely going to his place on occasions like marriage. It is the case of the prosecution that as this accused Suresh Chand Jain was visiting the house Public Witness .I he knew that there was no male issue in the family of Public Witness .I Rajinder Kumar and his brothers. Seeing the same he used to repeatedly remark that he would give some vibhuti due to which a male issue would be born in the family and the family would become very happy and all their problems would be solved. It seems that due to his repeated remarks the first

informant Public Witness .I Rajinder Kumar as well as his parents and other brothers were influenced by his said remarks and an inclination was created in their mind to accept his suggestion.

(5) It is further case of the prosecution that on 9th June, 1986 he had given a ring at the house of Public Witness .I Rajinder Kumar Jain and given certain instructions to Rajinder Kumar Jain's father regarding performing of pooja and distribution of Vibhuti on the next day i.e. on 10th June, 1986 by saying that the next day was the most auspicious day to perform the said pooja and for receiving vibhuti. He further told the father of Public Witness .I Rajinder Kumar that Rajinder Kumar be asked to see him at his house on that evening. Accordingly, Rajinder Kumar had gone to the house of appellant Sunil Chand. When he had gone there appellant had again repeated his claim that the next day i.e. 10th June, 1986 was the most auspicious day to perform the said pooja and that he would come tomorrow in the morning and perform the same.

(6) Accordingly on the morning of 10th June, 1986 at about 8.00 A.M. appellant Sunil Chand Jain had come to the house of Public Witness .I Rajinder Kumar Jain and then he asked all the 10 members of the family who were present in the house on that day to take a seat in the Varanda of the first floor of the house and then he performed hawan and chanted some mantras and performed pooja for half an hour. Thereafter he took out the packet containing the said vibhuti and initially gave a small sample of it on the hand of Public Witness .I Rajinder Kumar and asked him to test the same by saying that the same would have the burning sensation. Public Witness .I Rajinder Kumar tested the same and found that it had burning sensation when it had touched his tongue. He, therefore, spit out the same in wash basin and washed his mouth. Thereafter the accused took out another packet which was containing empty capsules. Then he filled Vibhuti in empty capsules and gave two capsules each to all except Renu, daughter of Suresh Chander who had gone out for playing. They were asked by the appellant to consume the capsules with a glass of water. By that time Renu, daughter of Sutesh Chand Jain had gone on the second floor of the house. therefore, Suresh Chand Jain had gone Along with those two capsules and a glass of water in his hand on the second floor. After the accused had given the said capsules, as per

his direction it seems that all the members of the family consumed the said capsules. When Public Witness .I Rajinder Kumar put the two capsules on his tongue one of them splitted and opened and thereforee, he had burning sensation. He rushed to the wash basin and spit out the same. It seems that cynide was there and had been partially consumed by him till he went to the wash basin and spit out the same. thereforee, he had fainted and fell down.

(7) Then about half an hour thereafter he regained consciousness and he found that all the persons around him were lying unconscious on the ground and he himself had also not fully became conscious and was feeling giddiness. He, thereforee, rushed down the building and went in the lane and raised a hue and cry and collected the people and told them that all his family members are lying unconscious and that they should be rushed to the hospital. Accordingly the neighbours had removed all the unconscious persons lying in his house namely. Vakil Chand Jain, his wife Rashmi Jain, Prem Chand, Suresh, Anil, Devender Kumar, Santosh wife of Prem Chand, Asha Rani wife of Rajinder Jain to St. Stephen's hospital, Tis Hazari. Public Witness .5 Vinod Kumar, one of the neighbours of Public Witness .I Rajinder and his son in law Mukesh Kumar also arrived there. Public Witness .5 Vinod Kumar asked his son in law Mukesh Kumar to inform the police on telephone as to what had happened in that house and Vinod Kumar himself rushed P.W.I Rajinder Kumar who had again fainted to Hindu Rao Hospital.

(8) When eight persons Vakil Chand, Rashmi wife of Vakil Chand, Prem Chand, Santosh wife of Prem Chand, Suresh Chand, Asha Devi wife of Rajinder Kumar, Anil Kumar and Devender Kumar were taken to St. Stephen's hospital it was found that all of them were dead. The Public Witness .I Rajinder Kumar was admitted in Hindu Rao Hospital. He was contacted by S.I. Bhim Singh and he recorded his statement which was treated as first information report bearing No-219/86 by the police of Bara Hindu Rao Police Station and thereafter the investigation was started. In his first information report Public Witness. I Rajinder Kumar Jain had disclosed the name of appellant Sunil Chand Jain and had told that said Sunil Chand had given the vibhuti to all family members by saying that as there was no male issue in .the house they would get a male issue in the house by consumption

of the said vibhuti, after performing pooja in their house in the morning of 10th June, 1986. He had consumed half of the prashad given by Sunil Chand and had thrown remaining prashad in the wash basin and then he had become unconscious. When he became conscious he found all the persons were lying unconscious and some of them had vomited in the house. He was not fully conscious and was feeling giddiness even at the time of giving the said first information report.

(9) After registering the offence the inquest reports regarding the dead bodies were prepared and they were sent to the medical officer for post mortem. Then one hour after the recording of the first information report the supplementary statement of Public Witness .I Rajinder Kumar was recorded. At the time of the said supplementary statement he had also stated that the golden ring which was on his finger was also missing. Thereafter police arrested the present appellant/accused Sunil Chand Jain at about 3.00 P.M. When he was interrogated at about 4.30 P.M. on that day of 10th June, 1986 he showed his readiness and willingness to point out the place in his house where he had kept the Jewelleries which he had removed from the persons of the victims in the presence of Public Witness .9 Ved Prakash and P.W.IO Rishi Ram. A memo of Public Witness .9/.A was accordingly prepared. Then he led the police and those two witnesses to his house and took them to his bed room and then from the drawer of his bed he produced in all eight golden ornaments which were seized under the panchnama Ex.P.W.9/B, The said ornaments recovered at the instance of the accused Sunil Chand Jain were identified by Public Witness .I Rajinder Kumar as well as by Public Witness .4, Kamini, .wife of Suresh Chand Jain as belonging to the members of their family.

(10) On further interrogation on 12th June, 1986 he disclosed that he had purchased empty capsules from the medical shop Dardmand Medical Store and pointed out the said shop and he was identified by Public Witness .6 Akash Mathur, Salesman in the said shop as the person to whom he had sold 500 empty capsules under a cash memo on 8th August, 1986. The carbon copy of the said cash memo was also seized by the police from the said medical shop pointed out by the appellant. The appellant also disclosed and pointed out the shop of Public Witness .II,.Mohd. Akil, s/o Nisar Ahmad from where he had purchased 250 gms.

of Sodium Cyanide.

(11) At the time of post mortem the medical officer who carried out the said post mortem had reserved his opinion regarding the cause of death till he happened to get the opinion of the Chemical analyser regarding the analysis of the viscera preserved by him and forwarded by him to Chemical analyser. Chemical analyser had found cyanide on the viscera examination of all the persons except Suresh Chand. After getting the said reports from the Chemical analyser the medical officer who had carried out the post mortem had given opinion in respect of all the deaths as the death due to the poisoning including the death of Suresh Chand Jain.

(12) The police had also found some vomits and white powder near basin, some articles indicating the performing of Hawan and pooja and 10 stainless glasses in the said varandha of the house of the deceased. The Chemical analyser has detected Sodium Cyanide in that white powder and in the vomit found there in the house of the first informant, Rajinder Kumar Jain.

