

Ajai Alias Ajju and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Feb-22-2012

Judge : Amar Saran & Ramesh Sinha

Appeal No. : Criminal (Capital) Appeal No. 6293 of 2009, Reference No. 12 of 2009 Connected with Criminal (Capital) Appeal Nos. 6294, 6295 & 7705 of 2009

Appellant : Ajai Alias Ajju and Others

Respondent : State of U.P. and Others

Advocate for Pet/Ap. : Sri. N.I. Zafri, Sri. Rajeev Gupta, Sri. A.C. Srivastava, Sri. N.I. Jafri, Sri. Jafri

Judgement :

Ramesh Sinha, J.

The aforesaid jail appeals have been filed by the appellants against the judgment and order dated 24.9.2009, passed by the Additional Sessions Judge, Court No.3, Ghaziabad in S.T. No.1371 of 2007 (State Vs. Braj Pal and others), whereby the appellants-Braj Pal, Mukesh, Ravi and Ajai alias Ajju have been convicted under Section 302 read with Section 149 I.P.C. and sentenced to penalties for death. Again the appellants have been convicted under Section 148 I.P.C. and sentenced to rigorous imprisonment for three years. The appellants have also been convicted under Section 307 read with Section 149 I.P.C. and sentenced to undergo imprisonment for life and a fine of Rs.50,000/- each and in default of

payment of fine, they have to undergo three months further imprisonment. Again, the trial Court convicted the appellants under Section 452 I.P.C. and sentenced to undergo further imprisonment for seven years rigorous imprisonment each and a fine of Rs.10,000/- and in default of payment of fine, they have to undergo further simple imprisonment for one year. The appellants-Mukesh and Ravi have also been convicted under Section 404 I.P.C. and to undergo rigorous imprisonment for three years and in default of payment of fine, they have to undergo six months simple imprisonment. The appellants-Mukesh and Ajai alias Ajju have been convicted under Section 25/4 and Section 25(1)-Kha of the Arms Act and sentenced to two years rigorous imprisonment to each and a fine of Rs.5000/- and in default of payment of fine, they have to undergo six months rigorous imprisonment. All the sentences of the appellants shall run concurrently and the period undergone in jail by the appellants shall be merged in the sentence.

Since the aforesaid four appeals have been preferred against the impugned judgment and order of the trial Court, hence the same are being decided by one common judgment.

The brief facts shorn of background and frills are set out asunder:

The complainant's brother Vijay Pal Singh, son of Horam Singh, was sleeping in his house along with his family members and son-in-law of Vijay Pal Singh (deceased) namely, Mangal Singh, had also come there. It is alleged that on 24/25.8.2007 at about 3 A.M., the complainant-Braj Pal Singh on hearing the shriek of younger daughter, namely, Rashmi of Vijay Pal Singh(deceased) reached along with other villagers at the house of Vijay Pal Singh and saw an unfortunate incident in which the complainant's brother Vijay Pal Singh aged about 40 years and Smt. Rajesh wife of Vijay Pal Singh aged about 38 years were lying on cots and their neck were cut by sharp edged weapons, due to which they had died. When the complainant along with other persons went on the roof, he saw Nishant, son of Vijay Pal Singh, aged about 21 years and son-in-law Mangal Singh, son of Jay Singh, resident of Ataur, who were also lying dead on the cot and their neck were also cut. Smt. Pinky, daughter of Vijay Pal Singh, was lying in an injured condition, who was taken to the hospital and admitted there. The dead

body of all the four deceased persons were lying on the spot in the house. It has been further alleged that some unknown miscreants have committed their murder.

The F.I.R. of the alleged incident was lodged on 25.8.2007 at about 4.30 P.M. by Braj Pal Singh real brother of deceased Vijay Pal Singh at Police Station-Murad Nagar, District-Ghaziabad, which is at a distance of 8 kms. away from the place of occurrence.

Braj Pal Singh was later on made an accused in the present Case Crime No. 471 of 2007 for the offence under Section 302/307 I.P.C., which was endorsed in the G.D. No. 9 about 4.30 A.M.

Smt. Pinky, wife of Mangal Singh (deceased) and daughter of Vijay Pal Singh (deceased), received injuries in the incident dated 24/25.8.2007 at about 3 A.M. She was medically examined in Sarvodaya Hospital, Ghaziabad by PW2- Dr. Rajeev Sharma on 25.8.2007 at about 5.25 A.M. The injuries received by Smt. Pinky are as under:

“INJURIES

- (i) Amputated little and ring finger at level of proximal crease (R)
- (ii) Cut lacerated wound on palmar aspect of (R) hand 8 cm. x 2cm. red in colour. 2 cm distal to palmar crease.
- (iii) Cut lacerated wound on front side of forearm (R) 6 cm.x2cm. red in colour profusely, bleeding, 5 cm. above wrist joint.
- (iv) Cut lacerated wound over face extending from (Lt.) Angle of mouth 5 cm. x 3 cm.
- (v) Cut lacerated wound over neck 5 cm. x 1 cm. just above upper crease of neck.
- (vi) Cut lacerated wound at base of index and middle finger on `back side 2 cm. x 1 cm. and 2 cm. x 0.5 cm. respectively.
- (vii) Cut lacerated wound on (L) ear 3 cm. x 1 cm. red in colour and bleeding.”

PW3-Dr. Rajeshwar Yadav, Radiologist Sarvodaya Hospital, Ghaziabad, on the same day had performed the X-Ray on the neck and jaws of Smt. Pinky and prepared an X-Ray report to this effect.

Four persons namely, Vijay Pal Singh son of Horam Singh, Smt. Rajesh wife of Vijay Pal Singh, Nishant son of Vijay Pal Singh, Mangal Singh son-in-law of Vijay Pal Singh and husband of Smt. Pinky were brutally killed in the alleged incident who belonged to one family.

PW4-Dr. K.N. Tiwari on 25.8.2007 conducted the post-mortem of four deceased persons, namely, Smt. Rajesh at about 2 P.M., deceased Vijay Pal Singh at about 2.30 P.M., deceased Mangal Singh at about 3 P.M. and deceased Nishant at about 3.30 P.M. respectively and found the following injuries:

Smt. Rajesh

Antemortem Injuries (Exhibit Ka-3)

(1) Incised wound over neck lower part anteriorly and on Rt. Side 8 cm. x 4 cm., bone deep, 3 cm. above suprasternal notch, soft tissues of neck including blood vessels and trachea are cut in the wound.

