

In Re: Baskar

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SooperKanoon Citation : sooperkanoon.com/783900

Court : Chennai

Decided On : Feb-26-1990

Reported in : 1991CriLJ535

Judge : K.P. Sivasubramaniam and ;S.T. Ramalingam, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 307; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 235, 235(2), 354 and 354(3)

Appeal No. : Referred Trial No. 7 of 1989

Appellant : In Re: Baskar

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Miss Lakshmi Panicker, Adv.

Judgement :

Sivasubramaniam, J.

1. This referred trial comes before us on a reference made by the learned Sessions Judge, Nagapattinam. The accused Basker was tried for offences u/S. 307 on three counts and u/S. 302 Indian Penal Code on three counts. Learned Sessions Judge convicted the accused u/S. 302 Penal Code on three counts and sentenced him to be hanged by his neck till his death. The accused was further convicted u/S. 307 Penal Code on three counts and sentenced to seven years

rigorous imprisonment on three counts. The sentence of seven years directed to merge with the sentence of death.

2. The accused does not prefer any appeal.

3. The prosecution case in brief is as follows :- P.W. 1 Bhagalavan is residing in Aduthurai Tarangambadi Salai along with his wife the deceased Nagu and his mother deceased Sampurnathammal, Another deceased Chandra, the sister of P.W. 1 was residing with her husband Krishnamoorthy in the same place at a distance of a furlong from the house of P.W. 1. P.W. 2 injured minor Thangamani is a son of the deceased Chandra and nephew of P.W. 1. The accused also belongs to the same place and he was employed in the Special Armed Police at Madras as a Constable. About 3 months before the date of occurrence when the accused visited Aduthurai, he was breaking old tins and plastic articles near the house of the deceased Chandra, when the deceased Chandra asked him to carry out the said work some distance away from her house, a wordy quarrel arose between them. The accused caught hold of the tuft of Chandra and beat her with chappals. The deceased Chandra lodged a complaint before Thiruvideimarudur Police Station as a result of which he was charged before the learned Judicial Magistrate, Kumbakonam and the case was pending at that time. As a result of the said Criminal case the accused was suspended temporarily from service. Thereafter he was living in Aduthurai.

4. On 14-2-1988 at about 10 a.m., P.W. 1 Bagalavan and P.W. 2 Rani were in the house of the deceased Chandra. The accused came there and requested Chandra to compromise the case for which P.W. 1 and Chandra were not willing. At that time the accused stated and left the place.

5. P.W. 2 Thangamani aged about 10, a son of deceased Chandra was studying in the Crescent Elementary School at Avvunialpuram. P.W. 3 was the Headmaster of the School. As Fridays and Saturdays are holidays for the School, the School is working on Sundays. At about 3.20 p.m., P.W. 2 took permission from the Headmaster to leave the school since P.W. 3 Rani had come to that place on a visit. As P.W. 2 was asked to accompany her, he left the school and was proceeding towards his house, when he was passing on the road opposite to one

Balakrishnan's house, the accused came there with Veechu Aruval M.O. 1 from behind and asked him to stop. When P.W. 2 stopped, the accused slapped him on his cheeks and out him indiscriminately on his shoulder, right ear, back-side of the head chest, left hand, right hand, left forearm, left shoulder, and right knee. P.W. 1 Bhagalawan, who was also passing on the road witnessed the occurrence and tried to prevent the attack on the deceased. The accused chased him with M.O. 1 and P.W. 1 entered the house of deceased Chandra. At that time Chandra was grinding rice in front of her house. P.W. 1 pushed the fence of the house of Balu and ran followed by the deceased Chandra. On seeing the accused, Aramudan the eldest son of Chandra (not examined) Thenmozhi, a daughter of Chandra and P.W. 3 Rani who came there as a guest ran inside the house bolted inside. The accused came there and hit the door with his legs. Thereafter he chased P.W. 1 and Chandra through the backyard. When Chandra was running near the place where the bricks were stored in the house of Balu, the accused cut her on her right hand, left shoulder, head and chest, indiscriminately. Then he chased P.W. 1 Bagalavan. On seeing the accused, P.W. 1 jumped into a tank and swam across the same. This was witnessed by P.W. 3 Rani through a hole from the house of Chandra. Thereafter the accused proceeded towards East with M.O. 1. He went to the house of P.W. 1 and cut Sampurnathammal, the mother of P.W. 1 who was standing in front of her house with M.O. 1 indiscriminately. When P.W. 4 Maruthian, a servant of P.W. 1 came there to prevent the attack, the accused cut him also on his right hand, and right side chest with M.O. 1. At that time the deceased Nagu wife of P.W. 1 came there and raised an alarm. On seeing her, the accused said that she must also die and cut her with M.O. 1 indiscriminately and ran towards the river. The injured P.W. 2, Thangamani was taken to the hospital of P.W. 7 by his brother Aramudan and others. P.W. 7 advised them to take the injured to Kumbakonam.