(13) Then on the completion of necessary investigation police had sent up the charge sheet against the appellant/accused for the offences punishable under Section 302/307 and 392 of the Indian Penal Code. As the said offences were exclusively triable by the court of Sessions the learned Metropolitan Magistrate had committed the accused to the court of Sessions.

(14) After hearing the learned counsel for the appellant and the public prosecutor the learned Additional Sessions Judge has framed the charge against the present appellant on 18th April, 1987 for the offence punishable under Section 302/307 and 392 of the Indian Penal Code. The accused pleaded not guilty of the charge. His defense is total denial and false implication.

(15) In order to prove its case against the present appellant the prosecution had examined in all 36 witnesses. Out of these 36 witnesses examined by the prosecution only Public Witness .I Rajinder Kumar is a direct eye witness against the present appellant and other witnesses are proving certain circumstances on which the prosecution is relying to prove its claim against the present appellant.

The accused had not examined any witness in support of his defense.

(16) The learned Additional Sessions Judge came to the conclusion that P.W.I Rajinder Kumar Jain was a truthful and honest witness and that his evidence gets the necessary support and corroboration from the other circumstances brought on record. He also accepted the discoveries made at the instance of the present appellant. He found that deaths of all the eight persons were due to poisoning and the present appellant was responsible for the said poisoning. He also found that the appellant had caused the said deaths in order to commit the theft of the ornaments. He found that he also made attempt to kill Public Witness .I Rajinder Kumar Jain. He thus accepted the whole of the prosecution case against the present appellant/ accused. He accordingly held him guilty of this offence and awarded him sentences as stated earlier.

(17) Mr. Mathur, learned counsel for the appellant has vehemently urged before us that Public Witness .I Rajinder Kumar is not at all an honest and truthful witness. He has contended that the conduct of said Public Witness .I was not at all natural, probable and believable as deposed by him. He contended that there are many infirmities and inconsistencies in his evidence as well as in the other circumstances produced by the prosecution to prove its case against the present appellant. He further urged that the discoveries alleged by the prosecution are not at all believable and acceptable. He contended that there is no proper identification of the ornaments alleged to have been recovered at the instance of the accused by the prosecution. He contended that the circumstances on record indicate that there is possibility of Public Witness .I Rajinder Kumar being more responsible for the deaths in question. He contended that the prosecution has also failed to prove that Suresh Chand had met with death due to poisoning. He contended that from the material on record it is not at all possible to hold that the prosecution has proved its case against the present appellant beyond reasonable doubt. He also contended that from the material on record it is not at all possible to hold that the appellant really intended to cause the death of said eight persons and he had any motive to cause the said death. therefore in the circumstances he contended that the reference made by the Additional Sessions Judge be rejected and the appeal of the present appellant be allowed and he be acquitted of the

offence alleged against him.

(18) As against this Shri Handa, learned counsel for the State has vehemently supported the findings recorded by the trial court and he contended that the prosecution has proved its case against the present appellant beyond reasonable doubt and therefore, in the circumstances. the appellant/ accused has been rightly punished by the trial court under Sections 302, 307 and 392 of the Indian Penal Code. The order of trial court is proper and correct. In view of the gruesome murders committed by the appellant, the order of sentences including death sentence of the trial court deserves to be maintained. He thus contended that appellant's appeal be dismissed and order of conviction passed by the trial court be maintained.

(19) It is not disputed before us that death of all the persons except the death of Suresh Chand Jain is due to poisoning, in view of the post mortem reports as well as the Chemical analyser's report regarding examination of vicera on record. It is vehemently urged before us by Mr. MathuY, counsel for the appellant that the Chemical analyser's report regarding the examination of vicera of the deceased Suresh Chand shows no detection of cynide and therefore, it is not at all possible to hold that the deceased Suresh had met with death due to poisoning. It is true that if the report of the Sr. Scientific Officer of Central Forensic Scientific Laboratory, New Delhi on record is seen then it would be quite clear that the vicera examination of Suresh Chand show.s negative test for cynide. If the evidence of Public Witness .I Rajinder Kumar which is brought in his cross examination is considered then it would be clear that Suresh Chand had gone on the second floor with a glass of water and two capsules of cynide in his hand. The evidence further shows that vomits were also found on the second floor. The Chemical analyser's report shows that in the vomits found in the house cynide is detected.

(20) No doubt the doctor who had examined Suresh Chand in St. Stephen's Hospital was not examined in this case as could be seen from the record. Prosecution has examined Public Witness .34 Antony, a record clerk from St. Stephen's hospital who has brought the record of Mlc of all those eight persons and has identified the handwriting of Dr.Shreeman and Dr.Sahu who had prepared

the Mlc Report. He has deposed that both doctors have left their services and their permanent address and whereabouts are not known to them-and there is no cross examination. But prosecution has examined Dr. Bharat Singh, the Medical Superintendent of Civil Hospital, Delhi as Public Witness .26. This Public Witness .26 Dr. Bharat Singh has carried post mortem on the dead body of Suresh Chand and has desposed as under:

'EXAMINATION in chief. My opinion after seeing the Cfsi report No.T86/4403 dated 16.10.1986 which gave negative test to common poison. However, I gave the cause of death as Cynide poisoning as the post mortem findings were suggesting Cynide poisoning. Cross examination I have given the cause of death due to Cynide poisoning even in the absense of positive Chemical Analyser's report because there were post mortem findings such as prominent eye balls, clear cornea, whitish froth in respiratory passage and irritating smell coming out from the brain as well as stomach, bright red or pinkish blood in the lungs which are seen in case of cynide poisoning. Cynide compound is bitter in taste and causes sensation as soon as it comes into contact with muscular membrane and goes into the system.'

(21) thereforee, merely because the medical officer who had prepared the Mlc of said Suresh Chand Jain was not examined by the prosecution for the reasons beyond the control of the prosecution it could not be said that the opinion given by the doctor who had carried out the post mortem report should be rejected. It is not possible to hold from the material on record that prosecution has purposely withheld the examination of the medical officer who had prepared the Mlc of Suresh Chand Jain. If the material on record as well as the case of the prosecution is seen then it would be quite clear that as a matter of fact Suresh Chand was brought in the hospital in dead condition and thereforee the initial Mlc report prepared at the time of admission is not of much importance in this case. thereforee, in view of the evidence of Dr. Singh and the post mortem note on record it will have to be held that Suresh Chand Jain has also met with death due to poisoning.

(22) Thus the prosecution's claim that all the eight persons had met with death due to poisoning will have to be accepted without any hesitation of mind.

(23) In this case admittedly Public Witness .I Rajinder Kumar is the sole and direct witness to connect the appellant/accused with the offences alleged against the accused. It is settled law that for proof of a fact not plurality but quality of evidence is needed and conviction can be based on the evidence of a solitary witness if it is clear, cogent and unimpeachable. It is vehemently urged before us by the learned counsel for the appellant that the evidence of Public Witness .I Rajinder Kumar should not be accepted as the same is full of reasonable doubts and could not be accepted without hesitation of mind and consequently the appellant/accused is entitled to get benefit of doubt.