(2) Incised wound on Lt. Side neck lower part 8 cm. below ear 7 cm. x 3 cm. wound in muscle deep, soft tissue and muscle cut.

Post Mortem wound

Three clean cut wounds on right hand dorsum are present.. Size 8 cm. x 5 cm., 7 cm. X 4 cm., 3 cm. x 2 cm., 2.3 cm. apart.

Vijay Pal

Antemortem Injuries (Exhibit Ka-4)

(1) Incised wound in upper part of neck on anterior and sides size 10 cm.x 3 cm. bone deep, wound is 8 cm. below ear lobule larynx, hyoid soft tissues and blood vessels are cut in the wound.

Post Mortem wound

Post mortem wounds (1) clean cut 7 cm x 3 cm. on dorsum of Rt.hand, (2) Abrasion 7 cm. x 3 cm. on dorsum of Rt. hand and 1cmx1cm clean cut over Lt. angle of mouth noted.

Mangal

Ante-mortem Injuries (Exhibit Ka-5)

(1) Incised wound 25 cm.x 9 cm. on upper part of neck and lower jaw on anterior and Rt. Side, wound is reactive upto Vertebrae; Mandible, soft tissues of neck muscles, Larynx, hyoid and blood vessels are cut in the wound.

(2) Upper part of wound in at level of ear lobule and oblique, oblique Incised wound on Rt. Side face, from upper lip to ear 11cm. x 1 cm. muscle deep.

NishantAnte-mortem Injuries (Exhibit Ka-6)

(1) Incised Wound 9 cm. x 2 cm, oblique, Rt. Side neck reaching upto mid line 6 cm. Below ear muscle deep.

(2) Incised wound 5 m.m. Below injury no.1 on Rt. side neck reaching up to midline size 10 cm x 8 cm., muscles, Larynx,(thyroid cartilage and hyoid) vessels are cut in the wound.

PW9- Ram Babu Saxena, S.I., who is the first Investigating Officer of the case, reached on the same day at Sarvodaya Nursing Home Ghaziabad where Smt. Pinky was admitted and recorded the statement under Section 161 Cr.P.C. of Smt. Pinky on 25.8.2007, who disclosed the name of the accused persons who were involved in the incident dated 24/25.7.2007, namely, Mukesh, Braj Pal Singh, Ravi, Ajai alias Aju, Pramod and Abrar, who have committed the murder of all the four deceased persons and have also caused injuries to her. The Investigating Officer thereafter went to I.T.S. Dental College where he recorded the statement of Km. Rashmi, who is younger daughter of deceased Vijay Pal Singh and she also stated under Section 161 Cr.P.C. that it was the said accused persons who have committed the crime and also disclosed that one mobile phone of Reliance L.G.

No. 9336780542 which belongs to her brother, is also not traceable.

On the disclosure of the names of the accused persons by Smt. Pinky in her statement under Section 161 Cr.P.C., the Investigating Officer on 26.8.2007 arrested the accused Mukesh and Braj Pal Singh and the accused in their confessional statement disclosed the name of their companion and further on the pointing out of accused Mukesh, a blood stained pant and Khukhri were recovered from the house of Mukesh which was hidden in the fodder (bhusa), which was taken into custody and sealed. A Hero Honda Splendor Motorcycle No.UP4-056 which is said to be that of co-accused Abrar was also taken into custody by the police. Similarly, on the pointing out of accused Braj Pal Singh, a blood stained Gandasa was recovered from his house which was given by him to the police and taken into custody and sealed.

On 26.8.2007 on the recovery of Gandasa at the instance of accused Mukesh, a fard recovery memo was prepared by the police and an F.I.R. was registered against Mukesh as Case Crime No. 472 of 2007, under Section 25/4 of the Arms Act which was also endorsed in the G.D. at Police Station Muradnagar, District Ghaziabad by Ram Babu Saxena, Station Officer of the said police station. On 28.8.2007, the police arrested the accused Ravi, son of Inderpal, and recorded his confessional statement and on his pointing out, a blood stained T-Shirt and a mobile phone L.G.Reliance No.9336780542 was recovered from the house of his Mause where he had hidden it and gave it to the police which was taken into custody, a fard recovery memo of mobile phone and the blood stained T-Shirt was prepared by the Station Officer on 28.8.2007 which was numbered as Exhibit Ka-47. Similarly on 4.11.2007, accused Ajai alias Aju was arrested by the police and his confessional statement was recorded and on his pointing out a knife was recovered from his village, which was hidden near a culvert situated at the South West by the side of the canal. The said knife was taken by the police in custody and sealed, a fard recovery memo was prepared which is numbered as Exhibit Ka-48 and an F.I.R. was registered by Mehar Singh, Station Officer, Police Station-Muradnagar, District-Ghaziabad as Case Crime No.671 of 2007, under Section 4/25 of the Arms Act and endorsed in the G.D.

During investigation, the Investigating Officer prepared fard recovery memo of blood stained earth underneath the cots of deceased Vijay Pal Singh and his wife Smt. Rajesh, which was numbered as Exhibit Ka-40, on 25.8.2007 a fard recovery memo of Gorsa Loha (Machine) blood stained which was kept under the cot of deceased Vijay Pal Singh's wife namely Rajesh and numbered as Exhibit Ka-41, fard recovery memo of Khoon se Farsh Sada VaKhoon Alooda which was under the cots of deceased Mangal Singh and Nishant alias Bhola and was numbered as Exhibit Ka-42, fard recovery memo prepared on 25.8.2007 of the bloodstained cots on which deceased Vijay Pal Singh, Smt. Rajesh, Nishant alias Bhola and Mangal Singh were lying, which was numbered as Exhibit Ka-43. respectively.

The Investigating Officer had sent the blood stained clothes and other articles of the four deceased along with the weapon of assault i.e. Gandasa, Khukhri, one pant and T-Shirt recovered from the appellants-Mukesh, Braj Pal Singh and Ravi respectively to the Vidhi Vigyan Prayogshala, Agra by the orders of the C.J.M. on 2.11.2007 and the report of the Sereologist dated 15.11.2007 sent to the Court of Chief Judicial Magistrate, Ghaziabad has been numbered as Exhibit Ka-57.