6. In the meanwhile P.W. 1 Bagalavan reached his house and saw his wife Nagu and Sampurnathammal his brother lying dead on the earth. He also saw his servant P.W. 4 with severe cut injures. P.W. 4 informed him as to what had happened. Krishnamoorthy, the husband of the deceased Chandra also came there and he wrote a complaint to the dictation of P.W. 1. P.W. 1 signed the complaint and he took P.W. 4 Maruthian and went to the police station at

Thiruvidadaimarudar at 6 p.m. and presented the complaint to P.W. 11, Head Constable who was present at that time. He registered the case in Crime No. 46/88 and prepared express F.I.Rs. He dispatched the copies of the FIR to the Officers concerned and to the Court. The Inspector of Police, who was engaged in bandobust duty at Kumbakonam was informed through wireless message. P.W. 11 sent the injured, P.W. 4 to the hospital with a memo through P.C. 841. Ex. P. 12 the copy of the FIR sent to the Court. He sent two constables to the scene of occurrence to keep watch over the scene. At 7.15 p.m. P.W. 19 Inspector of Police reached the scene of occurrence with a photographer and received copy of the FIR. He took up investigation of the case.

7. After cutting Nagu, the wife of P.W. 1 the accused was proceeding near Pottanankulam. At that time P.W. 10 Nagarajan, who was studying in Plus two Class in Avvunialpuram School, was returning on a cycle after finishing his examination. He saw the accused coming with blood-stained Veechu Aruval. The accused threatened him to handover the cycle to him and, therefore, he gave M.O. 15 cycle to the accused. The accused went on the cycle with the weapon P.W. 10 ran saying that the accused had taken his cycle. His brother Chandrasekaran was coming from the opposite direction on another cycle and P.W. 10 reported the matter to him. Both of them went on the cycle towards the direction in which the accused had gone. The accused dropped the cycle near Kumanan Thurai and ran towards Kanchanur with the Aruval. P.W. 10 took the cycle and returned to his house.

8. P.W. 2 Thangamani, who was injured was admitted in the Kumbakonam Government Hospital. P.W. 15 treated him for the injuries sustained by him. He found the following injuries on him.

1. Lower 1/3 of the right forearm is cut into two leaving the skin alone-Grievous injury.

2. 8 cm x 3 cm x bone depth incised wound on the right hand x-ray right hand Fracture both bones lower end and fracture bone of the 5th metacarpal bone-grievous injury.

3. 10 cm x 6 cm x bone depth lacerated wound on the right shoulder joint-x-ray of chest AP view Fracture upper and humerous grievous injury.
4. 6 cm x 4 cm x bone depth lacerated wound just below the 1/3rd wound-simple injury.
5. 4 cm x 2 cm x 1 cm lacerated wound on the upper part of the right shoulder X-Ray chest AP view-Fracture right acromian.
6. For lobe right is cut into two on the pinna aspect simple injury.
7. 2 cms, x cm lacerated wound on the chest, X-Ray chest AP view - No bone injury simple injury.
8. The left hand is cut into two between the left thumb and left index finger cutting 4 metacorpal bones. X-Ray left hand :

Traumatic amputation of the proximal phalanx level at the left index finger Grievous Injury. 9. 3 cm x 1 cm lacerated wound on the lower left forearm simple injury.

10. 2 cm x 1 cm lacerated wound just above the 9th wound simple injury'.

He sent intimation to the police and also requisition to the learned Magistrate for recording his dying declaration. Learned Magistrate came there at 4-50 p.m. and recorded his dying declaration. P.W. 2 was thereafter transferred to the Government Medical College Hospital at Thanjavur for further treatment. A Surgical Operation was performed on P.W. 2 in Thanjavur Hospital and a portion in the right hand of P.W. 2 was amputated. Another dying declaration was recorded in the Thanjavur Medical College Hospital by a Magistrate. On receipt of further particulars from Thanjavur hospital, P.W. 15 issued the wound certificate Ex. P. 16. Ex. P. 17 is the copy of the Accident Register.

9. On the same day at about 6-40 p.m. P.W. 15 examined injured P.W. 4 Maruthian and found the following injuries on him.

'O/E Pt. is drowsy and answering the question.

Injuries :

1. The right thumb is hanging and a lacerated wound about 10 cm x 6 cm passing between the web of the right thumb and right index finger.
2. 3 cm x 1 cm x bone depth wound found on the right chest.

Radiological findings :

X-Ray chest PA view - No bony injury,

X-Ray right hand Fracture dislocation based of 1st metacarpal bone (right)

Fracture Proximal Phalanx right index finger,

Fracture base of Proximal Phalanx right ring finger.

Ex. P. 18 is the wound certificate, Ex. P. 19 is the copy of the Accident Register. He was sent to the Government Medical College Hospital, Thanjavur for further treatment. On receipt of further particulars from the Thanjavur hospital, P.W. 15 gave his opinion that the first injury found on P.W. 4 is grievous and the second injury is simple in nature. He was taking treatment as inpatient in Thanjavur Hospital for 25 days.