(24) But before considering the said submission and the various circumstances pointed out by him in support of his conclusion that the evidence of Public Witness .I Rajinder Kumar could not be accepted beyond reasonable doubt it is necessary to bear in mind as what is reasonable doubt according to law. Doubts could be called reasonable if they are free from the over emotional response. Doubts must be actual and substantial doubts as to the guilt of accused person arising from evidence or lack of it. Reasonable doubt must not be imaginary or merely probable doubts. Apex Court of our country in the case of Khem Karan and Others Vs . State of U.P. and Another : 1974 CriLJ1033 has considered the question of reasonable doubt and has made the following observations:-

'NEITHER mere possibilities nor remote probabilities nor mere doubts which are not reasonable can, without danger to the administration of justice, be the foundation of the acquittal of an accused person, if there is otherwise fairly credible testimony.'

(25) Then in the case of Inder Singh and another Vs . State (Delhi Administration) : 1978 CriLJ766 the following observations are made:

'CREDIBILITY of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary, that proof beyond reasonable doubt should be adduced in all criminal cases. It is not

necessary that it should be perfect. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction.'

(26) Then in the case of K. Gopal Ad Vs . State of Andhra Pradesh : 1980 CriLJ812 His Lordship O.Chinnappa Reddy has made the following observations in paraNo.9 on pages 390 and 391:-

'IT seems that out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favor of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favor of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim.'

(27) Then in the same case his Lordship has quoted the observation of Salaman J, in the case of R. v. Fantle reported in 1959 CLR 584 as under:-

'A reasonable doubt does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other, it does not mean a doubt begotten by sympathy out of reluctance to convict it means a read doubt - doubt found on record.'

(28) Then in the same case his Lordship Chinnappa Reddy, J. has quoted law in the following words :-

'PROOF beyond a reasonable doubt does not mean proof beyond a shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a

man as to leave only a remote possibility in his favor, which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt, but nothing short of that will suffice.'

(29) thereforee, bearing the above principles in mind the evidence of Public Witness .I Rajinder Kumar Jain and the criticism made as regards his evidence by the learned counsel for the appellant will have to be considered. Public Witness .I Rajinder Kumar Jain has deposed that the present appellant was his classmate when he was in Xth standard and thereforee, he was coming to his house on some occasions but he and members of his family were going to accused's house only occasionally, on the occasions of marriages and festivals. His evidence further shows his two elder brothers Prem Chand and Suresh Chand were married in the year 1973 and 1977 respectively and his marriage had taken place in February, 1985. But there was no male child in the house as his eldest brother Prem Chand had no issue whereas his brother Suresh Chand had only three daughters and he himself also had no issue. When the appellant was visiting his house in month of May and June, 1986 appellant used to say that there was no male issue in his house and that he would give a vibhuti due to which a male child will take birth in their house and their house would be very happy and prosperous. Rajinder Kumar has further testified that on the 9th of June, 1986 this accused had come to his house and he had talked with his father and he had told his father that the next day was the very auspicious day for performing of pooja and taking of vibhuti brought by him and he had settled with his father regarding the performance of pooja. Then he went to his house and gave a ring to his father and asked his father to send him. to accused's house in the evening. Accordingly he had gone to his house in the evening. When he had gone to his house at about 7.30- 8.00 P.M. accused had again repeated his claim that the next day was very auspicious day and he would come to his house and perform the pooja and distribute the vibhuti and that he' was coming to his house in the next morning.

(30) On the next day accused came to their house at about 7.30-8.00 A.M.and he had brought with him one photo of Balaji. Then he put that photo on a wooden small platform and he had performed hawan and pooja by chanting some mantras for about half an hour. Then he took out one polythene bag from his sachet saying

that was the vibhuti to be given by him. He gave a small quantity of the same on the hand of Public Witness .1 Rajinder Kumar and asked him to taste the same by his tongue. When Rajinder Kumar touched the same he felt burning sensation. He, therefore, returned the remaining to the appellant and told the appellant that the same was having burning sensation and he spit his it out in the wash basin and gargled in mouth. Thereafter acused took out another polythene bag. From that polythene bag he took out empty capsules. He filled in 20 capsules with that vibhuti which was of white colour and then asked all of them to take two capsules each Along with water. He had asked them to take a glass of water in the hand of each of them and then had given two capsules to all except Renu, daughter of Suresh Chander who was about five years old and who had gone out. As per his instructions those capsules were put in the mouths by them. When Public Witness .2 Rajinder Kumar put those two capsules in his mouth accidentally one of the capsules opened and the contents filled therein spread on his tongue and he got high burning sensation. therefore, he rushed to the wash basi: and spit out the contents from his mouth in the wash basin and the second capsule fell in the wash basin. By that time a portion of the contents of the capsules had entered his body therefore he fainted and fell down. Before that Suresh Chand, his elder brother, on Realizing that Renu had gone on the second floor had gone with two capsules and with a glass of water to the second floor.

(31) He further deposed that he regained consciousness after about 1-1/2 hours to 2 hours and when he regained consciousness he found that all the members of his family were lying unconscious and there were also some vomits lying there. He, therefore, rushed down the building and went in the gally and raised a hue and cry by saying that all members of his family were lying unconscious in the house and they should be rushed to the hospital. By that time he again fainted and fell down. On hearing his cries his neighbours rushed to his house. They first went in his house and removed eight persons, namely. Vakil Chand, Rashmi, wife of Vakil Chand, Prem Chand, Santosh, wife of Prem Chand, Suresh Chand, Asha Devi, wife of Rajinder Kumar, Anil Kumar and Devender to St. Stephen's hospital. Whereas Public Witness .5 Vinod Kumar took Public Witness .1 Rajinder Kumar in three wheeler scooter and rushed him to Hindu Rao Hospital. When he was being rushed to Hindu Rao Hospital he regained some conscious and he disclosed to

Public Witness .5 Vinod Kumar about appellant having given them the Vibhuti. At the time of admitting Public Witness .I Rajinder Kumar Public Witness .5 487 Vinod Kumar had given the history of giving of poisoning substance by a friend of him. Public Witness .I Rajinder Kumar was examined and was admitted in intensive care unit on learning that other eight members of his family had died. When the other eight members of his family were taken to St. Stephen's Hospital it was found that they were brought dead in the Hospital.

(32) The police has recorded his first information report and about 13.00 hours on 10th June, 1986 when the doctor had found that he was in a fit condition to give a statement but it seems that at that time he was not informed about the death of other members of his family and he had not- fully recovered to give a complete story. Then his supplementary statement was again recorded after one hour. At the time of the said supplementary statement he had disclosed that the golden ring which was bearing the engraving of Rk and which was on the finger of his hand was missing.. In his first statement as well as in his supplementary statement he had named the present appellant as the person who had come to his house and had given the Vibhuti in order to get a male issue in the house and therefore it was quite clear that appellant was responsible for the giving of the vibhuti to the members of his house.

(33) It is necessary for us to consider as to whether the above evidence of P.W.I, the sole witness in this case, get the necessary support and corroboration from the material on record so as to accept the same without any hesitation of mind. After considering this aspect we would go to consider the various attacks made on behalf of the appellant by the learned counsel by which he wants us to discard the evidence of Public Witness .1.

(35) Then the evidence of Public Witness .23 and Public Witness .24 as well as the memos at Exhibits 23/G to 23/K show that the pooja samagri was found in the house of Public Witness .I. The memos prepared in the house of the first informant show that eight brass tumbler and lota were found in the house at the place of incident. The presence of the articles of pooja samagri, the presence of eight glasses and lota supports and corroborates the version given by the first

informant. As per his evidence the appellant had asked to take a glass of water and had given two capsules to all and asked them to consume the same with a glass of water. It is very pertinent to note that thus brass glasses were not found in the kitchen place but in the varandha and that circumstance supports his version.