The Chief Judicial Magistrate, Ghaziabad committed thecaes to the Sessions Judge on 7.12.2007. The trial Judge framed the charges under Sections 148, 302/149, 452 I.P.C. against the appellants-Braj Pal Singh, Mukesh and Ravi and Ajai alias Ajju and framed a separate charge against the appellants-Mukesh and Ravi under Section 404 I.P.C. Further, against the appellants Mukesh and Ajai alias Ajju charges were also framed under Section 4/25 of the Arms Act, which they denied. On 22.10.2008, an order was passed by the Trial Court in leading S.T. No. 1371 of 2007 that S.T. No. 1373 of 2007 (State Vs. Ajai alias Ajju) and S.T. No. 1385 of 2007 (State Vs. Mukesh) under Section 25 of the Arms Act be also tried together along with the leading Sessions Trial, hence an order was passed by the Trial Court by which they were clubbed together and were proceeded accordingly by the trial Court. In order to bring home the guilt of the appellants, the prosecution examined in all 13 witnesses out of whom PW1-Smt. Pinky who is the injured as well as an eye witness and the other formal witnesses such as PW2-Dr. Rajeev Verma who performed the medical examination of Smt. Pinky (PW1), PW3-Dr. Rajeshwar Yadav, who conducted X-Ray of Smt. Pinky, PW4-Dr. K.N. Tiwari, who

conducted the post mortem of four deceased, PW5- S.I. BrajPal Singh proved the F.I.R. (Exhibit Ka-7), PW6-S.I. Ram Pal Singh, who conducted Panchayatnama/Inquest Report of the four deceased persons, PW7-Constable Babu Khan and proved chik FIRs under Section 25/4 of the Arms Act, PW8-Head Constable Dinesh Kumar who also proved the Chik FIR under Section 25 of the Arms Act of Case Crime No.671 of 2007, PW9-Ram Babu Saxena, Station Officer, who is the first Investigating Officer of case crime No. 471 of 2007 under Section 302/307 I.P.C., PW10-Naresh Chandra Sharma who was posted as 2nd Officer at Police Station Muradnagar and prepared the fard recovery memo (ExhibitKa-44), PW11-Mehar Singh, Station Officer, who is also the Investigating Officer and submitted charge sheet against the appellants, PW12-Subhash Chandra, Head Constable and proved the F.I.R. and the first Investigating Officer who has investigated the case under Section 25/4 of the Arms Act, PW13-Soni Ram Singh, who also investigated the case under Section 25/4 of the Arms Act and submitted charge sheet against the accused Mukesh and PW14-Chandra Sen, S.I., submitted charge sheet against Ajai alias Aiju under Section 25 of the Arms Act.

The statements of all the four appellants were recorded under Section 313 Cr.P.C. The appellant-Braj Pal has stated that a false case has been registered against him and the witnesses have falsely deposed against him due to village party bandi and further the recovery of blood stained Gandasa at his pointing out on 26.8.2007 is wrong, appellant-Mukesh has also denied that nothing was recovered at his pointing out and he was taken by the police from his house. He has further stated that Smt. Pinky is deposing due to enmity and at the behest of her grand-father she is giving false evidence. He also stated that his grand-father Ram Swaroop had not given 18-19 Bighas of land to Horam, father of the deceased Vijay Pal, therefore, Horam and his family member bore enmity with him and some unknown miscreants have murdered the deceased persons and he has been falsely implicated. Appellant-Ravi has expressed his unawareness regarding recovery of bloodstained Khukhri which is alleged to have been recovered at his pointing out. He has further stated that the witnesses are falsely deposing against him due to village party bandi and he was not residing in Village Nabipur for the last 10-15 years but he is living in Village Baheta Hajipur and is studying there and a false case has been initiated against him. Appellant-Ajai alias Aiju has also

expressed his unawareness about the recovery of knife which is alleged to have been recovered on his pointing out and he has been falsely implicated due to village party bandi. He further stated that initially some other person by the name of Ajai was arrested and in order to save him, he was falsely implicated in the present case.

In defence, the appellants have examined DW1-Dr.Islamuddin who was a resident doctor in Sarvodaya Hospital Ghazibad who has proved Exhibit Kha-1 to Exhibit Kha-38 regarding admission of Smt. Pinky in the hospital and her medical papers, DW2-Smt. Berwati W/o Mool Chand, who is mother of accused Ajai alias Ajjju, who has stated that her son was arrested by the police along with Mukesh and BrajPal and thereafter released by the police and after 20 days again his son Ajai alias Ajjju has been arrested and falsely implicated in the present case. The Trial Judge after scanning the evidence and appreciating the facts of the case arrived at a conclusion that the prosecution has successfully anointed the guilt of the appellant committing the murder of the deceased persons who were their close relatives and convicted them under Sections 302/149 and 307 I.P.C. and awarded them death sentence and life imprisonment respectively. Hence the present appeal.

Though the aforesaid appeals have been filed by the appellants from jail, now appellants Ajai alias Ajjju, Braj Pal and Ravi have engaged their respective counsel to argue appeal on their behalf before this Court. As there is no counsel for appellant-Mukesh, thus, this Court has appointed an Amicus Curiae to argue appeal on his behalf. We have heard Sri A.C. Srivatava, counsel for the Ajai alias Ajjju, Sri N.I. Zafri, counsel for the appellant-Braj Pal, Sri Rajeev Gupta, counsel for appellant Ravi and Sri Rajeev Gupta who was also appointed as Amicus Curiae for appellant Mukesh by this Court and learned Government Advocate Sri D.R. Chaudhary assisted by Sri Anand Tiwari, learned AGA for the State and Sri Jagdish Singh Sengar assisted by Sri Sunil Singh, learned counsel for the complainant.