10. P.W. 19, who took up the investigation in this case, made arrangements to take photographs of the scene of occurrence. Ex. P. 25 series are the photographs taken in the place where dead body of Chandra was found. Ex. P. 26 series are taken in the place where the dead body of Sampurnathammal was found. Ex. P. 27 series related to the place where the dead body of Nagu was found. P.W. 19 saw the dead body of Chandra near the heap of bricks in the site of one Balakrishnan. He inspected the scene of occurrence at 3-30 p.m. and prepared the observation mahazar Ex. P. 2. From 9-30 p.m. to 11-15 p.m. he conducted inquest on the dead body of Chandra. He examined P.Ws. 1, 3, 5 and others during the inquest. Ex. P. 29 is the inquest report prepared by P.W. 19. The dead body of Chandra was sent to the hospital for postmortem through the constable P.W. 17. At about 11.15 p.m. he recovered blood stained earth M.O. 3, blood stained sample earth M.O. 4 and bangles M.O. 5 from the place where the dead

body of Chandra was found under Ex. P. 3 Mahazar attested by witnesses. At 11-30 p.m., he recovered blood stained earth M.O. 6 and sample earth M.O. 7 in the place where P.W. 2 was cut under mahazar Ex. P. 5 attested by the same witnesses. Ex. P. 4 is the observation mahazar relating to the place where P.W. 2 was cut. At 12-30 midnight P.W. 19 inspected the place where the dead bodies of Sampurnathammal and Nagu were lying and prepared the observation Mahazar Ex. P. 6 and rough sketch of the scene of occurrence Ex. P. 30. He conducted inquest report on the dead body of Sampurnathammal on 15-12-1988 from 2 p.m. to 4-30 a.m. He examined P.W. 1, P.W. 3, P.W. 5 and others during the inquest. Ex. P. 31 is the inquest report, relating to deceased Sampurnathammal. From 4-30 a.m. to 6 a.m. he conducted the inquest over the dead body of Nagu in the presence of Panchyatdars and examined the same witnesses during the inquest. Ex. P. 32 is the inquest report relating to deceased Nagu. P.W. 19 dispatched the dead bodies of Sampurnathammal and Nagu through P.W. 17 for post-mortem. On the day at 6-30 a.m., he recovered blood stained cement flooring M.O. 8 and sample cement flooring M.O. 9, under Ex. P. 7 Mahazar attested by the same witnesses. At about 7 a.m. he recovered M.O. 10 blood stained cement M.O. 11 sample cement flooring M.O. 12 gold earring and M.O. 13 blood stained wire basket from the place where dead body of Nagu was found under Ex. P. 8 Mahazar attested by the same witnesses. He also prepared a combined rough sketch of all the places where the three dead bodies were found. Ex. P. 33 is the rough sketch showing the place where all the dead bodies were lying. Thereafter he made arrangements for searching the accused.

11. P.W. 13 conducted the autopsy on the dead body of Chandra on 15-2-1988 at 11.30 a.m. and found the following injuries :

'External Injuries : 1. Incised cut injury of about (clean margin) 7 inches x 2 1/2 x 2 x 3 starting from the middle of the ramus of the mandible (left) encircling the half of the neck on the back up to the occipital region on the right side exposing the fractured occipital bone and also severed spinal column with fractured. IInd cervical vertebra. Cut edges of major vessels also seen.

(2) Incised injury of about (clean margin) 4 inch x 2 1/2 x 3 over the lower half of neck on the left side exposing the lateral end of fractured clavicle. This injury is 1 inch below the injury No. 1 :

(3) Incised injury of about (clean margin) 2 1/2 x 2 x 1 over the chest on the left side near the left shoulder :

(4) Incised injury of about (clean Margin) 4 inch x 2 x 2 starting from the base of the little finger extending to the medial aspect of the lower one third of forearm exposing the fractured lower one third of ulna.

(5) Incised cut injury of about (clean margin) 10' x 3 x 1 over the right forearm (palmar aspect) exposing the lacerated muscles. On opening the thorax - No fractured ribs. Heart pale. 5 ounces. Lungs pale. Rt. 15 Lt. 10 Ounces Hyoid bone intact. Fractured clavicle on the lateral end on the left side present. On opening the abdomen stomach about 20 ml. of partially digested rice particles present. Liver pale 40 ounces Intestines-pale. Distended with gas. Spleen Pale. Uterus-pale. Normal size. Cavity-empty. No fractured pelvis. On opening the head-fractured occipital bone on the right side spinal column severed. At the level of second cervical vertebra-Fractured 2 cervical-vertebra present. Brain pale 45 ounces.

She is of the Opinion that the deceased appears to have died of shock and haemorrhage due to Head injury about 16 to 22 hours prior to autopsy Ex. P. 14 is the postmortem issued by the doctor.

12. P.W. 12 conducted autopsy on Sampooranammal on 15-2-1988 at 3-30 p.m. She found the following injuries on the dead body.

'External injuries : 1 a vertical clean cut injury 6' length extending from the angle of mouth on the left side across the face in front of the ear to the frontal region laterally. Bones, muscles and vessels exposed in the face 1' breadth found the depth of the wound in the upper part is 3' Blood clots at the edges and base of the wound present.