(36) The medical evidence on record and a report of Cfsi clearly show that the eight persons who were found dead in the house of the first informant in the morning have died due to poisoning and there was positive finding of cyanide in the viscera examination of all the persons except Suresh Chand. We have already discussed above, the death of Suresh Chand and there is no doubt that he has also met with death due to poisoning. The vomits which were found in the house were also containing cyanide poison. therefore, the above facts corroborate the version of P.W.I Rajinder Kumar.

(37) As per his evidence when he regained consciousness he found that all the persons were unconscious and therefore he rushed down his house and he raised a hue and cry and told the persons in the gally that all the family members of his house were lying unconscious and they should be rushed to the hospital. That version of his is supported by testimony of P.W.5 Vinod Kumar and Public Witness .7 Mukesh. It is very pertinent to note that from the cross examination of both these witnesses it is not possible to hold that they have got any animosity or illwill towards the present appellant. Similarly no material is brought out on record in their cross examination so as to infer that they have got any interest in Public Witness .1 Rajinder Kumar. Merely because Public Witness .5 Vinod Kumar happened to be resident in the same gally and thereby a neighbour of the first informant Rajinder Kumar it could not be said that he is interested in Rajinder Kumar. The evidence of both the witnesses clearly shows that on hearing the hue and cry raised by Rajinder Kumar they came down from their houses in the gally and then they had rushed to the house of Rajinder Kumar and the inmates of the house were found lying unconscious and they were rushed to the hospital. Thus they fully corroborate and support the version of RajinderKurnar.

(38) .THE evidence of both Public Witness .5 Vinod Kumar Public Witness .7 Mukesh Kumar further shows that Public Witness .I Rajinder Kumar was rushed to

Hindu Rao Hospital whereas the other material on record shows that the other inmates of his house were rushed to St. Stephen's Hospital this gives support to the version given by Public Witness .1 Rajinder Kumar.

(39) Rajinder Kumar had stated in his first supplementary statement which was recorded after one hour after the recording of his first information report that a golden ring with the engraving of Rk which was on his hand, was missing. He had disclosed the name of the appellant in his first information report. The evidence on record further shows that the present appellant was arrested by the police at 3.00 P.M. on the day of incident. Thereafter he was interrogated and the evidence of the 1.0. and Public Witness .9, Ved Prakash and Public Witness .10 Rishi Pal shows that at about 4.30 P.M. i.e.-within 1-1/2 hours of his arrest the accused made a discovery statement leading to the discovery of the golden ornaments concealed in his house. In the discovered ornaments there is a golden ring of Rajinder Kumar. It is very pertinent to note that this discovery is made by the police within nine hours from the entry of the present appellant in the house of Rajinder Kumar and within five hours after the registration of the offence. It is also very pertinent to note that at the time of the said discovery Public Witness .1 Rajinder Kumar was lying in intensive care unit of Hindu Rao Hospital whereas all other members of his family had met with death except Kamini and her three daughters who were at her parental house. Both P.W.I Rajinder Kumar and Public Witness .4 Kamini had identified the ornaments which were recovered at the instance of the present appellant on that day as per the discovery statement from his house as belonging to the members of their family. This discovery of ornaments at the instance of the appellant supports the version given by the first informant.

(40) The evidence of Public Witness .6 Prakash, Public Witness .8 Man Singh shows that the appellant had pointed out the shop of Dardmand Medical Store and from the said shop the empty capsules were purchased by the present appellant under a cash memo. He has also pointed out the shop of Public Witness .11 from where he had purchased the Sodium Cyanide which was administered by him to the victims as a vibhuti. therefore, these discoveries made by the accused namely producing the ornaments belonging to the family of the first informant,

pointing out the shop from where he had purchased the empty capsules and the Sodium Cyanide supports the testimony of Public Witness .1.

(41) therefore, the above discussion of the material on record made by us clearly show that the evidence of Public Witness .1 Rajinder Kumar is quite worthy of belief and there is no reason or circumstance to discard the same. It must be remembered that as per the evidence of Public Witness .1 Rajinder Kumar to the actual incident in question only the present appellant and first informant Rajinder Kumar and other members of his family except Public Witness .4 Kamini and her three small daughters were the witnesses. Out of those witnesses all the members of the family of Public Witness .1 Rajinder Kumar had met with death and consequently there remains only Public Witness .1 Rajinder Kumar as a witness to the incident in question. therefore, in these circumstances it could not be said that the prosecution has with-held witnesses and that there are ground to draw adverse inference against the prosecution for non-examination of material witnesses.

(42) It is very pertinent to note that during the cross examination of the P.W.1 which runs into 30 pages there is no material on record to show that he has got any illwill or animosity towards the present appellant. There is no even a word of suggestion or any circumstance to infer that this Public Witness .1 Rajinder Kumar has got illwill or animosity towards the appellant/accused. No reason is suggested for falsely implicating the accused. Thus there is absolutely no reason to falsely implicate the present appellant by P.W.1 Rajinder Kumar. It is very pertinent to note that Rajinder Kumar has disclosed the name of the present appellant immediately at the time of the incident and there was no time for any concoction or hatching out a plot. therefore, this circumstance will have also to be taken into consideration while appreciating and considering the evidence of Public Witness .1. We are aware that merely because there is no illwill or animosity towards the present accused that does not mean that the evidence of such a witness against the accused must be necessarily accepted but that is also a circumstance to be taken into consideration while appreciating the evidence of the prosecution witnesses though that circumstance itself could not be a ground or foundation for believing him.

(43) Thus in view of the above considerations and discussions of the evidence on record we have no hesitation in our mind to accept the testimony of PW.1 Rajinder Kumar and to hold that the present appellant had gone to the house of Public Witness .1 Rajinder Kumar on that morning and he had given .Sodium Cynide to the members of his family through capsules by way of vibhuti by saying that by consumption of the same a male child will arrive in their house.

(44) After having satisfied ourselves about the creditability of the evidence of Public Witness .1 Rajinder Kumar we proceed to consider the various grounds of attack made by the learned counsel Mr. Mathur on the evidence of Public Witness .1 and consider as to whether those attacks made by him could be accepted and the testimony of Public Witness .1 Rajinder Kumar could be thrown out. We have adopted this line with a view that merely because the attacks made on the testimony of Public Witness .1 Rajinder Kumar are not accepted by us that would not ultimately result into accepting his testimony. We will have to give our reasons as to why we are prepared to accept his testimony and we have accordingly given above our reasons and considerations as to why we are prepared to accept his testimony and now we proceed to consider the various grounds of attack made by Shri Mathur, the learned counsel for the appellant.

(45) It is urged by Shri Mathur that the claim of the appellant that a male child was required in the house could not be believed and accepted in view of the material brought out in the cross examination of Public Witness .1 Rajinder Kumar. It has come in the evidence of Public Witness .1 Rajinder Kumar that his elder brother Prem Chand's wife had two children that by cesarean and Prem Chand and his wife Santosh was advised not to go for a third child. It has brought in the cross examination of Public Witness .1 Rajinder Kumar that deceased Suresh Chand and Public Witness . Kamini were quite happy with three daughters and they had not shown any displeasure for having only three daughters and that they were loving their daughters very much. He had also admitted that no members of the family had taunted them for having only three daughters.