PW1-Smt. Pinky has stated before the trial Court the relationship of the accused persons with the deceased Vijay Pal Singh. The pedigree of the family of Ram

Swaroop of which the accused and the deceased are inter-se related is being mentioned here-in-below for ready reference:

Ram Swaroop

Harkesh

Bheema

Horam

Tungal

Kiran Pal	Indra Pal	Braj Pal	(Accused)
	Vijay Pal=	Smt. Rajesh Prince	
	(Deceased)		(Deceased)

(W/o Vijay Pal Deceased)

Ravi (Accused)

Nishant (Deceased)	Smt. Pinki (injured)=	Mangal Singh (Deceased)
Rashmi		

(Husband of Smt. Pinky injured)

PW1-Smt. Pinky has deposed that her grand father Horamused to live with his father Vijay Pal Singh and there was a dispute with respect to land between her father Vijay Pal Singh and her Uncle/Tau Braj Pal and Ravi. Her grand-father had 50-60 Big has of land in his name and 10-12 years back her father has purchased 6Bighas of land and about two years back 2 Big has of land was again sold by her grand-father in favour of her father Vijay Pal, due to which her Uncle/Tau was annoyed and used to tell her father that the land which he has purchased from her grand father should12

be shared by them which her father did not want to share with her uncles. It was further stated before the trial Court by PW1- Smt. Pinky that accused Mukesh was a drunkard and her father who does not take liquor asked Mukesh not to consume liquor, due to which accused Mukesh had also indulged in a fight with her father

and when her brother Nishant came to know about the fight between the accused and her father then he also indulged in Marpeet with accused Mukesh and also punished him on which accused Mukesh threatened Nishant (deceased) that he would eliminate his whole family. Smt. Pinky had come to her parents house 5-6 days before Raksha Bandhan on 25.8.2007. On the said date in the evening someone taking the pretext of her illness called her husband Mangal Singh (deceased) to her parents house though she was not ill. On 25.8.2007 in the night, her father Vijay Pal Singh (deceased), mother Smt. Rajesh (deceased), brother Nishant alias Bhola (deceased) and her husband Mangal Singh(deceased) along with her sister Rashmi were having a chat in the house and at about 1 A.M. In the night her mother and father went to sleep on the ground floor on their cots and her brother Nishant and her husband Mangal Singh went on the first floor to sleep on their cots. Her sister Rashmi went to sleep on the second floor and she came to the ground floor and went to sleep with her mother and thereafter they went to sleep. At about 3 A.M. In the night, there was some commotion due to which she awake and she saw that accused-Mukesh, Braj Pal, Ravi and Ajai alias Ajju and besides them two other persons namely, Pramod and Abrar were assaulting her father and mother. The accused Abrar was standing a little distance away, whereas accused Braj Pal Singh was armed with a gadasa, Mukesh was armed with a weapon like sword, Ajai alias Ajju was armed with a knife, Ravi was armed with an axe(kulhari), accused-Pramod and Abrar were carrying weapons like gadasas. Out of the said accused persons, Braj Pal Singh and Mukesh were assaulting her father, whereas Ravi and Ajai alias Ajju were assaulting her mother. The accused Mukesh and Braj Pal Singh also assaulted her and Braj Pal Singh was telling accused Abrar to finish all the family members and that no one should remain alive. She received seven injuries and two fingers of her right hand were completely chopped off and she further received several injuries on her person including hand and her jaw was broken. PW-1 Smt. Pinky further stated before the trial Court that the accused persons thought that she is also dead but she heard that they were murmuring amongst themselves and saying that all the persons are to be killed. Thereafter they went on the first floor where her husband and her brother was sleeping and returned after a while from the same way and went to their house. Her husband was the only son of his parents and when the accused had left the

house, she screamed, on which her sister Km.Rashmi came down on which she disclosed that both of us have seen the incident and her sister told her that the accused persons have killed her father, mother, brother and Jija. In the house the lights were on and on the alarm being raised by the PW1-Smt.Pinky and her sister Rashmi, Braj Pal Singh, Mukesh and many other persons of the Mohalla had come down and Braj Pal Singh and Mukesh asked her and her sister as to who has killed their parents. Realizing the fact that it was Braj Pal Singh, Mukesh, Ravi, Ajai alias Ajju, Pramod and Abrar who had killed her parents, brother and Jija, but due to fear she did not disclose the said fact to them. Thereafter Braj Pal, Mukesh and her Tai Smt. Saroj, Aunt Smt. Mithlesh took her to Sarvodaya Hospital Ghaziabad on a vehicle. In the vehicle Braj Pal and other accused inquired from her as to who had killed her parents, brother and husband, then she refused to disclose their names. She disclosed the names of the accused persons to the Investigating Officer in her statement recorded under Section 161 Cr.P.C. as soon as she came in contact with him and she does not know why the accused Braj Pal has lodged a false report. She further stated that accused Mukesh's sasural is in Noorpur where she saw accused Pramod and Abrar who used to come to meet Mukesh and a day before the incident she saw the accused Pramod and Abrar coming to the house of Mukesh.

Sri A.C. Srivastava, learned counsel for the appellant-Ajai alias Ajju has argued that the appellant Ajai alias Ajju has no motive to commit the crime along with the accused persons as he has been implicated in the present case only because the accused Ajai alias Ajju was known to accused persons and had familiar relationship with them. It is further argued that the recovery of knife at the pointing out of the accused Ajai alias Ajju near the Canal(Nahar) on 4.11.2007 i.e. after three months of the alleged incident is only a fabrication and a false recovery has been made at his pointing out by the police personnel in order to associate him with the crime. It is submitted by him that the knife which was recovered was also not sent to the Serologist. Learned counsel further argued that the Santro Car on which Smt. Pinky was taken to the hospital by the accused Braj Pal, Mukesh along with his wife Smt. Saroj belongs to Ajai alias Ajju and it was due to this suspicion, accused Ajai alias Ajju has been roped in the present case.

Sri N.I. Jafri, learned counsel for the appellant-Braj Pal Singh has argued that the incident has taken place in darkness and PW1-Smt. Pinky did not identify the real assailants who have murdered her parents, brother and her husband. Moreover, it has been vehemently argued that as some unknown miscreants have committed the ghastly murder of four persons and when the accused Braj Pal who is the real brother of the deceased Vijal Pal came to know about the incident, then he lodged the F.I.R. at Police Station-Muradnagar, District-Ghaziabad on 25.8.2007 at about 4.30 A.M. It is further urged that Smt. Pinky who was also injured in the incident was taken to Sarvodaya Hospital Ghaziabad by Braj Pal and his wife Smt. Saroj alongwith Mukesh and on their way to the hospital, Braj Pal and Mukesh inquired about the assailants from Smt. Pinky who did not disclose their names and when she reached at the hospital and the doctors asked her about the names of the assailants then she kept quiet and did not disclose the names of the assailants. It is then argued by Sri Jafri that had the accused Braj Pal committed the murder along with other co-accused persons then he would not have taken PW1-Smt.Pinky to the hospital and admitted her and would have definitely eliminated her also along with her parents, brother and husband. It is vehemently argued by the counsel of Braj Pal that on the person of deceased Smt. Rajesh and Vijay Pal post mortem injuries were found, for which no explanation has been given by the prosecution, hence the incident has taken place in some other manner and not as alleged by PW1- Smt. Pinky. It was then submitted that Km.Rashmi who is also said to be an eye-witness of the incident and was present in the same house along with Smt.Pinky, was not examined by the trial Court which creates doubt about the sole testimony of PW1-Smt. Pinky. It is further argued that Horam, father of the Vijay Pal Singh, had also come at the place of occurrence, he too was not produced before the trial Court which also creates doubt about the prosecution story. It is further submitted by the learned counsel that Smt. Pinky is a solitary witness and her testimony is wholly unreliable as she has not disclosed the names of the real assailants either to her grand-father Horam, relatives, Doctors and other persons of the village, though she knew the real assailants. It was after due consultation, the names of the accused persons were disclosed by Smt. Pinky for her ulterior motives. Sri Jafri has further drawn attention of this Court towards to the statement of Dr. Rajeev Sharma, PW-2, who has stated that PW1-Smt.Pinky