2. Ampliation of the tips of middle three fingers on the Left hand with blood stains in the out edges of the fingers.

Thorax : Symmetrical no fracture ribs. No injury to viscera. Heart : 6 ozs. No injury. Lungs : right 18 ozs. Left 16 ozs. Section is pale hyod bone intact.

Abdomen : mild uniform distention present. No injury re viscere. Colour is pale. Liver 40 ozs. Spleen 4 ozs. stomach 6 ozs. contains little semi solid material. Mucous is pale. Kidney right 4 ozs. Left 4 1/2 ozs. Bladder empty. The Utricle Atrophie.

Head : Blood stains over the scalp hair. A punched wound over the frontal region of scalp bones on the left side on opening a punched wound' length over the membrane on the left side in the frontal region with blood clots underneath the membrane. Extra vasation of blood over the hold of brain. A clean cut injury of one inch length and one inch depth over the brain substance on the left side frontal region with clotted blood around the wound. No injury to any other organs or bones.

The doctor was of the opinion that the deceased would appear to have died about 20 to 22 hours prior to post-mortem due to shock and haemorrhage due to injury to brain. Ex. P. 13 is the postmortem certificate issued by her.

13. P.W. 14 conducted autopsy on the dead body of Nagu at 1-30 p.m., She found the following injuries on the dead body.

'External injuries :

(1) An incised cut injury with clean margin 6' x 4' x 1'. Exposing the fractured temporal bone on right side 1' above right ear. Brain matter seeping through the fractured temporal bone.

(2) An incised cut injury with clean margin 3' x 1' x 2' over right side of neck just below right ear.

(3) Only thumb and index finger present over the hand. Other fingers absent exposing the metacarpo phalangeal joints. The severed fingers approximated with

the cut edges of right hand and found to be tallied.

(4) An incised cut wound with clean margin 5' x 1 1/2' in between web space of little and ring finger up to wrist seen. On the right hand on both sides.

(5) An incised cut injury with clean margin 5' x 1' x 1 1/2' extending from the webs space between middle and ring finger up to wrist seen, on right hand on both palma and dorsal side.

(6) An incied wound with clean marigin 1' x 1' x 1/2' over the forearm palma side middle.

(7) An incised wound with clean cut margin 1' x 1' x 1/2' over right forearm on dorsal side middle.

(8) On the left hand only thumb is present. Other fingers absent exposing the metacarpo phalangeal joints. The severed fingers approximated without edges of left hand and the same tallied.

(9) An incised cut injury with clean margin 4' x 2' x 2 1/2' over left forearm medial side near wrist exposing the fractured ulna. (10) An incised cut injury with clean margin 6' x 3' x 2' over right shoulder back.

(11) An incised cut injury with clean margin 7' x 3 1/2' x 2' starting from the nape of neck on the right side extending up to upper border of left scapula.

(12) An incised cut injury with clean margin 5' x 1' x 1' extending from lateral end of left eye brow to the back of the left ear cutting the ear (left) into 2 halves in the middle. Fractured maxilla seen through the injury.

(13) An incised cut injury with clean margin 4' x 1' x bone deep over parietal bones (both) near anterior margin fractured parietal bones seen.

Ex. P. 15 is the postmortem certificate. The doctor was of the opinion that the deceased would appear to have died due to shock and harmorrhage due to injury to vital organs like brain, skull and other multiple injuries.

14. On 16-2-1988, P.W. 19 arrested the accused at the bus stand at Kanchanur at 4-30 p.m. in the presence of P.W. 9 and another. When the accused was questioned, he gave a confessional statement, the admissible portion of which is Ex. P. 9. He volunteered to produce the Veech Aruval used by him and also pointed out the place where the cycle was abandoned by him. P.W. 19 seized M.O. 14 blood stained lungi from the accused under mahazer Ex. P. 10 attested by the same witnesses. The accused took P.W. 19 and the witnesses to the northern bund of Cauveri river and took out M.O. 1 from the bamboo bush belonging to one Govindasami which was seized under Ex. P. 13 mahazer attested by witnesses. On the next day, the accused was produced before Court for remand. P.W. 19 examined other witnesses on different dates. P.W. 10 produced M.O. 15 Cycle in the police station which was recovered under Form 95 on 22-2-1988. The material objects were sent to Chemical Examiner for his report. Ex. P. 21 is the report received from the Chemical Examiner and Ex. P. 21 is the report received from the Chemical Examiner and Ex. P. 22 is the report of Zerologist. After completing the investigation, P.W. 19 laid down the charge-sheet in this case on 10-6-1988.

15. When the accused was questioned u/S. 313 Criminal Procedure Code on the incriminating circumstances appearing against him, he denied the occurrence and pleaded not guilty. He did not examine any witness on his side.

16. Learned Sessions Judge after careful consideration of the entire evidence found that the prosecution has proved its case and therefore he convicted and sentenced the accused as stated above.

17. The only question to be decided in this case is whether the prosecution has proved its case beyond all reasonable doubt and if so, what is the proper sentence to be awarded against the accused.