(46) But merely because of the circumstances of all these things it could not be said that Suresh Chand and Public Witness .4 Kamini Were not desirous of having

a male child. It is very pertinent to note that there is no cross examination of Kamini on this issue of male child but also in respect of Prem Chand and his wife Santosh. Merely because Santosh had undergone two cesareans and Public Witness .1 Rajinder Kumar says that he had heard that they were advised not to go for more child it could not be said that they were not desirous of getting a male child. There are incidents of undergoing even four cesareans operations and getting child and three cesareans of a woman is not quite abnormal. thereforee, it could not be said that Prem Chand and Santosh were not desirous of getting a male child. Public Witness .1 Rajinder Kumar had admitted during his cross examination that it was not his keen desire that he must have his child within nine months. But at the same time he has also stated that he was not following any family planning and he has clearly stated that he would have been happy even if the child was borne within one year and he was not at all also unhappy for not getting child within one year from his marriage. But it must be remembered that as per the religious belief of Hindus and as per the customs prevailing among Hindus every Hindu feels in his heart to have a male child and particularly when there are old parents who are expecting grand children then the desire to have a male grand child by them is always prevailing. It must be remembered that the accused was visiting the house of Rajinder Kumar and he was making remarks in the presence of his parents that he could give a vibhuti by which a male child will come in their house. This shows that he was appealing more to the parents of Rajinder Kumar than Rajinder Kumar and his brothers. thereforee, in the circumstances, it could not be said that from the material on record that the family of Rajinder Kumar was not at all desirous of getting a male child.

(47) It is further submitted by the learned counsel for the appellant that the prosecution has not examined any witness other Public Witness .5 from the gally where the first informant Rajinder Kumar was residing to, support his claim that he had come down of the house and raised hue and cry. It is very pertinent to note that from the material on record it is not possible to hold that the Investigating Officer had examined the residents of his gally as a witness and inspire of recording the witnesses from the said gally the prosecution has not examined any other witness except Public Witness .5 Vinod Kumar. If the cross examination of the Investigating Officer is seen then it would be quite clear that there is no

material in the cross examination of the said witness to hold that besides Public Witness .5 the statements of any other persons were recorded by him under Section 161 of Code of Criminal Procedure. No adverse inference could be drawn against the prosecution as it could not be said that what the person was likely to say when his statement is not recorded and consequently it is not possible to hold that as the said witness was likely to depose against the prosecution, the prosecution has not examined him. This would be quite clear from the following principles laid down by the Supreme Court in the case of Srichand K. Khetwani Vs . State of Maharashtra : 1967 CriLJ414 .

'AN adverse inference against the prosecution only can be drawn if it with holds certain evidence and not merely or its failure to obtain certain evidence. When no such evidence has been obtained, it can not be said what that evidence would have been and thereforee no question of prosecuting that evidence would have been against the prosecution under S.114(9) of the Indian Evidence Act 1872 can arise.'

(48) Then the learned counsel for the appellant further urged before us that all the inmates of the house who were found lying unconscious were removed to St. Stephen's Hospital whereas first informant Rajinder Kumar was taken to Hindu Rao Hospital. Then he further pointed out that as per the MLC's of the deceased persons they are admitted in St. Stephen's Hospital at 10.30 A.M. whereas the Rajinder Kumar was admitted in. Hindu Rao Hospital at 11.00 A.M. According to him this timing if it is taken into consideration Along with the fact that there is no Explanationn as to why the Rajinder Kumar was taken to Hindu Rao Hospital then it suggests that the Public Witness .I Rajinder Kumar himself had first managed to take the bodies to St. Stephen's Hospital and he went purposely to Hindu Rao Hospital in order to be away from the police and to avoid questioning to him.

(49) It is true that all the inmates who were victims of the incident in question were admitted to St. Stephen's Hospital whereas Rajinder Kumar was admitted to Hindu. Rao Hospital. But it must be remembered that Rajinder Kumar was admitted to Hindu Rao Hospital by Public Witness .5 Vinod Kumar and the other persons who admitted to St. Stephen's Hospital were brought by other neighbours

of Rajinder Kumar. As a matter of fact there is no cross examination Public Witness .5 Vinod Kumar as to why he had taken Rajinder Kumar to Hindu Rao Hospital which is ahead of St. Stephen's Hospital. It must be remembered that this is not a case that though the prosecution had opportunity to give Explanationn, prosecution failed to give Explanationn for taking the injured persons to two different hospitals or that the Explanationn given by the prosecution is not satisfactory. When there is no crossexamination on this aspect of the prosecution witnesses particularly Public Witness .1 Rajinder Kumar and Public Witness .5 Vinod Kumar, no adverse inference could be drawn against the prosecution and particularly against P.W.1 Rajinder Kumar: It is quite probable that St. Stephen's Hospital which was formally a .women hospital and being near from the house of Rajinder Kumar was chosen by his neighbours to take the unconscious persons as early as possible. Vinod Kumar, having seen the other eight persons being rushed to St. Stephen's Hospital and Hindu Rao Hospital which was hardly 1-1/2 to 2 Kms. ahead of St. Stephen's Hospital might have been chosen it to give treatment to Public Witness .1 Rajinder Kumar who was semi conscious. The difference in timing of hardly half an hour could be also on account of the distance between the two places as well as the availability of the vehicles for rushing the injured persons there. But merely because of difference in the timing of admission by half an hour to one hour in the two hospitals which are at the distance of admittedly more than 1 Km. away from each other could not be said to indicate that P.W.I Rajinder Kumar had purposely chosen to go to other hospital in order to avoid the facing of the police. As a matter of fact as per his evidence as well as the evidence of Public Witness .5, medico legal papers on record, the Hindu Rao Hospital was not chosen by Public Witness .1 Rajinder Kurnar but it was chosen by Public Witness .5 Vinod Kumar and therefore, in the circumstance the inference as suggested by the learned counsel for the appellant could not be drawn in this case.

(50) He further contended that Rajinder Kumar was admitted in the Hindu Rao Hospital on 10th June, 1986 and he was in the hospital till 16th June, 1986. The medical papers of the said hospital and the examination of his blood and urine clearly show that there was no detection of cynide in his blood and urine. But if the evidence of Public Witness .1 Rajinder Kumar is seen then it would be quite clear that Rajinder Kumar had spitted out the capsules containing cynide as one of the

capsules had accidentally opened and he had further deposed that he had vomited. therefore, in the circumstances the non finding of the cyanide in his examination would not necessarily lead to the conclusion that he had not at all taken any cyanide as deposed by him. The material on record shows that in case of deceased Suresh Chand also there was no detection of cyanide in his viscera examination by the Chemical analyser but in spite of this the medical officer who had performed the post mortem on his body has given a positive opinion that he has met with death due to poisoning and he has found other symptoms of poisoning at the time of internal and external examination of his body. therefore, merely because no cyanide was detected in the blood and urine of first informant it could not be said that he had not taken any cyanide as deposed by him. It must be remembered that Public Witness .1 Rajinder Kumar was repeatedly examined by various doctors in Hindu Rao Hospital and they had kept him under the observation in intensive care unit. That conduct of the medical experts indicates or shows that his claim must be true and correct.