has stated that some unknown persons have assaulted the deceased persons. He also pointed out towards the suggestion put to PW1 Smt. Pinky that she did not know the names of the accused persons and that she named the accused persons at the instance of her grand-father Horam. Sri Jafri has placed reliance on a judgment of the Hon'ble Apex Court reported in AIR 1996 S.C. 3471, Alil Mollah and another Vs. State of West Bengal. In paragraph No.7 of the judgment, it has been held by the Apex Court that the admissions by eye-witness in cross-examination that he did not tell any one about the occurrence to even his co-employees, though next day he went at the work place. There was no explanation about his silence. Moreover, delayed statement by him to the police and no corroboration to his testimony from any independent source. Such admissions of witness in cross-examination which materially detracted from his reliability were not noticed by the Courts. Appreciation of evidence by the Court resulting in miscarriage of justice. The conviction of accused only on the basis of testimony of sole eye witness was liable to be set aside.

Sri Jafri then submitted that so far as the recovery of bloodstained Gandasa at the instance of accused Braj Pal is concerned, it is a false recovery and further the Gandasa which was recovered, as has come in the statement of PW9-Ram Babu Saxena, the Investigating Officer, was rusted from the side and the Gandasa was also broken from the sharp edged side from which it appears that the said recovered Gandasa was out of use and was falsely planted by the police in order to connect the accused BrajPal Singh with the crime. Learned Counsel further argued that there was no question of recovery of Gandasa at the pointing out of accused Braj Pal Singh on 26.8.2007 as on 25.8.2007 the Investigating Officer has prepared a fard recovery memo of bloodstained Gandasa which was found under the cot of deceased Smt.Rajesh wife of Vijay Pal and the same was sealed by the police after preparing its memo which is marked as Exhibit Ka-41.

Sri Rajeev Gupta, learned counsel for the appellant-Ravi and also Amicus Curiae for appellant Mukesh has also vehemently argued that the testimony of PW1-Smt. Pinky is unworthy to be believed as she is a solitary witness and she has not disclosed the names of the accused persons to Braj Pal who had taken her to the hospital along with his wife Smt. Saroj. Moreover, learned counsel has adopted

the arguments raised by Sri N.I. Jafri and for the sake of brevity, the same are not being repeated. Sri Gupta further argued that so far as the recovery of blood stained Khukhri and pant of accused Mukesh which was recovered at his pointing out is a false recovery and the police has falsely shown the same to have been recovered from the house of Mukesh at his pointing out as no such recovery of blood stained Khukhri or pant of Mukesh was recovered from his House. Sri Gupta also argued that accused Ravi was a juvenile i.e. under 18 years at the time of the alleged incident. He submitted this argument on the basis of his age given by the accused when his statement under Section 313 Cr.P.C. was recorded by the trial Judge in which his age is mentioned as 20 years as on 28.7.2009, hence he should be given the benefit of being a juvenile.

On the other hand, learned Government Advocate for the State has argued that Smt. Pinky who has been examined as PW1 though a solitary witness, her testimony cannot be doubted in any manner as she being an injured witness has seen the incident and disclosed the names of the accused persons to the Investigating Officer when she found herself in a safe condition when her statement was recorded under Section 161 Cr.P.C. by the Investigating Officer Ram Babu Saxena, PW10 on 26.8.2007. The learned Government Advocate in support of his argument placed reliance on a judgment of the Hon'ble Supreme Court in the case of Ashok Kumar Pandey Vs. State of Delhi, reported in 2002 SC(Cri.) 728, in which it was held that "the evidence of a solitary witness cannot be discarded merely on the ground that he is either partisan or interested or both, if otherwise the same is found to be reliable."

It was further argued by the learned Government Advocate that as Smt. Pinky after the alleged incident was taken to the Sarvodaya Hospital, Ghaziabad for medical treatment by her Tau Braj Pal and Mukesh and other relatives who were present with her all the way and apprehending danger to her life, she did not disclose the names of the accused Braj Pal, Mukesh who were her real Tau/Uncle and who had murdered her parents, brother and her husband and if there has been any disclosure of the names of the actual assailants, which she knew, then she would have also been killed by Braj Pal, Mukesh and other accused persons. It was then argued that when Smt. Pinky was admitted in Sarvodaya Hospital,

Ghaziabad by accused Braj Pal and his wife Smt. Saroj then it has come in the statement of PW2-Dr.Rajeev Verma that she was operated of her injuries and her surgery took almost 2 hours and thereafter the Investigating Officer recorded the statement of Smt. Pinky, PW1, under Section 161 Cr.P.C. on 26.8.2007 and there was no time for any tutoring or concoction with respect to the names of the accused persons. It was further submitted by the Government Advocate that when the accused Braj Pal, Mukesh, Ajai alias Aju, Ravi, Abrar and Pramod had brutally murdered the parents, brother and her husband and also seriously assaulted Smt. Pinky and she was left in an injured condition and the accused thought that she is also dead, Smt. Pinky with the terror of the accused persons pretended to have been dead so that she may not also be done to death by the said accused persons. This conduct of Smt. Pinky was quite natural who had to save her life at the hands of her Uncles/Tau i.e. accused Braj Pal, Mukesh and Ravi who had committed the ghastly murder of her family members.