18. The fact that the deceased Chandra, Sampornathammal, and Nagu, the sister, mother and wife of P.W. 1 respectively died of homicidal violence due to the cut injuries sustained by them on 14-2-1988 is not in dispute. We have already referred to the evidence of the doctors P.W. 13, P.W. 12 and P.W. 14 who conducted the autopsy on the dead bodies of Chandra, Sampornathammal and

Nagu respectively. They found number of incised cut injuries on the dead bodies, the details of which are found in Exs. P. 14, P. 13 and P. 15, the postmortem certificates. The doctors were of opinion that the deceased persons would appear to have died due to shock and haemorrhage due to the injuries to the vital organs of the body. As a matter of fact the cause of death has not been challenged on behalf of the accused in this case. Similarly the injuries found on P.Ws. 1 and 4 were also caused by a weapon like M.O. 1. This fact also is not in dispute. What is contended on behalf of the accused is that the accused did not cause those injuries and that he had been falsely implicated in this case. Therefore it is unnecessary to enter into any detailed discussion regarding the injuries sustained by the deceased and P.Ws. 2 and 4.

19. Miss Lakshmi Panicker, learned counsel appearing for the accused submitted that the prosecution has not come out with complete truth and the genesis of the occurrence has been deliberately suppressed. Further she contended that the prosecution has not proved any motive for the murder. According to her the version spoken to by P.Ws. 1 to 4 appeared to be highly artificial and unnatural. Even though several independent people were present during the course of series of incidents, none of them had been examined in this case. The only independent witness by name Jothi, P.W. 5 had turned hostile and did not support the prosecution case. This according to the learned counsel for the accused would show that the prosecution has not come out with truth. Learned counsel for the accused further submitted that it is highly impossible to accept the prosecution case that the accused began to cut several persons indiscriminately all of a sudden without any provocation whatsoever from the prosecution witnesses. According to her if really the accused had come to the house of the deceased Chandra with an intention to attack her, there was no reason why he had chosen to cut P.W. 2 who was coming on the road instead of entering into the house and attacking Chandra, who was sitting in front of the house at that time. It is the case of the learned Counsel for the accused that something would have happened between P.W. 1 and the accused as the accused is alleged to have attacked P.W. 2 on the road and that the prosecution has suppressed the genesis of the occurrence with certain other ulterior objects and for the reasons best known to them. We are unable to accept the said contentions of the learned Counsel for the

accused.

20. The prosecution relies on the evidence of P.Ws. 1 to 4 to prove its case. As already noticed, the accused attacked P.W. 2 when he was returning from the school at about 3.25 p.m. on 14-2-1988. It is no doubt true that there was no provocation for the accused to attack P.W. 2 who had nothing to do with the dispute between the accused and the deceased Chandra. That by itself cannot be a reason to discredit the testimony of the witnesses in this case. We do not know how the mind of the accused worked at that time when he committed this dastardly crime. When he attacked P.W. 2 and cut him indiscriminately, P.W. 1 who came there accidentally, tried to prevent further attacks on P.W. 2. On seeing P.W. 1 the accused chased him and therefore P.W. 1 ran into the house of the deceased Chandra, who was grinding rice at that time in front of her house. On seeing the accused running with an Aruval, she also ran behind P.W. 1. P.W. 1 removed the fence of the house of one Balu and ran away. The accused caught hold of the tuft of Chandra and cut her indiscriminately as described above. P.W. 1 was able to jump into the tank situated nearby and swam across for safety. Since P.W. 1 escaped, the accused went to his house where the other two deceased namely Nagu and Sampornathammal were present. The accused cut Sampornathammal, the mother of P.W. 1 with M.O. 1 indiscriminately and when their servant P.W. 4 Maruthian came there running to prevent the accused from cutting further, the accused cut him also with M.O. 1. At that time, the deceased Nagu, wife of P.W. 1 came there raising an alarm. The accused stated that she must also die and cut her indiscriminately. The accused, after inflicting fatal injuries on them ran away towards the river situated nearby. All the deceased died on the spot. All the witnesses spoke categorically about the attack of the accused on P.W. 2, the deceased Chandra, Sampornathammal and Nagu. P.W. 1 is the person who actually the attack on P.W. 2 Thangamani. P.W. 3 Rani who happened to be in the house of deceased Chandra on that date was able to see the attack on her by the accused. As far as the attack made on deceased Sampornathammal and Nagu, P.W. 4 has given a clear account about the manner in which they were attacked by the accused. It has to be noted in this connection that P.Ws. 2 and 4 are injured witnesses. It is seen from the medical evidence that both of them were seriously injured and as a matter of fact one of

the hands of P.W. 2 had to be amputated. We are unable to find any reason why these witnesses should depose falsely against the accused if somebody had attacked them. Merely because P.W. 5 turned hostile, it is not possible to say that the version of prosecution witnesses is not believable. A perusal of their evidence shows that they have given a cogent and consistent version about the manner in which the accused committed the crime. Nothing has been established during their cross-examination to discredit their testimony. Their evidence inspired confidence in the mind of the Court below and therefore we can safely rely on their evidence.