(51) It is true that from the material on record it is quite clear that witnesses Public Witness . 3 Lakshmi Chand, father in law of Rajinder Kumar and Public Witness .2 Suraj Prakash maternal uncle of Rajinder Kumar had not met him in the hospital on the day of incident after he was admitted in the hospital. The evidence of Public Witness .3 Lakshmi Chand clearly shows that as a matter of fact he had gone to meet Public Witness .1 Rajinder Kumar in the said hospital but he was at that time in intensive care unit and police were not allowing to meet him in the hospital. The evidence of Public Witness .1 as well as the medical papers on record shows that Public Witness .1 Rajinder Kumar was restless and he was under trauma. He was the only sole witness who had remained alive after this ghastec incident and the fact that the eight persons from his house has met with death was not known to him till he was admitted in the hospital. therefore, in the circumstances, the police must be taking precautions in order to see that he does not get information of the death of those eight persons of his family and thereby avoiding of getting a shock and meeting with death. When he was already under trauma and when he was already restless and when he was kept by the medical officers in intensive care unit the act of the police in taking precautions in protecting him and in seeing that he remains alive is justified and proper. therefore, in the circumstances it could

not be said that his relatives were not meeting him as they were holding him responsible for the said eight deaths. The conduct of Public Witness .2 Suraj Prakash in not going to meet Public Witness .1 Rajinder Kumar on the first two .days could not be also said to be unnatural or improper. The material on record shows that Public Witness .2 Suraj Prakash was to make all the arrangements for getting the post mortems of all the eight bodies and then performing the death rites of the said bodies. He was also aware that P.W.1 Rajinder Kumar was kept in intensive care unit and he wanted to keep it secret from him about the death of eight members of his family. therefore, that conduct of Public Witness .2 Suraj Prakash could not be taken into consideration as urged by the learned counsel for the appellant as an act indicating that he was treating the Public Witness .1 responsible for eight deaths in question.

(52) Then the learned counsel for the appellant has further urged that Public Witness .1 has admitted during his cross examination that the accused had initially given him a small quantity of the white vibhuti brought by him and asked him to taste and he had accordingly tested the same and on testing he had found that it was giving a burning sensation. But he had not disclosed this fact to any other person present there and that conduct of him is unnatural, improbable and unbelievable. But if the cross examination of Public Witness .1 is carefully read then it would be quite clear that in his cross examination itself the learned counsel for the appellant/accused has brought out material which justifies his conduct in not disclosing the same to other members of the family. It has brought out in his cross examination that accused had told Public Witness .1 Rajinder Kumar that the said vibhuti was to give a burning sensation and therefore, he had asked that Public Witness .1 to taste the same and after Public Witness .1 had told him that it was giving burning sensation the appellant had taken out the empty capsules and put the said vibhuti in the said capsules. No doubt that fact was not stated by the witness in his examination in chief or in his statement before the police and therefore it has been tried to suggest or show by cross examining him by way of contradiction by way of omission. If the crossexamination of prosecution witnesses is seen then it would be quite clear that the Public Witness . No. 1 as well as the other witnesses are cross examined at length and the damaging material was brought out in such cross examination and then the witnesses including Public

Witness .1 is further cross examined by way of omission and contradiction. That mode is improper and illegal.

(53) The first informant Rajinder Kumar is further cross examined as in what manner the Jains are performing pooja and what they use in performing poojas: It has also brought out in his cross examination that if Jains are to perform pooja or any religious ceremony then they do fasting and they do not take any eatables before performance of pooja. On the strength of the said material brought out in cross examination of P.W.1, it is urged before us by the learned counsel for the appellant that at the time of the performance of the said pooja there was no collection of the material which was usually collected at the time of performing the pooja by Jains. Then our attention is drawn to the post mortem notes wherein it has been mentioned that stomachs of the victims were containing semi-digested food material, and it is contended that there must not have been the performance of the pooja path as claimed by P.W.1 Rajinder Kumar in view of those circumstances. But it must be remembered that the performance of the pooja path or pooja in the instant case was not to perform any religious ritual or pooja as per the Jain religion. It was a pooja as per the direction of the present appellant undergone for getting a male child i to follow the instructions of collecting the material and performing the pooja as per his direction. If appellant had not directed them to perform fast before performance of pooja they must have taken some breakfast in the morning before the performance of pooja as usual. We have already mentioned above that the evidence of Public Witness .23 Ramesh Chand, Public Witness .24, Yudhr and Public Witness .31 Sri Jagdish Chand who had prepared the panchnama of the house of Public Witness .1 on the day of incident after the incident regarding the findings of samugary of the pooja in his house is not at all challenged and disputed in the cross examination of all of them. therefore, in the circumstances, merely because there were no pooja articles as per the Jain's religion or that the victims had not performed the fast it could not be said that there must not have been a pooja as claimed by Public Witness .1.

(54) It is further urged before us that no body from the gally where the house of Public Witness .1 is situated is coming forth to corroborate his version. Prosecution has not also examined any witness to show that on that morning the

present appellant was seen coming from his house and going to the house of Public Witness .1 and after performance of pooja going from the house of Public Witness 1. by about 9.15-9.30 A.M. It is true that prosecution has not examined any witness from the gally where the house of Public Witness .1 is situated except Public Witness .5 Vinod Kumar. But it must be remembered that there is no material on record to show that during the investigation police had interrogated and recorded a statement under Section 161 of the Code of Criminal Procedure of any person from the said gally except Public Witness .5 Vinod Kumar. There is no material on record to show that as a matter of fact prosecution had recorded statements of the witnesses from the said gally during the investigation besides Public Witness .5. therefore, in these circumstances it could not be said that this is a case of with-holding the material witnesses. At the most it shows the incompetency, lethargy on the part of the investigating agency but that lethargy, incompetence and impropriety on the part of the investigating agency could not be used or taken into consideration to discard the testimony of Public Witness .1. It is quite true that the investigating officer could have collected much more material against the present appellant to fasten his liability for the offence in question but merely because that much more material was not collected by the investigating agency it could not be said that the material collected by the investigating agency should not be considered. Thus in our view the lethargy, incompetency and impropriety on the part of the investigating officer as well as their supervisors who were allegedly supervising the said investigation could not be taken into consideration for rejecting the testimony of Public Witness .1.

(55) It has been tried to suggest during the cross examination of Public Witness .1 Rajinder Kumar that he himself was in need of Rs.30,000.00 to 40,000.00 and it has been tried to suggest during the cross examination of him as well as during submissions made before us that there is likelihood of the first informant Public Witness .1 Rajinder Kumar himself responsible to the deaths in question. Though there is a vague suggestion in the cross examination of P.W.1 Rajinder Kumar that he was in need of money, there is absolutely no foundation either in his cross examination or in the cross examination of any of the witnesses to show that that suggestion could be accepted. As per the evidence of Public Witness .1 he and his brothers and parents were joint and they had joint business. There is no suggestion

to him in the cross examination that he himself was having separate independent business and in that separate independent business he had suffered loss. There is also no suggestion that their joint family had suffered loss. There is no suggestion in his cross examination that relation between him, his brothers and parents were strained and that he wanted to separate from his brothers and parents. The only other surviving elderly member of the family P.W.4 Kamini has entered the witness box. During her cross examination also there is no suggestion of any strained relations between. Public Witness .1 Rajinder Kumar, his brothers and parents. There is also no suggestion that the Rajinder Kumar wanted money to support his own business. therefore, in the circumstances merely suggesting that he was in need of money and therefore he was responsible for the deaths in question could not be accepted and believed. It must be remembered that one of the victims is his own wife and his marriage had taken place hardly 16 months prior to the said incident. There is no suggestion to him that there were disputes between him and his wife. His father in law has entered the witness box but no suggestions are made to him or any material is brought out in his cross examination to show that Public Witness .1 Rajinder Kumar wanted to get rid of his wife when he was recently married and when there was no dispute between him and his wife. It is not at all probable that he would think of doing away of his own wife Along with other members of his family. He would have waited for the opportunity to do away with other members of the family when his wife had gone to her parental house. It must be remembered that his wife's parental house is in Delhi only. He would have send his wife to his in laws' house prior to the date of the incident. Similarly if he wanted to finish all other members of his family he would not have committed the act in question on the day when Public Witness .4 Kamini was away from the house. If he wanted to grab the whole family property as has been tried to urge before us then he would not have committed the act in question when Kamini was not away from the family house. It has come in evidence that Kamini had not gone to her parental house accidentally or on the previous evening but she had gone to her parental house for Teej festival couple of days prior to the incident in question. The evidence of both Public Witness .1 and Public Witness .4 Kamini clearly shows that Public Witness .1 Rajinder Kumar and all his family members were quite joint and they had no problem between them. therefore, in the circumstances, we are

not prepared to accept the suggestion made on behalf of the appellant that P.W.1 Rajinder Kumar must have done away with the members of his family out of greed for money.