Sri Jagdish Singh Sengar, learned counsel for the complainant, has adopted the arguments of the learned Government Advocate and has submitted that the post-mortem injuries found on the persons of the two deceased namely, Smt. Rajesh and Vijay Pal Singh are not very significant as the dead bodies of the deceased persons were taken to the mortuary in what manner and it was lying in the mortuary under what conditions due to which the said injuries would have been caused. Moreover, it might be possible that the accused persons have also managed the post mortem injuries in collusion with the doctor to mislead the prosecution case. He further submitted that there is no reason to doubt the testimony of Smt. Pinky who is an injured witness and further there is no reason for her to falsely implicate the accused persons as her whole family has been done to death including her husband who was the only son of his parents. It was then argued by Sri Sengar that it is a ghastly murder of four persons of a family and no sympathy should be shown to the appellants regarding commuting of the sentence from death to life and has further argued that the present case is one in which death sentence should be confirmed by this Court.

Having considered the submissions advanced by the learned counsel for the parties and perused the entire evidence and material on record, it cannot be said

that Smt. Pinky who is an eyewitness as well as injured witness, her presence at the place of occurrence cannot be doubted in any manner. The disclosure of the names of the four accused persons, namely, Ajai alias Ajju, Braj Pal, Ravi and Mukesh, who have participated in the ghastly murder appears to be true from the testimony of Smt. Pinky. Moreover, disclosure by her about the accused to the Investigating Officer, PW10-Ram Babu Saxena, in her statement under Section 161 Cr.P.C. on 26.8.2007 in the hospital when she first met him, shows her natural conduct, that when she found herself to be in safe hands, then she disclosed the names of the accused persons to him at the first opportune time. The non-disclosure of the names of actual assailants by her to her Tau-Braj Pal and Mukesh and Tai-Smt. Saroj, wife of Braj Pal also shows her presence of mind that she is conscious about the fact that if she tells the names of the actual assailants (who is the informant Braj Pal, Mukesh and Ravi who are her close relatives, who have murdered her parents, brother and husband) then her life will also be in danger and she would be also eliminated. PW1-Smt. Pinky has also stated before the trial Court that it was her Tau Braj Pal and close relative Mukesh and Ravi who is her cousin brother along with Ajai alias Ajju who have brutally murdered her parents, brother and husband and the trial Court rightly believed her testimony and recorded the finding of conviction against the accused persons, who is the solitary eye witness and also an injured witness. Hence the argument of the learned counsel for the appellants that the testimony of PW1 Smt. Pinky who is the solitary witness does not find force in recording the conviction of the accused persons.

It has come on record that Km. Rashmi, who is the real sister of PW1-Smt. Pinky, had also seen the incident and was an eyewitness and supported the prosecution story. Km. Rashmi was produced by the prosecution but for the reasons best known to it, she was got discharged by which an adverse inference may be drawn against the accused persons that she may have been warned by the accused persons for not giving any evidence against them and furthermore her whereabouts after the incident was also not known to PW1-Smt. Pinky who is the real sister of Km. Rashmi.

The testimony of PW1 Smt. Pinky find support from the recovery of blood stained Gandasa which was recovered at the pointing out of accused Braj Pal from his house on 26.8.2007 by the Investigating Officer just after the disclosure of the names of accused persons by PW1-Smt. Pinky in her statement under Section 161 Cr.P.C.. There is a report of the Serologist that human blood was found on the Gandasa which is clinching evidence and incriminating circumstance against the accused Braj Pal.

Similarly, accused Mukesh on whose pointing out, a bloodstained Khukhri and his pant was recovered from his house which was hidden by him and the report of the Serologist that the human blood was found on both the articles is also a clinching piece of evidence and a strong circumstance against the accused Mukesh.

The Supreme Court in the case of State of Rajasthan Vs. Tej Ram and others reported in AIR 1999 SC 1776 has held that

“

One of the circumstances which trial court relied on as incriminating the accused is the recovery of two axes (Kulahadi) on the strength of statements of A1 Teja Ram and A2 Ram Lal. They were subjected to chemical examination and the result is that both axes were found stained with blood. When it was further subjected to test by Serologist the blood on one axe was found to be of human origin, while the blood stain on the other axe was found to have so disintegrated that its origin became undetectable. Ex. P10 is the report of the Serologist.

22. Axes hidden beneath the rags were disinterred with the help of information elicited from the accused. According to PW21 (the Investigation Officer) A1 Teja Ram told him

“ I have concealed the axe under some rags and kept it at the left corner of the hut in my farm at Dhokwa.” The axe recovered pursuant thereto on 20.9.1981 as per Ex.P14 seizure memo was marked as Article No.8. Similarly, PW42 Ram Lal has told the Investigation Officer that “I have concealed the axe under some rags and placed it on a slab in the store of my house.” On the said information another axe

was recovered on 23.9.1981 as per Ex.P3 Seizure Memo. That axe has been marked as Article 1.

.....

.....

25. Failure of the Serologist to detect the origin of the blood, due to disintegration of the serum in the meanwhile, does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to hematological changes and plasmatic coagulation that a Serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin? Such a guess work that blood on the other axe would have been animal blood is unrealistic and far fetched in the broad spectrum of this case. The effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity no benefit can be claimed by the accused.”

The Apex Court in the case of Gura Singh Vs. The State of Rajasthan reported in JT 2000 (suppl 3) SC 528 reiterated the law laid down in the case of Tej Ram (supra).

The contention of the learned counsel for the appellants that had Km. Rashmi been present in the house at the time of the alleged incident and had seen it then she would not have been spared by the accused persons. The said contention also does not seem to have much substance as it was pointed out by the learned counsel for the complainant that from the site plan prepared by the Investigating Officer of the place of occurrence, Km. Rashmi was sleeping on the second floor of the house and had witnessed the incident and when the accused persons had left she on the alarm being raised by her elder sister PW1-Smt. Pinky came down. It was the sheer luck of Km. Rashmi that the accused probably could not know that she is on the second floor of the house, hence she was saved.

It has also come in the evidence of PW10-Ram Babu Saxena, the first Investigating Officer, that he recorded the statement of PW1-Smt. Pinky in the hospital on 26.8.2007 and he got her pacified before interrogating her and on interrogation she told the names of the accused persons to him at the first meeting with her. Moreover, PW10 has also proved the recoveries made at the pointing out of the accused Braj Pal and Mukesh and his testimony cannot be doubted in any manner. He has completely supported the prosecution story and there appears to be no ambiguity in his statement which may falsify the prosecution case.