21. Learned Counsel for the accused submitted that the prosecution has not proved any motive for the murder. It is in evidence that about 3 months before the date of the occurrence, there was a wordy altercation between the accused and the deceased Chandra in front of her house during which the accused caught hold of her tuft and beat her with chappals. Thereafter she gave complaint against him at the police station and subsequently the accused was prosecuted before the Court. It appears that subsequently he was convicted and sentenced to six months rigorous imprisonment. Consequent to the criminal prosecution, the accused was temporarily suspended from his service. This is projected as the motive for the murder by the prosecution. The said incident has been clearly spoken to by P.W. 1 and P.W. 2. According to P.W. 1 when he was in the house of his sister deceased Chandra at about 10 a.m. on 14-2-1988, the accused came there and requested them to compromise the matter. Since the matter was pending before the Court, she refused to do so. At that time, the accused threatened to cause harm to them and went away. A little later at about 3.30 p.m. on the same day, he came with M.O. 1 to the house of the deceased Chandra. Before entering her house, he saw P.W. 2 coming on the road. Immediately cut the three deceased persons and P.W. 4. Whether the earlier incident referred to would have acted as a motive or not is a matter which cannot be decided at this stage. It depends upon the way in which the mind of the accused acted and how he viewed things. The fact remains that the deceased Chandra gave a criminal complaint as a result of which he lost his job. That would have caused serious provocation on the part of the accused for committing the murder of three innocent persons. Therefore it is not possible to say that the prosecution has not established any motive in this case.

22. On a careful consideration of the evidence of P.Ws. 1 to 4 and the medical evidence, we are of the view that the prosecution has established that it is the accused who has caused the injuries on the three deceased persons and on P.Ws. 2 and 4. Accordingly we hold that the prosecution has proved its case beyond all reasonable doubt. We do not find any ground to differ from the findings rendered by the learned Sessions Judge in this regard.

23. Miss Lakshmi Panicker, learned Counsel appearing for the accused would however strenuously contend that the sentence of death passed against the accused is not called for as it is not one of the rarest of rare cases as observed by the Supreme Court. She pleaded that the accused certainly had no motive to murder the three deceased persons in this case and cause injuries to P.Ws. 2 to 4. According to her, since the prosecution had failed to establish the genesis of the occurrence, it was not possible to come to the conclusion that the accused had acted in a dastardly manner. She further contended that the accused was serving in the police force and he has lost his job and therefore he must have been in agitated mood. In any event, according to her it is not a case where the extreme punishment is called for.

24. Yet another contention was raised by the learned Counsel for the accused to the effect that the learned Sessions Judge committed a serious error in questioning the accused in the matter of awarding death sentence. According to her the trial Court treated the requirement of giving the opportunity to the accused as a mere formality. She pointed out that the procedure contemplated under S. 235, Criminal Procedure Code must be scrupulously followed and that the requirement of hearing the accused is intended to satisfy the rule of natural justice as the Courts are required to make the choice from a wide range of discretion in the matter of sentencing. In order to assist the Court in determining the correct sentence to be imposed the legislature introduced sub-section (2) to S. 235 of the Code. Since the provision is intended to give the accused an opportunity to place before the Court all the relevant material having a bearing on the question of sentence, there can be no doubt that the provision is salutary and must be strictly followed. According to her it is a mandatory provision and it cannot be treated as a mere formality. The decision taken without following the requirement of Section

235(2) of the Code in letter and spirit, would vitiate the sentence of death. In support of the above contention, learned Counsel for the accused relied on the decision of the Supreme Court in *Allauddin Mian v. State of Bihar*, .

25. As far as the question of sentence is concerned we feel that the submission of the learned Counsel for the accused in this regard are sustainable. We have bestowed our careful consideration on this question and we feel that awarding of death sentence in a case like this is not called for. Section 302, Indian Penal Code prescribes death or life sentence as penalty for murder. The Parliament took note of contemporary criminological thought and movement, and introduced a new concept of punishment in case of murder in S. 354, Cr.P.C. Section 354, sub-clause (3) of the new Code provides as follows :-

'When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.'

Therefore, according to the new Code, imprisonment for life is a rule and death sentence an exception in the matter of awarding punishment for murder. If a death sentence is to be awarded to a person found guilty of murder, the Court awarding it has to justify it by giving special reasons. Therefore Courts have not laid down any hard and fast rule of universal application and each case must be decided on its own merit and punishment should be awarded suitable to each case. It is the duty of the Courts to award appropriate punishment in exercise of their discretion must be exercised judiciously and not arbitrarily. We are conscious of the fact that where the offence committed is vindictive, pre-planned and cold-blooded and for gain, ordinarily death sentence should be imposed. The question of sentence has to be determined not with reference to the volume or character of the evidence adduced by the prosecution, but it must be with reference to the fact whether there are extenuating circumstances which can be said to mitigate the enormity of the crime. The preponderance of judicial opinion is that in cases of murders committed on the spur of the moment and actuated by anger, jealousy, pride or sense of honour the murder may call for the lesser penalty. On the other hand, Courts have

categorically held that when murder has been planned before hand and has been committed with cruelty or for a sordid purpose, and without the least trace of any spirit of fair play or sportsmanship without giving a chance to the victim, it should necessarily be furnished with the extreme sentence. The Supreme Court in the case referred to above made the following observation regarding sentence (Para 9) :