(56) The learned counsel for the appellant further urged before us that there is no proper, identification of the ornaments recovered at the instance of appellant by Public Witness .1 Rajinder Kumar as well as by Public Witness .4 Kamini. But if the evidence of Public Witness .4 Kamini is considered then it would be quite clear that Kamini has correctly identified all the ornaments recovered at the instance of the appellant/accused belonging to the various members of his family. She held also identified the same before the Metropolitan Magistrate, Public Witness .36 Shri Gurdeep Kumar. The first informant Public Witness .1 had also correctly identified the ornaments recovered at the instance of the present accused in his examination in chief. No doubt during his cross examination he was again asked to identify the same and point out the ornaments when he was cross examined on 24th January, 1989 but if the record is correctly seen then it would be quite clear that when he was asked to point out the ornaments on that day out of the jewellery which was put up before him, the jewellery which was recovered at the instance of the accused was not put before him. The recording of evidence shows that the jewellery articles which were attached from dead bodies were put before him and from those he was not initially in a position to point out the jewellery which were recovered from the accused and the record further shows that after the said inability of him has come on record the jewellery which was attached at the instance of the accused was shown to the witnesses. (That would be quite clear from the pages 131 to 134 of the paper book).

(57) No doubt both the Public Witness .1 as well as Public Witness .4 Kamini have not assigned any satisfactory reasons as to why and on what grounds they are claiming those ornaments as belonging to the various members of their family. therefore, in view of the said admission of the witnesses or their inability to give reasons for the identification of ornaments, it is urged before us that their evidence regarding the identification of ornaments should not be accepted. A similar contention was raised before Their Lordships of the Madras High Court in the case of Public prosecutor v. I.C. Lingiah & Ors. 1954 Cri LJ 586 wherein His

Lordship Ramaswamy, J. has repeated the same contention by making the following observations:

'THE only point of criticism advanced by the learned Magistrate is that these articles are articles of common use and bear no particular identifying marks and consequently no reliance can be placed on the testimony of these identifying witnesses. But in advancing this criticism it is forgotten that small and even nice points of difference distinguishing one thing from others of the same kind may merely by the frequent sight of them and without any special attention to them make an impression on the mind. They are component parts of the thing and go to make the whole of which the mind receives an impression. In this case the impression is the general appearance of the thing. This sort of impression is exceedingly common; a workman has it of his tools and most people have it of their dress, jewellery and other things they are frequently seeing, handling or using. It occurs every day that by remembrance of their general appearance a carpenter, mason or other workman recognises his tools; and dress, jewellery or other property is known by its owner. Undoubtedly animals and things may be identified by those familiar with them. Observation teaches that such identification may be safely relied upon. But at the same time a witness would not be able to formulate his reasons for the identification since it is based upon general untranslatable impression of the mind. I may readily recognise my veshti, my cow, my wife's addigai or my friend's handwriting in the midst of a multitude of other things in most respects like them. But if questioned I would not be able to formulate any cogent or intelligent reason for the identification. It would be fatuous to discredit such identification on the ground that reasons are not being formulated for them.'

(58) The said principles laid down by Madras High Court are quoted with approval by the Mysore High Court (at present Karnataka High Court) in the case of *Re: G.Reddy & Ors.* Air 1958 Mys 150 as well as by Division Bench of Orissa High Court in *State v. Pareshwar* 1968 Ori 20. Then in the case of *Era* of the following observations are made by the Apex Court of our country:-

'WHEN a lady witness identified stolen property viz. ornaments and silk at the trial without prior test identification the testimony of such a witness was not inadmissible in evidence for want of prior identification. It is a matter of common knowledge that the ladies have got an uncanny sense of identifying their own belongings particularly articles of personal use in the family.'

(59) The above observations of the Supreme Court also negatives the contention made by the learned counsel for the appellant that the identification parade for identifying the ornaments was not properly held in this case.

(60) It is lastly submitted before us by the learned counsel for the appellant that the investigating officer had not brought on record sample capsules purchased from Medical Store as well as the alleged Sodium Cynide purchased from Public Witness .11 Mohd. Akil. It is true that the investigating officer had not taken the sample of empty capsules from the shop Dardmand Medical Store as well as the sample of Sodium Cynide from Public Witness .11 Mohd. Akil. But that failure on the part of the investigating officer speaks about the incompetency, lethargy and impropriety of the investigating officer but that could not be a circumstance to discard the testimony of Public Witness .1 as well as the prosecution case.

(61) It is further urged before us by Shri Mathur, learned counsel for the appellant that the present appellant has got in all three daughters. He was having two daughters at the time of incident and he got the third daughter after the incident in question when he was released on parole for some days. thereforee, when the appellant himself has got daughters it is not at all probable that the first informant's family will accept his advise to perform the pooja and to take vibhuti in order to get a male child when the appellant himself had no male child. But there is no material on record to show that the first informant Public Witness .1 Rajinder Kumar or his family members were knowing or had full knowledge that in fact the appellant was having only two daughters at the time of the incident in question. On the contrary it has come in the evidence of Public Witness .1 that the appellant had told to his parents that he was having one daughter and a male child. If the cross examination of Public Witness .I Rajinder Kumar or P.W.4 Kamini is taken into consideration then it could not be said that they could be in the knowledge of the

members of the family or the children of the appellant. It is not suggested to either Public Witness .1 Rajindser Kumar or Public Witness .4 Kamini that the members of their family particularly lady members of their family were on visiting terms with the house of appellant/accused. Similarly, it is not also suggested to them that wife or any members of the family of appellant/accused were on visiting terms with the house of Public Witness .I thereforee, in the circumstances, it is very difficult to accept that the family of Rajinder Kumar was knowing that appellant had only two daughters at the time of the incident. On the contrary there is a positive statement that the appellant has represented that he had a daughter and a male child.

(62) Thus we are unable to hold that the evidence of Public Witness .1 Rajinder Kumar should be rejected. On the contrary we are of the opinion that the trial court was quite justified in accepting the testimony of Public Witness .I Rajinder Kumar as the same testimony gets also corroboration and support from other circumstantial evidence on record. Thus in view of the above discussion and consideration we are in least hesitation to come to the conclusion that it is the appellant alone who had administered cynide to P.W.1 Rajinder Kumar and other eight members of his family and that he is responsible for the death of those eight persons.