It is noteworthy to mention here that the contention of Sri N.I.Jafri submitted on behalf of appellant-Braj Pal that blood stained Gandasa was also recovered on 25.8.2007 under the cot of deceased Smt. Rajesh hence there was no occasion to get it recovered at the pointing out of appellant Braj Pal, has no force from the perusal of Exhibit Ka-41, find recovery memo dated 25.8.2007, the recovered article is blood stained 'Gorsa Loha' which is like a machine, was recovered which was lying under the cot of the deceased Smt. Rajesh wife of Vijay Pal Singh and not blood stained Gandasa which was recovered on 26.7.2008 at the pointing out of accused Braj Pal from his house where it was hidden.

The argument of Sri Jafri and Sri Rajeev Gupta, learned counsel for the appellants that had accused Braj Pal and Mukesh murdered the deceased and assaulted Smt. Pinky then Braj Pal would not have lodged the FIR of the occurrence nor they would taken her to Sarvodaya Hospital, Ghaziabad. This argument of the learned counsel has also no legs to stand because PW1-Smt. Pinky is a sensible lady and her conduct appears to be quite natural and she being conscious about danger to her life, did not disclose the names of the accused persons to Braj Pal and Mukesh, who were her Taus and had actually murdered her parents, brother and her husband and she knew that if she disclosed the identity of the accused persons who are Braj Pal and Mukesh along with the other accused persons then she would have also been eliminated at the outset, but she kept quiet and disclosed the names of the accused persons to the first Investigating Officer PW10-Ram Babu Saxena at the first opportune time on 26.8.2007 when her statement was recorded under Section 161 Cr.P.C. by the I.O. and she realized that she was in safe hands.

The argument of Sri Gupta with regard to plea of juvenile raised for appellant Ravi is concerned, the said argument too has no basis as from the perusal of the record shows that during investigation, inquiry and trial no plea of juvenile was taken by the appellant Ravi. Moreover, no plea of juvenile was either taken by the appellant Ravi at the time of his moving the bail application before the Court below or at the stage of committal proceedings before the Magistrate or in memo of appeal filed before this Court. Thus, in such a circumstance, the submission of the learned counsel does not find force and the appellant Ravi cannot be given benefit of Juvenile Justice (Care and Protection of Children) Act, 2000.

The Supreme Court in the case of Ram Deo Chauhan @ Raj Nath Vs. State of Assam, reported in AIR 2001 SC 2231, has held:

“

A perusal of the record shows that during the investigation, inquiry and trial, though represented by Senior Counsel, no plea was ever raised regarding the petitioner being juvenile and the case being governed by the provisions of the Act. Only at the time of arguments, plea regarding the accused being juvenile was raised on the basis of defence evidence and the statement of Dr. B.C. Roy, Medhi. However, such evidence appears to have been brought on record for the purposes of avoiding the death sentence and not for the applicability of the Act. Even in his application for grant of bail under Section 437 of the Code, the petitioner had not raised the plea of being under the age of 16 years entitling him bail under the first proviso to Sub-section (1) of Section 437 of the Code. Neither in his confessional statement, recorded by the Magistrate, nor in the memo of appeal filed in the High Court, such plea was ever raised.

.....

In a case where the accused had not raised the plea of his being a child/juvenile either before the committal court, or the trial court, in appeal the High Court basing merely on an entry made in the statement records under Section 313 of the Code, wherein his age was mentioned as 17 year, concluded that he was a child. Setting aside the judgment of the High Court in State of Haryana vs. Balwant Singh

MANU/ SC/0600/1993 this Court held:

“We have gone through the records carefully. It appears that the respondent took his trial before the trial court only on being committed by the Magistrate. It may be noticed that the age of the respondent before the trial court even at the stage of framing the charge was given at 17years. Evidently, the Magistrate before whom the respondent was brought, was not satisfied that the respondent was a child within the definition of word 'child' under the Haryana Children Act. Admittedly, neither before the committal court nor before the trial court, no plea was raised on behalf of the respondent that he was a child and that he should not have been committed by the Magistrate and thereafter tried by the sessions court and that he ought to have been dealt with only by the court of Juveniles. When it is not the case of the respondent that he was a child both before the committal court as well as before the trial court, it is very surprising that the High Court, based merely on the entry made in Section 313 statement mentioning the age of the respondent as 17 has concluded that the respondent was a 'child' within the definition of the Act on the date of the occurrence though there was no other material for that conclusion. This observation of the High Court, in our considered view, cannot be sustained either in-law or on facts. Hence, we set aside that finding of the High Court that the respondent was a 'child'.

The argument of Sri A.C. Srivastava submitted on behalf of appellant Ajai alias Ajju that the appellant is said to have caused injury to Smt. Rajesh by knife and there is no injury of knife, but the said argument of Sri Srivastava does not find force as from a perusal of the post-mortem report of deceased Smt. Rajesh it is clear that the injury No.2 found on her body is of knife which can be caused by it. From the entire evidence available on record and the testimony of PW1-Smt. Pinky, it cannot be ruled out that Smt. Pinky being an injured witness and had seen the incident. It is found that it was her Tau, Braj Pal and cousin brother Ravi and close relative Mukesh along with Ajai alias Ajju who have committed the cold blooded murder of her parents, brother and her husband and there is no ambiguity and infirmity in any manner by which it can be said that the prosecution version given by her during investigation or trial is false or can be doubted in any manner.

The case law cited by Sri N.I. Jafri, learned counsel, in support of his contention regarding the solitary witness in the case of Alil Mulla and others (supra) is distinguishable from the present case. In the instant case though PW1 Smt. Pinky is a solitary witness but she being an eye witness as well as injured witness, her presence at the place of occurrence cannot be doubted and further she has stated that she disclosed the names of the accused persons to the Investigating Officer under Section 161 Cr.P.C. on 26.8.2007 just immediately after the incident and when she for the first time came in contact with the Police Personnel who had come to investigate the present case and on her disclosure of the names of the accused Braj Pal who tried to mislead the police about the ghastly murder to save himself has lodged the FIR of the incident and during investigation on 26.8.2007 the police made him an accused in the present case and arrested him on 26.8.2007 along with accused Mukesh and got a blood stained Gandasa and blood stained Khukhri and pant recovered on their pointing out from their houses where it was hidden by them.

It also transpires from the record that the accused appellants had a strong motive to commit the ghastly murder of the deceased as Horam, father of the deceased Vijay Pal, was living with him and had also given the landed property to the deceased Vijay Pal, which was disliked by the accused Braj Pal, Mukesh and Ravi²⁸

who could not bear the favour given by their father and grand-father respectively to deceased Vijay Pal and his family members.