'While rejecting the demand of the protagonist of the reformatory theory for the abolition of the death penalty the legislature in its wisdom thought that the special reasons clause should be a sufficient safeguard against arbitrary imposition of the extreme penalty. Where a sentence of severity is imposed, it is imperative that the Judge should indicate the basis upon which he considers a sentence of that magnitude Justified. Unless there are special reasons, special to the facts of the particular case which can be catalogued as justifying a severe punishment the Judge would not award the death sentence. It may be stated that if a Judge finds that he is unable to explain with reasonable accuracy the basis for selecting the higher of the two sentences, his choice should fall on the lower sentence. In all such cases the law casts an obligation on the Judge to make his choice after carefully examining the pros and cons of each case. It must at once be conceded that offenders of some particularly grossly brutal crimes which send tremors in the community have to be firmly dealt with to protect the community from perpetrators of such crimes. Where the incidence of a certain crime is rapidly growing and is assuming menacing proportions, for example, acid pouring or bride burning, it may be necessary for the Courts to award exemplary punishments to protect the community and to deter others from committing such crimes. Since the legislature in its wisdom thought that in some rare cases it may still be necessary to impose the extreme punishment of death to deter others and to protect the society and in a given case the country, it left the choice of sentence to the judiciary with the rider that the Judge may visit the convicts with the extreme punishment provided there exist special reasons for so doing. In the face of this statutory provision which is consistent with Art. 21 of the Constitution which enjoins that the personal liberty or life of an individual shall not be taken except according to the procedure established by law, we are unable to countenance counsel's extreme submission of death in no case.'

The Supreme Court modified the sentence of death to one of life imprisonment in that case with the following observations.

'12. It will be seen from the above, that the Courts below are considerably moved by the fact that the victims were innocent and helpless infants who had not provided any provocation for the ruthless manner in which they were killed. No one can deny the fact that the murders were ghastly. However, in order that the sentences may be properly graded to fit the degree of gravity of each case, it is necessary that the maximum sentence prescribed by law should, as observed in Bachan Singh's case, : 1980 CriLJ636 (supra), be reserved for the rarest of rare cases which are of an exceptional nature. Sentences of severity are imposed to reflect the seriousness of the crime, to promote respect for the law, to provide just punishment for the offence, to afford adequate deterrent to criminal conduct and to protect the community from further similar conduct. It serves a three-fold purpose (i) punitive, (ii) deterrent and (iii) protective. That is why this Court in Bachan Singh's case observed that when the question of choice of sentence is under consideration the Court must not only look to the crime and the victim but also the circumstances of the criminal and the impact of the crime on the community. Unless the nature of the crime and the circumstances of the offender reveal that the criminal is a menace to the society and the sentence of life imprisonment would be altogether inadequate, the Court should ordinarily impose the lesser punishment and not the extreme punishment of death which should be reserved for exceptional cases only. In the subsequent decision of Machhi Singh v. State of Punjab, : 1983 CriLJ1457 , this Court, after culling out the guidelines laid down in Bachan Singh's case, observed that only in those exceptional cases in which the crime is so brutal, diabolical and revolting as to shock the collective conscience of the community, would it be permissible to award the death sentence. In the present case, unfortunately the material for choice of sentence is scanty. The motives for the crime is obscure, the one stated, namely, the quarrel between two infants of both sides, does not seem to be correct. The killings were not for gain. The charge shows that the target was P.W. 6, the father, and not the two infants. The killing of the two infants was not the contemplation of any of the accused. Both the girls were the victims of the offenders' resulting from frustration at the escape of their target. There is nothing so uncommon about the crime as to make

the case an exceptional one. The mere fact that infants are killed without more, is not sufficient to bring the case within the category of the rarest of rare cases.'

26. Bearing the abovesaid principles in mind let us now consider the facts of the present case. As already noticed, there was no serious motive on the part of the accused to murder any of the deceased. There was some enmity between the accused and one of the deceased Chandra on account of a petty quarrel that took place three months before the date of occurrence. Consequent to the criminal prosecution launched at the instance of the deceased Chandra, he was temporarily suspended from service. The immediate provocation appears to be the refusal of the deceased Chandra and P.W. 1 to accede to the suggestion of compromise made by the accused on the date of occurrence. This shows that the accused had no idea of causing any wrong to the deceased persons and P.Ws. 2 and/or 4. The blunt refusal of P.W. 1 and the deceased Chandra to accede to the request of the accused should have provoked the accused and considering the said instance and the fact that he had lost his job as a result of sentence of six months' rigorous imprisonment, we can safely come to the conclusion that the accused lost his balance and became frustrated which was beyond his control. Further when he saw P.W. 2 a son of deceased Chandra coming on the road, he must have lost his balance and attacked him. When P.W. 1 intervened, he chased him to the house of deceased Chandra. On seeing Chandra, he attacked her indiscriminately. Since P.W. 1 escaped he went to his house and cut the other two, namely the mother and wife of P.W. 1. This only shows that the accused must have lost his senses and must have been in a troubled state of mind as otherwise there was no reason as to why he should cut two innocent ladies found in the house of P.W. 1. It is no doubt true that the accused was not justified in killing 3 innocent persons and causing injury to a small boy who had nothing to do with the quarrel with the deceased Chandra. Therefore it is not possible to hold that the accused was in a position to weigh and analyse in a rational manner as to what he was about to do was proper or not. The Supreme Court has taken the view that the extreme penalty of death is not called for in such circumstances. In *Muniappan v. State of Tamil Nadu*, : 1981 CriLJ726 , the Supreme Court held as follows (Para 2) :-