(63) It is vehemently urged before me by the learned counsel for the appellant that from the material on record it is not possible to hold that appellant had real intention to cause the death of those eight persons as well as Public Witness .1 Rajinder Kumar. The learned counsel for the appellant further urged before us that the property which is recovered at the instance of the present appellant is hardly worth less than Rs.25,000.00 and it is not at all likely that for such a pahry amount the appellant had intended to cause the death of eight persons. He further urged before us that the material on record clearly shows and it is also an admitted fact that. the ornaments were also lying there on the persons of those eight dead bodies and then all the ornaments from the dead bodies were not removed by the appellant. But merely because of the fact that all the ornaments from the dead bodies were not removed it could not be said that accused had no intention to commit the theft of the ornaments belonging to them. It is quite probable that before the accused could remove all the ornaments Public Witness .1 Rajinder

Kumar might have been making some actions on account of regaining consciousness and on seeing the same the appellant must have ran away. That possibility could not be ruled out. It must be remembered that one of the chain which has found in possession of the accused was taken away by breaking the same that shows that he had removed the ornaments hurriedly and in the said hurry and on account of the first informant coming out of the effect of Sodium Cynide the appellant might have gone away without taking all the ornaments.

(64) It must be remembered here that the removal of ornaments have taken place immediately after those persons had initially become unconscious after consuming the Sodium Cynide. thereforee, it is quite clear that the act of removing the ornaments from their person is a part of one and the same transaction of giving them Sodium Cynide in order to remove ornaments from their person, thereforee, the theft of the ornaments and killing of those persons are the parts of one and the same transaction. The removal of ornaments is obviously the motive for commission of the offence in question. Merely because the appellant was found in possession of ornaments worth less than Rs.25,000.00 it could not be said that he must not have the motive to commit the offence. It must be remembered that appellant was known to Public Witness .I as well as his brothers and parents. He was visiting their house. thereforee, in these circumstances he wold not think of only making them unconscious and then remove the ornaments from their person because in that case he would be leaving the evidence against him by keeping alive all those persons.

(65) thereforee, in view of all above considerations we hold that the appellant/accused has committed the murders in question and he was motivated to commit the said murders in order to remove the ornaments from the persons of those eight persons and to remove other articles from the house. Then the appellant is rightly held guilty of the offence punishable under Section 302 as well as Section 392 of Indian Penal Code. He is also guilty for the offence for attempt to commit the murder of Public Witness .1 Rajinder Kumar by giving him Sodium Cynide. Thus he is guilty of the offence punishable under Section 307 of the Indian Penal Code also.

(66) This brings us to consider the question as to whether the death sentence awarded by the trial court is to be confirmed or whether in the circumstances on record the appellant deserves any lesser punishment. It is true that accused has taken lives of eight persons on account of his greed for money. He has taken lives of eight innocent persons who had not done anything wrong to him. The offence committed by him is definitely very cruel and ghasty.

(67) But though we have come to the conclusion that the appellant Sunil Jain has administered poison to all deceased and Public Witness . No. 1 Rajinder Kumar and that he had intention to cause their death, it seems that there was one or more person who is/are the real brain in the matter. The material on record indicates that the appellant was a tool in the hands of those persons to be quite probable. At the time of making of the discovery statement leading to the discovery of the ornaments the appellant Sunil Jain had named one Lakshmi Chand purchasing the Sodium Cyanide and giving it to him and had also stated that he would point out that person. But the investigating officer did not say any thing in respect of this disclosure of the accused. He did not try to find out as to whether any person was present that day with accused at the time of purchase of Sodium Cyanide from Public Witness .11 Mohd. Akil. Public Witness .11 Mohd. Akil also did not say that nobody was accompanying the appellant when he had come to purchase Sodium Cyanide from him.

(68) Then as per the evidence of Public Witness .1 Rajinder Kumar when he returned home on 16th June, 1986 he found that Godrej Cupboard of his mother was lying open and ornaments of 32 tolas of gold and cash amount of Rs.27,000.00 /28,000.00 were missing from his house. He had also given an application to that effect to police on 21st June, 1986. But there is nothing on record as to what happened about that claim of P.W.I Rajindser Kumar. It is not the claim of either the prosecution or the accused that those things were not at all missing from the house of Public Witness .I It is quite possible that the Lakshmi Chand named immediately by the appellant at the time of making the discovery statement might have come after inmates of Rajinder Kumar had become unconscious and might have taken those things away and might have asked accused to take ornaments on the person of the victims after they had become

unconscious We feel that the accused alone must not have hatched this whole plot and there must be some other real brain behind him. The accused had no previous bad history and he alone must not have taken such drastic steps which have occurred in this incident.

(69) therefore, in our view the accused seems to be tool in the hands of third person. Then the accused is very young and is having three young daughters and a wife and that he is undergoing the trial for nearly 8-1/2 years we feel that the accused does not deserve the extreme penalty of death. We therefore partly allow his appeal and reduce the sentence to that of imprisonment for life.

(70) But before finally disposing of this appeal we would like to observe that the conduct of investigation and the conduct of trial in this case were not only not up to the normal standard but they were also below standard. It seems that investigating agency was set at rest on tracing the accused who was named in Fir and discovering some stolen property at his hand. The investigating officer has not collected the material which was easily available to further tighten the chain against the accused and to find out the real brain behind the incident. Investigating officer and his superiors did not take the trouble to collect the evidence which would have corroborated the various discoveries at the instance of the accused.

(71) The learned Additional Sessions Judge has not paid proper attention at the time of framing of charge. He had framed one charge under Section 302 for eight murders. Every murder is a separate offence. He ought to have framed separate charge for each killing. Then the charge is framed on 18th April, 1987 and he started recording evidence on 25th August, 1987. He had recorded evidence in this case between 25th August, 1987 and 19th April, 1994. The evidence of Public Witness .I Rajinder Kumar Jain is recorded by him on the following dates: 2.8.1987, 11.9.1987, 27.5.1988, 5.9.1988, 9.9.1988, 17.11.1988, 23.1.1989, 24.1.1989 and 24.4.1989. That evidence is running into actually 30 pages. If a person has to attend the court to give evidence on numerous dates - we say numerous dates because besides the nine dates given above Public Witness .1 has attended the court as per court .record not less than on 30 dates - and that too over a period of two years. What feeling he would carry about the working of court.

He must have suffered great harrasment. Such harrassment caused to witnesses by asking them to attend the courts on numerous dates induces them to refrain from coming forward as witnesses for sake of justice. It seems that the learned Additional Sessions Judge has not at all taken into consideration the provisions of Sections 230 to 235 of Code of Criminal Procedure. He must remember that as per the provisions of Section 230 on the date of framing of charge and recording plea of the accused on accused pleading not guilty to the charge he must fix the dates of recording of evidence. The provisions of following sections clearly show that he must hear a Session's case day to day. After the recording the plea of the accused he must assess as. what time would be required by each of the witness to be summoned at the instance of the prosecution and then fix the hearing of Sessions case for continually for 4/5 days or for the days as per the requirement of case. But in no case hearing of Session's case should be piecemeal with breakings of weeks, and months and years as has taken place. In recording the evidence in Sessions case the procedure laid down in Sections 230 to 235 must be seriously followed by recording oral evidence day to day.

(72) Thus we are unable to accept the reference made by the Additional Sessions Judge to confirm the death sentence awarded by him. We partly allow the appeal preferred by the accused. The order of conviction passed by the learned Additional Sessions Judge against the appellant Sunil Chand Jain under Section 302, 307 and 392 is maintained. The order of sentence passed against him under Section 302 of sentence of death is set aside and in its place he is sentenced to suffer rigorous imprisonment for life. The order of sentence of fine and in default of its payment the order of sentence is maintained. The order of sentences passed under Sections 307 and 392 is also maintained. Substantive sentences under all the Sections are to run concurrently.