Learned counsel for the appellants have made an alternative argument that the accused appellants may not be given death sentence and their sentence be commuted into life, as the instant case does not fall within the category of 'rarest of rare cases'. In support of this contention, reliance have been placed on the judgment of the Hon'ble Supreme Court reported in 2010(1) SCC(Cri.) 348, Sushil Kumar Vs. State of Punjab. The Hon'ble Supreme Court in the said case held after weighing the mitigating circumstances the following facts are manifest:

“

- (i) The appellant had been unemployed for last seven to eight months.
- (ii) He used to borrow money from others to meet his daily needs.
- (iii) He himself had consumed "sulphas tablets" to commit suicide even though not medically established.
- (vi) He therefore, was keen that his whole family should be finished and no one should be alive to suffer the pain and agony alone.
- (v) He was fed up with his life and was seen in a perplexed condition by PW 4.
- (vi) In any case, he cannot be a threat to the society and there are fairly good chances of his reformation as he has learnt sufficient lesson from it."

On the other hand, learned Government Advocate as well as learned counsel for the complainant have submitted that the present case falls within the category of 'rarest of rare cases' where the death penalty awarded by the trial Court should be confirmed by this Hon'ble Court and no sympathy should be shown to the accused appellants. It is further submitted that the case cited by the learned counsel for the appellants of the Supreme Court in the case of Sushil Kumar Vs. State of Punjab (supra) is distinguishable on the ground that it was a case of circumstantial evidence and the instant case is of direct evidence and injured witness PW1-Smt. Pinky has supported the prosecution story and her testimony cannot be doubted in any manner.

Having considered the submissions advanced by the learned counsel for the parties regarding sentence of death awarded to the accused appellants, it is necessary to take into consideration the various pronouncements of the Hon'ble Apex Court taking into the circumstances of each case. Some of the latest pronouncement of the Apex Court on this point in which the earlier decisions of the Apex Court have also been considered are being discussed asunder:

The Supreme Court in the case of Ashok Kumar Pandey Vs. State of Delhi reported in 2002 SCC (Cri.) 728, wherein husband was convicted and sentenced to death for committing the murder of his wife and daughter. The Supreme Court

having regard to the decision in 'Bachan Singh as well as Machhi Singh case held that in the facts and circumstances of the case it could not be concluded that the present case fell within the category of 'rarest of rare cases' hence sentence of death was commuted to R.I. for life.

The Supreme Court in the case of Mulla and another Vs. State of U.P. reported in 2010 (2) SCC (Cri.) 1150 has again narrated the principles of Bachan Singh case (supra). In the said case, in the night incident eight miscreants killed five persons mercilessly for non-payment of ransom. Taking into account all the aggravating and mitigating circumstances, the appellants' death sentence was commuted to life imprisonment which was to extend to the full term of life. In another case of Rajesh Kumar Vs. State through Government of NCT of Delhi reported in 2011 (75) ACC 553, relevant paragraph Nos. 86 to 90 and 105, the Supreme Court hashed that the principles discussed in Bachan Singh's case reported in 1980(2) SCC 684 set out certain mitigating circumstances which was suggested by Dr. Chitaley. At paragraph 207 of the report of the learned Judge that these are undoubtedly relevant circumstances and must be given great weight in determination of the sentence. The circumstances set out here-in-below:

"206. Dr. Chitaley has suggested these mitigating factors :

Mitigating circumstances.-- In the exercise of its discretion in the above cases, the Court shall take into account the following circumstances:

- (1) That the offence was committed under the influence of extreme mental or emotional disturbance.
- (2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.
- (3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
- (4) The probability that the accused can be reformed and rehabilitated.

The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.”

In the said case, the Supreme Court observed that the High Court while discussing the mitigating circumstances as against the aggravating circumstance has not properly followed the principle discussed in Bachan Singh's case supra), hence the Supreme Court held that the persons convicted of murder life imprisonment is the rule and death sentence is an exception hence the Supreme Court in the said case substituted death sentence by imprisonment for life.

In another case, Apex Court in Rameshbhai Chandubhai Rathod Vs. State of Gujrat reported in 2011 (2) SCC 764 reiterated the principles of law laid down in Bachan Singh's case(supra), Mullah's case (supra). In the said case the Supreme Court considering the gravity of the offence, behaviour of appellant and fear and concern such incident generate in ordered society commuted the death sentence to life imprisonment directing that life imprisonment would extend to the full life of the appellant subject to any remission/commutation at the instance of Government for good and sufficient reasons.

Now in the light of the principles laid down in Bachan Singh(supra) case, which has been followed by the Supreme in its latest decisions, as seen above, the present case has to be adjudged whether there are mitigating circumstances which could be taken into account for appellants' death sentence computed to life imprisonment to extend full term of life.

In the instant case, the State has failed to show that the appellants are a continuing threat to Society or they are beyond reform or rehabilitation. Secondly,

accused appellant Ajai alias Ajuaged about 36-37 years, appellant-Braj Pal aged about 55 years, appellant Ravi aged about 20 years and appellant Mukesh aged about 42-43 years respectively, when their statements were recorded by the trial Court under Section 313 Cr.P.C on 20.7.2009. Thirdly, there is no material shown by the State or the complainant to that there was a probability that the appellants would again commit criminal acts of violence as would constitute a continuing threat to Society.

In the instant case three persons of a family and one person of another family (who was his father's only son), have been murdered by the appellants is undoubtedly a grave offence for which the duty of the Court is to impose adequate punishment depending upon the degree of criminality and desirability to impose such punishment, as a measure of social necessity and also as a means of deterring other potential offenders the sentence should be appropriate and befitting the crime. Having considered the principles discussed in the Bachan Singh case as well as Rameshbhai Chandubhai Rathod (supra) and other cases of the Apex Court mentioned above, we are of the opinion that the present case does not fall within the category of 'rarest of rare cases' where the other option of awarding a sentence of imprisonment for life is unquestionably foreclosed. The death sentence taking into all aggravating and mitigating circumstances, all the appellants death sentence are computed to life imprisonment to extend to the full term of life of the appellants would be sufficient and meet the ends of justice. We, therefore, reduce the sentence of death of the appellants to life imprisonment to extend to the full term of life of the appellants.

References aforesaid are rejected. The appeals are partly allowed. In consequence the conviction recorded by the trial Court is maintained. The sentence of death awarded to the appellants by the trial Court is commuted to life imprisonment to extend to the full term of life of the appellants.

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