'all murders are terrific and if the fact of the murder being terrific is an adequate reason for imposing the death sentence, then every murder shall have to be visited with that sentence. In that event, death sentence will become the rule, not an exception and S. 354(3) will become a dead letter.'

Further, the Supreme Court pointed out that it is the bounden duty of the Judge to ease aside the formalities of the Court scene and approach the question of sentence from a broad sociological point of view. While the Court is considering the question of sentence, it is in an altogether different domain in which facts and factors which operate are of an entirely different order than those which come into play on the question of conviction. Hence merely because three persons were killed, the crime cannot be termed as gruesome and ghastly done with a deliberate motive calling for an extreme penalty of death. As the Supreme Court has pointed out in motive for the crime in this case is also obscure and the killings were not for gain. Further the killings of Sampoorathammal and Nagu and the attack of P.Ws. 2 and 4 were not in the contemplation of the accused. They were the victims of unfortunate circumstances resulting from frustration. Therefore we are of the view that extreme penalty of death is not called for in this case.

27. Regarding the method of questioning the accused by the learned Sessions Judge in the matter of sentence, the guidelines indicated by the Supreme Court in the abovesaid cases are worth mentioning.

'10. The requirement of hearing the accused is intended to satisfy the rule of natural justice. It is a fundamental requirement of fair-play that the accused who was hitherto concentrating on the prosecution evidence on the question of guilt should, on being found guilty, be asked if he has anything to say or any evidence to tender on the question of sentence. This is all the more necessary since the Courts are generally required to make the choice from a wide range of discretion in the matter of sentencing. To assist the Court in determining the correct sentence to be imposed the legislature introduced sub-section (2) to Section 235. The said provision therefore satisfied a dual purpose; it satisfies the rule of natural justice by affording to the accused an opportunity of being heard on the question of sentence and at the same time helps the Court to choose the sentence to be awarded.

Since the provision is intended to give the accused an opportunity to place before the Court all the relevant material having a bearing on the question of sentence there can be no doubt that the provision is salutary and must be strictly followed. It is clearly mandatory and should not be treated as a mere formality. Mr. Garg was, therefore justified in making a grievance that the trial Court actually treated it as a mere formality as is evident from the fact that it recorded the finding of guilt on 31st March, 1987, on the same day before the accused could absorb and overcome the shock of conviction they were asked if they had anything to say on the question of sentence and immediately thereafter the decision imposing the death penalty on the two accused was pronounced. In a case of life or death as stated earlier, the Presiding Officer must show a high degree of concern for the statutory right of the accused and should not treat it as a mere formality to be crossed before making the choice of sentence. If the choice is made, as in this case, without giving the accused an effective and real opportunity to place his antecedents, social and economic background, mitigating and extenuating circumstances, etc., before the Court, the Court's decision on the sentence would be vulnerable. We need hardly mention that in many cases a sentencing decision has a more serious consequences on the offender and his family members than in the case of a purely administrative decision; a fortiori, therefore, the principle of fair play must apply with greater vigour in the case of the former than the latter. An administrative decision having civil consequences, if taken without giving a hearing is generally struck down as a violative of the rule of natural justice. Likewise a sentencing decision taken without following the requirement of sub-section (2) of S. 235 of the Code in letter and spirit would also meet a similar fate and may have to be replaced by an appropriate order. The sentencing court must approach the question seriously and must endeavour to see that all the relevant facts and circumstances bearing on the question of sentence are brought on record. Only after giving due weight to the mitigating as well as the aggravating circumstances placed before it, it must pronounce the sentence. We think as a general rule the trial Courts should after recording the conviction adjourn the matter to a future date and call upon both the prosecution as well as the defence to place the relevant material bearing on the question of sentence before it and thereafter pronounce the sentence to be imposed on the offender. In the present case, as pointed out

earlier, we are afraid that the learned trial Judge did not give attention, sufficient importance to the mandatory requirement of sub-section (2) of the Code. The High Court also had before it only the scanty material placed before the learned Sessions Judge when it confirmed the death penalty.'

The above observation is extracted in this Judgment so that the trial Courts may follow the said norms hereafter.

28. In the result the conviction on all the charges is confirmed and the sentence of death is modified to one or imprisonment for life. The sentence of 7 years is directed to run concurrently with the sentence of imprisonment for life. The reference is answered accordingly.

29. Order accordingly.

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